Board of Directors Meeting Agenda

Date: March 19, 2020
Time: 6:00 p.m.
Location: SMUD Headquarters Building, Auditorium
6201 S Street, Sacramento, CA
Members of the public wishing to address the Board are requested to complete a sign-up slip at the lobby information center. Statements shall not exceed three minutes, unless the Board President grants special permission.

AGENDA

SACRAMENTO MUNICIPAL UTILITY DISTRICT
BOARD OF DIRECTORS MEETING
SMUD HEADQUARTERS BUILDING
AUDITORIUM - 6201 S STREET
SACRAMENTO, CALIFORNIA

March 19, 2020 – 6:00 p.m.

Call to Order.
    a. Roll Call.

1. Approval of the Agenda.

2. Approval of the minutes of the meeting of February 20, 2020.

3. Committee Chair Reports.
    a. Committee Chair report of March 10, 2020, Strategic Development Committee
    b. Committee Chair report of March 11, 2020, Policy Committee
    c. Committee Chair report of March 17, 2020, Finance and Audit Committee
        Present the Financial Statement for SMUD for the one-month period ended January 31, 2020
    d. Committee Chair report of March 18, 2020, Energy Resources & Customer Services Committee

Items 5 through 7 were reviewed by the Policy Committee on March 11, 2020. Item 8 was reviewed by the Finance and Audit Committee on March 17, 2020.

Comments from the public are welcome when these agenda items are called.

Consent Calendar:

4. Approve Board member compensation for service rendered at the request of the Board (pursuant to Resolution 18-12-15) for the period of February 16, 2020, through March 15, 2020.

5. Accept the monitoring report for **Strategic Direction SD-6, Safety**. Policy Committee 3/11.
   *(Gary King)*
6. Approve proposed revisions to **Governance Process GP-6, Role of the Board President.** Policy Committee 3/11. *(President Kerth)*

7. Approve proposed revisions to **Governance Process GP-14, External Auditor Relationship.** Policy Committee 3/11. *(President Kerth)*

8. Authorize the Chief Executive Officer and General Manager to award contracts to **The Original Mowbray’s Tree Service, Inc. and Wright Tree Service of the West, Inc.** for Vegetation Management – Utility Line and Subject Pole Clearance Services for a three-year term starting March 23, 2020, with two optional one-year extensions for each contract, for a total not-to-exceed aggregate amount of $156 million. **Finance and Audit Committee 3/17. (Gary King)*

    * * * * * * *

**Public Comment:**

9. Items not on the agenda.

    * * * * * * *

**Board and CEO Reports:**

10. Directors' Reports.


12. CEO’s Report.
    a. Board Video re: Habitat for Humanity

    * * * * * * *

**Summary of Board Direction**

    * * * * * * *
Board Committee Meetings and Special Meetings of the Board of Directors are held at the SMUD Headquarters Building, 6201 S Street, Sacramento

<table>
<thead>
<tr>
<th>Date</th>
<th>Meeting Description</th>
<th>Location</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>March 17, 2020</td>
<td>Finance and Audit Committee and Special Board of Directors Meeting</td>
<td>Auditorium*</td>
<td>5:30 p.m.</td>
</tr>
<tr>
<td>March 18, 2020</td>
<td>Energy Resources &amp; Customer Services Committee and Special Board of Directors Meeting</td>
<td>Auditorium</td>
<td>5:30 p.m.</td>
</tr>
<tr>
<td>April 7, 2020</td>
<td>Strategic Development Committee and Special Board of Directors Meeting</td>
<td>Auditorium</td>
<td>5:30 p.m.</td>
</tr>
<tr>
<td>April 8, 2020</td>
<td>Policy Committee and Special Board of Directors Meeting</td>
<td>Auditorium</td>
<td>5:30 p.m.</td>
</tr>
<tr>
<td>April 14, 2020</td>
<td>Finance and Audit Committee and Special Board of Directors Meeting</td>
<td>Auditorium</td>
<td>5:30 p.m.</td>
</tr>
<tr>
<td>April 15, 2020</td>
<td>Energy Resources &amp; Customer Services Committee and Special Board of Directors Meeting</td>
<td>Auditorium</td>
<td>5:30 p.m.</td>
</tr>
</tbody>
</table>

Regular Meetings of the Board of Directors are held at the SMUD Headquarters Building, 6201 S Street, Sacramento

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>April 16, 2020</td>
<td>Auditorium</td>
<td>9:00 a.m.</td>
</tr>
</tbody>
</table>

*The Auditorium is located on the first floor of SMUD Headquarters Building, 6201 S Street, Sacramento, CA

Members of the public wishing to address the Board should complete a sign-up form available at the table outside of the meeting room. Members of the public shall have up to three (3) minutes to provide public comment on items on the agenda or items not on the agenda, but within the jurisdiction of SMUD. The total time allotted to any individual speaker shall not exceed nine (9) minutes.

Members of the public wishing to inspect public documents related to agenda items may call 916-732-7143 to arrange for inspection of the documents at the SMUD Headquarters Building, 6201 S Street, Sacramento, California.

NOTE: Accommodations are available for the disabled public. If you need a hearing assistance device or other aid, please call 916-732-7143 in advance of this Board Meeting.
The Board of Directors of the Sacramento Municipal Utility District met in regular session in the Auditorium of the SMUD Headquarters Building at 6201 S Street, Sacramento, at 6:10 p.m.

Roll Call:

Presiding: President Kerth

Present: Directors Rose, Bui-Thompson, Fishman, Herber, Tamayo, and Sanborn

Present also were Jennifer Davidson, acting Chief Executive Officer and General Manager; Joe Schofield, Deputy General Counsel and Assistant Secretary, and members of SMUD’s executive management; and SMUD employees and visitors.

Director Herber relayed the environmental message.

President Kerth called for the approval of the agenda. Director Rose moved for approval of the agenda, Director Tamayo seconded, and the agenda was unanimously approved.

President Kerth called for the approval of the minutes of the meeting held January 16, 2020. Director Tamayo moved for approval of the minutes, Director Herber seconded, and the minutes were unanimously approved.

Vice President Bui-Thompson, Chair, presented the report on the Strategic Development Committee meeting held on February 11, 2020.

Director Sanborn, Chair, presented the report on the Policy Committee meeting held on February 12, 2020.

Director Herber, Chair, presented the report on the Finance and Audit Committee meeting held on February 18, 2020.

President Kerth then called for statements from the public regarding items on the agenda, but he had not received any cards for items on the agenda.

President Kerth then addressed the consent calendar consisting of Items 4 through 9. Vice President Bui-Thompson moved for approval of the
consent calendar, Director Fishman seconded, and Resolution Nos. 20-02-01 through 20-02-06 were unanimously approved.
BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

Section 1. That this Board hereby approves Board member compensation for service rendered at the request of the Board (pursuant to Resolution 18-12-15) for the period of January 16, 2020, through February 15, 2020.

Section 2. That this Board hereby approves Board member reimbursement requests for technology-related expenses (pursuant to Resolution 19-12-05).

Approved: February 20, 2020

<table>
<thead>
<tr>
<th>DIRECTOR</th>
<th>YES</th>
<th>NO</th>
<th>ABSTAIN</th>
<th>ABSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>KERTH</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>ROSE</td>
<td></td>
<td>X</td>
<td></td>
<td></td>
</tr>
<tr>
<td>BUI-THOMPSON</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FISHMAN</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>HERBER</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>TAMAYO</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>SANBORN</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

This Board accepts the monitoring report for Strategic Direction SD-2, Competitive Rates, substantially in the form set forth in Attachment A hereto and made a part hereof.

Approved: February 20, 2020

INTRODUCED: DIRECTOR BUI-THOMPSON
SECONDED: DIRECTOR FISHMAN

DIRECTOR AYE NO ABSTAIN ABSENT

KERTH X
ROSE X
BUI-THOMPSON X
FISHMAN X
HERBER X
TAMAYO X
SANBORN X
SACRAMENTO MUNICIPAL UTILITY DISTRICT

OFFICE MEMORANDUM

TO: Board of Directors

FROM: Claire Rogers

DATE: February 5, 2020

SUBJECT: Audit Report No. 28007180
Board Monitoring Report; SD-02: Competitive Rates

Audit and Quality Services (AQS) reviewed the SD-02 Competitive Rates 2019 Annual Board Monitoring Report and performed the following:

- Reviewed the information presented in the report to determine the possible existence of material misstatements;
- Interviewed report contributors and verified the methodology used to prepare the monitoring report; and
- Validated the reasonableness of a selection of the report’s statements and assertions.

During the course of the review, nothing came to AQS’ attention that would suggest the report did not fairly represent the source data available at the time of the review.

CC:
Arlen Orchard
1. **Background**

Strategic Direction 2, Competitive Rates states that:

Maintaining competitive rates is a core value of SMUD.

Therefore:

a) The Board establishes a rate target of 18 percent below Pacific Gas & Electric Company’s published rates on a system average basis. In addition, the Board establishes a rate target of at least 10 percent below PG&E’s published rates for each customer class.

b) SMUD’s rate of change for both rates and bills shall be competitive with other local utilities on a system average basis.

c) In addition, SMUD’s rates shall be designed to balance and achieve the following goals:

   i) Reflect the cost of energy when it is used;
   
   ii) Reduce use on peak;
   
   iii) Encourage energy efficiency and conservation;
   
   iv) Minimize “sticker” shock in the transition from one rate design to another;
   
   v) Offer flexibility and options;
   
   vi) Be simple and easy to understand;
   
   vii) Meet the needs of people with fixed low incomes and severe medical conditions; and
   
   viii) Equitably allocate costs across and within customer classes.

2. **Executive summary**

   a) **SMUD is in compliance with SD-2, Competitive Rates.**

   As of December 31, 2019, SMUD’s rates remain among the lowest in the state and on a system average rate basis are 36.5% below Pacific Gas & Electric
(PG&E) Company’s, which is better than the SD-2 target of at least 18% below on a system average rate basis. Residential average rates are at least 32.2% below PG&E’s residential average rates. See figure 1 for details.

There was no rate increase to SMUD’s residential rates in 2019. Rates for all non-residential customers were increased by 1% in 2019 per Board adopted rate changes on June 15, 2017. The overall rate advantage between SMUD and PG&E remains well above the SD-2 target of at least 18% on a system average basis.

<table>
<thead>
<tr>
<th>Metric</th>
<th>2019 performance</th>
<th>2018 performance</th>
<th>5-year average</th>
</tr>
</thead>
<tbody>
<tr>
<td>SD-2, Competitive Rates requires system average rates 18% below PG&amp;E rates</td>
<td>36.5% below PG&amp;E on a system average rate basis</td>
<td>33.4% below PG&amp;E on a system average rate basis</td>
<td>31.4% below PG&amp;E on a system average rate basis</td>
</tr>
</tbody>
</table>

The new standard residential Time-of-Day (TOD) rate and alternative fixed rate went into effect in late 2018, with the full rollout completed in November 2019. The restructuring of the Energy Assistance Program Rate (EAPR) began in 2019 and will end in 2021. The restructuring of the EAPR rate modified the discount to be based on the customer’s income as a percentage of the federal poverty level, rather than a straight percentage discount on the bill. This change provides a higher discount to the low-income customers who are most in need. The EAPR customer population was transitioned to the new structure as of the end of 2019.

As of December 31, 2019, all customers have transitioned to TOD, with only 2% of customers choosing the alternative fixed rate. Similarly, less than 2% of the EAPR customers transitioned to TOD chose the alternative fixed rate.

The TOD rate supports the principles of the Board’s Strategic Direction as it better aligns residential rates with costs and gives SMUD the ability to achieve our environmental goals by sending price signals that influence customer behaviors; such as encouraging efficiency and conservation. We have seen a reduction of energy use during the Peak time period which may help to defer future infrastructure investments. Additionally, this reduction in peak load will save our customers money and help the environment by reducing energy generation during the time energy is most expensive and most carbon-intensive. Customers have not only shifted their load out of the Peak time period but have also reduced their usage in all time periods. At this point, it is assumed that the primary driver of that reduction is due to TOD.
So far, preliminary findings show that in the first summer, TOD has benefitted customers and SMUD by reducing the carbon impact by approximately 12,800 tonnes per year, which is the equivalent of removing approximately 4,200 cars with internal combustion engines from the road for one year. A full presentation of the benefits of TOD is being presented to the Board at the finance committee presentation in March.

3) Additional supporting information

a) The Board establishes a rate target of 18% below PG&E’s published rates on a system average basis. In addition, the Board establishes a rate target of at least 10% below PG&E’s published rates for each customer class.

SMUD continues to maintain average rates that are lower than PG&E’s, both at a system level and by rate class. Figure 1 provides a detailed picture of the difference between SMUD’s and PG&E’s projected average rates by rate class in 2019 as well as the difference in rates in 2018.

Figure 1 – Summary of SMUD and PG&E Rate Comparison in $/kWh

<table>
<thead>
<tr>
<th>Customer</th>
<th>Rate Categories</th>
<th>Average Annual Rate</th>
<th>Difference Below PG&amp;E*</th>
<th>Difference Below PG&amp;E*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>PG&amp;E</td>
<td>SMUD</td>
<td>2019</td>
</tr>
<tr>
<td>Class</td>
<td>Description</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential</td>
<td>Standard</td>
<td>E-1</td>
<td>R-TOD</td>
<td>$0.2505</td>
</tr>
<tr>
<td></td>
<td>Low Income</td>
<td>CARE**</td>
<td>EAPR &amp; EAPRMED**</td>
<td>$0.1471</td>
</tr>
<tr>
<td>All Residential</td>
<td></td>
<td>$0.2205</td>
<td>$0.1439</td>
<td>-34.7%</td>
</tr>
<tr>
<td>Small Commercial***</td>
<td>&lt;= 20 kW</td>
<td>A-1</td>
<td>GFN/GSN_T</td>
<td>$0.2572</td>
</tr>
<tr>
<td></td>
<td>21 - 299 kW</td>
<td>A-6</td>
<td>GSS_T</td>
<td>$0.2456</td>
</tr>
<tr>
<td>Medium Commercial****</td>
<td>300 - 999 kW</td>
<td>A-10</td>
<td>TOU-3</td>
<td>$0.2265</td>
</tr>
<tr>
<td></td>
<td>500 - 999 kW</td>
<td>E-19</td>
<td>TOU-2</td>
<td>$0.2006</td>
</tr>
<tr>
<td>Large Commercial****</td>
<td>=&gt; 1 MW</td>
<td>E-20</td>
<td>TOU-1</td>
<td>$0.1598</td>
</tr>
<tr>
<td>Lighting</td>
<td>Traffic Signals</td>
<td>TC-1</td>
<td>TS</td>
<td>$0.2453</td>
</tr>
<tr>
<td></td>
<td>Street Lighting</td>
<td>various</td>
<td>SLS,NLGT</td>
<td>$0.2614</td>
</tr>
<tr>
<td>Agriculture</td>
<td>Ag &amp; Pumping</td>
<td>AG</td>
<td>ASNI/D,AON/D</td>
<td>$0.2162</td>
</tr>
<tr>
<td>System Average</td>
<td></td>
<td>$0.2109</td>
<td>$0.1340</td>
<td>-36.5%</td>
</tr>
</tbody>
</table>


** CARE vs. EAPR includes EAPR & EAPRMED customers.

*** Commercial rates include WAPA credits. The revenue forecast does not consider economic development discounts for year 2019.

As shown in Figure 1, the rate competitiveness by class varies for the different customer classes and is at least 32.2% below comparable PG&E class average rates. Since the creation of this annual monitoring report in 2007, SMUD has consistently maintained rates that were more than 18% below PG&E. See Appendix A for more details.
b) SMUD’s rate of change for both rates and bills shall be competitive with other local utilities on a system average basis.

SMUD’s system average rate increases are comparable with other local utilities, as shown in Figures 2 and 3. The values in the table are simple averages of rate or bill changes over the referenced period. Figure 2 shows the average of total annual bill amounts which vary year over year due to rate changes as well as changes in weather among other variables since customers’ load impacts the average bill. Values can be negative due to uncharacteristically drastic weather changes. Extremely hot weather will cause the average bill to increase regardless of changes in the average rate. Figure 1 in Appendix C shows the system average rates of the utilities used for the tables below.

**Figure 2 - Average Annual Bill Changes**

<table>
<thead>
<tr>
<th>Average Annual Bill Rate of Changes</th>
<th>SMUD</th>
<th>Local Utilities*</th>
<th>Local Utilities* Without PG&amp;E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Across Time</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10-yr avg. (2009 - 2018)</td>
<td>1.19%</td>
<td>2.34%</td>
<td>2.01%</td>
</tr>
<tr>
<td>5-yr avg. (2014 - 2018)</td>
<td>1.22%</td>
<td>0.9%</td>
<td>0.50%</td>
</tr>
</tbody>
</table>

**Figure 3 - Average Annual Rate Changes**

<table>
<thead>
<tr>
<th>Average Annual System Rate of Changes</th>
<th>SMUD</th>
<th>Local Utilities*</th>
<th>Local Utilities* Without PG&amp;E</th>
</tr>
</thead>
<tbody>
<tr>
<td>Average Across Time</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>10-yr avg. (2009 - 2018)</td>
<td>2.45%</td>
<td>3.09%</td>
<td>3.02%</td>
</tr>
<tr>
<td>5-yr avg. (2014 - 2018)</td>
<td>2.25%</td>
<td>1.93%</td>
<td>1.41%</td>
</tr>
</tbody>
</table>
c) Reflect the cost of energy when it is used

As approved in the 2017 rate process, and completed in November 2019, SMUD has transitioned all residential customers to SMUD’s TOD Rate. SMUD’s TOD rate is designed to more closely reflect the cost of energy when it is used, with prices highest between 5 and 8 p.m., when the cost of energy is the highest. In 2019, the Board approved a restructure of commercial rates which will improve the alignment of the cost of electricity with the price.

d) Encourage energy efficiency and conservation

SMUD encourages energy efficiency and conservation through the residential TOD rate structure, non-residential TOD rates and a variety of programs, such as offering rebates for energy-efficient appliances and heating and cooling systems, and energy-efficient LED lighting. With TOD Rates, when customers use energy is as important as how much they use. TOD Rates encourage customers to shift energy use from peak times when energy is more costly and is produced by a larger portion of carbon-emitting generation plants to off-peak times, when there is often excess carbon-free solar generation on our system. By shifting usage to times when non-carbon emitting resources are plentiful, customers not only save money, they also help reduce carbon emissions and help SMUD achieve our carbon reduction goals. The TOD rate structure as well as the commercial rate restructure are designed to be revenue neutral, so customers can save money if they shift or reduce their usage from peak hours. More detailed information about rebates and savings tips can be found on smud.org.

e) Minimize “sticker shock” in the transition from one rate design to another

SMUD follows this principle through gradualism and balance between rate implementation and customer satisfaction when making rate structure changes in combination with rate increases. For example, to minimize “sticker shock,” SMUD raised residential rates in 2018 but not in 2019 so that customers would experience the transition to TOD with no rate increase impacts. This was done to help reduce confusion and facilitate explanations that the bill changes were caused by the structural rate change and customer behavior, and not a rate increase. In addition, an optional residential fixed rate is an alternative to the standard TOD rate for those customers that do not wish to be on TOD. Additionally, the approved rate transition to the EAPR program will be phased in over three years to minimize bill impacts to
our low-income customers. Furthermore, the commercial rate restructure is being phased in over an 8-year period in order to mitigate bill impacts.

f) Offer flexibility and options

SMUD provides flexibility and rate options to its customers. Residential customers may select custom due dates, budget billing, and net energy metering customers can choose the monthly settlement option. The residential rate transition to TOD included the option to switch to a fixed rate as an alternative to the standard TOD rate. All customers may make online payments and set up billing alerts.

Also, qualified commercial customers moving to SMUD’s service area may choose between two different Economic Development Rate discount structures, selecting the option that best suits their business needs. Figure 5 below shows the available options.

Figure 4 – Economic Development Discount Price Structures

<table>
<thead>
<tr>
<th>Economic Development Discount</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option A</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>5.0%</td>
<td>4.0%</td>
<td>3.0%</td>
<td>2.0%</td>
<td>1.0%</td>
<td></td>
</tr>
<tr>
<td>Option B</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
<td>4.5%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disadvantaged Communities Economic Development Discount</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
<th>Year 6</th>
<th>Year 7</th>
<th>Year 8</th>
<th>Year 9</th>
<th>Year 10</th>
</tr>
</thead>
<tbody>
<tr>
<td>Option C</td>
<td>8.0%</td>
<td>8.0%</td>
<td>8.0%</td>
<td>8.0%</td>
<td>6.5%</td>
<td>5.0%</td>
<td>3.5%</td>
<td>2.0%</td>
<td>0.5%</td>
<td></td>
</tr>
<tr>
<td>Option D</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
<td>6.0%</td>
</tr>
</tbody>
</table>

g) Be simple and easy to understand

SMUD works to make sure its many programs and rates are simple and easy to understand. For example, staff designed the TOD rate and future commercial rates to balance simplicity while still reflecting the cost of energy when it is used. Significant ongoing customer outreach will assist customers in understanding the new rate designs.

h) Meet the needs of people with fixed low incomes and severe medical conditions
SMUD continues to meet the needs of people with fixed low incomes and severe medical conditions. The restructuring of the EAPR program will further improve the assistance that we can offer to the customers most in need by basing assistance on federal poverty level. SMUD is working with customers to ease the transition with various programs.

i) Equitably allocate costs across and within customer classes

To ensure costs are equitably allocated across and within customer classes, staff updates SMUD’s marginal cost study and performs rate costing studies prior to recommending rate structure changes. For example, the marginal cost study was updated in 2016, and the results of the study were used to develop the cost-based standard residential TOD rate. The details of this analysis were included in the 2017 CEO & GM Report.

In 2019, the Board approved changes to the commercial rate structures which had not been adjusted in decades. The new rate structure will better align cost across the different commercial classes as well as give SMUD a more stable revenue collection as the changes move revenue from variable components to fixed components. This change will also support the Integrated Resource Plan’s (IRP) electrification goals by lowering the variable cost of energy.

j) Reduce Use On-Peak

Both the residential TOD rate and the newly approved commercial time of day rates will send signals to customers to reduce their on-peak usage. The peak time for residential customers is 5 pm to 8 pm and the peak time for commercial customers is 4 pm to 9 pm. These time periods correspond to the highest $/kWh in the rate design to encourage customers to shift their usage outside of the peak period.

4) Challenges:

a) Rate Pressures

While SMUD has been able to keep rates low, SMUD does face cost pressures going forward from both known and unknown drivers. Examples of known drivers include:

1. Wildfire mitigation, including the increased cost of fire insurance and additional vegetation management,
2. SMUD’s newly-adopted IRP to fund initiatives such as transportation and building electrification, storage as well as continuing to encourage energy efficiency to achieve carbon reduction goals, as well as increasing carbon free resources such as new solar and wind.

3. Increased costs for SMUD labor and benefits, as well as costs for materials, goods and services,

4. New and enhanced technology solutions to support cyber security, customer experience, and distributed energy resources, and

5. Additional capacity to ensure SMUD can reliably serve load during peak demand.

SMUD also must be prepared to weather unknown cost drivers. Examples of these are additional requirements stemming from new legislation in response to the recent wildfires, or potentially new mandates to achieve California environmental goals.

An additional challenge may materialize with the SD-2 requirement of, “SMUD’s rate of change for both rates and bills shall be competitive with other local utilities” if the other local public utilities adopt a less aggressive carbon goals than SMUD has done, since this will be a significant driver of future rate increases.

b) Cost Allocation

Due to the current Net Energy Metering (NEM) rates, there is a cost shift to non-NEM customers. This is not aligned with SD-2 guidance. Currently, SMUD is hosting a stakeholder group to receive input into a NEM 2.0 successor rate. This stakeholder process includes both a Technical Working Group and a Community Working Group that will provide feedback on shaping the NEM 2.0 rate. The goal of the successor rate is to assist in addressing the current cost-shift to non-NEM customers and to create a new NEM tariff that is more aligned with the SD-2 guidelines as well as support SMUD’s achievement of our aggressive carbon goals.

5) **Recommendation:** It is recommended that the Board accept the Monitoring Report for SD 2, Competitive Rates.
6) Appendices

Appendix A: Historical Rate Comparison with PG&E

Figure 1: Compares SMUD and PG&E system average rates for the past 10 years. On a system average basis, SMUD’s system average rates have averaged 28% below PG&E’s since 2010.

Figure 1 – SMUD and PG&E Historical System Average Rate Comparison
Appendix B: PG&E Updates

Overview of PG&E’s recent rate proceedings: In 2019 PG&E had five rate changes, increasing the system average rate in $kWh from $0.1982 in 2018 to $0.2109 in 2019 as shown in Figure 1.

Figure 1 – PG&E 2018-19 Rate Changes

<table>
<thead>
<tr>
<th></th>
<th>PG&amp;E Rate Changes in 2018(1)</th>
<th>Annual</th>
<th>PG&amp;E Rate Changes in 2019(1)</th>
<th>Annual</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rate Change (%)</td>
<td>January</td>
<td>March</td>
<td>September</td>
<td>2018</td>
</tr>
<tr>
<td></td>
<td>0.40%</td>
<td>1.80%</td>
<td>1.40%</td>
<td>3.60%</td>
</tr>
<tr>
<td>System Rate ($/kWh)</td>
<td>$0.1917</td>
<td>$0.1954</td>
<td>$0.1982</td>
<td>$0.1955</td>
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</table>

(1) Includes California Climate Credit

PG&E’s 2020 forecast is a 7 percent increase in PG&E’s system bundled average electric rate. For Direct Access (DA) and Community Choice Aggregation (CCA) customers, whose average rates exclude commodity charges because these customers purchase energy from third-party service providers, PG&E is forecasting a 12 percent increase in PG&E’s system average rate. PG&E is requesting approval to implement PG&E’s electric rates on January 1, 2020 based on the 2020 sales forecast proposed and approved in the 2020 Energy Resource Recovery Account (ERRA) Forecast proceeding.

Pending Rate Actions/Initiatives

- **PG&E’s 2020 General Rate Case:** PG&E is proposing a $1.058 billion increase over currently authorized spending for 2019. More than half of PG&E’s proposed increase would be directly related to wildfire prevention, risk reduction, and additional safety enhancements. This proposal would increase a typical residential customer bill by 6.4 percent or $10.57 per month ($8.73 for electric service and $1.84 for gas service). An average CARE customer would see an increase of about $7.01 a month ($5.54 for electric service and $1.47 gas service). Customer bills would change some time in 2020 following a decision by the CPUC.

- **Commercial Electric Vehicle Subscription Rate:** PG&E filed an application for approval of new commercial rates for load serving electric vehicle service equipment (EVSE) on November 5, 2018. After public input a joint stipulation entered between PG&E and Public Advocates on May 22, 2019 outlined the following commercial electric vehicle (CEV) rates for the Commission’s consideration.
The proposed CEV peak period is 4:00 p.m. – 9:00 p.m. all days of the year, and the proposed CEV super off-peak period is 9:00 a.m. – 2:00 p.m. all days of the year. All other hours would fall in the proposed CEV off-peak period. There is no proposed seasonal differentiation in the CEV rates. There are no demand charges or fixed charges proposed for the CEV rates although the subscription charge is based on peak demand. Costs normally collected by such charges would instead be collected through the subscription charge and energy charges.

- **Default Time-of-Use Rates:** PG&E is scheduled to begin defaulting most Residential customers to more cost-based default TOU rates (subject to their ability to opt-out to another applicable rate) starting in 2020 and continuing in waves for a period of up to eighteen months, ending in 2022.

- **PG&E Commercial Rate Restructure:** PG&E is transitioning its Non-Residential customers to new TOU periods with a later peak period (4pm to 9 pm), reflecting the late afternoon peak market prices. These Non-Residential rates with new TOU periods will become available on an “opt-in” basis beginning in 2019 and are scheduled to become mandatory in late 2020 (for Commercial and Industrial (C&I) customers) and early 2021 (for Agricultural customers).

- **Chapter 11 Bankruptcy:** On January 29, 2019 PG&E filed for chapter 11 bankruptcy. PG&E Corporation and Pacific Gas and Electric Company (together, "PG&E") have agreed to a settlement with the Official Committee of Tort Claimants (TCC) and with firms representing individual claimants who sustained losses from the 2015 Butte Fire, 2017 Northern California Wildfires and 2018 Camp Fire. The settlement agreement is valued at approximately $13.5 billion and has the support of the TCC. The settlement would resolve all claims arising from those fires, including the 2017 Tubbs Fire as well as all claims arising from the 2016 Ghost Ship Fire in Oakland. The settlement is subject to a number of conditions and is to be implemented pursuant to PG&E's Chapter 11 Plan of Reorganization (the “Plan”), which is subject to confirmation by the Bankruptcy Court in accordance with the provisions of the Bankruptcy Code. Bankruptcy Court approval of the settlement agreement would put PG&E on a sustainable path forward to emerge from Chapter 11 by the June 30, 2020, the deadline to participate in the State of California's go-forward wildfire fund.

<table>
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<tr>
<th>Rate Element</th>
<th>CEV-S4</th>
<th>CEV-L-S5</th>
<th>CEV-L-P6</th>
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<tr>
<td>Subscription Charge per Kilowatt (kW) of Peak Demand</td>
<td>$21.17/10kW block</td>
<td>$167.75/50kW block</td>
<td>$153.41/50kW block</td>
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<td>Peak Energy Charge</td>
<td>$0.32166/kilowatt-hour (kWh)</td>
<td>$0.33410/kWh</td>
<td>$0.32611/kWh</td>
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<td>Off-Peak Energy Charge</td>
<td>$0.12966/kWh</td>
<td>$0.12086/kWh</td>
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<td>Super Off-Peak Energy Charge</td>
<td>$0.10299/kWh</td>
<td>$0.09760/kWh</td>
<td>$0.09457/kWh</td>
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Appendix C: Local Utility Rates

- **Modesto Irrigation District (MID):** MID has not had a rate increase since 2012. MID did true-up their Environmental Energy Adjustment that resulted in a change from $0.0067/kWh to $0.0079/kWh.

- **Turlock Irrigation District (TID):** TID has not had a rate increase since 2015 and there is no plan to modify rates in the near future. TID did implement an experimental EV rate effective 4/1/2019 which includes a $17.00 customer charge and two time of use periods that vary in price by season.

- **Roseville Electric:** Roseville Electric has not had a rate increase since 2014 and there is no plan to increase their rates for 2020.

- **Lodi Electric:** Lodi Electric approved a 2% rate increase in 2017. Lodi did not change their base rates in 2019 and they do not have any changes forecasted for 2020. Lodi has a monthly energy cost adjustment that adjusts as power costs increase or decrease. The range of the energy cost adjustment for 2019 was $0.0264 to -$0.0082 $/kWh.

- **Los Angeles Department of Water and Power (LADWP):** LADWP had a 4.2% rate increase in fiscal year 2018-2019 and plans to have a 5.2% rate increase in fiscal year 2019-2020.

While SMUD’s neighboring utilities have not raised rates recently, SMUD’s system average rate is still competitive, as shown in **Figure 1**. Figure 1 uses data from the U.S. Energy Information Administration and 2018 is the most recent data available.

**Figure 1 – 2018 Utility System Average Rate Comparison**

![System Average Rate Chart]

Including pass-through mechanisms in rates is a common utility practice, allowing the utility to collect enough revenue without having to increase rates. SMUD has the Hydro Generation Adjustment, which allows for a small additional charge on customer bills in the event of less
than median precipitation. Figure 2 details the pass-through mechanisms some of SMUD’s neighboring utilities have as part of their rate structures.

**Figure 2 – Utility Pass-through Mechanisms**

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<th>Utility</th>
<th>Pass-through</th>
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<td>SMUD</td>
<td>Hydroelectric Generation Adjustment</td>
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<td>Modesto Irrigation District</td>
<td>Capital Infrastructure Adjustment</td>
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<td>Public Benefits Surcharge</td>
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<td>Roseville Electric</td>
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<td>Greenhouse Gas Surcharge</td>
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<td>Hydroelectric Adjustment</td>
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<tr>
<td>Lodi Electric</td>
<td>Energy Cost Adjustment</td>
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<td>LADWP*</td>
<td>Energy Cost Adjustment</td>
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<tr>
<td></td>
<td>Electric Subsidy Adjustment</td>
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<tr>
<td></td>
<td>Reliability Cost Adjustment</td>
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*LADWP has other adjustments to reflect approved rate increase*

Including a fixed charge amount on residential customers bills is also a common utility practice. The fixed charge allows for revenue collection for fixed assets that do not vary with electricity consumption. Figure 3 below outlines the fixed charge amount of SMUD’s neighboring communities.
Figure 3 – Monthly Fixed Charge Amount

<table>
<thead>
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<th>Monthly Fixed Charge (2019) $/Customer</th>
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<tbody>
<tr>
<td>Roseville</td>
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<td>LADWP Tier 3+</td>
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<td>SMUD</td>
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<td>Modesto ID</td>
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<td>Turlock ID</td>
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<tr>
<td>Lodi</td>
</tr>
<tr>
<td>PG&amp;E</td>
</tr>
<tr>
<td>LADWP (min. bill)*</td>
</tr>
</tbody>
</table>
Appendix D: Historical Rate Increases

Figure 1 shows that SMUD’s historical rate increases have tracked the Consumer Price Index (CPI) over the past 28 years.

Figure 1 – Annual Rate Increase vs CPI
RESOLUTION NO. 20-02-03

BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

This Board accepts the monitoring report for Strategic Direction SD-3, Access to Credit Markets, substantially in the form set forth in Attachment B hereto and made a part hereof.

Approved: February 20, 2020

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SACRAMENTO MUNICIPAL UTILITY DISTRICT
OFFICE MEMORANDUM

TO: Board of Directors
FROM: Claire Rogers

SUBJECT: Audit Report No. 28007181
Board Monitoring Report; SD-03: Access to Credit Markets

Audit and Quality Services (AQS) reviewed the SD-03 Access to Credit Markets 2019 Annual Board Monitoring Report and performed the following:

• Reviewed the information presented in the report to determine the possible existence of material misstatements;
• Interviewed report contributors and verified the methodology used to prepare the monitoring report; and
• Validated the reasonableness of a selection of the report’s statements and assertions.

During the course of the review, nothing came to AQS’ attention that would suggest the report did not fairly represent the source data available at the time of the review.

CC:
Arlen Orchard
1. **Background**

   Strategic Direction 3 on Access to Credit Markets states that:

   Maintaining access to credit is a core value of SMUD.

   Therefore:

   a. For SMUD’s annual budgets, the Board establishes a minimum target of cash coverage of all debt service payments (fixed charge ratio) of 1.50 times.

   b. When making resource decisions, SMUD shall weigh the impacts on long-term revenue requirements, debt, financial risk and flexibility.

   c. SMUD’s goal is to maintain at least an “A” rating with credit rating agencies.

2. **Executive summary**

   SMUD relies on the use of borrowed funds to pay for a portion of its capital needs on an ongoing basis. The Board adopted SD-3, Access to Credit Markets, to help ensure that SMUD maintains the ability to raise new money at competitive rates in the bond market as needed. Making prudent use of borrowed funds to finance capital improvements can help SMUD to mitigate major rate adjustments in periods of intensive capital expansion, and allows SMUD to allocate the costs of those improvements over their useful lives to the ratepayers who benefit from them. Maintaining access to credit markets supports our objective to be financially flexible to make necessary and timely investment and take advantage of opportunities while remaining competitive.

   One of the most important indicators of an organization’s ability to access credit markets is the independent assessment made by credit rating agencies. SMUD is rated by the three major rating agencies: Standard & Poor’s (S&P), Moody’s, and Fitch, which review SMUD’s credit on approximately an annual basis. The credit ratings assigned are intended to give investors the rating agency’s view of the likelihood that SMUD will pay principal and interest on bonds when due. They utilize financial metrics in assessing creditworthiness such as the Fixed Charge Ratio that measures revenue sufficiency to meet obligations, and Days Cash on Hand, a measure of liquidity. They also measure leverage, such as our debt outstanding per customer, and the rate capacity to finance future capital projects without placing undue burden on ratepayers. SMUD’s overall governance and risk management
practices are also important to the agencies, along with the ability and willingness to raise rates when necessary while maintaining competitive rates.

As referenced in the attached ratings agency reports, SMUD has very strong metrics and due to well managed cash flow, limited borrowing over the past 5 to 7 years, and the ability to plan to a more modest fixed charge ratio relative to AA rated peers. The most recent SMUD credit reports from both S&P and Fitch also specifically cite the Board’s demonstrated willingness to raise rates to support financial performance.

Credit ratings heavily impact an organization’s ability to borrow money in the municipal markets, as well as the interest rates they will be required to pay. Higher credit ratings translate into lower borrowing costs. For example, if SMUD’s credit ratings were to fall into a lower category, from AA to A, the impact at today’s rates would be approximately $200k/yr for every $100 million borrowed.

Credit ratings also impact an organization’s ability to conduct general business transactions. Trading partners utilize credit ratings as a factor in assessing their willingness to transact with SMUD, and to determine commercial terms. Stronger credit ratings enable SMUD to negotiate better terms and conditions for contracts. For example, SMUD’s healthy credit ratings minimize the amount of collateral posting required under many of its commodity contracts to hedge natural gas and power. Likewise, if SMUD’s ratings were to drop from current levels, collateral posting requirements would increase accordingly. In many cases, a reduction in SMUD’s credit ratings below a certain threshold gives our counterparty the right to terminate the contract.

In support of maintaining its financial strength and as a financial risk mitigator SMUD procures insurance. SMUD maintains a comprehensive property and casualty insurance program, with coverage in excess of various self-insured retentions ranging from $5,000 to $5,000,000, designed to protect against catastrophic losses that would have an adverse effect on its financial position or operational capabilities. Insurance programs are continuously reviewed and modified when construction, operational exposures, or developments in the insurance industry so warrant. Long term relationships with a variety of insurers minimize SMUD’s susceptibility to the effects of insurance market cycles. SMUD budgets reserves to meet potential insurance deductibles and self-insured liability claims and has had no claims that have exceeded coverage limits.
SMUD has remained in compliance with SD-3 during 2019 as evidenced by:

a. Maintained key financial metrics, including a fixed charge ratio above the minimum policy target of 1.50 times.
   1. 2.21 times in 2018
   2. 2.09 times in 2019 (draft figure as of January 24, 2020)
   3. 1.69 times in 2020 (projected in 2020 Budget)

b. Credit ratings were affirmed at ‘AA’ from S&P and Fitch, and Aa3 from Moody’s. However, S&P and Moody’s changed their outlook to negative for SMUD, primarily as a result of the increased wildfire risk and liability borne by all power utilities from the interpretation of inverse condemnation statutes.

c. Entered into a $540 million commodity prepay transaction, issued by NCEA, a SMUD created JPA, which will result in average annual commodity savings of approximately $3 million over the initial 5-year term. This innovative transaction was the first municipal finance prepay to incorporate a switch feature that gives SMUD the option to switch from gas to electricity or a renewable PPA at year 10 or later.

d. Issued $392 million of 2019 Series A, B & G Electric Revenue Refunding Bonds. This transaction not only refunded outstanding commercial paper, but also included SMUD’s first ever issuance of Green Bonds for the renovation of SMUD’s Headquarters building.

e. Defeased the remaining CVFA and SCA outstanding debt totaling $18 million one and two years early, respectively, which lowers SMUD’s annual debt costs and increases the fixed charge ratios in 2020 and 2021.

f. Expanded SMUD’s Commercial Paper Program from $288 million to $400 million and implemented new financial management guidelines that increased the minimum liquidity target of 150 days’ cash and plan for maintaining a $150 million reserve of unused commercial paper capacity. The expanded commercial paper program combined with Treasury’s new guidelines will provide improved financial flexibility for matching capital spending needs and a reserve capacity to mitigate unforeseen events.

g. Made $45 million in additional supplemental contributions to CalPERS as part of a 10-year pension funding strategy to eliminate its unfunded pension liability—an obligation rating agencies are increasingly focusing on in their reviews. Prior to these contributions, SMUD’s Other Post-Employment Benefits (OPEB) and Pension were of 88% and 78% funded, respectively.

h. Successfully renewed Property and Casualty insurance coverage at market rates, while increasing limits for Directors’ and Officers’ insurance, and
maintaining Cyber insurance and coverage for the Sacramento Power Academy. In this challenging insurance market, SMUD not only maintained its insured Wildfire coverage limits at $186 million, but also decreased its self-insured retention within the those limits from $114 million to $64 million.

3. Credit Strengths:

   SMUD Specific Credit Strengths mentioned in rating’s agency reports:
   a. Extremely strong fixed charge coverage
   b. Very strong liquidity unrestricted cash reserves
   c. Prudent financial policies, including strong internal coverage and liquidity targets;
   d. Diverse, low-cost, and relatively low greenhouse-gas-emitting power supply mix
   e. Demonstrated willingness and ability to adjust rates to recover costs and maintain margins
   f. Reduced reliance on debt to finance capital needs
   g. Strong risk management and hedging procedures, particularly concerning gas supply for its gas fired plants.

4. Challenges:

   Below are comments from recent rating’s agency reports regarding challenges to SMUD’s credit rating:
   a. Wildfire liability and inverse condemnation exposure
   b. Increased forecast of capital spending over next five years could put pressure on key credit metrics;
   c. Potential for liquidity declines as SMUD relies less on debt and more heavily on cash on hand to fund capital projects in the future;
   d. Moderate although declining debt burden as a percentage of capitalization, or Debt per customer
   e. Moderate long-term gas exposure and potential for collateral posting requirements requiring maintenance of strong liquidity

5. Additional supporting information

   Details on ratings variables, SMUD specific credit strengths, factors that could lead to an upgrade, and insurance are listed below:

   **Ratings Variables:**
   The rating agencies evaluate a number of factors in deriving municipal power ratings. These include:
   a. Financial ratios and metrics
   b. Governance Structure and Management
   c. Rate Competitiveness
   d. Cost of production/purchased power (particularly with respect to higher cost renewables)
e. Risk Management Practices  
f. Service area demographics  
g. Regulatory factors  

6. **Recommendation:**

It is recommended that the Board accept the Monitoring Report for SD-3, Board Strategic Direction on Access to Credit Markets
WHEREAS, SMUD receives Low Carbon Fuel Standard (LCFS) credits from the California Air Resources Board (CARB) based on kwh sales and deemed credits for Electric Vehicle (EV) customers (“LCFS Credits”); and
WHEREAS, SMUD monetizes the LCFS Credits through a sales transaction; and
WHEREAS, CARB requires that LCFS sales proceeds be spent in a way to benefit current or future EV drivers in California; and
WHEREAS, CARB now requires, as a part of its LCFS program, all utilities to participate in the Clean Fuel Reward Program in order to retain eligibility to generate LCFS Credits; and
WHEREAS, participation in the Clean Fuel Reward Program will require utilities to contribute a portion of their LCFS Credits to fund the Clean Fuel Reward Program, with SMUD’s contribution portion being 35% of its LCFS Credits, increasing to 45% in 2023; and
WHEREAS, the Clean Fuel Reward Program will provide a statewide point of purchase incentive for all new EV purchases to help increase EV adoption; and
WHEREAS, participation in the Clean Fuel Reward Program will support SMUD’s Integrated Resource Plan greenhouse gas (GHG) reduction goals while also allowing SMUD to retain the remaining portion of its LCFS Credits which can be used to offset SMUD EV Program costs to support equity communities; and
WHEREAS, CARB’s Clean Fuel Reward Program requires utilities to demonstrate their ability to contribute their allocated LCFS Credits to the Program, and utilities may make this demonstration by entering into a Clean Fuel Reward Program Governance Agreement in a form approved by the California Public Utilities Commission (CPUC); and
WHEREAS, on November 23, 2019, the CPUC approved the Governance Agreement negotiated by participating utilities, including SMUD;
BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

That this Board approves SMUD’s participation in the statewide Low Carbon Fuel Standard **Clean Fuel Reward Program** and authorizes the Chief Executive Officer and General Manager, or his delegate, to enter into the **Clean Fuel Reward Program Governance Agreement**, and to take such other action as may be necessary and appropriate to implement that Agreement.

Approved: February 20, 2020

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CLEAN FUEL REWARD PROGRAM
GOVERNANCE AGREEMENT
BY AND AMONG
PACIFIC GAS AND ELECTRIC COMPANY
SAN DIEGO GAS & ELECTRIC COMPANY
SOUTHERN CALIFORNIA EDISON COMPANY
LOS ANGELES DEPARTMENT OF WATER & POWER
SACRAMENTO MUNICIPAL UTILITY DISTRICT
AND
THE OTHER ELECTRIC DISTRIBUTION UTILITIES PARTY HERETO
DATED AS OF (-), 2020
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<td>4.2. Program Implementer(s)</td>
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<td>4.4. Program Auditor</td>
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<td>4.5. Program Implementer Qualifications</td>
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<td>ARTICLE 5 CFR PROGRAM EXPENSES; COST SHARING; LAUNCH</td>
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CLEAN FUEL REWARD PROGRAM

GOVERNANCE AGREEMENT

This Governance Agreement (“Agreement”) is made and entered into effective as of ___, 2020 (the “Effective Date”), by and among Pacific Gas and Electric Company (“PG&E”), San Diego Gas & Electric Company (“SDG&E”), Southern California Edison Company (“SCE”), Los Angeles Department of Water & Power (“LADWP”), Sacramento Municipal Utility District (“SMUD”), and the other electric distribution utilities that may become a Party hereto during the term of the Agreement.

RECITALS

WHEREAS, the Low Carbon Fuel Standard (“LCFS”) regulation of the California Air Resources Board (“CARB”) (as may be amended from time to time, the “LCFS Regulation”) provides for the issuance of “base” credits for residential electric vehicle charging (“LCFS Base Credits”) to electric distribution utilities (“EDUs”) that participate in the LCFS program, each quarter;¹ and

WHEREAS, on September 27, 2018, CARB adopted amendments to the LCFS Regulation mandating the development and implementation of a statewide, common-design, EDU-run program to reduce the price of purchased and leased light-duty, zero emission, plug-in electric and electric hybrid vehicles (“ZEVs”) at the point of sale that is funded by EDUs’ LCFS Base Credit revenues that are assigned to the statewide program according to provisions in California Code of Regulations Title 13 sections 95481 and section 95483(c), and the Parties (as defined in Section 1.1 below) have agreed that the name for this program shall be the Clean Fuel Reward Program (“CFR Program”); and

WHEREAS, CARB’s amended LCFS Regulation² requires that the CFR Program be (i) initiated through the investor-owned utilities (“IOUs”), publicly-owned utilities (“POUs”) and electric cooperatives (“COOPs”) participating in the CFR Program, and (ii) funded by the EDUs with revenue from the sale of LCFS Base Credits pursuant to mandatory EDU contributions of such LCFS Base Credit revenue to the CFR Program in accordance with the minimum percentage amounts determined by EDU-size³ set forth in the LCFS Regulation (“EDU Contributions”); and

WHEREAS, the Parties hereby agree to establish and fund the CFR Program, per the direction of CARB, in an effort to accelerate the progress towards achieving the state and

¹ See California Code of Regulations Title 13 sections 95480, et seq.
² See September 27, 2018 CARB Resolution 18-34 available at: https://www.arb.ca.gov/regact/2018/lcfs18/finalres18-34.pdf
³ Participating EDUs’ minimum percentages of LCFS Credit Revenue that must be contributed to the CFR Program pursuant to the LCFS Regulations are set forth in Appendix A.
national clean energy and environmental policies through the execution of this Agreement in compliance with CARB’s directives, including but not limited to implementation of a sliding-scale incentive program based on the ZEV’s all-electric operating range and equity for all customers; and

WHEREAS, the Parties recognized that in order to develop and implement the CFR Program in a timely manner to support accelerating ZEV market adoption in California, one of the EDUs needs to serve as the initial administrator of the CFR Program through the start-up process and early stages of the CFR Program; and

WHEREAS, in the absence of another EDU volunteer to serve as the initial administrator, SCE agreed to serve in such role on a short term basis provided that the California Public Utilities Commission (“CPUC”) directed and CARB has authorized SCE to do so, and the other EDUs agree to have SCE serve in such capacity subject to SCE’s receipt of the CPUC’s direction and CARB’s authorization to do so; and

WHEREAS, SCE filed Advice Letter #AL 3982-E with the CPUC on April 2, 2019 (the “Advice Letter”) to request the CPUC to authorize and direct SCE to serve as the initial short-term administrator of the CFR Program and to effect SCE’s proposed implementation plan for the CFR Program on the terms and conditions set forth in the Advice Letter; and

WHEREAS, on August 15, 2019, the CPUC issued Resolution E-5015 adopting and approving the Advice Letter and SCE’s proposed implementation plan for the CFR Program, subject to certain modifications set forth in such Resolution (the “CPUC Approval”); and

WHEREAS, on [_______], 2019, CARB authorized and directed that the CFR Program be administered pursuant to this Governance Agreement and found that this Governance Agreement is in the public interest, is made for the public purposes stated in the LCFS Regulation, and is consistent with the LCFS Regulation (the “CARB Authorization”); and

WHEREAS, the Parties have agreed to appoint SCE as the initial administrator of the CFR Program consistent with the terms and conditions set forth in the Advice Letter, the CPUC Approval, the CARB Authorization, and this Agreement in order to expedite the implementation of the CFR Program for the benefit of the EDUs, CARB, and the State of California; and

WHEREAS, the Parties desire to enter into this Agreement to set forth the rights, powers, duties, obligations, and liabilities of the Parties concerning the conduct, operation, administration and funding of the CFR Program and any fees, costs, expenses and liabilities arising from the administration of the CFR Program by SCE as the Program Administrator, including those arising under this Agreement or any agreement entered into by SCE in connection with its role as the Program Administrator of the CFR Program, in each case pursuant to the terms and conditions of this Agreement; and

WHEREAS, each of the Large EDUs has executed and delivered this Agreement to one another on or before the Effective Date, and each additional Participating EDU who becomes a Party after the Effective Date shall execute and deliver a joinder to this Agreement pursuant to the provisions of Section 2.2 below.
NOW THEREFORE, in consideration of the mutual covenants, purposes and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1
CERTAIN DEFINITIONS

1.1. Defined Terms. As used in this Agreement, the following capitalized terms shall have the respective meanings specified in this Section 1.1.

(a) “Accounts” has the meaning set forth in Section 4.3(b).

(b) “Additional LCFS Revenue Payments” has the meaning set forth in Section 9.1(b)(ii).

(c) “Administrative Expenses” has the meaning set forth in Section 5.1.

(d) “Advice Letter” has the meaning set forth in the Recitals.

(e) “Advisory Committee” has the meaning set forth in Section 3.4.

(f) “Affiliate” means, with respect to any Person, any other Person controlling, controlled by, or under common control with such other Person. For purposes of this definition, “control,” when used with respect to any Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

(g) “Agreement” has the meaning set forth in the preamble.

(h) “Alternates” has the meaning set forth in Section 3.3(c).

(i) “Annual Program Funds Amount” means the total EDU Contributions deposited by all of the Participating EDUs during each calendar year following the Initial Funding Date, plus all interest and earnings thereon regardless of the Account in which such funds are held from time to time, during such calendar year.

(j) “Bond” has the meaning set forth in Section 7.4.

(k) “CARB” has the meaning set forth in the Recitals.

(l) “CARB Authorization” has the meaning set forth in the Recitals.

(m) “CARB Representative” has the meaning set forth in Section 3.3(a).

(n) “CFR Program” has the meaning set forth in the Recitals.
(o) “Claim” or “Claims” means any and all actions, causes of action, complaints, charges, claims, costs, damages, deficiencies, demands, expenses, fees, indebtedness, injuries, interest, judgments, liabilities, losses, obligations, orders, penalties, remedies, suits, sums of money, Taxes, and torts, of whatever kind or character, whether in law, equity or otherwise, direct or indirect, fixed or contingent, foreseeable or unforeseeable, liquidated or unliquidated, known or unknown, matured or unmatured, absolute or contingent, determined or determinable.

(p) “Collective Deposit Account” has the meaning set forth in Section 4.3(b)(ii).

(q) “Contribution Percentage” means, with respect to any Party at any time, the resulting percentage determined by multiplying 100 by a fraction, the numerator of which shall be the amount of such Party’s Initial EDU Contribution, and the denominator of which shall be the aggregate total of shares all Initial EDU Contributions made by all Parties (including any former Parties) at such time. In calculating the respective Contribution Percentages of the Parties at an time, in the event that a court or arbitrator of competent jurisdiction has determined that any Party is released or excused from its obligation to pay, or is otherwise unable or not required to pay, its Contribution Percentage of any Indemnified Claim, then such Party’s Initial EDU Contribution shall be excluded from the denominator for purposes of calculating the respective Contribution Percentages with respect to such Indemnified Claim as well as to any Indemnified Claim thereafter to which such exclusion would be applicable according to such court or arbitral order or determination.

(r) “COOPs” has the meaning set forth in the Recitals.

(s) “Covenant Not to Sue” has the meaning set forth in Section 7.3(a).

(t) “Covered Person” has the meaning set forth in Section 3.5(a).

(u) “CPUC” has the meaning set forth in the Recitals.

(v) “CPUC Approval” has the meaning set forth in the Recitals.

(w) “Deposit Account” means any Collective Deposit and any Individual Deposit Account.

(x) “Designated Account Holder” means any Governmental Authority (including, for the avoidance of doubt, a POU) or not for profit entity that is identified and selected by the Program Administrator and the Steering Committee to hold the Program Funds Account pursuant to Section 4.3(b)(i) or any Collective Deposit Account pursuant to Section 4.3(b)(ii).

(y) “Disbursement Account” has the meaning set forth in Section 4.3(c).

(z) “Earmarked Credits” means any LCFS Base Credits that are deposited into any EDU’s LCFS balancing account by CARB at any time on or after the Final CPUC Approval Date.
(aa) “EDU Contribution Account” means, when used with respect to any Participating EDU at any time and from time to time, (i) if a Program Funds Account has been established and is being maintained at such time, the Program Funds Account, or (ii) if there is no Program Funds Account at such time, then either the Collective Deposit Account or the Individual Deposit Account for such Participating EDU into which such Participating EDU is instructed to make its EDU Contributions at such time in accordance with the instructions of the Program Administrator.

(bb) “EDU Contributions” has the meaning set forth in the Recitals.

(cc) “EDUs” has the meaning set forth in the Recitals.

(dd) “Effective Date” has the meaning set forth in preamble.

(ee) “Excess Party” has the meaning set forth in the Section 7.5(b)(iii).

(ff) “FDIC” means the Federal Deposit Insurance Corporation.

(gg) “Final CPUC Approval Date” the first date on which each of the following approvals from the CPUC shall have been received: (i) the CPUC Approval, (ii) the CPUC’s approval of the advice letter submitted by PG&E for approval to enter into this Agreement, and (iii) the CPUC’s approval of the advice letter submitted by SDG&E for approval to enter into this Agreement.

(hh) “Financial Institution” has the meaning set forth in Section 4.1(a).

(ii) “Governmental Authority” means the United States, or any state, county, city, municipal, territory, possession, foreign or other governmental or quasi-governmental entity or authority of any nature, including any courts, departments, commissions, boards, bureaus, agencies or other instrumentalities of any of the foregoing.

(jj) “Holdback Funds” has the meaning set forth in the Section 7.5(b)(iii).

(kk) “Imaged Agreement” has the meaning set forth in Section 10.19.

(ll) “Implementer” has the meaning set forth in Section 3.2(a).

(mm) “Indemnified Claim” means (i) when used in connection with the SCE Indemnified Persons, the SCE Indemnified Claims, and (ii) when used in connection with the Steering Committee Indemnified Persons, the Steering Committee Indemnified Claims.

(nn) “Indemnified Persons” means any of the SCE Indemnified Persons and the Steering Committee Indemnified Persons, each an “Indemnified Person”.

(oo) “Individual Deposit Account” has the meaning set forth in Section 4.3(b)(iii).
“Individual Deposit Account Agreement” has the meaning set forth in Section 4.3(b)(iii).

“Initial EDU Contributions” has the meaning set forth in Section 5.3.

“Initial Funding Date” has the meaning set forth in Section 5.3.

“Invoice Subcommittee” has the meaning set forth in Section 3.3(e).

“IOUs” has the meaning set forth in the Recitals.

“Joinder” has the meaning set forth in Section 2.2.

“LADWP” has the meaning set forth in the preamble.

“Large EDU Members” has the meaning set forth in Section 3.3(a).

“Large EDUs” means PG&E, SDG&E, SCE, LADWP, and SMUD, each a “Large EDU”.

“Law Firms” has the meaning set forth in Section 10.18.

“LCFS” has the meaning set forth in the Recitals.

“LCFS Base Credits” has the meaning set forth in the Recitals.

“LCFS Credit Revenue” means the aggregate gross revenue received by any EDU at any time from the sale, transfer or other disposition of Earmarked Credits.

“LCFS Non-Base Credit Revenue” has the meaning set forth in the Section 7.5(b)(iii).

“LCFS Regulation” has the meaning set forth in the Recitals.

“Liability Reserve” has the meaning set forth in Section 4.3(e).

“Master Account Agreement” has the meaning set forth in Section 4.3(b).

“Member” has the meaning set forth in Section 3.3(a).

“ME&O” has the meaning set forth in Section 4.2(a).

“NCPA” means the Northern California Power Agency.

“Northern EDU Majority Vote” has the meaning set forth in Section 3.3(a).

“Northern EDU Member” has the meaning set forth in Section 3.3(a).
(III) “Northern EDUs” means any EDU listed as a Northern EDU on Schedule 1.1 hereto, as such Schedule may be amended from time to time hereafter; provided that in no event shall any Large EDU ever be listed as or deemed to be a Northern EDU.

(mmm) “Operating Reserve” has the meaning set forth in Section 4.3(e).

(nnn) “PA Representative” has the meaning set forth in Section 3.3(a).

(ooo) “Participating EDU” means any EDU that has (i) become a Party to this Agreement by either (A) executing and delivering a duly executed signature page to this Agreement to the other Parties on or prior to the Effective Date, or (B) executing and delivering a duly executed Joinder to this Agreement to the Program Administrator in accordance with the provisions of Section 2.2 following the Effective Date, and (ii) not withdrawn as a Party pursuant to Section 9.2 or been removed as Party pursuant to Section 9.3.

(ppp) “Participating Northern EDU” has the meaning set forth in Section 3.3(a).

(qqq) “Participating Southern EDU” has the meaning set forth in Section 3.3(a).

(rrr) “Party” means any entity that is a signatory to this Agreement as set forth on the signature pages hereto or that hereafter becomes a party to this Agreement by executing and delivering a duly executed Joinder to this Agreement to the Program Administrator in accordance with the provisions of Section 2.2 following the Effective Date, which entities are referred to collectively, as the “Parties”. For the avoidance of doubt, unless and until an entity that is not an EDU becomes a Party to this Agreement, each Party is a Participating EDU, and vice versa, and the terms may be used interchangeably.

(sss) “Percentage Target” has the meaning set forth in Section 5.2.

(ttt) “Person” means an individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, unincorporated organization, association, organization or other entity or form of business enterprise or Governmental Authority.

(uuu) “PG&E” has the meaning set forth in the preamble.

(vvv) “Policy” has the meaning set forth in Section 7.4.

(www) “POU” has the meaning set forth in the Recitals.

(xxx) “Program Administrator” means SCE in its capacity as program administrator and administrative agent for the Parties with respect to the CFR Program for the term set forth in Section 3.1(b), or any successor Program Administrator appointed following the end of SCE’s term as Program Administrator in accordance with the provisions of Section 3.1(c) or any amendment to this Agreement entered into pursuant to the provisions thereof.
(yyy) “Program Agreement” has the meaning set forth in Section 3.1(a).

(zzz) “Program Auditor” has the meaning set forth in Section 4.1(a).

(aaaa) “Program Funds” has the meaning set forth in Section 4.3(a).

(bbbb) “Program Funds Account” has the meaning set forth in Section 4.3(b)(i).

(cccc) “Program Implementer” has the meaning set forth in Section 4.1(a).

(dddd) “Program Implementer Representatives” has the meaning set forth in Section 4.5(a).

(eeee) “Program Launch Date” has the meaning set forth in Section 5.5.

(ffff) “Program Legal Matters” has the meaning set forth in Section 10.18.

(gggg) “Program Material” has the meaning set forth in Section 8.1.

(hhhh) “Related Entities” has the meaning set forth in Section 7.1(a).

(iiii) “Release” has the meaning set forth in Section 7.1(b).

(jjjj) “Released Claims” means (i) when used in connection with the SCE Released Parties, the SCE Released Claims, and (ii) when used in connection with the Steering Committee Released Parties, the Steering Committee Released Claims.

(kkkk) “Released Parties” means any of the SCE Released Parties and the Steering Committee Released Parties, each a “Released Party”.

(IIII) “Remaining Liabilities” has the meaning set forth in Section 9.1(b).

(mmmm) “Removal Vote” has the meaning set forth in Section 9.3(a).

(nnnn) “Representative” means, with respect to a particular Person, any director, member, partner, officer, employee, agent, consultant, advisor or other representative of such Person, including outside legal counsel, accountants and financial advisors; provided that in no event shall any Implementer, any other vendor or contractor retained by the Program Administrator on behalf of the CFR Program, or any of their respective Representatives be, or be deemed to be, a Representative of the Program Administrator or of any Participating EDU.

(oooo) “Required Percentage” has the meaning set forth in Section 5.4.

(pppp) “Reserve Amounts” means the aggregate amounts of Program Funds maintained at any time, and from time to time, in the Liability Reserve and the Operating Reserve.

(qqqq) “Reward Amount” has the meaning set forth in Section 3.3(d)(iii).
“RFI” has the meaning set forth in Section 3.2(a).
“RFP” has the meaning set forth in Section 3.2(a).
“SCE” has the meaning set forth in the preamble.
“SCE Indemnified Claim” has the meaning set forth in Section 7.5(a)(i).
“SCE Indemnified Person(s)” has the meaning set forth in Section 7.5(a)(i).
“SCE Released Claims” has the meaning set forth in Section 7.1(a)(i).
“SCE Released Party(y/ies)” has the meaning set forth in Section 7.1(a)(i).
“SDG&E” has the meaning set forth in the preamble.
“Shortfall Indemnity Termination Date” has the meaning set forth in Section 7.9.
“Shortfall Party” has the meaning set forth in the Section 7.5(b)(iii).
“Shortfall Payments” has the meaning set forth in Section 9.1(b)(i).
“Small EDU Members” means the Northern EDU Member and the Southern EDU Member, each a “Small EDU Member”.
“SMUD” has the meaning set forth in the preamble.
“Southern EDU Member” has the meaning set forth in Section 3.3(a).
“Southern EDUs” means any EDU listed as a Southern EDU on Schedule 1.1 hereto, as such Schedule may be amended from time to time hereafter; provided that in no event shall any Large EDU ever be listed as or deemed to be a Southern EDU.
“Southern EDU Supermajority Vote” has the meaning set forth in Section 3.3(a).
“Steering Committee” has the meaning set forth in Section 3.3(a).
“Steering Committee Indemnified Claim” has the meaning set forth in Section 7.5(a)(ii).
“Steering Committee Indemnified Person(s)” has the meaning set forth in Section 7.5(a)(ii).
“Steering Committee Released Claims” has the meaning set forth in Section 7.1(a)(ii).

“Steering Committee Released Party(ies)” has the meaning set forth in Section 7.1(a)(ii).

“Tax” or “Taxes” means any and all taxes, assessments, charges, duties, fees, levies, imposts or other governmental charges, including all federal, state, local or non-U.S. income taxes (including any tax on or based upon net income, gross income, or income as specially defined, or earnings, profits, or selected items of income, earnings or profits) and all gross receipts, payroll, employment, excise, severance, stamp, occupation, premium, environmental, customs duties, capital stock, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, ad valorem, transfer, service, franchise, license, windfall profits taxes, estimated, alternative or add-in minimum taxes and any other taxes of any kind whatsoever (whether or not requiring the filing of a Tax Return), together with any interest and any penalties and additions to tax.

“Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedules and amendments thereof.

“Third Party Program Administrator” means any successor Program Administrator appointed at any time following the end of SCE’s term as Program Administrator, in accordance with the provisions of Section 3.1(c) or any amendment to this Agreement entered into pursuant to the provisions thereof, that is not also a Participating ED hereunder.

“TOU” has the meaning set forth in Section 4.2(b).

“Withdrawing Notice” has the meaning set forth in Section 9.2(a).

“ZEVs” has the meaning set forth in the Recitals.

1.2. Construction. As used herein, unless the context of this Agreement otherwise requires, (a) all references to Sections, Articles, Schedules or Exhibits are to Sections, Articles, Schedules or Exhibits of this Agreement; (b) each accounting term has the meaning assigned to it in accordance with GAAP; (c) words of any gender include each other gender; (d) words using the singular or plural number also include the plural or singular number, respectively; (e) the terms “hereof,” “herein,” “hereby,” “hereto” and derivative or similar words refer to this entire Agreement; (f) the word “including” shall mean “including, without limitation”; (g) the word “or” shall be used in the inclusive sense of “and/or” and not exclusive; (h) each reference to “$” or “dollars” shall be to United States dollars; and (i) each reference to “days” shall be to calendar days.
ARTICLE 2
FORMATION OF CFR PROGRAM

2.1. Governance Agreement. This Agreement shall constitute a “Governance Agreement” (as that term is used in the Advice Letter and the CPUC Approval). The rights, powers, duties, obligations, and liabilities of the Parties to each other with respect to the CFR Program shall be determined pursuant to this Agreement. Each Party shall at all times comply with its respective duties, obligations, covenants and agreements set forth in this Agreement.

2.2. EDU Participation. As of the Effective Date, the Parties and Participating EDUs consist of PG&E, SDG&E, SCE, LADWP, and SMUD. Any EDU that desires to participate in the CFR Program and that is not already a Party hereto on the Effective Date as set forth in the preamble to this Agreement and the signature pages hereto, will be required to execute and deliver to the Program Administrator (with a copy to CARB) a joinder to this Agreement in the form attached hereto as Exhibit A (a “Joinder”), in order to become a Party and a Participating EDU hereunder.

ARTICLE 3
ADMINISTRATION OF CFR PROGRAM

3.1. SCE Appointment as Initial Program Administrator and Agent.

(a) Appointment. Each of the Participating EDUs (in its capacity as a Participating EDU) and each other current and future Party hereto hereby irrevocably appoints SCE as the initial Program Administrator, and hereby designates and authorizes SCE to act on its behalf as the Program Administrator under this Agreement and under any agreement approved by the Steering Committee that is entered into by the Program Administrator or any Participating EDU with respect to the CFR Program pursuant to the terms and conditions hereof (each, a “Program Agreement”), and authorizes the Program Administrator to take such actions on its behalf and to exercise such powers as are delegated to the Program Administrator by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto or as otherwise determined by the Steering Committee, in each case for the time period set forth in Section 3.1(b) below. As used herein, Program Administrator shall mean SCE in its capacity as program administrator and administrative agent for the Parties with respect to the CFR Program under this Agreement or any Program Agreement, or any successor to SCE appointed by the Parties as Program Administrator pursuant to the terms of the replacement administrative and governance structure for the CFR Program implemented pursuant to Section 3.1(c) below. It is understood and agreed that the use of the terms “agent” and “administrator” herein or in any other Program Agreement (or any other similar term) with reference to the Program Administrator or SCE is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between sophisticated contracting parties.

(b) Term. SCE is hereby appointed and authorized to serve in such role as Program Administrator from the Effective Date until the earliest to occur of (i) the third (3rd) anniversary of the commencement date of the third party contractor solicitation process
described in ARTICLE 4 below, unless SCE files an advice letter with the CPUC requesting authority to administer the CFR Program long term, in which case SCE will continue to serve as Program Administrator while the CPUC considers the appropriate disposition of the advice letter, and thereafter, if approved, in compliance with the CPUC resolution approving that advice letter, (ii) the date on which SCE is removed or ordered to be removed as Program Administrator by CARB or CPUC, and (iii) the effective date of resignation of SCE as Program Administrator as set forth in any written communication of resignation delivered by SCE to the other Parties after receiving CPUC authorization or approval to withdraw as Program Administrator.

(c) Replacement Structure. No later than the second anniversary of the Effective Date, the Steering Committee, with oversight from CARB, will develop and determine a replacement administrative and governance structure for the CFR Program that would go into effect upon the date of expiration or termination of SCE’s appointment as Program Administrator in accordance with the provisions of Section 3.1(b), in order to ensure a seamless transition to a new administrative and governance regime following such date. The Parties will implement such replacement administrative and governance structure through an amendment to this Agreement establishing the terms of such replacement structure, which amendment shall be executed by all Parties no later than the date that is ninety (90) days before the third anniversary of the Effective Date.

3.2. Program Administrator Authority.

(a) Solicitation. The Program Administrator will serve as the principal agent of the Parties to develop, issue and administer the competitive Request for Proposals (“RFP”), Request for Information with Pricing (“RFI”) or other such solicitations to acquire the services of one (or more) qualified firm(s) to develop, administer and implement the CFR Program, subject to the terms below. All Parties shall assist the Program Administrator in the performance of the associated responsibilities, as may be requested by the Program Administrator during the solicitation process, and the Program Administrator shall work with the Steering Committee in selecting the successful respondent(s) to the solicitation. The Steering Committee shall make recommendations to the Program Administrator regarding the competitive solicitation, selection of offers, and negotiation of third-party contracts. The Program Administrator shall have the discretionary contracting authority (i) to recommend the third party firms and institutions that it deems to be the best-qualified to perform the necessary and appropriate functions to develop, implement and maintain the CFR Program, which at a minimum will include the Program Auditor, Financial Institution, and Program Implementer (each, an “Implementer”), (ii) to negotiate the terms and conditions of any Program Agreement entered into with any Implementer in connection with the CFR Program, and (iii) subject to receipt of approval from the Steering Committee, to enter into Program Agreements with the Implementers as Program Administrator of the CFR Program on behalf of the Parties. The selection of each Implementer and the final form of each Program Agreement shall require the approval of both the Program Administrator and the Steering Committee. The mechanics of the solicitation process are set forth in further detail in ARTICLE 4 below.

(b) Post-Solicitation Program Administration. The Program Administrator will also serve as the principal agent of the Parties with respect to the administration of the CFR Program, in providing instructions to the Implementers and in enforcing the provisions of the
Program Agreements both during and following the solicitation process. All Parties shall assist the Program Administrator in the performance of the associated responsibilities necessary for the successful functioning and operation of the CFR Program, as may be requested by the Program Administrator from time to time in accordance with the provisions of this Agreement, the Program Agreements and the decisions and resolutions of the Steering Committee that will be responsible for oversight of the CFR Program.

(c) Reporting. The Program Administrator shall provide the Steering Committee quarterly reports on program administration, financial accounting and program results, which quarterly reports are anticipated to be delivered to the Steering Committee by the end of the first month that commences following the close of each of the first three calendar quarters, and by the last day of February following the close of the fourth calendar quarter and the calendar year. At any other time, the Program Administrator shall provide the Steering Committee such other information as may be reasonably requested by the Steering Committee with reasonable advance notice of not less than ten (10) business days for the Program Administrator to collect the requested information. The Program Administrator and the Steering Committee shall cause to be provided to the Participating EDUs on a quarterly basis such Tax information regarding the operation of the CFR Program as the Program Administrator determines is reasonably necessary for the Participating EDUs to calculate their Taxes with respect to the CFR Program.

3.3. Steering Committee.

(a) Composition. The CFR Program will be overseen by a joint steering committee (the “Steering Committee”) made up of seven (7) voting members (each, a “Member”), one (1) non-voting representative appointed by the Program Administrator (the “PA Representative”), and one (1) non-voting LCFS program implementation representative from CARB with oversight authority over the Steering Committee (the “CARB Representative”).

(i) The Members will consist of (1) one senior representative from and appointed by each Large EDU (the “Large EDU Members”), one (1) Member (the “Southern EDU Member”) selected by the Southern EDUs that are Participating EDUs (the “Participating Southern EDUs”), and one (1) Member (the “Northern EDU Member”) selected by the Northern EDUs that are Participating EDUs (the “Participating Northern EDUs”).

(ii) Southern EDU Member annual voting structure. The Southern EDU Member shall be confirmed annually before each new calendar year and shall be either a representative from one of the Participating Southern EDUs or a qualified third-party representative, as determined by the Participating Southern EDUs. The Southern EDU Member shall be selected by at least a 2/3 majority vote (with each of the Participating Southern EDUs receiving a single vote each of equal weight) of the Participating Southern EDUs (“Southern EDU Supermajority Vote”), if the Member is a representative from one of the Participating Southern EDUs. If the Southern EDU Member is a third-party representative they shall be
selected by a unanimous vote of the Participating Southern EDUs. Votes shall be submitted by a senior representative (Assistant General Manager level or higher; or equivalent position(s)) through a conference call vote with an email confirmation of the final vote following the call. A proxy voting representative may be assigned by each Participating Southern EDU through a written notification from their senior representative to the other Participating Southern EDUs.

(B) Initial adoption period. Notwithstanding the provisions of Section 3.3(a)(ii)(A) above, selection of the Southern EDU Member will be conducted as set forth in this Section 3.3(a)(ii)(B) until December 31st, 2020. Once the first Participating Southern EDU has become a Party to this Agreement in accordance with the provisions of Section 2.2, it will select the initial Southern EDU Member. A new vote will be held among the Participating Southern EDUs to elect the Southern EDU Member each time a new Southern EDU becomes a Party to this Agreement in accordance with the provisions of Section 2.2, until December 31st, 2020. All votes during this initial adoption period will continue to follow the Southern EDU Supermajority Vote and senior representative voting requirements set forth in Section 3.3(a)(ii)(A). The Participating Southern EDUs will vote, in accordance with the provisions of Section 3.3(a)(ii)(A), to elect a Southern EDU Member for the 2021 calendar year before the end of 2020. After December 31, 2020, even if any new Southern EDU becomes a Party to this Agreement in accordance with the provisions of Section 2.2, there will be no new vote on a Southern EDU Member until the annual vote, unless a vote is called for under Section 3.4(b).

(iii) The Northern EDU Member shall be selected by vote of the Participating Northern EDUs (which vote may be cast directly by any such Participating Northern EDU or indirectly by a third party Representative granted a proxy by any such Participating Northern EDU to act on its behalf for purposes of such vote) representing more than 50% of the aggregate EDU Contributions made as of such date by all Participating Northern EDUs, as determined from time to time (a “Northern EDU Majority Vote”), and shall be either a senior representative from one of the Participating Northern EDUs or a member of the staff of NCPA or other qualified third party representative.

(iv) Each of the seven Members on the Steering Committee shall serve on the Steering Committee until such time as a replacement is designated for such Member pursuant to the provisions of Section 3.3(b) below. The Steering Committee shall maintain a Chair, a Vice-Chair and Secretary positions. The Members that hold these positions described in the preceding sentence shall be selected from within the Steering Committee by a vote thereof pursuant to Section 3.3(i), and shall, subject to the provisions of Section 3.3(b), maintain those positions for a one year term, unless agreed upon in writing by all Members (other than the Member holding the position). The Chair (or, in the absence of the Chair, the Vice-Chair) shall preside over all meetings of the Steering Committee, and the Secretary (or, in the absence of the Secretary, any person appointed by the Chair or, in the Chair’s absence, by the Vice-Chair) shall take and maintain the minutes of the proceedings of the meetings of the Steering Committee.

(v) The Program Administrator will designate a staff person to serve as the PA Representative, who will be invited to participate in all meetings of the Steering Committee. The PA Representative will be the Program Administrator’s non-voting representative on the Steering Committee and will serve as the primary point of contact between
the Program Administrator and the Steering Committee. The Program Administrator may remove and replace the PA Representative at any time with or without cause, effective upon written notice to the Members provided in accordance with the provisions of Section 10.14.

(vi) CARB will designate a senior LCFS program staff person to serve as the CARB Representative, who will be invited to participate in all meetings of the Steering Committee. The CARB Representative will monitor and provide feedback to and oversight of the Steering Committee regarding LCFS and vehicle incentive goals and implementation. CARB may remove and replace the CARB Representative at any time with or without cause, effective upon written notice to the Members provided in accordance with the provisions of Section 10.14.

(b) Member Removal, Resignation and Replacement. Each Large EDU may remove and/or replace any Large EDU Member appointed by it at any time with or without cause, effective upon written notice to the other Members. The Participating Southern EDUs may by a Southern EDU Supermajority Vote remove and/or replace the Southern EDU Member at any time with or without cause, effective upon written notice to the Members documenting the results of such Southern EDU Supermajority Vote. The Participating Northern EDUs may by a Northern EDU Majority Vote remove and/or replace the Northern EDU Member at any time with or without cause, effective upon written notice to the Members documenting the results of such Northern EDU Majority Vote. A Member may resign at any time from the Steering Committee by delivering his or her written resignation to the Chair (or in the absence of a Chair, the Vice Chair or Secretary). Any such resignation shall be effective upon receipt thereof unless it is specified to be effective at some other time or upon the occurrence of some other event. The Steering Committee’s acceptance of a resignation shall not be necessary to make it effective. Any vacancy on the Steering Committee resulting from the resignation, removal, death or disability of a Member shall be filled by (i) if a Large EDU Member, the same Large EDU that appointed such Member pursuant to Section 3.3(a), (ii) if a Southern EDU Member, by written notice to the other Members documenting the results of the Southern EDU Supermajority Vote held to select a replacement for such Southern EDU Member, or (iii) if a Northern EDU Member, by written notice to the other Members documenting the results of the Northern EDU Majority Vote held to select a replacement for such Northern EDU Member, in each case with such appointment to become effective immediately upon delivery of written notice of such appointment to the Chair (or in the absence of a Chair, the Vice Chair or Secretary).

(c) Alternates. In addition to the Member removal and replacement procedures set forth in Section 3.3(b) above, each Large EDU, the Participating Southern EDUs (by Southern EDU Supermajority Vote), and the Participating Northern EDUs (by Northern EDU Majority Vote), may by written notice delivered to the Chair designate up to two (2) alternative representatives (“Alternates”) who may, upon written or oral notice by such Party/Parties to the Chair that the Member designated by such Party/Parties is unable to attend any meeting (or participate in any action by written consent) of the Steering Committee (or any subcommittee thereof) and shall instead be represented by the Alternate designated in such notice, attend, participate and vote at any regular or special meeting of the Steering Committee (or any subcommittee thereof), or participate and vote in any action by written consent, in lieu of the regular Member designated by such Party/Parties. The Program Administrator may also designate one or more alternate representatives to attend and participate in any meeting of the
Steering Committee (or any subcommittee thereof) in lieu of the designated PA Representative. CARB may also designate one or more alternate representatives to attend and participate in any meeting of the Steering Committee (or any subcommittee thereof) in lieu of the designated CARB Representative.

(d) **Roles and Responsibilities:** The Steering Committee is responsible for strategic direction, program guidance, oversight of policy objectives, and overall governance and supervision of the CFR Program, subject to the oversight of CARB exercised through the CARB Representative’s participation on the Steering Committee as provided by Section 3.3(a)(vi). These roles and responsibilities will include but not be limited to:

(i) participation with the Program Administrator in the development, review and selection processes related to the competitive solicitation process to select the Implementers, and final approval of the solicitation process, the selection of Implementers and the final form of the Program Agreements to be entered into with the Implementers;

(ii) reviewing and approving the CFR Program’s budget and the initial starting balance for the CFR Program, each of which shall be submitted to the Steering Committee by the Program Administrator for review and approval;

(iii) approving the initial CFR rebate amount ("Reward Amount") and approving any required adjustments thereto or in the method of payment of any Reward Amounts, in each case as recommended by the Program Administrator following CARB approval of the methodology for determining the Reward Amount;

(iv) determining the process for approving payment of invoices for administrative and marketing functions, including Implementer invoices, in accordance with the provisions of ARTICLE 6, and the Steering Committee shall also have the authority to make any changes to the invoice approval processes set forth in ARTICLE 6 or otherwise as determined by the Steering Committee from time to time, in order to maintain the efficient operation of the CFR Program;

(v) determining whether to adjust the amounts specified to be held in the Liability Reserve or the Operating Reserve as set forth in Section 4.3(e) and the amount of any such increase, but in no event shall any such specified amounts be decreased without the prior written consent of the Program Administrator;

(vi) reviewing the performance of the CFR Program and recommending any required adjustments thereto;

(vii) approving the timing and content of public announcements about this Agreement and/or the CFR Program (as described in Section 8.2);

(viii) terminating this Agreement (as described in Section 9.1);

(ix) removing a Party as a party under this Agreement (as described in Section 9.3);
(x) amending this Agreement, or waiving, discharging, or terminating any provision hereof (as described in Section 10.7);

(xi) reviewing the quarterly reports and other information required to be provided by the Program Administrator under Section 3.2(c); and

(xii) any and all other roles and responsibilities for the Steering Committee set forth in this Agreement or in any Program Agreement.

(e) Subcommittees. The Steering Committee may, by resolution, designate from among the Members one or more subcommittees, each of which shall be comprised of two or more Members, and that, subject to the limitations set forth in the next sentence, shall have and may exercise any authority of the Steering Committee as the Steering Committee may delegate to it in the resolution forming such subcommittee. The Steering Committee shall not, and shall not have the power or authority to, designate or authorize any subcommittee with all of the powers and authority of the Steering Committee, or with the authority of the Steering Committee in reference to: (A) final approval of the initial Reward Amount or the amount of any adjustment thereto, (B) any proposed increase (or other adjustment) to the amounts specified to be held in the Liability Reserve or the Operating Reserve as set forth in Section 4.3(e), (C) final approval of payment of any invoice for Administrative Expenses (provided that the Steering Committee may create one or more subcommittees with the responsibility and authority to review, reject, negotiate, pre-approve and submit to the Steering Committee for final approval any or all such invoices (each, an “Invoice Subcommittee”)), (D) altering or repealing any resolution of the Steering Committee that by its terms provides that it shall not be so amendable or repealable, or (E) final approval of any Implementers. The Steering Committee may dissolve any subcommittee or remove any member (or non-voting participant) of a subcommittee through a Steering Committee vote conducted pursuant to the provisions of Section 3.3(i) below at any time. The Parties anticipate that, in addition to an Invoice Subcommittee, potential subcommittees may include (but not be limited to) subcommittees to address dealer training, marketing and outreach, and financial forecasting. The Steering Committee and any subcommittee thereof, and their respective Members, may consult with and seek and rely upon information and advice from employees and representatives of any Participating EDUs, Implementers, Advisory Committee members, Governmental Authorities, legal counsel, independent accountants and other Persons as to matters which they believe to be within such Person’s professional or expert competence. The Steering Committee shall designate a chair and secretary for each subcommittee. The chair (or in the absence of the chair, the secretary) shall preside over all meetings of the subcommittee, and the secretary (or, in the absence of the secretary, the chair or any person appointed by the chair) shall take and maintain the minutes of the proceedings of the meetings of the subcommittee. All minutes of subcommittee meetings shall be made available to all Steering Committee Members. If any member of the Advisory Committee is invited to a subcommittee meeting or a Steering Committee meeting, then the portion(s) of the minutes of such meeting during which such member of the Advisory Committee was present shall also be made available to all members of the Advisory Committee.

(f) Regular Meetings. Regular meetings of the Steering Committee shall be held no less than monthly during the first year, and quarterly thereafter, via a conference call at a date and time that is either (i) determined by the Chair (or in the absence thereof, by the Vice
Chair or Secretary) after consulting with the Members at the immediately preceding meeting, or (ii) scheduled by the Chair (or in the absence thereof, by the Vice Chair or Secretary) on not less than five (5) calendar days’ notice to the Members, the PA Representative and the CARB Representative. All meetings (regular or special) of the Steering Committee shall be held by means of telephone or video conference or other communications device that permits all Members, the PA Representative and the CARB Representative participating in the meeting to hear each other, provided that if all Members agree any meeting may be held in person at a mutually agreed location. The Parties acknowledge and agree that the presence and participation of all Members (or their respective Alternates) on the Steering Committee at the meetings and proceedings of the Steering Committee is important for the successful development, implementation, operation and oversight of the CFR Program and, accordingly, each Party shall use its commercially reasonable efforts to have its respective Member (or Alternate) attend each meeting (regular and special) of the Steering Committee. To the extent reasonably practicable, any written materials for regular meetings of the Steering Committee shall be provided to all Members, the PA Representative and the CARB Representative not less than seventy-two (72) hours prior to the meeting. Unless specifically noted on such meeting materials or in the cover correspondence distributed with such meeting materials that such materials (or any portion thereof) are not to be distributed outside of the Steering Committee, each Member shall be free to distribute copies of the meeting materials to the Participating EDUs that such Member represents on the Steering Committee.

(g) Special Meetings. Special meetings of the Steering Committee to address emergency, urgent or other time sensitive matters shall be held on the call of the Program Administrator or any two (2) Members upon written notice to the Members, the PA Representative and the CARB Representative sent at least 2 business days prior to the meeting, or upon such shorter notice as may be approved by all the Members. To the extent reasonably practicable, any written materials for special meetings of the Steering Committee shall be provided to all Members, the PA Representative and the CARB Representative not less than twenty-four (24) hours prior to the meeting (it being understood that it may not always be practicable to meet such a timeframe). Any Member may waive such notice as to himself or herself.

(h) Quorum; Voting Percentages. Members holding a majority of the voting percentages held by all Members (as described below in this Section 3.3(h)), shall constitute a quorum for the transaction of business of the Steering Committee. For the avoidance of doubt, as long as such a quorum is present, the Steering Committee may meet and act even if there are vacancies on the Steering Committee at such time, including, without limitation, during the time period following the Effective Date prior to the appointment of any Small EDU Member to the Steering Committee. At all times when the Steering Committee is conducting business at a meeting of the Steering Committee, a quorum of the Steering Committee must be present at such meeting. If a quorum shall not be present at any meeting of the Steering Committee, then the Members present at the meeting may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. Until such time as SCE is no longer the Program Administrator, the voting percentages of the Members (which shall always total 100% in the aggregate) shall be:

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<th>Member</th>
<th>Voting Percentage</th>
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43425759.3 18
SCE’s Member 33.0%
Each remaining Large EDU Member 12.5%
The Southern EDU Member 8.5%
The Northern EDU Member 8.5%

Unless previously modified pursuant to a replacement structure implemented by way of an amendment to this Agreement entered into pursuant to the provisions of Section 3.1(c), the following voting percentages set forth below will serve as the default replacement structure in the event of the replacement of the initial Program Administrator. In the event that another Large EDU replaces SCE as the Program Administrator, then its designated Member shall have a 33.0% voting percentage and SCE’s Member shall have a 12.5% voting percentage, and the other voting percentages shall remain unchanged. In the event that a Participating Southern EDU replaces SCE as the Program Administrator, then such Participating Southern EDU shall have the sole power to appoint the Southern EDU Member and the Southern EDU Member shall have a 25.0% voting percentage, each Large EDU Member shall have a 13.3% voting percentage, and the Northern EDU Member shall have a 8.5% voting percentage. In the event that a Participating Northern EDU replaces SCE as the Program Administrator, then such Participating Northern EDU shall have the sole power to appoint the Northern EDU Member and the Northern EDU Member shall have a 25.0% voting percentage, each Large EDU Member shall have a 13.3% voting percentage, and the Southern EDU Member shall have a 8.5% voting percentage. In the event that the Program Administrator is not an EDU, then unless otherwise approved by the Steering Committee in connection with its approval of such replacement Program Administrator, the Program Administrator shall have no (0%) voting percentage, and each Large EDU Member shall have a 16% voting percentage, and the Southern EDU Member and the Northern EDU Member shall each have a 10% voting percentage.

(i) Vote Required for Action. Except as expressly set forth otherwise with respect to certain actions in this Agreement, (i) all actions of the Steering Committee must be taken at any duly scheduled or called meeting thereof at which a quorum is present and shall require the affirmative vote of Members (or of their respective Alternate or designated proxy as set forth below) holding a majority of the aggregate voting percentages held by all Members present at such meeting, and (ii) all actions of any subcommittee of the Steering Committee must be taken at any duly scheduled or called meeting of such subcommittee at which a quorum (i.e., a majority of the aggregate voting percentage held by all members of such subcommittee) is present and shall require the affirmative vote of Members (or of their respective Alternate or designated proxy as set forth below) holding a majority of the aggregate voting percentages held by all Members who are members of such subcommittee. Voting by proxy, which proxy must be in writing and signed by the Member or Alternate designated by the Party granting a proxy, granted to another Member (or Alternate therefor) will be allowed in case a Party with a Member on the Steering Committee is not able to have its designated Member or Alternate attend any regular or special meeting.

(j) Action by Written Consent. Notwithstanding anything herein to the contrary, any action of the Steering Committee (or any subcommittee thereof) may be taken
without a meeting if either (a) a written consent of Members holding at least sixty-six percent (66%) of the aggregate voting percentage held by all Members on the Steering Committee (or subcommittee), and which consent must include the signature of the Member (or Alternate) designated by the Program Administrator, shall approve such action; provided, that prior written notice of such action is provided to all Members, the PA Representative and the CARB Representative at least two (2) business days before such action is taken, or (b) a written consent constituting all of the Members on the Steering Committee (or subcommittee) shall approve such action. Such written consent shall have the same force and effect as a vote at a meeting where a quorum was present.

3.4. Advisory Committee

(a) The CFR Program’s performance will be monitored by an advisory committee (the “Advisory Committee”) comprised of representatives of stakeholder organizations (such as EDUs, regulatory agencies, industry groups, ZEV manufacturers and dealers, other industry representatives, environmental NGOs, social and economic justice groups, and other community-based organizations) that have a direct interest in the success of the CFR Program. A list of the stakeholders that the Parties anticipate inviting to join the Advisory Committee is set forth on Schedule 3.4(a) hereto, which Schedule may be amended from time to time by the Steering Committee.

(b) The purpose and role of the Advisory Committee will be to provide feedback to the Steering Committee on CFR Program performance and on market and industry trends and best practices to ensure a successful program. The Advisory Committee shall provide such information and feedback to the Steering Committee, and may make recommendations to the Steering Committee on program implementation, in response to consumer and dealer feedback, on metrics needed to evaluate program effectiveness and on CFR Program or process improvement, but the Advisory Committee shall have no management, operational, or decision-making power or authority, or any other type of power or authority, with respect to the CFR Program and neither the Steering Committee nor the Program Administrator shall be required to implement or follow any recommendations made by the Advisory Committee.

(c) The Advisory Committee and Steering Committee will meet or have conference calls or electronic meetings not less than twice a year to share feedback on CFR Program performance. The Steering Committee shall inform the Advisory Committee, by way of written or electronic notice to all members of the Advisory Committee or at an in-person, telephonic or electronic meeting of the Advisory Committee, prior to effecting any adjustment to the Reward Amount.

3.5. Duties

(a) This Agreement is not intended to, and does not, create or impose any fiduciary duty on any Party, the Program Administrator, the PA Representative, the CARB Representative, any Member or any member of the Advisory Committee appointed by a Participating EDU (each of the foregoing, a “Covered Person”). Furthermore, each of the Parties hereby waives any and all fiduciary duties that, absent such waiver, may be implied on any Covered Person by applicable law, and in doing so, acknowledges and agrees that the duties
and obligation of each Covered Person to each other, to any other Party and to the CFR Program with respect to the CFR Program or the matters that are the subject of this Agreement, are only as expressly set forth in this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are expressly agreed by the Parties to replace such other duties and liabilities of such Covered Person.

(b) Whenever in this Agreement a Covered Person is permitted or required to make a decision (including a decision that is in such Covered Person’s “discretion” or under a grant of similar authority or latitude), the Covered Person shall be entitled to consider only such interests and factors as such Covered Person desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting any other Party, Member or third party. Whenever in this Agreement a Covered Person is permitted or required to make a decision in such Covered Person’s “good faith,” the Covered Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or any other applicable law.

ARTICLE 4
SOLICITATION PROCESS.

4.1. Solicitation.

(a) As set forth above, the Steering Committee, under the oversight of the CARB Representative, will work with the Program Administrator to develop and ultimately approve the RFP/RFI processes to select the Implementers who will be engaged to develop, administer and implement the CFR Program, and the Program Administrator will serve as the primary agent of the Parties to issue and administer the RFP/RFI processes, subject to the terms below. The Parties agree that at least the following three Implementer functions will be required for the statewide CFR program: (i) implementation of the CFR program activities (“Program Implementer(s)’’); (ii) a FDIC insured financial institution to receive, hold, and/or distribute CFR funds (“Financial Institution’’); and (iii) an independent accounting firm to perform regular audits (“Program Auditor”). The Parties acknowledge and agree that additional Implementers may also be required as determined and approved by the Program Administrator and the Steering Committee.

(b) The Program Administrator will utilize a competitive solicitation/bidding process by issuing a Request for Proposal/Information with pricing (RFP/RFI) to potential Implementers to submit a proposal or quote on a specific commodity or service. The RFP/RFI bid process is a fair and standardized method for the Program Administrator to systematically obtain and demonstrate best value for goods and services procured and ensure that the CFR Program’s vendor costs are reasonable according to prevailing market conditions.

(c) Competitive awards resulting from the RFPs/RFIs will be based upon the comparison of commercial and/or technical information from multiple independent suppliers. The RFP/RFI process will start with the development and definition of business requirements contained in a Statement of Work (SOW) or Specification. A list of prospective qualified suppliers will be established. The Program Administrator will receive input and approval from
the Steering Committee on the RFP/RFIs and development of an evaluation criteria prior to receipt of the bids. The Program Administrator will manage the competitive procurement process including the evaluation of the RFP responses. The successful bidder will be selected based on the established criteria (e.g., technical, commercial, supplier responsibility, and risk considerations). Negotiations are entered into, if necessary. Once negotiations with a proposed Implementer are complete, the Program Administrator will submit the proposed Program Agreement with such Implementer together with any requested supporting documentation to the Steering Committee for review and approval; provided that approval of each Program Implementer and the Program Auditor shall require the approval of Members holding at least sixty-six percent (66%) of the aggregate voting percentage held by all Members on the Steering Committee, which approval must include the approval of the Member designated by the Program Administrator and, as long as there are at least five (5) Members on the Steering Committee, the approval of at least three (3) other Members in addition to the Member designated by the Program Administrator. If the Steering Committee rejects the proposed Program Agreement with any vendor, it shall provide the Program Administrator with a detailed set of terms and conditions that must be included in the Program Agreement for the Steering Committee to provide its approval thereof. The Program Administrator shall then continue negotiations with the proposed Implementer or with other respondents to the solicitation process in order to meet the terms and conditions specified by the Steering Committee, and may then submit one or more revised proposals to the Steering Committee for approval. Following Steering Committee approval, the approved procurement award and Program Agreement will be delivered to the applicable vendor selected to serve as such Implementer.

4.2. Program Implementer(s).

(a) The Program Implementer(s) will consist of one or more third parties (which may include multiple contractors or a prime contractor that engages multiple subcontractors) to engage in Marketing, Education and Outreach (“ME&O”) activities for the CFR Program; establish, operate, and maintain the web-based portal for ZEV dealers to request reimbursement for payment of a Reward Amount and to submit documentation required to establish compliance with requirements for such reimbursement; and to review and evaluate the dealership requests for Reward Amount reimbursements to confirm whether they comply with the reimbursement requirements set forth in the applicable Program Agreement; and to perform such other services and obligations as are set forth in the applicable Program Agreement. The Program Implementer(s) will also assist with the collection of data, including all data necessary for participant and CFR Program reporting, and submit invoices to the Program Administrator to request payments owed to the Program Implementer or to approved subcontractors or vendors that have been engaged in accordance with the terms of the applicable Program Agreement. The Program Implementer(s) will perform, or contract for, other administrative and ME&O functions necessary and appropriate for the efficient operation of the CFR Program pursuant to the terms and conditions of the Program Agreements entered into with such Program Implementers by the Program Administrator on behalf of the Parties.

(b) A rate education and outreach implementation plan will be developed by the Program Implementer, in collaboration with the Steering Committee and the CPUC’s Energy Division, designed to educate ZEV purchasers and the public on time-of-use (“TOU”) rates (in general), other applicable rates and the benefits of off-peak charging. The rate education and
outreach plan will include a proposal for point of purchase or dealership educational materials. Rate education and outreach materials developed for the statewide CFR program will specify that there are a variety of rate options available depending on the different EDU service territories and will direct customers to contact their specific utility for more information. At a minimum, rate education will be required for all IOU customers who participate in the CFR Program.

(c) The Program Implementer’s contract will require it to collect certain data, including but not limited to customer name, address, Vehicle Identification Number (VIN), ZEV make and model. The Program Implementer will provide this information to the Participating EDU that serves that particular customer, and to any non-Participating EDU that serves that customer that has executed and delivered the non-disclosure agreement with the Program Implementer required under Section 4.2(d). See Appendix B for a copy of the data collection template.

(d) In order to receive certain confidential customer related information from the Program Implementer (such as customer name, address, vehicle make, and other information relevant for purposes of grid planning, marketing of any additional utility ZEV programs and similar permitted uses), each Participating EDU shall be required to execute and deliver a non-disclosure agreement with the Program Implementer in a form negotiated by the Program Administrator and approved by the Steering Committee, which shall include the applicable confidentiality and data security requirements governing the handling of such information under applicable laws.

4.3. Financial Institution.

(a) The Financial Institution shall be a state or federally regulated bank or other financial institution that is insured by the FDIC and selected through a RFP/RFI process approved by the Steering Committee. The Financial Institution will receive and hold the EDU Contributions and all interest or other earnings thereon (collectively, “Program Funds”) in designated Accounts (as defined and described below), and will disseminate Program Funds from the Accounts upon receipt of appropriate instructions from the Program Administrator, including (i) to pay reimbursements to ZEV dealers for their qualifying Reward Amount payments following verification thereof by the Program Implementer pursuant to the terms of its Program Agreement, and (ii) to pay other CFR Program costs, expenses and liabilities, including Administrative Expenses following approval of payment of the invoice by the Steering Committee or CARB in accordance with ARTICLE 6, and any amounts payable for or in connection with Indemnified Claims pursuant to Sections 7.5(b)(ii) and 7.5(b)(iii).

(b) Subject to such modifications to the below provisions as may be proposed by the Program Administrator and approved by the Steering Committee, the Program Administrator will enter into a master agreement with the Financial Institution (the “Master Account Agreement”) that will provide for the establishment and maintenance of one or more bank accounts to hold, disburse or otherwise administer the Program Funds (“Accounts”). While the terms of the Master Account Agreement and the structure of the Accounts will not be able to be finalized until the completion of the RFP/RFI process to select a Financial Institution, the Parties currently anticipate that the basic financial structure of the CFR Program will follow
one of the structural models set forth below (with such modifications thereto as are proposed by the Program Administrator and approved by the Steering Committee), which are ranked in order of preference and which, to the extent a higher priority option is available prior to finalization of the Master Account Agreement, shall be approved by the Steering Committee in such order, subject to the provisions of Section 4.3(f) below and consideration of relevant Tax reporting and administration requirements:

(i) if the Program Administrator and the Steering Committee identify a Governmental Authority (including, for the avoidance of doubt, a POU) or not for profit entity that (A) is willing to serve as the record holder (under its name and federal Tax identification number) of an Account to hold all Program Funds (the “Program Funds Account”), and (B) they believe in good faith is appropriate to hold the Program Funds Account, then the Program Administrator shall negotiate the terms of one or more Program Agreements (each of which shall be subject to the approval of the Steering Committee in accordance with Section 3.2(a)) with such Designated Account Holder (as such term is defined in Section 1.1) and the Financial Institution pursuant to which the Designated Account Holder will (1) open and maintain the Program Funds Account in its name and federal Tax identification number, and (2) provide sole management authority and control over the Program Funds Account, all funds contained therein and all decisions pertaining thereto to the Program Administrator, which management authority and control shall in all cases be limited by and subject to the provisions of this Governance Agreement and any additional requirements established by CARB pursuant to the LCFS Regulation;

(ii) in the event that the Program Administrator and the Steering Committee have not identified a Designated Account Holder to hold the Program Funds Account, but have identified any Governmental Authority (including, for the avoidance of doubt, a POU) or not for profit entity that (A) is willing to serve as the record holder (under its name and federal Tax identification number) of an Account to hold the EDU Contributions (and all interest and earnings thereon) of more than one but less than all of the Participating EDUs (a “Collective Deposit Account”), and (B) they believe in good faith is appropriate to hold such Collective Deposit Account, then the Program Administrator shall negotiate the terms of one or more Program Agreements (each of which shall be subject to the approval of the Steering Committee in accordance with Section 3.2(a)) with each such Designated Account Holder and the Financial Institution pursuant to which the Designated Account Holder will (1) open and maintain such Collective Deposit Account in its name and federal Tax identification number, and (2) provide sole management authority and control over such Collective Deposit Account, all funds contained therein and all decisions pertaining thereto to the Program Administrator, which management authority and control shall in all cases be limited by and subject to the provisions of this Governance Agreement and any additional requirements established by CARB pursuant to the LCFS Regulation. For the avoidance of doubt, any Participating EDU that is not authorized to deposit its EDU Contributions into a Collective Deposit Account established pursuant to this Section 4.3(b)(ii) must establish an Individual Deposit Account in accordance with the provisions of Section 4.3(b)(iii) below; or

(iii) in the event that the Program Administrator and the Steering Committee have not identified (A) a Designated Account Holder to hold the Program Funds Account pursuant to Section 4.3(b)(i), or (B) one or more Designated Account Holders to hold
one or more Collective Deposit Accounts pursuant to Section 4.3(b)(ii) that, individually or in the aggregate, would hold the EDU Contributions for all Participating EDUs, then any Participating EDU that is not authorized to deposit its EDU Contributions into a Collective Deposit Account or, in the event there is no Collective Deposit Account, each Participating EDU, must establish its own individual deposit Account with the Financial Institution selected pursuant to Section 4.1(c) (each, an “Individual Deposit Account”) and will be required to execute and deliver, upon the Program Administrator’s request therefor, the separate Program Agreement with the Financial Institution creating and governing its Individual Deposit Account in the final form thereof negotiated by the Program Administrator for all Participating EDUs to deliver and as such final form has been approved by the Steering Committee (the “Individual Deposit Account Agreement”), as a condition to remaining as a Participating EDU and Party under this Agreement. The Individual Deposit Account Agreement shall grant the Program Administrator sole management authority and control over each Individual Deposit Account, all funds contained therein and all decisions pertaining thereto, which management authority and control shall in all cases be limited by and subject to the provisions of this Governance Agreement and any additional requirements established by CARB pursuant to the LCFS Regulation.

(c) In the event that the Program Administrator and the Steering Committee have not identified a Designated Account Holder to hold the Program Funds Account, the Program Administrator will establish one or more disbursement Accounts (the “Disbursement Account”) to be maintained for the purpose of paying all Reward Amount reimbursement payments to ZEV dealers (and, solely to the extent required by CARB pursuant to the LCFS Regulation and in accordance with the terms thereof, any carrying costs associated with any undue delay in reimbursement of Reward Amount payments to the ZEV dealers due to the fault of the Program Administrator), all Administrative Expenses, all payments to reimburse the Program Administrator for its (or its Affiliates’) payment of any Administrative Expenses, and all amounts payable for or in connection with Indemnified Claims pursuant to Sections 7.5(b)(ii) and 7.5(b)(iii). If there is a Program Funds Account, then all such payments, Administrative Expenses, reimbursement and amounts referenced in the preceding sentence will be paid out of the Program Funds Account. The Disbursement Account shall be held in the name of and under the federal Tax identification number of the Program Administrator, and the Program Administrator’s management authority and control over the funds in the Disbursement Account shall in all cases be limited by and subject to the provisions of this Governance Agreement and any additional requirements established by CARB pursuant to the LCFS Regulation.

(d) In the event that the Program Administrator and the Steering Committee have not identified a Designated Account Holder to hold the Program Funds Account, the Master Account Agreement shall set forth the terms and condition pursuant to which:

(i) when the Program Administrator delivers an instruction to the Financial Institution to make any payment of any Reward Amount to any ZEV dealer as verified by the Program Implementer, the Financial Institution will transfer from the Deposit Accounts to the Disbursement Account, pro rata from each Deposit Account (based on the respective then current account balances in each of the Deposit Accounts), the amounts necessary to pay such Reward Amount, and
(ii) when the Program Administrator delivers an instruction to the Financial Institution to make a payment of any Administrative Expense from the Administrative Account following approval of payment of the invoice from the Steering Committee or CARB in accordance with ARTICLE 6, the Financial Institution will transfer from the Deposit Accounts to the Disbursement Account, pro rata from each Deposit Account (based on the respective then current account balances in each of the Deposit Accounts), the amounts necessary to pay such Administrative Expense.

(e) A reserve of Program Funds totaling Ten Million Dollars ($10,000,000.00) in the aggregate shall be maintained at all times following the Program Launch Date in the Program Funds Account or, if none, segregated among the Deposit Accounts in the manner and amounts determined by the Program Administrator but totaling Ten Million Dollars in the aggregate (the “Liability Reserve”). The Liability Reserve shall only be used by the Program Administrator as a reserve to cover and pay any and all amounts payable to any Indemnified Party in accordance with the indemnification provisions of Section 7.5(b), or to pay off any Remaining Liabilities following the termination of the CFR Program or this Agreement pursuant to the provisions of Section 9.1(b). In addition to the Liability Reserve, for each calendar year that ends following the Program Launch Date, an operating reserve shall be maintained in the Program Funds Account or, if none, segregated among the Deposit Accounts in the manner and amounts determined by the Program Administrator, in an amount equal to the CFR Program’s highest forecasted calendar month of expenditures projected for such year as set forth in the CFR Program budget for such year (the “Operating Reserve”). The Operating Reserve shall only be used by the Program Administrator as a reserve to cover and pay any and all amounts payable in accordance with the provisions of Section 4.3(d) and ARTICLE 6, or to any Indemnified Party in accordance with the indemnification provisions of Section 7.5(b), or to pay off any Remaining Liabilities following the termination of the CFR Program or this Agreement pursuant to the provisions of Section 9.1(b), in each case solely to the extent that there are insufficient Program Funds otherwise available to pay such amounts when due or required to be paid. Upon the request of the Program Administrator at any time, the Steering Committee is hereby authorized to adjust the respective amounts of the Liability Reserve and the Operating Reserve from time to time in an effort to ensure that adequate reserves for the payment of all costs, expenses, and liabilities (fixed or contingent) of the CFR Program, and all Claims pertaining thereto, are maintained at all times.

(f) Notwithstanding the foregoing or any other provision of this Agreement to the contrary, in the event that the Program Administrator determines in good faith that modifications to the foregoing structure, or an alternative Account structure, are necessary or appropriate in order to avoid any adverse Tax consequences to the Program Administrator or its Affiliates arising from such structure, the Program Administrator may call an emergency meeting for Steering Committee review and approval of any such modifications or alternative structures; provided that if the Program Administrator and the Steering Committee are unable to agree upon the modifications to be implemented within ten (10) business days following the initial issuance of the notice for such emergency meeting by the Program Administrator, the Program Administrator shall have the power, authority and discretion to implement such modifications or alternative structures as are determined appropriate by the Program Administrator, and the Program Administrator shall promptly notify the Steering Committee no
later than three (3) business days following the implementation of any such modifications or alternative structures that did not receive Steering Committee approval.

(g) Without limiting the provisions of Section 9.1(b) below, once any EDU Contribution is deposited into any Deposit Account or Program Funds Account, as the case may be, those funds and all interest and earnings thereon will become Program Funds and the Participating EDU or Designated Account Holder that is the holder of such Deposit Account or Program Funds Account, as the case may be, will not be able to withdraw, transfer or otherwise exercise any control over such funds (or any interest or earnings thereon) even if such Participating EDU withdraws or is removed from the CFR Program or this Agreement, or such Designated Account Holder desires to close such Collective Deposit Account or Program Funds Account; provided that for Tax purposes, such Participating EDU or Designated Account Holder that is the holder of such Deposit Account or Program Funds Account shall be considered the owner of such funds and all interest and earnings on such funds maintained in any Deposit Account will be reported as interest and earnings paid to or received by the Participating EDU or Designated Account Holder that is the record holder of such Account. All applicable bank fees and penalties for all Accounts are considered part of CFR Program Administrative Expenses and will be paid or reimbursed using Program Funds. No Participating EDU shall claim a Tax deduction in connection with a deposit to their respective EDU Contribution Account, except at such time and to the extent such funds are paid to ZEV dealers or to satisfy or reimburse Administrative Expenses or Indemnified Claims pursuant to Sections 7.5(b)(ii) and 7.5(b)(iii).

4.4. Program Auditor.

(a) Program Auditor. The Program Auditor will be an independent (i.e., not an Affiliate of any EDU), nationally-recognized (i.e., with 10 or more offices in at least 3 different states) accounting firm engaged to perform regular audits of all auditable aspects of the CFR Program, including the program controls and performance, the administration of the CFR Program and Administrative Expenses, including payment/reimbursement of expenses to the Program Administrator and Program Implementers, and Reward Amount payments/reimbursements to ZEV dealers. An annual audit of the CFR Program will be conducted by the Program Auditor each fiscal year with a published report to be issued within sixty (60) days following the completion of the audit (and in no event later than one hundred eighty (180) days following the end of the fiscal year). During the first year of the CFR Program following the Program Launch Date, an interim audit will be performed to test CFR Program controls and such audit will commence within six (6) months after the Program Launch Date with a report issued sixty (60) days after completion of the audit.

(b) Confidential and Market-Sensitive Information. Unless otherwise determined by the Steering Committee it is not anticipated that the Program Auditor will receive any market-sensitive information in connection with its audits and market-sensitive aspects of the CFR Program, such as, but not limited to, any trading activity in LCFS Base Credits by the EDUs, shall not be included within the scope of any audit by the Program Auditor. No Participating EDU is obligated to provide or disclose any of its confidential or market-sensitive information to any other Participating EDU under this Agreement. All Participating EDUs and Implementers shall be required to comply with any and all requests for information issued by
CARB in accordance with the LCFS Regulation or other applicable law, as well as to any other Governmental Authority with legal authority and jurisdiction to request such information.

(c) Audit Reports. The Program Auditor’s audit reports shall be provided to all Participating EDUs, CARB, the CPUC, and the public. Any Participating EDU shall have the right at its own expense to review any non-confidential records and information underlying the Program Auditor’s report on reasonable notice during regular business hours. The Program Auditor’s reports shall contain all information necessary for the Program Administrator to comply with its reporting obligations to CARB as set forth in the CPUC Approval (and in any subsequent resolution issued by CARB), and each Party shall provide all information and assistance requested by the Program Auditor or the Program Administrator in order to comply with such reporting obligations to CARB or any other Governmental Authority.

(d) Program Auditor Insurance. The Program Auditor shall maintain insurance coverage of the specified types, with an endorsement as additional insured for the benefit of the Program Administrator, the Steering Committee and the Parties, and in amounts equal to or in excess of such minimum coverage amounts, in each case as are determined by the Steering Committee.

4.5. Program Implementer Qualifications. The RFP solicitation shall provide that third parties seeking to be Program Implementers must meet certain minimum requirements in order to submit an offer in response to the RFP. The RFP will provide that each Program Implementer will be required to execute and deliver one or more Program Agreements with the Program Administrator (and, if applicable, the Participating EDUs) that includes terms and conditions pursuant to which the Program Implementer, depending on the scope of work to be provided by such Program Implementer to the CFR Program, will:

(a) indemnify, defend, and hold each of the Participating EDUs, their Affiliates, and each of their respective Representatives harmless for and from any liabilities arising from or in connection with any negligent or intentional acts/omissions or mismanagement of Program Funds or other LCFS Credit Revenue by such Program Implementer, its contractors or subcontractors, or any of its or their respective Representatives (collectively, the “Program Implementer Representatives”);

(b) have procured, and will cause Program Implementer Representatives and other vendors and contractors, to have or procure, sufficient insurance to cover their liabilities in such amounts equal to or in excess of such minimum coverage amounts as are determined by the Steering Committee to cover any negligence, errors or omissions, or mismanagement of the Program Funds, LCFS Credit Revenue or the CFR Program by the Program Implementer Representatives;

(c) have internal practices and procedures to prevent the risk of fraud or mismanagement (including terms and conditions that would apply to the evaluation of claims submitted and payment of Reward Amounts to participating ZEV dealers);

(d) have experience managing large-scale programs with aggregate funding in excess of $100 million;
(e) have technological experience creating web-based programs;

(f) ensure that all agreements with subcontractors include terms for the protection of the Participating EDUs;

(g) not be an Affiliate of the Program Administrator or any Participating EDU; and

(h) have practices and procedures to prevent and prosecute fraud by ZEV dealers seeking reimbursement for Reward Amounts, such as through carefully crafted terms and conditions to which ZEV purchasers and point-of-sale entities must agree to receive the applicable Reward Amount for the ZEV purchaser.

ARTICLE 5
CFR PROGRAM EXPENSES; COST SHARING; LAUNCH

5.1. Program Administrator Expenses. The Parties hereby acknowledge and agree that Program Funds shall be used to pay and/or reimburse the Program Administrator (unless it is a Third Party Program Administrator) for, all costs, expenses, fees, Taxes, liabilities, and other amounts paid or incurred by the Program Administrator pursuant to or in connection with its service or status as Program Administrator (“Administrative Expenses”), including without limitation (but subject to the provisions of Section 5.2 below), (i) all amounts paid or incurred with respect to (A) any Implementers, or (B) any other contractors, vendors, attorneys, accountants, or other third parties in connection with the role of Program Administrator, (ii) an allocated portion of the fully-loaded labor costs (excluding bonus programs) for any employees who provide services in connection with the Program Administrator role and functions (which allocation shall be determined by the Program Administrator in good faith), (iii) an allocated portion of time and materials costs paid to independent contractors who provide services in connection with the Program Administrator role and functions (which allocation shall be determined by the Program Administrator in good faith), (iv) any reasonable travel related expenses incurred by any such persons described in the preceding clauses (ii) or (iii) associated with the Program Administrator role or functions, and (v) any non-labor related marketing costs such as media buy and collateral development expenses. For the avoidance of doubt, Administrative Expenses do not include costs, expenses, fees, Taxes, liabilities, and other amounts paid or incurred by SCE (or any successor thereof as Program Administrator that is a Participating EDU) to the extent paid or incurred in its capacity as a Participating EDU as opposed to in its capacity as Program Administrator. For purposes of illustrating the concept underlying the preceding sentence only, and without any limiting purpose or effect, any Taxes (including on any interest or other earnings on such account) incurred by the Program Administrator (or its Affiliates) in connection with any Disbursement Account, Program Funds Account, Collective Deposit Account, or Individual Deposit Account (except for the Program Administrator’s own Individual Deposit Account, if any), or any other Account opened or maintained with the Financial Institution in connection with its role as Program Administrator constitute Administrative Expenses, but any Taxes incurred by SCE (or any successor thereof as Program Administrator that is a Participating EDU) on its own Individual Deposit Account into which its EDU Contributions will be made in its capacity as a Participating EDU would not constitute Administrative Expenses. To make the Program Administrator (unless it is a
Governmental Authority or not for profit entity exempt from income Tax)) whole on an after-
Tax basis, Taxes constituting Administrative Expenses shall be calculated as if the Program
Administrator were subject to Tax at, and any payment or reimbursement of Taxes constituting
Administrative Expenses shall be grossed-up at, the highest combined federal and state marginal
Tax rate for the applicable period in the Program Administrator’s jurisdictions of operations, in
each case as reasonably determined by the Program Administrator. The Parties acknowledge and
agree that the Program Administrator (unless it is a Third Party Program Administrator) is
entitled to payment and reimbursement from Program Funds (including all required EDU
Contributions, but excluding, with respect to the Program Administrator’s own internal costs that
constitute Administrative Expenses, any interests or earnings thereon) for all Administrative
Expenses, particularly in light of the fact that the Program Administrator is not requesting or
receiving any administrator fee or compensation for its services as Program Administrator.
Accordingly, each Participating EDU hereby covenants and agrees to make its respective EDU
Contributions and to pay all other amounts payable by such Participating EDU in accordance
with the terms and conditions of this Agreement, and CARB shall be tasked with monitoring
each Participating EDU’s compliance with these obligations in its respective Program
Agreement and verifying the information received with the Financial Institution and CARB, as
applicable. For the avoidance of doubt, the foregoing Administrative Expense payment and
reimbursement rights shall not apply to any Program Administrator other than SCE or another
Participating EDU that is appointed by the Steering Committee to serve as Program
Administrator, as the Parties anticipate that any Third Party Program Administrator that may be
engaged would receive fees for its service in such role and any additional expense payments or
reimbursements to which it may be entitled would be expressly set forth in the engagement
agreement with such Third Party Program Administrator.

5.2. Payment/Reimbursement of Administrative Expenses. The Program
Administrator (unless it is a Third Party Program Administrator) upon approval by the Steering
Committee is hereby authorized to (i) pay Administrative Expenses directly from Program
Funds, and (ii) reimburse itself for any Administrative Expenses paid or incurred by the Program
Administrator (or any of its Affiliates), in each case from Program Funds in the Program Funds
Account or the Disbursement Account, as the case may be, and to transfer amounts from any
Deposit Account into the Disbursement Account in order to make such payments and
reimbursements, in each case in accordance with the provisions of ARTICLE 6 below and the
Master Account Agreement; provided that the total amount of such payments and
reimbursements of Administrative Expenses made by the Program Administrator in any calendar
year following approval of the invoice therefor by the Steering Committee or CARB in
accordance with the provisions of ARTICLE 6, shall in no event exceed ten percent (10%) (as
such percentage may be adjusted pursuant to the following provisions of this Section 5.2, the
“Percentage Target”) of the total CFR Program budget of aggregate Program Funds for such
calendar year. The Program Administrator and the Steering Committee shall monitor the
aggregate amount of payments and reimbursements of Administrative Expenses approved and
made in each calendar year to ensure that aggregate Administrative Expenses payments and
reimbursements made in such calendar year do not exceed the Percentage Target. Given that the
Parties cannot predict with any degree of accuracy what the actual annual Administrative
Expenses will be until the RFP/RFI processes have concluded and the Implementers have been
engaged, upon the request of the Program Administrator, but subject to the prior submission to,
and approval by, the CPUC of a Tier 2 advice letter if still required in connection therewith by
the provisions of ordering paragraph 6 or ordering paragraph 7 of CPUC Resolution E-5015, the Steering Committee is hereby authorized to increase (but not decrease) the Percentage Target from time to time to ensure that all Administrative Expenses incurred in each calendar year are authorized to be paid or reimbursed, as the case may be, in a timely fashion and when due. Notwithstanding the foregoing, the provisions of this Section 5.2 shall not apply to any Third Party Program Administrator, as the terms and conditions on which any Third Party Administrator may handle or administrator any Program Funds or Accounts shall be set forth in and governed by the applicable Program Agreement(s) entered into with such Third Party Program Administrator.

5.3. **Start-Up Funding.** To fund the initial start-up costs of the CFR Program, including the amounts necessary to pay all Administrative Expenses and all Reward Amount reimbursement payments to ZEV dealers and to fund the initial Reserve Amount during the start-up phase of the CFR Program, the Participating EDUs will contribute a total of Fifty Million Dollars ($50,000,000) in initial EDU Contributions in the aggregate (assuming full participation by all eligible EDUs in the CFR Program). Each Participating EDU shall be required to fund the amount set forth opposite such Participating EDU’s name on Appendix A hereto as its initial EDU Contribution (the “**Initial EDU Contributions**”). Following the establishment of the initial Account structure for the CFR Program in accordance with the provisions of Section 4.3, each Large EDU shall be required to deposit the amount of its Initial EDU Contribution into its EDU Contribution Account (which shall be the applicable Program Funds Account, Collective Deposit Account or Individual Deposit Account designated for such Large EDU in accordance with the instructions of the Program Administrator), no later than sixty (60) days following the date on which the Master Account Agreement is executed by the Program Administrator and the Financial Institution (the “**Initial Funding Date**”). In the event the Account structure includes an Individual Deposit Account for such Large EDU, such Large EDU shall also execute and deliver its Individual Deposit Agreement to the Financial Institution on or prior to the earlier to occur of the Initial Funding Date and the date on which it makes its Initial EDU Contribution. Each other Participating EDU besides the Large EDUs shall be required (a) to deposit the amount of its Initial EDU Contribution into its EDU Contribution Account, which shall be the applicable Program Funds Account, Collective Deposit Account or Individual Deposit Account designated for such Participating EDU in accordance with the instructions of the Program Administrator, and (b) if such Program Administrator instructions provide that an Individual Deposit Account be established for such Participating EDU, such Participating EDU shall also execute and deliver its Individual Deposit Agreement to the Financial Institution, in each case for both clauses (a) and (b), no later than (i) January 31, 2021 for all Participating EDUs identified as Medium Publicly-owned Utilities on **Appendix A**; and (ii) January 31, 2023 for all Participating EDUs identified as Small Publicly-owned Utilities or Small Investor-owned Utilities on **Appendix A**; provided that if such other Participating EDU has not executed and delivered its Joinder to become a Party to this Agreement pursuant to Section 2.2 on or prior to (x) January 31, 2021 for the Medium Publicly-owned Utilities, or (y) January 31, 2023 for the Small Publicly-owned Utilities, then such Participating EDU shall have until the first anniversary of the date of its Joinder to deposit the amount of its Initial EDU Contribution into its EDU Contribution Account and, if applicable, to execute and deliver its Individual Deposit Account Agreement to the Financial Institution.
5.4. Periodic Funding Requirements. Each Participating EDU hereby covenants and agrees that, upon and following such Participating EDU’s execution of this Agreement, in addition to making its required Initial EDU Contribution, it will also make additional aggregate EDU Contributions to its EDU Contribution Account during each calendar year in an amount equal to or greater than the applicable required percentage for such year of LCFS Credit Revenue generated by such Participating EDU during such calendar year as set forth opposite the name of such Participating EDU on Appendix A (the “Required Percentage”), and in accordance with the LCFS Regulation.

(a) Large EDUs’ Periodic EDU Contributions. Each Large EDU shall be responsible for (i) identifying and tracking all Earmarked Credits deposited into its LCFS balancing account by CARB at any time on or after the Final CPUC Approval Date, and (ii) no later than the Initial Funding Date, depositing into its EDU Contribution Account the Required Percentage of the LCFS Credit Revenue generated by such Large EDU from the sale of all Earmarked Credits that have been deposited by CARB into such Large EDU’s LCFS balancing account at any time on or prior to the end of the calendar quarter immediately preceding the quarter during which the Initial Funding Date occurs, and such Large EDU shall be required to sell all such deposited Earmarked Credits prior to the Initial Funding Date (provided that with respect to LCFS Credit Revenue generated by sales of any Earmarked Credits deposited into such Large EDU’s LCFS balancing account during the calendar quarter that immediately precedes the quarter in which the Initial Funding Date occurs, the Large EDU shall have until the last day of such quarter in which the Initial Funding Date occurs to deposit its Required Percentage of such LCFS Credit Revenue generated therefrom into its EDU Contribution Account as required under this Section 5.4(a)(ii)). Commencing with the quarter in which the Initial Funding Date occurs, the Large EDUs will deposit their Required Percentage of their respective LCFS Credit Revenue into their respective EDU Contribution Accounts no less frequently than on a quarterly basis in arrears and in one or more transactions that shall be made no later than the end of the last business day of the following quarter. The following table sets forth the required deposit schedule of the Large EDUs’ LCFS Credit Revenue for an illustrative year of the CFR Program:
<table>
<thead>
<tr>
<th>Due Date for Deposit</th>
<th>Large EDU Required Deposits into its EDU Contribution Account</th>
</tr>
</thead>
<tbody>
<tr>
<td>June 30</td>
<td>Large EDU deposits into its EDU Contribution Account the Required Percentage of its respective LCFS Credit Revenue from the sale of any Earmarked Credits deposited in its LCFS balancing account in Q1 of that year.</td>
</tr>
<tr>
<td>September 30</td>
<td>Large EDU deposits into its EDU Contribution Account the Required Percentage of its respective LCFS Credit Revenue from the sale of any Earmarked Credits deposited in its LCFS balancing account in Q2 of that year.</td>
</tr>
<tr>
<td>December 31</td>
<td>Large EDU deposits into its EDU Contribution Account the Required Percentage of its respective LCFS Credit Revenue from the sale of any Earmarked Credits deposited in its LCFS balancing account in Q3 of that year.</td>
</tr>
<tr>
<td>March 31</td>
<td>Large EDU deposits into its EDU Contribution Account the Required Percentage of its respective LCFS Credit Revenue from the sale of any Earmarked Credits deposited in its LCFS balancing account in Q4 of the previous year plus any “true up” revenue from the previous calendar year.</td>
</tr>
</tbody>
</table>

If any Large EDU has any Earmarked Credits deposited into its LCFS balancing account by CARB in any quarter that remain unsold at the end of such quarter, the Large EDU will track such Earmarked Credits and contribute the Required Percentage of the LCFS Credit Revenue generated therefrom to its EDU Contribution Account in the immediately following quarter, in which quarter such Earmarked Credits must be sold. Each Large EDU will be required to sell all Earmarked Credits deposited into its LCFS balancing account by CARB each quarter by no later than the end of the following quarter. By March 31st of each year, each Large EDU will be responsible for truing up and depositing into its EDU Contribution Account its aggregate required EDU Contributions for the entire previous calendar year. Notwithstanding the foregoing, the Steering Committee shall have the power and authority to waive or suspend the aforementioned timing requirements for when sales of Earmarked Credits held in the respective LCFS balancing accounts of the Large EDUs must take place should the Steering Committee determine that market conditions or other extenuating factors make such waiver or suspensions (which would apply as to all Large EDUs) prudent, and the Steering Committee shall promptly notify all Large EDUs of any such waiver or suspension. The Steering Committee shall grant an extension of the aforementioned timing requirements to any Large EDU, on an individual case-by-case basis, if the Large EDU has demonstrated to the satisfaction of the Steering Committee that it is utilizing all reasonable efforts to consummate the sale of its Earmarked Credits in a diligent and timely manner, but needs additional time to complete all sales required in order to deposit its full Required Percentage of LCFS Credit Revenue.
(b) Other Participating EDUs’ Periodic EDU Contributions. Each EDU that is not a Large EDU shall be responsible for (i) identifying and tracking all Earmarked Credits deposited into its LCFS balancing account by CARB at any time on or after the Final CPUC Approval Date, and (ii) within sixty (60) days following such EDU’s execution of this Agreement or a Joinder hereto, depositing into its EDU Contribution Account the Required Percentage of the LCFS Credit Revenue generated by such EDU from the sale of all such Earmarked Credits deposited into its LCFS balancing account by CARB at any time on or prior to the end of the calendar year immediately preceding the year during which such EDU becomes a Party to this Agreement, and each such EDU shall be required to sell all such deposited Earmarked Credits prior to such 60th day following such EDU’s execution of this Agreement or a Joinder hereto. Each other Participating EDU besides the Large EDUs will also deposit its Required Percentage of its respective LCFS Credit Revenue received in any calendar year commencing with the calendar year in which it becomes a Participating EDU into its respective EDU Contribution Account no less frequently than on an annual basis in arrears and in one or more transactions that shall occur no later than March 31st of the following year. All such Participating EDUs shall be required to sell all of the Earmarked Credits deposited by CARB into its LCFS balancing account during any calendar year in such calendar year. Notwithstanding the foregoing, the Steering Committee shall have the power and authority to waive or suspend the aforementioned timing requirements for when sales of Earmarked Credits held in the respective LCFS balancing accounts of the other Participating EDUs must take place should the Steering Committee determine that market conditions or other extenuating factors make such waiver or suspensions (which would apply as to all such other Participating EDUs) prudent, and the Steering Committee shall promptly notify all such Participating EDUs of any such waiver or suspension. The Steering Committee shall also have the power and authority to grant an extension of the aforementioned timing requirements to any Participating EDU, on an individual case-by-case basis, that has demonstrated to the satisfaction of the Steering Committee that it is utilizing all reasonable efforts to consummulate the sale of its Earmarked Credits in a diligent and timely manner, but needs additional time to complete all sales required in order to deposit its full Required Percentage of LCFS Credit Revenue.

(c) Steering Committee. Notwithstanding the foregoing, the above annual deposit schedules for the Participating EDUs set forth in Sections 5.4(a) and 5.4(b) above shall be reviewed by the Steering Committee at a minimum of every three years, and whenever the Program Administrator requests in good faith any modification to any such schedule, and the deposit schedule shall be updated from time to time if necessary as determined by the Steering Committee.

5.5. CFR Program Commencement. The Parties shall commence the CFR Program following the satisfaction of the following conditions: (i) SCE, PG&E and SDG&E shall have received any additional approval or consent of the CPUC to execute and deliver this Agreement as may be required by the CPUC Approval; (ii) CARB Authorization shall have been received; (iii) each Large EDU shall have duly executed and delivered this Agreement to the other Large EDUs; (iv) Members holding at least a majority of the voting percentages specified to be held by all Members as set forth in Section 3.3(h), shall have been appointed to the Steering Committee pursuant to the provisions of Section 3.3(a); (v) the Financial Institution, Program Auditor and the Program Implementer responsible for administering and paying Reward Amount reimbursement payments to ZEV dealers shall have been selected and engaged through duly
executed and delivered Program Agreements, and any preconditions to commencement of the CFR Program set forth in such Program Agreements shall have been satisfied or been duly waived by the Steering Committee and the Program Administrator; (vi) each Large EDU shall have deposited its Initial EDU Contribution into its EDU Contribution Account, the Liability Reserve and the Operating Reserve shall have been funded using such Initial EDU Contributions, and, to the extent instructed by the Program Administrator pursuant to Section 4.3(b), the Financial Institution and each Large EDU shall have duly entered into their respective Individual Deposit Account Agreement; (vii) the Steering Committee has approved the initial Reward Amount pursuant to the provisions of Section 3.3(d)(iii); (viii) the Parties shall have received approval or a legal opinion from CARB that the LCFS Credit Revenue may be used to compensate all CFR Program costs and expenses including, subject to Section 5.2 and the other provisions of this Agreement, any Administrative Expenses and any Indemnified Claims using Reserve Amounts and other Program Funds under this Agreement; (ix) the Program Administrator shall have made a solicitation to procure, or have otherwise approached insurance or bonding providers to procure, a Policy or Bond to cover Claims pertaining to the CFR Program and, to the extent commercially available, shall have procured such Policy or Bond in accordance with the provisions of Section 7.4; and (x) at the written request of the Program Administrator, the Steering Committee shall have issued its approval to commence the CFR Program and to authorize the offer and payment of the initial Reward Amount thereunder by issuance of a joint press release on behalf of all Participating EDUs announcing the official commencement and launch of the CFR Program. The CFR Program shall officially commence on the date specified in such joint press release as the official start date of the CFR Program (the “Program Launch Date”).

ARTICLE 6
APPROVAL AND PAYMENT OF INVOICES

6.1. Implementer Invoices. The Program Agreement with each Implementer shall set forth the terms and conditions for submission of all Implementer invoices to the Program Administrator for payment. Following receipt of any invoice from any Implementer, or from any other contractor, vendor, attorney, accountant, or other third party in connection with the Program Administrator’s role and responsibilities as Program Administrator and that the Program Administrator has not paid directly and submitted for reimbursement as an Administrative Expense that was paid by the Program Administrator in accordance with the provisions of Section 6.2 below, the Program Administrator shall submit such invoice (along with any other supporting documents submitted therewith) to the Steering Committee and/or the applicable Invoice Subcommittee. The CARB Representative shall receive copies of all invoices submitted to the Steering Committee. Following final approval of any such invoice by the Steering Committee or CARB, the Program Administrator shall authorize and instruct the Financial Institution to pay such invoice as an Administrative Expense from the Program Funds Account or the Disbursement Account, as applicable. Any amounts incurred in connection with any delay in approval or payment of any invoice, including any interest, fees, charges, penalties or other amounts, shall also be paid as an Administrative Expense from the Program Funds Account or the Disbursement Account, as applicable.

6.2. Program Administrator Invoices. In the event that the Program Administrator (or any Affiliate thereof) pays any Administrative Expenses directly, including any
Administrative Expenses paid or incurred by the Program Administrator prior to the Program Launch Date, the Program Administrator shall submit an invoice therefor (along with any reasonably requested supporting documentation) to the Steering Committee and/or the applicable Invoice Subcommittee. The CARB Representative shall receive copies of all invoices submitted to the Steering Committee. Following final approval of any such invoice by the Steering Committee or CARB, the Program Administrator shall authorize and instruct the Financial Institution to pay such invoice as an Administrative Expense from the Program Funds Account or the Disbursement Account, as applicable.

6.3. **Reward Amount Payments.** For the avoidance of doubt, Reward Amount payments and reimbursements shall not be subject to the invoice, approval and payment procedures set forth in this ARTICLE 6, and shall in no event be deemed to be Implementer or vendor invoices. Reward Amount payments and reimbursements shall be handled pursuant to the provisions of Section 4.3(c)(i) and the applicable Program Agreements with the Program Implementer and the Financial Institution, and shall in no event require any review or approval of the Steering Committee or any subcommittee thereof, but are subject to audit by the Program Auditor.

**ARTICLE 7**
**RELEASE, COVENANT NOT TO SUE, INSURANCE AND INDEMNIFICATION**

7.1. **Release and Waiver.**

(a) Each Party, on its own behalf, and on behalf of its successors, assigns, direct and indirect subsidiaries and Affiliates (collectively, “Related Entities”), does hereby irrevocably, unconditionally, voluntarily, knowingly, fully, finally, completely, and forever waive and disclaim, and release and discharge:

(i) SCE, and each of its direct and indirect subsidiaries, Affiliates, divisions, successors, assigns and predecessors and each of its and their direct and indirect Representatives, successors, and assigns, individually and collectively (each, a “SCE Released Party” and collectively, the “SCE Released Parties”), from, against and with respect to, any and all Claims that such Party or its Related Entities ever had or now has, or may hereafter have or acquire, against any of the Released Parties by reason of any and all acts, omissions, events, circumstances or facts existing or hereafter occurring that, directly or indirectly, arise out of, result from, relate to, or are otherwise connected with or involving SCE’s performance or non-performance in its role, capacity or status as Program Administrator, or its actions or inactions as Program Administrator or with respect to the administration, management or oversight of the CFR Program, including, without limitation, the RFP/RFI processes, the selection of the Implementers, the performance or non-performance of any Implementer, and any management or oversight of the Implementers (“SCE Released Claims”); provided that in no event shall SCE Released Claims include or be deemed to include Claims arising from the SCE Released Party’s own fraud, willful injury to the person or property of another, or violation of law whether willful or negligent, or otherwise against public policy pursuant to California Civil Code Section 1668; and
(ii) each Member, each Alternate and each EDU that appoints or employs such Member or Alternate, individually and collectively (each, a “Steering Committee Released Party” and collectively, the “Steering Committee Released Parties”), from, against and with respect to, any and all Claims that such Party or its Related Entities ever had or now has, or may hereafter have or acquire, against any of the Released Parties by reason of any and all acts, omissions, events, circumstances or facts existing or hereafter occurring that, directly or indirectly, arise out of, result from, relate to, or are otherwise connected with or involving such Member’s or Alternate’s performance or non-performance in his or her role, capacity or status as a Member or Alternate, or his or her actions or inactions as a Member or Alternate on the Steering Committee or with respect to the Steering Committee’s administration, management or oversight of the CFR Program, including, without limitation, the RFP/RFI processes, the selection of the Implementers, the performance or non-performance of any Implementer, and any management or oversight of the Implementers (“Steering Committee Released Claims”); provided that in no event shall Steering Committee Released Claims include or be deemed to include Claims arising from the Steering Committee Released Party’s own fraud, willful injury to the person or property of another, or violation of law whether willful or negligent, or otherwise against public policy pursuant to California Civil Code Section 1668.

(b) Each Party, itself and for its Related Entities, expressly acknowledges and agrees that it has executed and delivered this Agreement with the intention that the release and waiver set forth in this Section 7.1 (the “Release”) be a general release and waiver to the full extent provided herein. Each Party, itself and for its Related Entities, expressly acknowledges and agrees that that there is a possibility that subsequent to the execution of this Agreement, it will discover facts or incur or suffer Claims specifically related to Released Claims which were unknown or unsuspected at the time this Agreement was executed, and which if known by it at that time may have materially affected its decision to execute this Agreement or to grant the Release provided for herein. Each Party, itself and for its Related Entities, expressly acknowledges and agrees that it has by reason of this Agreement, and the Release contained herein, it is assuming any risk of such unknown facts and such unknown and unsuspected Released Claims. Each Party, itself and for its Related Entities, expressly acknowledges and agrees that it has been advised of, and does hereby specifically and expressly waive and release all rights under, the provisions of Section 1542 of the Civil Code of California, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

Notwithstanding any such provisions or similar laws, this Agreement shall constitute a full release of Released Claims in accordance with its terms. Each Party, itself and for its Related Entities, knowingly and voluntarily waives the provisions of Section 1542 and any other such statutes, laws, or rules of similar effect, and acknowledges and agrees that this waiver is an essential and material term of this Agreement and was separately bargained for, and without such waiver (i) SCE would not have agreed to serve as Program Administrator and would not have entered into this Agreement, and (ii) each Member and each Alternate would not have agreed to
serve as a Member or Alternate, as the case may be, on the Steering Committee. Each Party, itself and for its Related Entities, hereby represents that it has been advised by its legal counsel, and that it understands and acknowledges the significance and consequence of the Release set forth herein and of this waiver of Section 1542 and any other such statutes, laws, or rules of similar effect.

7.2. Covenant Not To Sue.

Each Party, on its own behalf and on behalf of each of its Related Entities, irrevocably covenants and agrees never to sue, commence or prosecute any action or other proceeding against, or make any Claim or demand upon any Released Party, directly or indirectly, in respect of any of the Claims or matters waived, disclaimed, released or discharged in respect of such Released Party pursuant to Section 7.1 above, or in respect of any of the Claims or matters purposed to be waived, disclaimed, released or discharged in respect of such Released Party pursuant to Section 7.1 above notwithstanding the failure of any court or arbitrator of competent jurisdiction to enforce or validate any provision thereof.

7.3. Effect of Release and Covenant Not to Sue.

(a) Enforcement. Each of the Release set forth in Section 7.1 and the covenant not to sue set forth in Section 7.2 (the “Covenant Not to Sue”) may be pleaded by any of the Released Parties as a full and complete defense and may be used as the basis for an injunction against any action at law or equity instituted or maintained against any of them in violation hereof.

(b) Complete Release. Each Party hereby warrants and represents that there are no additional entities or persons affiliated with such Party that are necessary to effectuate the release and extinguishment contemplated hereunder and this Agreement (including, without limitation, the Release and the Covenant Not to Sue set forth herein) constitutes a valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, subject to laws of general application relating to bankruptcy, insolvency and the relief of debtors and rules of law governing specific performance, injunctive relief or other equitable remedies. Each Party hereby warrants and represents that such Party has not heretofore assigned, subrogated or transferred, or purported to assign, subrogate, or transfer to any Person whatsoever any Released Claim. Each Party hereby agrees to indemnify, defend, and hold harmless each Released Party from any such assignment, subrogation, or transfer of Released Claims.

(c) Knowledge and Investigation Of Release/Covenant Not to Sue. Each Party granting the Release and making the Covenant Not to Sue has made such investigation of the facts pertaining to the Release and the Covenant Not to Sue, and all of the matters pertaining thereto, as such Party deems necessary. In agreeing to the Release and the Covenant Not to Sue, each such Party assumes, on its own behalf and on behalf of each of its Related Entities, the risk of any mistake. Should any such Party subsequently discover that such Party’s understanding of the facts or of the law in agreeing to such Release and Covenant Not to Sue was incorrect, such Party (and its Related Entities) will not be entitled to any relief in connection therewith. Without limiting the generality of the foregoing, each Party surrenders any alleged right or Claim to set aside or rescind the Release or the Covenant Not to Sue on any ground whatsoever. Each of the
Release and the Covenant Not to Sue is intended to be and is final and binding upon each Party and its Related Entities.

(d) **Newly Discovered Facts Or Claims.** Each Party is aware that such Party may hereafter discover claims or facts in addition to or different from those such Party now knows or believes to be true with respect to the matters related herein. Nevertheless, it is each Party’s intention to fully, finally, and forever waive, disclaim, settle and release all such matters covered by the Release or Covenant Not to Sue, and all Released Claims relative thereto, which now exist, heretofore have existed, or arise in the future between any Party or any Party’s Related Entities, on the one hand, and any Released Party, on the other hand. In furtherance of such intention, the waivers, disclaimers and releases given herein will remain in effect as full and complete waivers, disclaimers and releases of all such matters notwithstanding the discovery or existence of any additional or different claims or facts related thereto.

(e) **Full Knowledge; Independent Legal Advice.** Each Party hereby warrants and represents that, in executing this Agreement, such Party does so with full knowledge of any and all rights that such Party may have with respect to the matters set forth herein and the Released Claims, and that such Party has received independent legal advice with respect to the matters set forth herein and the Released Claims and with respect to the rights and asserted rights arising out of such matters.

(f) **Binding Effect.** Each of the Release and the Covenant Not to Sue is binding upon each Party and all of its Related Entities and will inure to the benefit of each of the Released Parties.

7.4. **Insurance.**

To the extent commercially available, SCE shall procure and purchase, as an Administrative Expense using Program Funds, one or more insurance policies (each a “Policy”) to cover any and all Claims pertaining to SCE’s administration of the CFR Program, the Steering Committee’s administration of the CFR Program and any administrative activities and, to the extent possible, Claims pertaining to the CFR Program itself and Claims against any Participating EDU arising from or in connection with the CFR Program. In addition to or in lieu of any such insurance policy, SCE may also procure and purchase, as an Administrative Expense using Program Funds, one or more performance bonds to cover its obligations under any Program Agreement (each, a “Bond”). SCE shall have the authority to select, purchase, maintain and replace, as the case may be, any such Policy or Bond and to make any and all decisions with respect thereto including, without limitation, the providers, nature, amounts, and other terms and conditions thereof; provided that if SCE is presented with more than one quotation for any such Policy or Bond from different providers prior to purchasing such a Policy or Bond, it shall present such quotations to the Steering Committee for review and approval in accordance with the provisions of Section 4.1(c). Notwithstanding the foregoing, in no event shall SCE or any other Released Party be liable or responsible to any Party or Person for any failure to obtain, approve or maintain any such Policy or Bond, and the lack of any such Policy or Bond shall in no event affect the right to indemnification of any Indemnified Person under the indemnification provisions contained herein, including the right to be reimbursed or advanced expenses or otherwise indemnified for Claims hereunder. If any Indemnified Person recovers any
amounts in respect of any Claim from any insurance coverage, then such Indemnified Person shall, to the extent that such recovery is duplicative of amounts with respect to such Claim received under the provisions of Section 7.5(c) below, reimburse the applicable Parties (on a pro rata basis) for any amounts previously paid to such Indemnified Person by such Parties in respect of such Claim.

7.5. Indemnification.

(a) Indemnified Claims.

(i) In the event that any Claims are made against or otherwise incurred or suffered by SCE or any other SCE Released Party (SCE and the other SCE Released Parties also being referred to herein collectively as, the “SCE Indemnified Persons”, each an “SCE Indemnified Person”) at any time that, directly or indirectly, arise out of, result from, relate to, or are otherwise connected with or involving SCE’s role, capacity or status as Program Administrator, SCE’s actions or inactions as Program Administrator or with respect to the administration, management or oversight of the CFR Program, the solicitation or RFP/RFI processes, or any Program Agreement (each, an “SCE Indemnified Claim”), each SCE Indemnified Person shall be entitled to reimbursement, advancement of expenses, defense, protection, and payment from Program Funds for any such SCE Indemnified Claim.

(ii) In the event that any Claims are made against or otherwise incurred or suffered by any Member, any Alternate or any other Steering Committee Released Party (the Members, Alternates and the other Steering Committee Released Parties also being referred to herein collectively as, the “Steering Committee Indemnified Persons”, each a “Steering Committee Indemnified Person”) at any time that, directly or indirectly, arise out of, result from, relate to, or are otherwise connected with or involving such Member’s or Alternate’s role, capacity or status as a Member or Alternate on the Steering Committee, or such Member’s or Alternate’s actions or inactions as a Member or Alternate on the Steering Committee, or with respect to the Steering Committee’s administration, management or oversight of the CFR Program, the solicitation or RFP/RFI processes, or the Steering Committee’s approval (or disapproval) of any Program Agreement (each, a “Steering Committee Indemnified Claim”), each Steering Committee Indemnified Person shall be entitled to reimbursement, advancement of expenses, defense, protection, and payment from Program Funds for any such Steering Committee Indemnified Claim.

(b) Payment of Indemnified Claims.

(i) As a first resort, payment for any Indemnified Claim will come from any Policy or Bond that may be then in effect and available to cover such Indemnified Claim.

(ii) To the extent that any Indemnified Claim, or any portion thereof, is not covered by any Policy or Bond that is then in effect and available, or to the extent the amounts available and obtained therefrom are insufficient to fully cover and satisfy the entire amount of such Indemnified Claim, then any and all Program Funds shall be used to pay and satisfy the Indemnified Claim and all amounts associated therewith in the following order of
priority (and, for the avoidance of doubt, no Percentage Target limitation that may otherwise be applicable as set forth in Section 5.2 shall apply). (A) if there is a Program Funds Account, (x) first, all amounts held in such Program Funds Account (other than the Reserve Amounts), and (y) second, the Reserve Amounts, and (B) if there is no Program Funds Account, (x) first, all amounts held in the Disbursement Account, (y) second, all amounts held in any and all Deposit Accounts (other than the Reserve Amounts), and (z) third, the Reserve Amounts.

(iii) In the event that existing Program Funds are insufficient to fully cover and satisfy the entire amount of any such Indemnified Claim, then each Party (including, for the avoidance of doubt, SCE in its capacity as a Participating EDU) shall, on a pro rata basis according to the respective Contribution Percentages (as defined in Section 1.1) of the Parties at such time, promptly deposit into its respective EDU Contribution Account such amounts of (A) additional LCFS Credit Revenue held by each Party in excess of its Required Percentage of LCFS Credit Revenue required to be contributed by such Party to Program Funds pursuant to Section 5.4 (“Holdback Funds”), and (B) revenue from the sale of any other credits issued by CARB pursuant to the LCFS Regulation (“LCFS Non-Base Credit Revenue”), up to an amount equal to the aggregate sum of all Holdback Funds and LCFS Non-Base Credit Revenue then held by such Party along with any and all future LCFS Credit Revenue received by such Party from the sale(s) of LCFS Base Credits (including all future Holdback Funds and not limited to such Party’s Required Percentage of its LCFS Credit Revenue) and any and all future LCFS Non-Base Credit Revenue received by such Party from the sale(s) of such other LCFS credits issued by CARB, until each such Indemnified Claim and all amounts associated therewith have been paid and satisfied in full. In the event that the total amount of any Party’s LCFS Non-Base Credit Revenue contributed with respect to any Indemnified Claim is insufficient to cover its respective Contribution Percentage of the amount of any such Indemnified Claim (each such Party, a “Shortfall Party”), each Party that is required to contribute aggregate Holdback Funds or LCFS Non-Base Credit Revenue pursuant to the preceding sentence or pursuant to the provisions of Section 7.5(c) below that is in excess of its respective Contribution Percentage of the amount of any such Indemnified Claim (each such Party, an “Excess Party”), shall be entitled to be reimbursed by each Shortfall Party, on a pro rata basis in proportion to its respective share of such excess contributions of Holdback Funds and LCFS Non-Base Credit Revenues made by all Excess Parties, and the Steering Committee (with oversight from CARB and, with respect to the IOUs only, the CPUC) shall determine the appropriate timing, manner and amounts of such reimbursements (including an appropriate interest factor to take into account the time value of money) required to be made by any Shortfall Party to any Excess Party, and each Party shall comply with the instructions of the Steering Committee with respect thereto.

(c) Shortfall Indemnity. Solely in the event that the amount of any Indemnified Claim has not been fully and finally satisfied pursuant to the provisions of Section 7.5(b), and the amounts available to pay such Indemnified Claim under Section 7.5(b) are insufficient or exhausted, all of the Parties (including, for the avoidance of doubt, SCE in its capacity as a Participating EDU), on a pro rata basis according to their respective Contribution Percentages, shall indemnify, defend, and hold each Indemnified Person harmless from and against any such Indemnified Claim that has been made, brought or asserted against any Indemnified Person by any other Person, except to the extent that such Indemnified Claim arises out of such Indemnified Person’s gross negligence or reckless or willful misconduct, as determined by a final arbitration award or final judgment or judicial decree issued by an
arbitrator or court of competent jurisdiction. The Parties acknowledge and agree that the obligations of any POU to make such payments under this Section 7.5(c) constitute an expense of the POU payable from its electric revenue fund.

7.6. Maximum Liability.

(a) IN ADDITION TO, AND WITHOUT ANY LIMITATION (EXPRESS OR IMPLIED) ON THE FOREGOING PROVISIONS OF THIS ARTICLE 7, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF SCE AND THE OTHER SCE RELEASED PARTIES WITH RESPECT TO ANY AND ALL CLAIMS DESCRIBED IN SECTION 7.1 OR SECTION 7.2 ABOVE, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED FIVE THOUSAND DOLLARS ($5,000.00) TO ANY PARTY AND ITS RELATED ENTITIES OR FIFTY THOUSAND DOLLARS ($50,000) IN THE AGGREGATE TO ALL PARTIES (AND THEIR RESPECTIVE RELATED ENTITIES) FOR ANY AND ALL SUCH CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THIS SECTION 7.6(a) DOES NOT APPLY TO ANY LIABILITY THAT SCE MAY HAVE UNDER SECTION 7.5(b) OR SECTION 7.5(c) IN ITS CAPACITY AS A PARTICIPATING EDU.

(b) IN ADDITION TO, AND WITHOUT ANY LIMITATION (EXPRESS OR IMPLIED) ON THE FOREGOING PROVISIONS OF THIS ARTICLE 7, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF ANY MEMBER OR ANY ALTERNATE (OR THEIR RESPECTIVE RELATED STEERING COMMITTEE RELEASED PARTIES) WITH RESPECT TO ANY AND ALL CLAIMS DESCRIBED IN SECTION 7.1 OR SECTION 7.2 ABOVE WITH RESPECT TO SUCH STEERING COMMITTEE RELEASED PARTIES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED FIVE THOUSAND DOLLARS ($5,000.00) TO ANY PARTY AND ITS RELATED ENTITIES OR FIFTY THOUSAND DOLLARS ($50,000) IN THE AGGREGATE TO ALL PARTIES (AND THEIR RESPECTIVE RELATED ENTITIES) FOR ANY AND ALL SUCH CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT. FOR THE AVOIDANCE OF DOUBT, THIS SECTION 7.6(b) DOES NOT APPLY TO ANY LIABILITY THAT ANY STEERING COMMITTEE RELEASED PARTY MAY HAVE UNDER SECTION 7.5(b) OR SECTION 7.5(c) IN ITS CAPACITY AS A PARTICIPATING EDU.

7.7. Savings.

If this ARTICLE 7 or any portion hereof shall be invalidated on any ground by any arbitrator or court of competent jurisdiction, then the Parties shall nevertheless release and covenant not to sue each Released Party pursuant to Sections 7.1 through 7.3, and the Parties shall nevertheless indemnify, defend and hold harmless each Indemnified Person pursuant to Section 7.5(c), in each case to the fullest extent permitted by any applicable portion of this ARTICLE 7 that shall not have been invalidated and to the fullest extent permitted by applicable law.

7.8. New Program Administrator; Amendment.
(a) In the event that a new Program Administrator that is a Participating EDU is appointed to replace or succeed SCE following the date of expiration or termination of SCE’s appointment as Program Administrator in accordance with the provisions of Section 3.1(b), then unless the Steering Committee otherwise determines and the Parties amend this Section 7.8(b) in connection with the replacement administrative and governance structure for the CFR Program that is implemented at such time in accordance with the provisions of 3.1(c), any such replacement or successor Program Administrator to SCE that is a Participating EDU shall receive and be entitled to the same rights and protections as are provided to SCE under this ARTICLE 7 and on the same terms and conditions as are applicable to SCE hereunder. For the avoidance of doubt, in the event that a Third Party Program Administrator replaces or succeeds SCE or any other Participating EDU as Program Administrator, any such Third Party Program Administrator shall not be entitled hereunder to any of the rights or protections that are provided to SCE (or to any other Released Party or Indemnified Person) under this ARTICLE 7.

(b) The provisions of this ARTICLE 7 shall be a contract among all of the Parties, on the one hand, and each Program Administrator (and the other Released Parties and Indemnified Persons with respect to such Program Administrator) who served in such capacity, in each case other any Third Party Program Administrator, at any time while this ARTICLE 7 is in effect, on the other hand, pursuant to which each of the Parties and each such Program Administrator, Released Party, and Indemnified Person intend to be legally bound. No amendment, modification, or repeal of this ARTICLE 7 that adversely affects the rights of any former, current or future Program Administrator (excluding any Third Party Program Administrator), Released Party or Indemnified Person to waiver, disclaimer, discharge, release, or the covenant not sue with respect to any or all Released Claims, or to indemnification and defense for and protection from any or all Indemnified Claims, incurred or relating to a state of facts existing, or to any Program Administrator’s service, status or capacity as Program Administrator (excluding any Third Party Program Administrator), prior to such amendment, modification, or repeal shall apply in such a way as to eliminate or reduce such Program Administrator’s (and the other Released Parties’ and Indemnified Persons’ with respect to such Program Administrator) entitlement to waiver, disclaimer, discharge, release, or the covenant not sue with respect to any or all such Released Claims, or to indemnification and defense for and protection from any or all such Indemnified Claims, or to any other rights or privileges under this ARTICLE 7, in each case without such Program Administrator’s or former Program Administrator’s (but excluding any Third Party Program Administrator) prior written consent.

7.9. Survival.

The provisions of this ARTICLE 7 shall survive and continue to apply and bind each Party (including each former, current and future Party) hereto in perpetuity notwithstanding any termination of this Agreement, any termination of the CFR Program, or any withdrawal of any Party from this Agreement or the CFR Program; provided, however, that the provisions of Section 7.5(c) shall terminate on the date (the “Shortfall Indemnity Termination Date”) that is ninety (90) days after the latest to occur of (i) the fourth anniversary of the date of termination of this Agreement, (ii) the fourth anniversary of the date of termination of the CFR Program, and (iii) the expiration of the longest federal, state, local or foreign statute of limitations (including extensions thereof) applicable to any Indemnified Claim (or, if written notice of such
Indemnified Claim shall have been given prior to such date, indefinitely until such Indemnified Claim is finally resolved and paid in full).

**ARTICLE 8**

**PROGRAM MATERIALS; PUBLIC ANNOUNCEMENTS**

**8.1. Ownership of Program Materials**

The Parties hereby acknowledge and agree that, because the CFR Program is a CARB program created by the LCFS Regulation, any and all intellectual property rights (including any copyright, trademark, service mark, and patent rights) in and to any materials, webpages, software, databases, project data, documentation, reports, logos, works of authorship, other works, or other intellectual property materials developed, created, produced or invented in the performance of the CFR Program, by any Implementer, whether solely or jointly with any other Implementer or with any employees, contractors, or agents of any Party in connection with the CFR Program (collectively, “Program Material”), will be assigned to CARB; provided that in no event shall Program Material (or any assignment thereof) include, or be deemed to include, any Party’s proprietary intellectual property or confidential information that may be incorporated into or included in any Program Material. All Program Agreements shall (a) contain or require the delivery of such an assignment by the Implementer to CARB of all intellectual property rights in any and all Program Material developed, created, produced or invented thereunder, and (b) require that the Implementer deliver to CARB or its designee all Program Material in its possession upon any termination of the applicable Program Agreement with such Implementer, and provide all reasonable and necessary assistance to CARB or its designee as needed to ensure a smooth transition to a new Implementer, in each case in a form approved by the Steering Committee. It is the Parties’ intention that rebate access and redemption be seamless to ZEV purchasers and lessees during the term of the CFR Program.

**8.2. Public Announcements**

The Steering Committee or its designee(s) will approve the content and timing of any and all joint press releases or announcements regarding the CFR Program on behalf of all Participating EDUs, and all Participating EDUs shall be required to sign on to such joint press releases and announcements in the time and manner so approved by the Steering Committee or its designee. No Party may issue any other press release or announcement regarding this Agreement, any Program Agreement, the CFR Program, or any Program Material unless (i) such press release is issued jointly by the Participating EDUs in the form approved by the Steering Committee or its designee (including any subcommittee established for such purpose or the applicable Program Implementer) in accordance with the immediately preceding sentence, or (ii) before the release of the press release such Party furnishes the other Parties with a copy of such press release, and (A) obtains the prior written approval of the Steering Committee or such designee of such press release, or (B) the press release by such Party complies and is in strict accordance with the terms, conditions and substance of a pre-approved form of such press release that has already been approved by the Steering Committee or such designee for purposes of issuances of such press release(s) by any Party; provided that, notwithstanding any failure to obtain such approval, no Party is prohibited from issuing or making any press release or other announcement or notification if it is necessary to do so in order to comply with applicable laws,
legal or regulatory proceedings or the rules and regulations of any stock exchange having jurisdiction over such Party.

**ARTICLE 9**

**PROGRAM TERM; TERMINATION; WITHDRAWAL**

9.1. **Term**

(a) **Term.** This Agreement will be effective as of the Effective Date and will remain in effect until the earlier to occur of (i) CARB’s termination of the CARB-authorized and endorsed CFR Program, or (ii) the unanimous approval of the termination of this Agreement by all Members of the Steering Committee.

(b) **Effect of Termination.** Notwithstanding any expiration or termination of this Agreement, the provisions of **ARTICLE 1, Section 4.3, ARTICLE 7, ARTICLE 8, this ARTICLE 9, and ARTICLE 10** shall survive any such expiration or termination and shall remain in full force and effect and each Party and each former Party shall continue to be obligated and bound thereafter by the provisions thereof. Any Program Funds shall remain in the respective Accounts in which they are held at the time of such termination and shall be used thereafter in order to pay for any Administrative Expenses, Reward Amount payment reimbursements, Indemnified Claims, or other expenses and liabilities (contingent or otherwise) of the CFR Program or with respect to its administration that exist as of or arise following the date of termination (collectively, “**Remaining Liabilities**”). After the payment and satisfaction of all Remaining Liabilities, and in no event before the occurrence of the Shortfall Indemnity Termination Date, but in all events subject to the requirements of the LCFS Regulation, any remaining Program Funds shall be distributed in the following manner and order of priority:

(i) To the extent that any payments have been made pursuant to the provisions of **Section 7.5(c)** at any time prior to the Shortfall Indemnity Termination Date (“**Shortfall Payments**”), any remaining Program Funds shall first be distributed to the Parties that made such Shortfall Payments on a pro rata basis in proportion to each such Party’s respective percentage of the aggregate total amount of all Shortfall Payments made by all of the Parties, in each case until each such Party has received the total amount of such Party’s Shortfall Payments returned to it in full (without interest);

(ii) After satisfaction in full of any amounts payable under **Section 9.1(b)(i) above, to the extent that any payments have been made pursuant to the provisions of Section 7.5(b)(iii) at any time prior to the Shortfall Indemnity Termination Date (“**Additional LCFS Revenue Payments**”), any remaining Program Funds shall next be distributed to the Parties that made such Additional LCFS Revenue Payments on a pro rata basis in proportion to each such Party’s respective percentage of the aggregate total amount of all Additional LCFS Revenue Payments made by all of the Parties, in each case until each such Party has received the total amount of such Party’s Additional LCFS Revenue Payments returned to it in full (without interest); and

(iii) After satisfaction in full of any amounts payable under **Section 9.1(b)(i) and 9.1(b)(ii) above, all remaining Program Funds shall be distributed in the manner
required by the LCFS Regulation or, if no such manner is specified, to the Parties on a pro rata basis in proportion to each such Party’s respective percentage of the aggregate total amount of all EDU Contributions made by all Parties during the term of the CFR Program.

(c) **LADWP Term.** Notwithstanding the provisions of Section 9.1(a) above, the term of LADWP’s participation as a Participating EDU under this Agreement shall commence on the Effective Date and terminate on the earlier to occur of (x) the fifth anniversary of the Effective Date unless, not less than ninety (90) days prior to such fifth anniversary, LADWP delivers written notice to the Program Administrator and the Steering Committee that LADWP elects not to terminate its participation as a Participating EDU under this Agreement on the date of such fifth anniversary, or (y) the date on which LADWP withdraws as a Party pursuant to the provisions of Section 9.2 below or is removed as a Party pursuant to the provisions of Section 9.3 below.

9.2. **Withdrawal by a Party**

(a) **Withdrawal by a Party.** Any Party may cancel its participation in this Agreement and withdraw as a Party hereunder with or without cause, upon (i) such Party’s compliance with any procedures and requirements set forth in the LCFS Regulation governing such Party’s withdrawal from the CFR Program and this Agreement, and such Party’s delivery of advanced written notice to CARB, the Program Administrator and the Members of such Party’s intent to withdraw as a Party (a “Withdrawal Notice”), which advance written notice must be delivered within the timeframe set forth in the LCFS Regulation or, if none is provided, not less than ninety (90) calendar days prior to the Party’s intended date of withdrawal; and (ii) such Party’s satisfaction of the following conditions to such withdrawal:

(A) Within ten (10) days of the date of its Withdrawal Notice, such Party must deposit into its EDU Contribution Account the Required Percentage of any LCFS Credit Revenue held by such Party;

(B) Within the timeframe required for such Party to sell its Earmarked Credits and contribute the Required Percentage of the LCFS Credit Revenue generated therefrom into its EDU Contribution Account pursuant to the provisions of Section 5.4, or such shorter timeframe as may be required by the LCFS Regulation, such Party must sell any remaining Earmarked Credits received or held by such Party and deposit into its EDU Contribution Account the Required Percentage of any LCFS Credit Revenue received by such Party from such sale(s) of LCFS Base Credits; and

(C) Immediately following the date of its Withdrawal Notice or, if later, the date on which the Program Administrator delivers to such Party a notice of an Indemnified Claim under Sections 7.5(b)(iii) or 7.5(c), such Party shall deposit into its EDU Contribution Account the additional amount of LCFS Credit Revenue demanded from such Party in any outstanding notice of Indemnified Claim delivered to such Party by the Program Administrator.

(b) **Effect of Withdrawal.** Following any withdrawal or attempted withdrawal by any Party from this Agreement, the provisions of ARTICLE 1, Section 4.3, ARTICLE 7,
ARTICLE 8, this ARTICLE 9, and ARTICLE 10 shall survive, remain in full force and effect, and continue to apply to such Party, and such Party shall continue to be obligated and bound by the provisions thereof at all times thereafter. Following a Party’s delivery of a Withdrawal Notice, such Party shall promptly complete and satisfy in full any procedures, requirements or other conditions for such Party’s withdrawal from the CFR Program or this Agreement as are set forth in the LCFS Regulation. In addition, following any Party’s delivery of a Withdrawal Notice, the Program Administrator may thereafter instruct the Financial Institution to transfer any and all amounts held in such Party’s Individual Deposit Account at such time or at any time thereafter into the Disbursement Account (or any Collective Deposit Account) on a priority basis at any time, and from time to time, thereafter, notwithstanding such Party’s respective pro rata share of any outstanding Reward Amount payment reimbursements or Administrative Expenses. Notwithstanding the foregoing provisions of this Section 9.2(b), following the second anniversary of the date of a Party’s valid withdrawal as a Party to this Agreement in accordance with the requirements set forth in this Section 9.2, and subject to such former Party’s continued compliance with its obligations hereunder following such withdrawal, such former Party’s obligations under Sections 7.5(b)(iii), 7.5(c) or 9.2(a)(C) shall no longer apply with respect to any Indemnified Claim that arises solely from activities, omissions, events or circumstances occurring following such second anniversary.

9.3. Removal of a Party

(a) Post-Breach Removal. Any Party may be removed as a Party under this Agreement if, following notice by the Program Administrator, upon the agreement and concurrence of the Steering Committee, of such Party’s material breach of such Party’s obligations under this Agreement (including any failure by such Party to make any of its Required EDU Contributions in strict accordance with the requirements of this Agreement), such Party does not cure such breach to the satisfaction of the Steering Committee within thirty (30) days of the date of such notice of breach and the Steering Committee thereafter votes to remove such Party as a Party under this Agreement ("Removal Vote"). Following the occurrence of a Removal Vote with respect to a Party, such Party shall immediately be removed as a Party from this Agreement, and shall further be required to act as follows (provided that such action is consistent with the LCFS Regulation as in effect at such time):

(i) Within three (3) days of the date of the Removal Vote, such Party must deposit into its EDU Contribution Account all LCFS Credit Revenue held by such Party; and

(ii) Within ten (10) days of the date of the Removal Vote, such Party must sell any remaining LCFS Base Credits received or held by such Party and deposit into its EDU Contribution Account all of the LCFS Credit Revenue received by such Party from such sale(s) of LCFS Base Credits.

(b) Effect of Removal. Following any Removal Vote with respect to any Party, the provisions of ARTICLE 1, Section 4.3, ARTICLE 7, ARTICLE 8, this ARTICLE 9, and ARTICLE 10 shall survive, remain in full force and effect, and continue to apply to such Party, and such Party shall continue to be obligated and bound by the provisions thereof at all times thereafter. Following the Removal Vote, such Party shall forfeit any and all rights to
receive any LCFS Base Credits and shall no longer receive any LCFS Base Credits from CARB, and such Party’s forfeited LCFS Base Credits it would have otherwise received thereafter had it not been removed as a Party shall be allocated to the other remaining Participating EDUs pro rata, in each case in accordance with the provisions of the LCFS Regulation. In addition, following the Party’s removal, the Program Administrator may thereafter instruct the Financial Institution to transfer any and all amounts held in such Party’s Individual Deposit Account at such time or at any time thereafter into the Disbursement Account (or any Collective Deposit Account) on a priority basis at any time, and from time to time, thereafter, notwithstanding such Party’s respective pro rata share of any outstanding Reward Amount payment reimbursements or Administrative Expenses.

**ARTICLE 10**
**MISCELLANEOUS**

10.1. **Governing Law; Waiver of Jury Trial.**

(a) The construction, validity, performance, and effect of this Agreement for all purposes will be governed by the laws of the State of California, without giving effect to otherwise applicable principles of conflicts of law that would give effect to the laws of another jurisdiction.

(b) EACH PARTY (OTHER THAN A PARTY LISTED ON SCHEDULE 10.9(d)) HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY MATTERS RELATED TO THIS AGREEMENT. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE OF ANY OTHER PARTY HERETO HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.1(b).

10.2. **Use of Name or Endorsements.**

No Party will use the name or intellectual property of any other Party on or with regard to any product or service, which is directly or indirectly related to this Agreement, without the prior written approval of the affected Party or Parties. By entering into this Agreement no Party directly or indirectly endorses any product or service, of or by any Party, its successors or assignees.

10.3. **Damages Limitation.**

EXCEPT FOR AMOUNTS PAYABLE UNDER SECTION 7.5(c), IN NO EVENT SHALL ANY PARTY OR ANY OF ITS REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO ANY OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE
DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF (A) WHETHER SUCH DAMAGES WERE FORESEEABLE, (B) WHETHER OR NOT THE LIABLE PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

10.4. Survival.

Notwithstanding the expiration or termination of this Agreement, the Parties will continue to be bound by the provisions of this Agreement which, by their nature, will survive such expiration or termination as set forth in Section 9.1(b).

10.5. Headings.

Titles and headings of the Sections and Subsections of this Agreement are for the convenience of reference only and do not form a part of this Agreement and will in no way affect the interpretation thereof.


In the event any one or more of the provisions of the Agreement shall for any reason be held or determined by any Governmental Authority (or any arbitrator appointed pursuant to Section 10.9(c)) to be invalid, illegal or unenforceable under any law, statute, regulation, order or decision of any Governmental Authority, the remaining provisions of this Agreement shall be unimpaired, and the invalid, illegal or unenforceable provision shall be replaced by a provision, which, being valid, legal and enforceable, comes closest to the intention of the Parties underlying the invalid, illegal or unenforceable provision.

10.7. Amendments.

Neither this Agreement nor any term hereof may be amended, waived, discharged or terminated other than (a) with the prior written approval of (i) the Steering Committee, (ii) CARB, and (iii) to the extent required under applicable law or resolution, the CPUC, and (b) following receipt of the foregoing required approvals, by means of a written instrument referencing this Agreement and signed by (i) the Program Administrator and (ii) Parties with Members on the Steering Committee holding a majority of the aggregate voting percentages held by all Members; provided, however, that if any amendment, waiver, discharge or termination operates in a manner that treats any Party materially different from the other Parties, the consent of such Party shall also be required for such amendment, waiver, discharge or termination. Any such amendment, waiver, discharge or termination effected in accordance with this Section shall be binding upon each Party that has entered into this Agreement; provided, however, that any such amendment, waiver, discharge or termination of the terms of (A) ARTICLE 7, 8 or 9 or Sections 10.1, 10.3, 10.4, 10.7 or 10.9 that adversely affects the rights or obligations of any Participating EDU thereunder will not be binding on such Participating EDU without its consent thereto unless such amendment, waiver, discharge or termination (x) has been approved by the Steering Committee by the vote of Members (or of their respective Alternates or designated
proxies therefor) holding an aggregate voting percentage of at least eighty percent (80%) of the aggregate voting percentage held by all Members, or (y) has been approved by the Steering Committee pursuant to the regular voting requirements set forth in Sections 3.3(i) and 3.3(j) in response to an order or request made by a Governmental Authority or in order to comply with a legal requirement, or (B) the provision of Section 4.1(c) setting forth the voting requirement for approval of each Program Implementer and the Program Auditor must be approved by the same approval vote of the Steering Committee set forth in such provision.

10.8. Assignment.

Neither this Agreement nor any rights or obligations of any Party will be assigned or otherwise transferred by any Party without the prior written consent of the Steering Committee, except that assignment will be permitted in the event of merger, acquisition or change in control of any Party.

10.9. Dispute Resolution.

Any dispute arising under or related to this Agreement shall be resolved exclusively as follows, with the costs of any mediation and arbitration to be shared equally by all Parties to such dispute:

(a) Initial Resolution by Meeting. The Parties shall first attempt to resolve amicably the dispute by meeting with each other, by telephone or in person at a mutually convenient time and location, within thirty (30) days after written notice of a dispute is delivered from one Party to any other Party. Subsequent meetings may be held upon mutual agreement of the Parties to the dispute.

(b) Mediation. If the dispute is not resolved within sixty (60) days of the first meeting, the Parties to the dispute shall submit the dispute to mediation by an organization or company specializing in providing neutral, third-party mediators. The mediation shall be conducted within sixty (60) days of the date the dispute is submitted to mediation, unless the Parties to the dispute mutually agree on a later date.

(c) Arbitration. Any dispute that is not otherwise resolved by meeting or mediation shall, subject to the provisions of Section 10.9(d) below, be exclusively resolved by arbitration between the Parties to the dispute in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS, with the arbitration to be conducted in Los Angeles, California, or another location mutually agreed by the Parties to the dispute. The results of such arbitration shall be binding on the Parties, and judgment may be entered in any court having jurisdiction. Notwithstanding the foregoing, any Party may seek interim injunctive relief from any court of competent jurisdiction.

(d) Venue in Limited Circumstances. Solely in the event that LADWP, SMUD, or any other POU that is added to Schedule 10.9(d) after the Effective Date by approval of the Steering Committee after having documented to the satisfaction of the Steering Committee concurrently with executing and delivering such POU’s Joinder hereto that such POU is prohibited by (i) applicable law or (ii) written city or municipal policy that is binding on such POU and that has been in effect since before the Effective Date, from agreeing to participate in
binding arbitration, is a necessary and non-severable party to the applicable dispute, then solely in such event shall such dispute not be resolved pursuant to binding arbitration as set forth in Section 10.9(c) above, but rather shall be submitted to the exclusive jurisdiction of the federal and state courts located in Los Angeles, California. Each Party hereby waives, and agrees not to assert in any such dispute, controversy or proceeding, in each case to the fullest extent permitted by applicable law, any claim that (a) such Party is not personally subject to the jurisdiction of such courts, (b) such Party and such Party’s property is immune from any legal process issued by such courts or (c) any Proceeding commenced in such courts is brought in an inconvenient forum.

10.10. No Third Party Beneficiaries.

This Agreement will be binding upon and inure solely to the benefit of each Party hereto and their permitted successors and assigns, and, except as expressly set forth in ARTICLE 7, nothing in this Agreement, express or implied, is intended to or will confer upon any other Person that is not a Party to this Agreement (or a permitted successor or assign thereof) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.11. Independent Parties.

For the purposes of this Agreement, the Parties are jointly funding the development of the CFR Program. The relationship of the Parties is that of independent parties and not as agents of each other or as joint venturers or partners. Nothing contained in this Agreement shall ever be construed to create an association, joint venture, trust or partnership, or impose a trust or partnership duty, obligation or liability on or with regard to any one or more of the Parties. Each Party shall be individually responsible for its own duties and obligations under this Agreement, and shall maintain sole and exclusive control over its respective personnel and operations. No Party or group of Parties shall be under the control of or shall be deemed to control any other Party or the Parties as a group. Except as expressly provided in this Agreement, no Party shall have a right or power to bind any other Party without its or their express written consent.


This Agreement may be executed in any number of identical counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed to be one and the same instrument when each Party has signed one such counterpart.

10.13. Full Performance Required.

Performance of any duty imposed on a Party by this Agreement is conditioned on each other Parties’ full performance of all duties imposed on this Agreement.


All notices, requests, consents, claims, demands, waivers, and other communications to a Party under this Agreement, or to any Member or Alternate of such Party on the Steering Committee, shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a
nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or
email of a PDF document (with confirmation of transmission) if sent during normal business
hours of the recipient, and on the next business day if sent after normal business hours of the
recipient; or (d) on the third day after the date mailed, by certified or registered mail, return
receipt requested, postage prepaid. Such communications must be sent to the Party addressed to
the individual(s) and at the address(es) for such Party specified on Schedule 10.14 hereto (or to
such replacement individual(s) at such other address(es) for a Party as shall be specified in a
notice given in accordance with this Section 10.14). The Steering Committee shall have the
power and authority to amend Schedule 10.14 hereto to incorporate any such modifications made
by a Party to its contact information in accordance with the provisions hereof and to add the
contact information for each new Party to this Agreement following the Effective Date, but in the
absence of the inclusion of a Party’s contact information on Schedule 10.14 hereto, then the
contact information for such Party shall be the contact information for such Party set forth on its
Joinder delivered when it became a Party to this Agreement.

10.15. Construction.

This Agreement has been negotiated by the Parties, and their respective legal counsel,
and legal or equitable principles that might require the construction of this Agreement or any
provision hereof against the party drafting this Agreement will not apply in any construction or
interpretation of this Agreement. The provisions of this Agreement will be interpreted in a
reasonable manner to effect the intentions of the Parties and beneficiaries hereto and of this
Agreement.


With regard to all dates and time periods set forth or referred to in this Agreement, time is
of the essence.


Each of the Parties acknowledges and agrees that the other Parties would be damaged
irreparably in the event any of the provisions of this Agreement are not performed in accordance
with their specific terms or otherwise are breached or violated. Accordingly, each of the Parties
agrees that, without posting bond or other undertaking, the other Parties will be entitled to an
injunction or injunctions to prevent breaches or violations of the provisions of this Agreement
and to enforce specifically this Agreement and the terms and provisions hereof in any claim,
action, cause of action or suit (whether in contract or tort or otherwise), litigation (whether at law
or in equity, whether civil or criminal), controversy, assessment, arbitration, investigation,
hearing, charge, complaint, demand, notice or proceeding to, from, by or before any
Governmental Authority having jurisdiction over the Parties and the matter in addition to any
other remedy to which it may be entitled, at law or in equity. Each Party hereto further agrees
that, in the event of any action for specific performance in respect of such breach or violation, it
will not assert the defense that a remedy at law would be adequate or that the consideration
reflected in this Agreement was inadequate or that the terms of this Agreement were not just and
reasonable.
10.18. Legal Matters.

SCE has retained its own outside legal counsel, Munger, Tolles & Olson LLP, in connection with the CFR Program, SCE’s intention to serve as the initial Program Administrator, and the drafting and negotiation of this Agreement, and SCE expects to retain additional legal counsel following approval thereof by the Steering Committee (collectively, including Munger, Tolles & Olson LLP, the “Law Firms”) following the execution of this Agreement in connection with SCE’s role as Program Administrator in administering, managing and overseeing the CFR Program. The Law Firms do not, have not and will not represent any Party other than SCE solely in its role as Program Administrator in connection with (i) the CFR Program or the formation thereof, (ii) the drafting and negotiation of this Agreement or any Program Agreement, (iii) the solicitation process or the operation, administration, management or oversight of the CFR Program, or (iv) any dispute which may arise between any Party or Person other than SCE, on the one hand, and the CFR Program, the Program Administrator, SCE or any other SCE Indemnified Person or SCE’s Steering Committee Indemnified Persons in connection with the CFR Program, on the other hand (each matter described in any of the foregoing clauses (i) through (iv), a “Program Legal Matter”). Each Party may, if it wishes to have counsel on a Program Legal Matter, retain its own independent counsel at its own expense with respect thereto. Each Party agrees that the Law Firms may represent one or more SCE Indemnified Persons, and/or one or more of SCE’s Steering Committee Indemnified Persons, in connection with any and all Program Legal Matters (including any dispute between the CFR Program, the Program Administrator, SCE or any other SCE Indemnified Person or SCE’s Steering Committee Indemnified Persons, on the one hand, and any Party (other than SCE), any other Steering Committee Indemnified Person or any other Person, on the other hand) and hereby waives any present or future conflict of interest with the Law Firms regarding Program Legal Matters arising by virtue of any representation or deemed representation of any Party or the CFR Program on account of the Law Firms’ representation of one or more SCE Indemnified Persons or SCE Steering Committee Indemnified Persons in connection with any Program Legal Matter; provided that each Law Firm shall be responsible for abiding by the Rules of Professional Conduct applicable to it and its attorneys in connection with any such representation including their duty to keep any client information received from any Party confidential and not disclose it to others and to ensure that appropriate ethical walls or other safeguards that are necessary for them to abide by such Rules of Professional Conduct are implemented. Amounts paid or payable by SCE to the Law Firms in connection with Program Legal Matters that arise or have risen during or prior to SCE’s service as Program Administrator, or that arise following SCE’s service as Program Administrator involving or otherwise relating to events or circumstances that occurred, in whole or in part, during SCE’s service as Program Administrator and that involve or otherwise relate to SCE’s role as Program Administrator, shall be reimbursed to SCE as Administrative Expenses.

10.19. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter. This Agreement and other related documents may be photocopied, scanned and stored on computer storage media (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidence, and all computer records of the foregoing, if introduced as evidence, and all computer records of the foregoing, if introduced as evidence in any 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. No Party shall object to the admissibility of the Imaged
Agreement (in electronic, printed, or photocopied format) on the basis that the Agreement or
other related documents were not originated or maintained in documentary or written form under
either the hearsay rule or the best evidence rule. However, nothing in this Section shall preclude
a Party from challenging the admissibility of that evidence on some other ground, without
limitation, the basis that the evidence has been materially or substantially altered from the
original.

10.20. Representations by the Parties.

Each Party hereby represents and warrants to the Program Administrator and to each
other Party that (a) it has the power and authority, and the legal right, to make, deliver and
perform this Agreement and it has taken all necessary action to authorize the execution, delivery
and performance of this Agreement, (b) other than the approvals of the CPUC set forth in the
definition of Final CPUC Approval Date in Section 1.1(gg), which approvals have been
requested but not yet received, no consent or authorization of, filing with, notice to or other act
by or in respect of, any Governmental Authority or any other Person that has not been obtained,
made or completed is required in connection with the execution, delivery and performance,
validity or enforceability of this Agreement, (c) this Agreement has been duly and validly
executed and delivered on behalf of such Party,(d) the execution, delivery and performance of
this Agreement by such Party will not violate, conflict with, require consent under or result in
any breach or default under (i) any of such Party’s organizational, governing or charter
documents, (ii) any applicable law, or (iii) with or without notice or lapse of time or both, the
provisions of any material contract or agreement to which such Party is a party or to which any
of its material assets are bound, and (e) this Agreement constitutes a legal, valid and binding
obligation of such Party enforceable against it in accordance with its terms, subject to the effects
of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar
laws relating to or affecting creditors’ rights generally, general equitable principles (whether
considered in a proceeding in equity or at law) and an implied covenant of good faith and fair
dealing.

[THIS SPACE INTENTIONALLY LEFT BLANK]
IN WITNESS WHEREOF, this Agreement has been duly executed on behalf of the Parties by their respective authorized officers (or respective designee) as of the year and dates first written above.

Pacific Gas and Electric Company
By: __________________________
Name: __________________________
Title: __________________________
Address for Notice: __________________________

Los Angeles Department of Water & Power
By: __________________________
Name: __________________________
Title: __________________________
Address for Notice: __________________________

Southern California Edison Company
By: __________________________
Name: __________________________
Title: __________________________
Address for Notice: __________________________

Approved as to Legal Form and Content (optional)
By: __________________________
Name: __________________________
Title: __________________________

Approved as to Legal Form and Content (optional)
By: __________________________
Name: __________________________
Title: __________________________

Approved as to Legal Form and Content (optional)
By: __________________________
Name: __________________________
Title: __________________________
San Diego Gas & Electric Company

By: ____________________________
Name: __________________________
Title: __________________________
Address for Notice: __________________________

Sacramento Municipal Utility District

By: ____________________________
Name: __________________________
Title: __________________________
Address for Notice: __________________________

Approved as to Legal Form and Content (optional)

By: ____________________________
Name: __________________________
Title: __________________________
SCHEDULE 1.1

NORTHERN EDUS AND SOUTHERN EDUS

Northern EDUs

Alameda Municipal Power
City of Healdsburg
Lodi Electric Utility
City of Palo Alto
City of Roseville Electric Utility
Silicon Valley Power
Truckee Donner Public Utilities District
Turlock Irrigation District
City of Ukiah

Southern EDUs

Anaheim Public Utilities
Azusa Light and Water
Burbank Water and Power
Colton Electric Utility
Glendale Water and Power
Pasadena Water and Power
Riverside Public Utilities
SCHEDULE 3.4(a)

ANTICIPATED ADVISORY COMMITTEE MEMBERSHIP

Set forth below is a list of all of the individual stakeholders and/or stakeholder groups that the Parties anticipate will be invited to participate on the Advisory Committee. This list is not intended to be comprehensive and additional organizations may be invited by any Participating EDU and are free to attend. Information regarding how to participate on and join the Advisory Committee will be provided on the Program Implementer’s website for the CFR Program.

<table>
<thead>
<tr>
<th>EDUs</th>
<th>ZEV Manufacturers</th>
</tr>
</thead>
<tbody>
<tr>
<td>PG&amp;E, SCE, SDG&amp;E, LADWP, SMUD, Silicon Valley Power, Glendale, Palo Alto, Anaheim Public Utilities, Pasadena, Burbank, Alameda, Riverside, Roseville, Turlock, Azusa, Healdsburg, Colton, Lodi, Truckee Donner, Ukiah</td>
<td>Tesla, Honda, BMW, Nissan, Toyota, Volvo, Hyundai, Jaguar, MINI Mercedes, Volkswagen, Honda, General Motors, Ford</td>
</tr>
<tr>
<td></td>
<td>Note: EDU representatives on the Advisory Committee are anticipated to be different individuals from the EDU representatives then serving on the Steering Committee as Members.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>California State Agencies</th>
<th>Community Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Air Resources Board, Public Utilities Commission - Energy Division, Governor’s Office</td>
<td>Plug-in America, Greenlining Institute</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public Advocacy Organizations</th>
<th>Industry Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Advocates Office, The Utility Reform Network</td>
<td>Dealerships/Dealership Associations</td>
</tr>
<tr>
<td></td>
<td>Charging Station Providers (ChargePoint, Greenlots, EVGo, Electrify America, EVConnect), CALSTART, CALETC, CMUA, NCPA, SCPPA</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Environmental NGOs</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>National Resources Defense Council, Environmental Defense Fund, Union of Concerned Scientists, Sierra Club</td>
<td></td>
</tr>
</tbody>
</table>
SCHEDULE 10.9(d)

POUs WHOSE DISPUTES SHALL BE RESOLVED PURSUANT TO SECTION 10.9(d) RATHER THAN SECTION 10.9(c)

LADWP
SMUD
SCHEDULE 10.14

PARTY NOTICE INFORMATION
(INCLUDING, IF APPLICABLE, SUCH PARTY’S STEERING COMMITTEE MEMBER)

PG&E:

Pacific Gas & Electric Company
77 Beale Street – B9F
San Francisco, CA 94105
Attn: Suncheth Bhat, Director, Clean Energy Transportation
Email: Suncheth.bhat@pge.com

And to:

Pacific Gas & Electric Company
77 Beale Street – B9F
San Francisco, CA 94105
Attn: Chris Warner, Chief Counsel
Email: Chris.Warner@pge.com

PG&E Steering Committee Member: Suncheth Bhat

SCE:

Southern California Edison
1515 Walnut Grove Avenue, 4th Floor
Rosemead, CA 91770
Attn: Katie Sloan, Director, eMobility
Email: katie.sloan@sce.com

And to:

Southern California Edison
2244 Walnut Grove Avenue
Rosemead, CA 91770
Attn: Rebecca A. Meiers-De Pastino, Senior Attorney
Email: Rebecca.Meiers.DePastino@SCE.com

SCE Steering Committee Member: Katie Sloan
PA Representative: Carter Prescott
Contact Information:
Southern California Edison
eMobility – Customer Programs & Services
1515 Walnut Grove Ave, GO5 4th Floor, 4D4-01
Rosemead, CA 91770
Attn: Carter Prescott, Principal Manager, Operations
E-mail: Carter.Prescott@sce.com

SDG&E:
San Diego Gas & Electric
8335 Century Park Court
San Diego, CA 92111
Attn: Brittany Applestein Syz, Director - Clean Transportation
Email: bsyz@semprautilities.com

And to:
San Diego Gas & Electric
8335 Century Park Court
San Diego, CA 92111
Attn: Abby Snyder, Senior Counsel - Commercial
Email: ASnyder@sdge.com

SDG&E Steering Committee Member: Brittany Applestein Syz

LADWP:
Los Angeles Department of Water & Power
111 N. Hope Street, Room 804
Los Angeles, CA 90012
Attn: Scott Briasco, P.E.
Email: scott.briasco@ladwp.com

With a copy to:
Jean-Claude Bertet, Deputy City Attorney
Office of the Los Angeles City Attorney, Water & Power Division
221 N Figueroa Street, Suite 1000
Los Angeles, CA 90012
E-mail: Jean-Claude.Bertet@ladwp.com

LADWP Steering Committee Member: Scott Briasco

SMUD:
Sacramento Municipal Utility District
6201 S Street Mail Stop B305
Sacramento, CA 95817
Attn: Rachel Huang, Director, Energy Strategy Research and Development
Email: Rachel.Huang@smud.org

With a copy to:

Sacramento Municipal Utility District
Office of General Counsel
6201 S Street, Mail Stop B406
Sacramento, CA 95817

SMUD Steering Committee Member: Rachel Huang
# APPENDIX A

## CFR PROGRAM EDU CONTRIBUTION REQUIREMENTS

<table>
<thead>
<tr>
<th>Electric Distribution Utility (“EDU”)</th>
<th>CVRP % All EDUs</th>
<th>Initial EDU Contribution</th>
<th>EDU Category</th>
<th>Required Percentage Contribution in years 2019-2022</th>
<th>Required Percentage Contribution in 2023 and thereafter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pacific Gas &amp; Electric Company</td>
<td>39.78%</td>
<td>$19,892,022</td>
<td>Investor-owned Utilities</td>
<td>67%</td>
<td>67%</td>
</tr>
<tr>
<td>Southern California Edison</td>
<td>31.11%</td>
<td>$15,553,039</td>
<td>Investor-owned Utilities</td>
<td>67%</td>
<td>67%</td>
</tr>
<tr>
<td>San Diego Gas &amp; Electric</td>
<td>9.99%</td>
<td>$4,994,827</td>
<td>Investor-owned Utilities</td>
<td>67%</td>
<td>67%</td>
</tr>
<tr>
<td>Los Angeles Department of Water &amp; Power</td>
<td>10.50%</td>
<td>$5,252,360</td>
<td>Large Publicly-owned Utilities</td>
<td>35%</td>
<td>45%</td>
</tr>
<tr>
<td>Sacramento Municipal Utility District</td>
<td>2.06%</td>
<td>$1,032,214</td>
<td>Large Publicly-owned Utilities</td>
<td>35%</td>
<td>45%</td>
</tr>
<tr>
<td>Silicon Valley Power</td>
<td>0.88%</td>
<td>$438,511</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Glendale Water &amp; Power</td>
<td>0.76%</td>
<td>$382,455</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>City of Palo Alto</td>
<td>0.73%</td>
<td>$364,198</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>City of Anaheim Public Utilities Department</td>
<td>0.73%</td>
<td>$363,397</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Pasadena Water &amp; Power</td>
<td>0.61%</td>
<td>$306,221</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Burbank Water &amp; Power</td>
<td>0.41%</td>
<td>$204,841</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>City of Riverside</td>
<td>0.34%</td>
<td>$168,485</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Roseville Electric</td>
<td>0.27%</td>
<td>$136,614</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Modesto Irrigation District</td>
<td>0.37%</td>
<td>$183,861</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Imperial Irrigation District</td>
<td>0.16%</td>
<td>$81,039</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Turlock Irrigation District</td>
<td>0.14%</td>
<td>$69,028</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Electric Distribution Utility (&quot;EDU&quot;)</td>
<td>CVRP % All EDUs</td>
<td>Initial EDU Contribution</td>
<td>EDU Category</td>
<td>Required Percentage Contribution in years 2019-2022</td>
<td>Required Percentage Contribution in 2023 and thereafter</td>
</tr>
<tr>
<td>--------------------------------------</td>
<td>-----------------</td>
<td>---------------------------</td>
<td>-------------------------------</td>
<td>--------------------------------------------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>Redding Electric Utility</td>
<td>0.05%</td>
<td>$23,544</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>City of Vernon Public Utilities</td>
<td>0.01%</td>
<td>$4,485</td>
<td>Medium Publicly-owned Utilities</td>
<td>20%</td>
<td>25%</td>
</tr>
<tr>
<td>Alameda Municipal Power</td>
<td>0.37%</td>
<td>$184,822</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>City of Cerritos</td>
<td>0.29%</td>
<td>$142,700</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Modesto Irrigation District</td>
<td>0.08%</td>
<td>$40,680</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Merced Irrigation District</td>
<td>0.06%</td>
<td>$28,348</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Azusa Light &amp; Power</td>
<td>0.06%</td>
<td>$28,188</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
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<tr>
<td>Moreno Valley Utility</td>
<td>0.04%</td>
<td>$20,820</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>City of Healdsburg Electric Department</td>
<td>0.04%</td>
<td>$19,700</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Colton Electric Utility Department</td>
<td>0.03%</td>
<td>$15,055</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Lodi Electric Utility</td>
<td>0.03%</td>
<td>$14,574</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Liberty Utilities</td>
<td>0.03%</td>
<td>$12,973</td>
<td>Small Investor-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>PacifiCorp</td>
<td>0.02%</td>
<td>$9,289</td>
<td>Small Investor-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Truckee Donner Public Utilities District</td>
<td>0.01%</td>
<td>$6,086</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>City of Lompoc Electric Division</td>
<td>0.01%</td>
<td>$5,766</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
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<tr>
<td>City of Ukiah Electric Utilities Division</td>
<td>0.01%</td>
<td>$5,125</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Rancho Cucamonga Municipal Utility</td>
<td>0.01%</td>
<td>$5,125</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Electric Distribution Utility (“EDU”)</td>
<td>CVRP % All EDUs</td>
<td>Initial EDU Contribution</td>
<td>EDU Category</td>
<td>Required Percentage Contribution in years 2019-2022</td>
<td>Required Percentage Contribution in 2023 and thereafter</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>-----------------</td>
<td>--------------------------</td>
<td>------------------------------</td>
<td>----------------------------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Bear Valley Electric Service</td>
<td>0.01%</td>
<td>$2,563</td>
<td>Small Investor-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>City of Corona Department of Water &amp; Power</td>
<td>0.01%</td>
<td>$2,563</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>City of Banning Electric Department</td>
<td>0.00%</td>
<td>$1,441</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Trinity Public Utilities District</td>
<td>0.00%</td>
<td>$1,281</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>City of Shasta Lake</td>
<td>0.00%</td>
<td>$1,121</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Lassen Municipal Utility District</td>
<td>0.00%</td>
<td>$320</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Gridley Electric Utility</td>
<td>0.00%</td>
<td>$160</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Shelter Cove Resort Improvement District</td>
<td>0.00%</td>
<td>$160</td>
<td>Small Publicly-owned Utilities</td>
<td>0%</td>
<td>2%</td>
</tr>
<tr>
<td>Total</td>
<td>100.00%</td>
<td>$50,000,000</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
APPENDIX B
PRELIMINARY DATA COLLECTION TEMPLATE

Additional data items may be added to the template below during program development. Some data requested may not be required for participation in the program.

<table>
<thead>
<tr>
<th>Category</th>
<th>Element</th>
<th>Sample Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Identification</td>
<td>First Name (Must be same name as the person the vehicle is DMV registered)</td>
<td>John</td>
</tr>
<tr>
<td>Identification</td>
<td>Last Name (Must be same name as the person the vehicle is DMV registered)</td>
<td>Doe</td>
</tr>
<tr>
<td>Identification</td>
<td>Driver’s License Number</td>
<td>A1234567</td>
</tr>
<tr>
<td>Location &amp; Contact Information</td>
<td>Vehicle Registration Home Street Number</td>
<td>123</td>
</tr>
<tr>
<td>Location &amp; Contact Information</td>
<td>Vehicle Registration Home Street Name</td>
<td>1st Street</td>
</tr>
<tr>
<td>Location &amp; Contact Information</td>
<td>Vehicle Registration State</td>
<td>CA</td>
</tr>
<tr>
<td>Location &amp; Contact Information</td>
<td>Car Registration Home Zip Code</td>
<td>12345</td>
</tr>
<tr>
<td>Location &amp; Contact Information</td>
<td>Email Address</td>
<td><a href="mailto:JohnDoe@email.com">JohnDoe@email.com</a></td>
</tr>
<tr>
<td>Location &amp; Contact Information</td>
<td>Phone Number</td>
<td>(555)555-5555</td>
</tr>
<tr>
<td>Vehicle Information</td>
<td>Vehicle Identification Number (VIN)</td>
<td>1HGCM82633A004352</td>
</tr>
<tr>
<td>Vehicle Information</td>
<td>Make</td>
<td>Chevrolet</td>
</tr>
<tr>
<td>Vehicle Information</td>
<td>Model</td>
<td>Bolt</td>
</tr>
<tr>
<td>Vehicle Information</td>
<td>Vehicle Model Year</td>
<td>2019</td>
</tr>
<tr>
<td>Vehicle Information</td>
<td>Dealership vehicle was purchased/leased at</td>
<td>EV California Dealers</td>
</tr>
<tr>
<td>Vehicle Information</td>
<td>Date Vehicle Purchased/Leased</td>
<td>12/25/2019</td>
</tr>
<tr>
<td>Vehicle Information</td>
<td>Vehicle Purchase/Lease Price</td>
<td>$XX,XXX.00</td>
</tr>
<tr>
<td>Utility Information</td>
<td>Utility Provider (electric)</td>
<td>Southern California Edison</td>
</tr>
</tbody>
</table>
EXHIBIT A
PARTICIPATING EDU JOINDER

This JOINDER AGREEMENT ("Joinder Agreement"), dated as of [DATE] is made by [JOINING EDU], a [STATE OF ORGANIZATION] [ENTITY TYPE] (the "Joining EDU"), and delivered to [NAME OF PROGRAM ADMINISTRATOR], in its capacity as Program Administrator (in such capacity and together with any successors in such capacity, the "Program Administrator") under that certain Governance Agreement (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Governance Agreement"; capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Governance Agreement), dated as of [DATE] made by and among Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, Los Angeles Department of Water & Power, Sacramento Municipal Utility District, and the other electric distribution utilities ("EDUs") party thereto.

WHEREAS, the Joining EDU is an EDU operating in the State of California and desires to participate in the CFR Program developed and implemented by the EDUs that are parties to the Governance Agreement and, in order to participate in the CFR Program, the Joining EDU is required by the terms of the Governance Agreement and the LCFS Regulation to be joined as a party to the Governance Agreement as a Participating EDU; and

WHEREAS, this Joinder Agreement supplements the Governance Agreement and is delivered by the Joining EDU pursuant to Section 2.2 of the Governance Agreement; and

WHEREAS, the Joining EDU will materially benefit directly and indirectly from (i) the CFR Program and from the LCFS Base Credits made available and to be made available by CARB to the Joining EDU as a participant in the CFR Program and a Participating EDU under the Governance Agreement, and (ii) from the Program Administrator’s administration of the CFR Program on behalf of the Joining EDU and all Participating EDU; and

NOW THEREFORE, the Joining EDU hereby agrees as follows with the Program Administrator and each other Party to the Governance Agreement:

1. Joinder. The Joining EDU hereby irrevocably, absolutely and unconditionally becomes a party to the Governance Agreement as a Participating EDU, as a Party, and in each other capacity (e.g., POU, IOU, Northern EDU, Southern EDU, etc.) under the Governance Agreement that is applicable to the Joining EDU as a Participating EDU and Party thereunder, and agrees to be bound by all the terms, conditions, covenants, obligations, liabilities and undertakings applicable to any such Participating EDU or Party, or to which any such Participating EDU or Party is subject thereunder, all with the same force and effect as if the Joining EDU were an original signatory to the Governance Agreement. Without limiting the generality of the foregoing, (a) the Joining EDU hereby designates and authorizes the Program Administrator to act on its behalf as the Program Administrator under the Governance Agreement and under any Program Agreement, and authorizes the Program Administrator to take such actions on its behalf and to exercise such powers as are delegated to the Program Administrator by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto or as otherwise determined by the Steering Committee, in each case...
in accordance with the terms and conditions of and for the time period set forth in the Governance Agreement, and (b) the Joining EDU, on its own behalf and on behalf of its Related Entities, does hereby irrevocably, unconditionally, voluntarily, knowingly, fully, finally, completely, and forever grant and make the Release and Covenant Not to Sue, and agrees to the indemnification and other obligations, set forth in ARTICLE 7 of the Governance Agreement with full knowledge and in full agreement with all of the terms, conditions and obligations set forth therein and without limiting the generality of the foregoing expressly acknowledges and agrees that it has been advised of, and does hereby specifically and expressly waive and release all rights under, the provisions of Section 1542 of the Civil Code of California, which provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

2. **Affirmations.** The Joining EDU hereby makes each of the representations and warranties and agrees to each of the covenants contained in the Governance Agreement that is made by any Participating EDU, Party, and in each other capacity under the Governance Agreement that is applicable to the Joining EDU as a Participating EDU and Party thereunder. The Joining EDU also represents and warrants to the Program Administrator and to each other Party that (a) it has the power and authority, and the legal right, to make, deliver and perform this Joinder Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Joinder Agreement, (b) no consent or authorization of, filing with, notice to or other act by or in respect of, any Governmental Authority or any other Person that has not been obtained, made or completed is required in connection with the execution, delivery and performance, validity or enforceability of this Joinder Agreement, (c) this Joinder Agreement has been duly and validly executed and delivered on behalf of the Joining EDU, (d) the execution, delivery and performance of this Agreement by such Joining EDU will not violate, conflict with, require consent under or result in any breach or default under (i) any of such Joining EDU’s organizational, governing or charter documents, (ii) any applicable law, or (iii) with or without notice or lapse of time or both, the provisions of any material contract or agreement to which such Joining EDU is a party or to which any of its material assets are bound, and (e) this Joinder Agreement constitutes a legal, valid and binding obligation of the Joining EDU enforceable against such Joining EDU in accordance with its terms, subject to the effects of bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors’ rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

3. **Miscellaneous.** ARTICLE 10 of the Governance Agreement is hereby incorporated into this Joinder Agreement by reference and shall be a part hereof, mutatis mutandis.

[Signature page follows]
IN WITNESS WHEREOF, the parties hereto have caused this Joinder Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

[NAME OF JOINING EDU]

By____________________
Name:
Title:
Contact Information for Notices:

If not already listed on Schedule 1.1 to the Governance Agreement, the Joining EDU hereby elects to be listed thereon as a [Northern EDU/Southern EDU] [Pick one only].

AGREED TO AND ACCEPTED:
[NAME OF PROGRAM ADMINISTRATOR][, as Program Administrator]

By____________________
Name:
Title:
Contact Information for Notices:
RESOLUTION NO. 20-02-05

WHEREAS, in August 2019, SMUD issued Request for Proposal No. 190143.PD (RFP) to solicit qualified firms to provide professional services to administer SMUD’s Complete Energy Solutions Program to deliver a comprehensive customized approach to encourage multi-measure efficiency retrofits primarily targeted to serve SMUD’s Small & Medium Business customers; and

WHEREAS, seven proposals submitted in response to the RFP were evaluated; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

Section 1. As a result of such examination, TRC Engineers, Inc. is hereby determined and declared to be the highest evaluated responsive proposer to provide professional services to administer SMUD’s Complete Energy Solutions Program.

Section 2. The Chief Executive Officer and General Manager, or his designee, is authorized, on behalf of SMUD, to award a contract to TRC Engineers, Inc. to provide professional services to administer SMUD’s Complete Energy Solutions Program for a three-year period from March 2, 2020, through February 28, 2023, with one optional one-year extension for a total not-to-exceed amount of $19,700,000.

Section 3. The Chief Executive Officer and General Manager, or his designee, is authorized to make future changes to the terms and conditions of the contract that, in his prudent judgment: (a) further the primary purpose of the
contract; (b) are intended to provide a net benefit to SMUD; and (c) do not exceed the authorized contract amount and applicable contingencies.

Approved: February 20, 2020

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<thead>
<tr>
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RESOLUTION NO. 20-02-06

WHEREAS, by Resolution No. 14-08-04, adopted August 21, 2014, this Board approved amendments to the SMUD Energy Risk Management and Energy Trading Standards (ERM&ETS); and

WHEREAS, SMUD’s ERM&ETS, as approved by the Board, prohibit energy transactions with any counterparty whose bond rating is below investment grade unless the counterparty posts enough collateral to cover the transaction; and

WHEREAS, by Resolution No. 19-02-06, adopted February 21, 2019, this Board approved an exception to the ERM&ETS for a 12-month period to allow the Chief Executive Officer and General Manager to enter into transactions with Pacific Gas and Electric Company (PG&E) for energy products necessary for meeting SMUD’s or its Community Choice Aggregator (CCA) Credit Services client’s regulatory and/or reliability requirements; and

WHEREAS, PG&E continues to be a key supplier of Resource Adequacy (RA) in and around SMUD’s and its CCA Credit Services client’s service territories; and

WHEREAS, PG&E’s bond ratings remain “below investment grade” and PG&E remains unwilling/unable to post collateral as it works through Chapter 11 bankruptcy proceedings; and

WHEREAS, to continue fulfilling its procurement obligations for its CCA Credit Services client and its own RA capacity and other commodity needs before PG&E emerges from bankruptcy with an adequate credit rating established, SMUD may need to continue entering into forward RA capacity contracts with PG&E; and

WHEREAS, staff recommends that the Board extend the exception to the ERM&ETS’s prohibition on transactions with less than creditworthy parties and authorize the Chief Executive Officer and General Manager to enter into transactions with PG&E for energy products necessary for meeting SMUD’s or its CCA Credit Services client’s regulatory and/or reliability requirements; and
WHEREAS, the above extension of the exception would apply to any transactions entered into over the next twelve (12) months; and

WHEREAS, there is no significant additional risk to SMUD under the circumstances proposed for extending such exception; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

Section 1. This Board approves a 12-month extension of the exception to the Energy Risk Management and Energy Trading Standards to allow the Chief Executive Officer and General Manager, or his designee, to enter into transactions with PG&E for the purchase of energy products necessary for meeting SMUD’s or its CCA Credit Services client’s regulatory and/or reliability requirements.

Section 2. This extension of the exception to the Energy Risk Management and Energy Trading Standards shall apply for a period of 12 months from February 21, 2020.

Section 3. Staff will report back to the Board with information on any transactions entered into pursuant to this resolution and shall seek additional Board approval to the extent that any exception to the Energy Risk Management and Energy Trading Standards is required beyond this extension.

Approved: February 20, 2020

INTRODUCED: DIRECTOR BUI-THOMPSON
SECONDED: DIRECTOR FISHMAN

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<th>NO</th>
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</table>
President Kerth announced that a portion of the President’s Report would be given now and asked Steven G. Lins, Deputy General Counsel and Director of Government Affairs, to give a quick update on the Neighborhood SolarShares program.

Mr. Lins provided a brief overview of the Neighborhood SolarShares application that had been unanimously approved by the California Energy Commission earlier that day.

President Kerth then called for statements from the public regarding items not on the agenda. He stated that given the length of the agenda and closed session to follow the open portion of the meeting, he would limit public comment time to one minute.

Director Rose asked to provide the public two minutes to provide their comments.

President Kerth stated the public would be allowed two minutes to provide comment.

Erik Sampayo, a member of the public, spoke in opposition to the Neighborhood SolarShares program.

Ann Amato, a Carmichael resident with Sacramento Climate Coalition, spoke in opposition to the Neighborhood SolarShares program.

Moiz, a member of the public, stated he was a participant on the technical advisory committees of Community Health, Resilience, and Equity for the Mayor’s Commission on Climate Change where Mr. Orchard had made a comment about organizations having a strategy to receive feedback from grassroots community organizations and that institutional action should be determined by the communities the institution serves. He asked the Board to hold those words to heart.

Alex Kaffka with Verdera Partners, an energy management consultant for large commercial property owners, spoke in opposition to the Neighborhood SolarShares program and asked the Board to allow customers to opt out upon three months’ notice.
Megan Elsea, with 350 Sacramento, spoke in opposition to the Neighborhood SolarShares program.

Eric Hafer, with California Solar + Storage Association (CalSSA), spoke in opposition to the Neighborhood SolarShares program.

Rodney E. Nix, a resident of Del Paso Heights, spoke in opposition to the Neighborhood SolarShares program.

President Kerth directed staff to meet with Mr. Nix to clarify requirements and availability related to homeowner installation of battery backups.

Lee Miller, a member of the community, spoke in opposition to the Neighborhood SolarShares program and stated she would send the Board a copy of SB 953.

David Rosenfeld, Director of the Solar Rights Alliance, spoke in opposition to the Neighborhood SolarShares program and asked if SMUD would amend its policy related to the 20-year commitment.

Vice President Bui-Thompson asked staff to clarify as to the 20-year commitment.

Ms. Davidson stated it is a long term benefit that SMUD will cover maintenance and guarantee generation for the full 20 years at the original system capacity.

Director Rose asked staff to clarify if SMUD would bond for a solar facility.

Ms. Davidson stated SMUD would not bond but would enter into a 20-year purchase power agreement for that power.

Dana Fries, with Solar Rights Alliance, spoke in opposition to the Neighborhood SolarShares program.

Ashley Anderson, a SMUD customer and Folsom resident with Solar Rights Alliance, spoke in opposition to the Neighborhood SolarShares program and asked SMUD to shut down its fossil fuel plants.

Curran Hamilton, a SMUD customer with Sunrise, spoke in opposition to the Neighborhood SolarShares program.
Fatima Malik, a resident of Del Paso Heights, spoke in opposition to the Neighborhood SolarShares program and asked questions about the annual bill she receives from SMUD related to production of her rooftop solar system.

Director Tamayo recommended that Ms. Malik contact staff to assist with interpretation of her bill as it relates to the deal she signed with the solar company.

Ms. Malik stated she would like to have a conference call to include SMUD staff and the solar company.

President Kerth stated staff could facilitate the call.

Ben Davis, with CalSSA, spoke in opposition to the Neighborhood SolarShares program and stated SMUD’s power plants should be shut down right away.

Thomas Larkin stated he was present in association with the Clean Power for the People campaign and spoke in opposition to the Neighborhood SolarShares program.

Montrice Stallworth spoke in opposition to the Neighborhood SolarShares program and requested that SMUD shut down its power plants by 2030.

Director Rose stated that SMUD’s Integrated Resource Plan (IRP) analyzed an absolute zero scenario, and it would have required a 150% increase in rates, so the Board had decided on the plan that, while doubling energy demand through electrification, would cut use of power plants by about 75%, so that by 2040, they will be used a fraction of what they are currently used.

Ms. Davidson clarified that it would have been a four-fold increase, so instead of an average rate of 16 cents, it would have been an immediate increase to 58 cents.

David Wright, with 350 Sacramento, spoke on global and local climate change issues.

Jane Lamborn, a Wilton resident and SMUD customer with Solar Rights Alliance, stated rooftop solar panels were one way to combat the climate crisis and asked SMUD to help customers.
Bill Schmidt, a resident of Sacramento and a SMUD customer, spoke in opposition to the Neighborhood SolarShares program.

Skye Cabrera, with Solar Rights Alliance, spoke in opposition to the Neighborhood SolarShares program.

Director Rose stated that the Neighborhood SolarShares program was about where solar would be built and not whether a coal plant or gas plant would be built. He stated it was all about solar, and he wanted to keep that in the context of the comments.

President Kerth asked staff how much of SMUD’s power today is green power.

Ms. Davidson stated 50 percent of SMUD’s portfolio is carbon-free.

Esmeralda Plascencia, with Sunrise Sacramento, spoke in opposition to the Neighborhood SolarShares program.

Mario Lopez Mendez, a Sacramento State student attending on behalf of Sunrise, spoke in opposition to the Neighborhood SolarShares program and asked SMUD to help low income customers with the installation of solar.

Director Tamayo asked staff to meet with Mr. Lopez Mendez to discuss GRID Alternatives and other available programs that partner with SMUD to help low income communities get rooftop solar.

Madelyn Hart, a representative from the UC Davis chapter of California Public Interest Research Group (CALPIRG), spoke in opposition to the Neighborhood SolarShares program.

Alexia Spichka, with Solar Rights Alliance, spoke in opposition to the Neighborhood SolarShares program.

President Kerth clarified that there was nothing in the Neighborhood SolarShares program that would stop someone from putting in their own solar panels. He stated that SMUD’s employees are committed to keeping the lights on and figuring out how to get the carbon out of our system.

Tom Meagher, a member of the public, stated there seemed to be a lot of confusion about the Neighborhood SolarShares program and asked that a PowerPoint or video be made available to learn about it. He asked SMUD to
pursue inexpensive energy conservation and to provide renters and landlords incentives to fix houses to reduce peak demand.

Vice President Bui-Thompson stated that SMUD has free weatherization programs for low income households and asked staff to meet with Mr. Meagher.

President Kerth stated he had insulated his attic, and he has saved a lot of money.

Alan Escarda, with Clean Power for the People, spoke in opposition to the Neighborhood SolarShares program and stated SMUD should re-invest the $800 million profit that SMUD had made by having lower rates than Pacific Gas and Electric Company (PG&E).

Director Herber stated that the $800 million referred to money the community saved.

President Kerth clarified that SMUD saved the community $800 million last year because of SMUD’s lower rates, which is money customers were able to keep in their pockets. He stated that in order to make an $800 million for SMUD, SMUD would have to raise rates to match PG&E’s.

Shea Dlott, with Sunrise Sac, spoke in opposition to the Neighborhood SolarShares program.

Adrienne Underwood, with Sunrun, spoke in opposition to the Neighborhood SolarShares program.

Shaina Meiners, a Sacramento resident and SMUD customer, spoke in opposition to the Neighborhood SolarShares program.

Tobi Liston, with Solar Rights Alliance and Sunrise Movement, spoke in opposition to the Neighborhood SolarShares program.

With public comment being closed, President Kerth called for reports from Directors on their activities.

Director Sanborn reported on her participation in a solar tree class with SMUD’s sustainable communities staff. She also reported on her attendance, along with Director Herber, at a Mow Better meeting. She
congratulated sustainability staff for their receipt of the Local Vision Award from the American Planning Association.

Director Rose reported on his attendance at the International Brotherhood of Electrical Workers (IBEW) crab feed as well as the DISTRIBUTECH conference.

Vice President Bui-Thompson stated she had also enjoyed the DISTRIBUTECH conference.

Director Fishman reported on his attendance, along with Director Herber, at the Rainbow Chamber of Commerce business awards luncheon where SMUD CEO and General Manager Arlen Orchard was the keynote speaker. He also noted the sudden passing of one of his mentors, Jim “Mac” McIntosh, who had been the Director of the California Independent System Operation (CAISO) when he worked there. He stated it was a loss to the energy industry and to him personally.

Director Herber reported on her presentation of a $20,000 check to the City of Elk Grove for the energy efficiency measures incorporated into their new community center. She also reported on her attendance at the SMUD Cares appreciation luncheon and noted SMUD employees had given over $400,000 in donations and an extreme number of volunteer hours.

President Kerth reported on his attendance at the DISTRIBUTECH conference, as well as his participation in meetings related to the wind farm in Solano County. He also stated he had enjoyed participating in the Martin Luther King Jr. march, and it was an event he looked forward to every year.

Jennifer Davidson, acting Chief Executive Officer and General Manager, stated she would give an abbreviated report given the time. She reported on the following items:

1) **CEC Approval of Neighborhood SolarShares.** Since first proposing the Neighborhood Solar Shares option to the CEC in November, SMUD made a number of compromises to address the concerns of the rooftop solar industry. We revised to ensure that all solar resources allocated to this program come from
within our service territory, are new resources, and are 20 megawatts of less.

2) **Celebration of African American Art.** Thanks to SMUD's Black Employee Resource Group and the Sacramento Metropolitan Arts Commission, the SMUD Art Gallery is hosting an exhibit, "The Sojourner Truth Museum, A Celebration of African American Art." The exhibition is open to the public through April 2.

3) **Board Video.** Today's video looks at the work SMUD's Building Leadership Team performed in helping make the American River Parkway and STEM education more accessible to students from Title 1 schools.

President Kerth announced that having completed the open session agenda for the meeting, the Board would enter into closed session, but before doing that, he wanted to conclude the open session in memory of Jim McIntosh and the wonderful accomplishments he had in the electric utility industry. He stated the Board would enter into closed session to discuss the following item:

**Public Employment:**

Pursuant to Section 54957 of the Government Code:

CEO and General Manager.

The Board entered into closed session at 8:24 p.m.

President Kerth re-opened the meeting and announced that no action was taken. The meeting adjourned at 10:48 p.m.

Approved:

__________________________  __________________________
President                     Assistant Secretary
TO: Distribution

FROM: Ruth Yee / Sandra Moorman

SUBJECT: JANUARY 2020 FINANCIAL RESULTS AND OPERATIONS DATA

We are attaching the financial and operating reports for the first month of 2020. They include sales and generation statistics and other selected data.

SMUD’s year-to-date net position increased $3.9 million compared to a $5.7 million decrease projected in the budget. We attribute the favorable variance ($9.5 million) to higher operating revenues, higher non-operating revenue, lower operating expenses and lower interest expense.

We prepared these statements on the accrual basis of accounting, and they conform to generally accepted accounting principles. The basis for the budget amounts are:

1) budgeted electric revenues are based on the Forecast of Revenues by the Rates Department, adjusted for unbilled revenues; and

2) budgeted operating expenses reflect the 2020 Budget approved by the Board of Directors on November 21, 2019.
EXECUTIVE SUMMARY
For the One Month Ended January 31, 2020

Net Position
- SMUD’s net position increased $3.9 million compared to a $5.7 million decrease projected in the budget. We attribute the favorable variance ($9.5 million) to higher operating revenues, higher non-operating revenue, lower operating expenses and lower interest expense.

Revenues
- Revenues from sales to customers were $102.6 million, which was $2.2 million (2.2 percent) higher than planned.
  - The variance was due to higher average customer rates per kilowatt-hour, customer usage and lower uncollectible provision.
- Non-cash revenues transferred from the Rate Stabilization fund for AB32 project expenses were $1.4 million (predominately related to EAPR).

Operating Expenses
- Purchased power expense, net of surplus power sales, was $18.3 million, which was $5.9 million (47.3 percent) higher than planned.
  - Purchased power expense is the result of higher quantities purchased of $14.4 million, offset by lower prices of $8.5 million.
- SMUD’s generation was lower by 223 GWh (30.7 percent).
  - JPAs and Other generation was lower by 161 GWh (25.3 percent).
  - Hydro generation was lower by 60 GWh (83.3 percent).
- Production operations cost, net of gas sales, was $18.8 million, which was $6.3 million (25.0 percent) lower than planned.
  - Fuel costs, net of gas sales, were $6.2 million lower due to lower fuel usage of $3.7 million and fuel prices of $2.5 million.
- The “power margin”, or revenues less cost of purchased power, production operations cost and gas hedges included in investment expense was $70.6 million, which was $5.0 million (7.6 percent) higher than planned.
- All other operating expenses were $62.7 million, which was $2.1 million (3.3 percent) lower than planned.
  - Administrative and general expenses were $2.1 million lower which includes non-cash Pension and OPEB amortization of $0.3 million.
  - Non-cash depreciation expense was $0.6 million higher, primarily a result of projects capitalized earlier than anticipated.

Non-Operating Revenues and Expenses
- Other revenue, net was $4.2 million, which was $1.9 million (80.8 percent) higher than planned.
  - The variance was primarily due to higher unrealized holding gain of $0.7 million, interest income of $0.4 million, other income of $0.4 million and CIAC revenue of $0.3 million.
- Interest expense was $8.2 million which was $0.6 million (6.6 percent) lower than planned.
# SACRAMENTO MUNICIPAL UTILITY DISTRICT
## STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
### For the Month Ended January 31, 2020
#### (thousands of dollars)

### OPERATING REVENUES

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<th>Budget</th>
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<th>Percent of Increase (Decrease)</th>
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<td>Sales to customers</td>
<td>$102,619</td>
<td>$100,396</td>
<td>$2,223</td>
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<td>Sales of surplus power</td>
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<td>5,503</td>
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<td>Sales of surplus gas</td>
<td>6,940</td>
<td>-</td>
<td>6,940</td>
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<td>Public good revenue</td>
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<td>333</td>
<td>329</td>
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<td>SB-1 revenue (deferral)/recognition, net</td>
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<td>342</td>
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<td>Other electric revenue</td>
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<td><strong>Total operating revenues</strong></td>
<td>115,372</td>
<td>108,952</td>
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### OPERATING EXPENSES

#### Operations

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<td>25,044</td>
<td>689</td>
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<td>Transmission and distribution</td>
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<td>6,949</td>
<td>(277)</td>
<td>(4.0)</td>
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<td>Customer accounts</td>
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<td>(260)</td>
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<td>Customer service and information</td>
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<td><strong>Total operations</strong></td>
<td>77,374</td>
<td>81,213</td>
<td>(3,839)</td>
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#### Maintenance

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<td>1,459</td>
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<tr>
<td>Transmission and distribution</td>
<td>6,704</td>
<td>5,522</td>
<td>1,182</td>
<td>21.4</td>
</tr>
<tr>
<td><strong>Total maintenance</strong></td>
<td>9,921</td>
<td>7,280</td>
<td>2,641</td>
<td>36.3</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Source</th>
<th>Actual</th>
<th>Budget</th>
<th>(Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Depreciation</td>
<td>17,036</td>
<td>16,422</td>
<td>614</td>
<td>3.7</td>
</tr>
<tr>
<td>Depletion</td>
<td>-</td>
<td>323</td>
<td>(323)</td>
<td>(100.0)</td>
</tr>
<tr>
<td>Amortization of regulatory asset</td>
<td>3,177</td>
<td>2,928</td>
<td>249</td>
<td>8.5</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>107,508</td>
<td>108,166</td>
<td>(658)</td>
<td>(0.6)</td>
</tr>
</tbody>
</table>

### OPERATING INCOME (LOSS)

<table>
<thead>
<tr>
<th>Source</th>
<th>Actual</th>
<th>Budget</th>
<th>(Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total operating expenses</td>
<td>7,864</td>
<td>786</td>
<td>7,078</td>
<td>900.5</td>
</tr>
</tbody>
</table>

### NON-OPERATING REVENUES AND EXPENSES

#### Other revenues/(expenses)

<table>
<thead>
<tr>
<th>Source</th>
<th>Actual</th>
<th>Budget</th>
<th>(Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>1,466</td>
<td>1,018</td>
<td>448</td>
<td>44.0</td>
</tr>
<tr>
<td>Investment revenue (expense)</td>
<td>(90)</td>
<td>(132)</td>
<td>42</td>
<td>31.8</td>
</tr>
<tr>
<td>Other income (expense) - net</td>
<td>733</td>
<td>297</td>
<td>436</td>
<td>146.8</td>
</tr>
<tr>
<td>Unrealized holding gains (losses)</td>
<td>672</td>
<td>-</td>
<td>672</td>
<td>*</td>
</tr>
<tr>
<td>Revenue - CIAC</td>
<td>1,426</td>
<td>1,144</td>
<td>282</td>
<td>24.7</td>
</tr>
<tr>
<td><strong>Total other revenues (expenses)</strong></td>
<td>4,207</td>
<td>2,327</td>
<td>1,880</td>
<td>80.8</td>
</tr>
</tbody>
</table>

#### Interest charges

<table>
<thead>
<tr>
<th>Source</th>
<th>Actual</th>
<th>Budget</th>
<th>(Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest on long-term debt</td>
<td>8,413</td>
<td>8,504</td>
<td>(91)</td>
<td>(1.1)</td>
</tr>
<tr>
<td>Interest on commercial paper</td>
<td>(217)</td>
<td>273</td>
<td>(490)</td>
<td>(179.5)</td>
</tr>
<tr>
<td><strong>Total interest charges</strong></td>
<td>8,196</td>
<td>8,777</td>
<td>(581)</td>
<td>(6.6)</td>
</tr>
</tbody>
</table>

### CHANGE IN NET POSITION

<table>
<thead>
<tr>
<th>Source</th>
<th>Actual</th>
<th>Budget</th>
<th>(Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total</strong></td>
<td>$3,875</td>
<td>$ (5,664)</td>
<td>$9,539</td>
<td>168.4 %</td>
</tr>
</tbody>
</table>

* Equals 1000% or greater.
## SACRAMENTO MUNICIPAL UTILITY DISTRICT
### STATEMENTS OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
#### For the One Month Ended January 31, 2020
*(thousands of dollars)*

### OPERATING REVENUES
<table>
<thead>
<tr>
<th>Description</th>
<th>Actual</th>
<th>Budget</th>
<th>Over (Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sales to customers</td>
<td>$102,619</td>
<td>$100,396</td>
<td>$2,223</td>
<td>2.2%</td>
</tr>
<tr>
<td>Sales of surplus power</td>
<td>734</td>
<td>5,503</td>
<td>(4,769)</td>
<td>(86.7)%</td>
</tr>
<tr>
<td>Sales of surplus gas</td>
<td>6,940</td>
<td>-</td>
<td>6,940</td>
<td>*</td>
</tr>
<tr>
<td>Public good revenue</td>
<td>662</td>
<td>333</td>
<td>329</td>
<td>98.8%</td>
</tr>
<tr>
<td>SB-1 revenue (deferral)/recognition, net</td>
<td>66</td>
<td>342</td>
<td>(276)</td>
<td>(80.7)%</td>
</tr>
<tr>
<td>Other electric revenue</td>
<td>2,946</td>
<td>2,378</td>
<td>568</td>
<td>23.9%</td>
</tr>
<tr>
<td>Rate stabilization fund transfers</td>
<td>1,405</td>
<td>-</td>
<td>1,405</td>
<td>*</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>115,372</td>
<td>108,952</td>
<td>6,420</td>
<td>5.9%</td>
</tr>
</tbody>
</table>

### OPERATING EXPENSES

#### Operations

<table>
<thead>
<tr>
<th>Description</th>
<th>Actual</th>
<th>Budget</th>
<th>Over (Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchased power</td>
<td>19,027</td>
<td>17,921</td>
<td>1,106</td>
<td>6.2%</td>
</tr>
<tr>
<td>Production</td>
<td>25,733</td>
<td>25,044</td>
<td>689</td>
<td>2.8%</td>
</tr>
<tr>
<td>Transmission and distribution</td>
<td>6,672</td>
<td>6,949</td>
<td>(277)</td>
<td>(4.0)%</td>
</tr>
<tr>
<td>Customer accounts</td>
<td>5,068</td>
<td>5,328</td>
<td>(260)</td>
<td>(4.9)%</td>
</tr>
<tr>
<td>Customer service and information</td>
<td>5,060</td>
<td>6,481</td>
<td>(1,421)</td>
<td>(21.9)%</td>
</tr>
<tr>
<td>Administrative and general</td>
<td>12,513</td>
<td>14,636</td>
<td>(2,123)</td>
<td>(14.5)%</td>
</tr>
<tr>
<td>Public good</td>
<td>3,301</td>
<td>4,854</td>
<td>(1,553)</td>
<td>(32.0)%</td>
</tr>
<tr>
<td>Total operations</td>
<td>77,374</td>
<td>81,213</td>
<td>(3,839)</td>
<td>(4.7)%</td>
</tr>
</tbody>
</table>

#### Maintenance

<table>
<thead>
<tr>
<th>Description</th>
<th>Actual</th>
<th>Budget</th>
<th>Over (Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Production</td>
<td>3,217</td>
<td>1,758</td>
<td>1,459</td>
<td>83.0%</td>
</tr>
<tr>
<td>Transmission and distribution</td>
<td>6,704</td>
<td>5,522</td>
<td>1,182</td>
<td>21.4%</td>
</tr>
<tr>
<td>Total maintenance</td>
<td>9,921</td>
<td>7,280</td>
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<td>36.3%</td>
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<td>-</td>
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<td>107,508</td>
<td>108,166</td>
<td>(658)</td>
<td>(0.6)%</td>
</tr>
</tbody>
</table>

### OPERATING INCOME (LOSS)

#### Operating income (loss)

<table>
<thead>
<tr>
<th>Description</th>
<th>Actual</th>
<th>Budget</th>
<th>Over (Under)</th>
<th>Percent of Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other revenues/(expenses)</td>
<td>4,207</td>
<td>2,327</td>
<td>1,880</td>
<td>80.8</td>
</tr>
</tbody>
</table>

### NON-OPERATING REVENUES AND EXPENSES

<table>
<thead>
<tr>
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<th>Budget</th>
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### CHANGE IN NET POSITION

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<tr>
<td>CHANGE IN NET POSITION</td>
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<td>$(5,664)</td>
<td>$9,539</td>
<td>168.4%</td>
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* Equals 1000% or greater.
### SACRAMENTO MUNICIPAL UTILITY DISTRICT
### SOURCES AND USES OF ENERGY - COMPARED TO BUDGET
### For the Period Ended January 31, 2020

#### Sources of Energy (GWh)

<table>
<thead>
<tr>
<th>Sources of Energy</th>
<th>Month</th>
<th>Increase (Decrease)</th>
<th>Year-to-Date</th>
<th>Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>Budget</td>
<td>Percentage</td>
<td>Actual</td>
</tr>
<tr>
<td>Hydro</td>
<td>12</td>
<td>72</td>
<td>(83.3) %</td>
<td>12</td>
</tr>
<tr>
<td>Carson Ice (CVFA)</td>
<td>21</td>
<td>40</td>
<td>(47.5) %</td>
<td>21</td>
</tr>
<tr>
<td>Procter &amp; Gamble (SCA)</td>
<td>48</td>
<td>46</td>
<td>4.3</td>
<td>48</td>
</tr>
<tr>
<td>Campbell Soup Project (SPA)</td>
<td>79</td>
<td>110</td>
<td>(28.2) %</td>
<td>79</td>
</tr>
<tr>
<td>SMUD Financing Authority (SFA)</td>
<td>328</td>
<td>441</td>
<td>(25.6) %</td>
<td>328</td>
</tr>
<tr>
<td>Other</td>
<td>14</td>
<td>16</td>
<td>(10.8) %</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total net generation</strong></td>
<td><strong>502</strong></td>
<td><strong>725</strong></td>
<td><strong>(30.7) %</strong></td>
<td><strong>502</strong></td>
</tr>
</tbody>
</table>

#### Purchased Power less transmission losses:

<table>
<thead>
<tr>
<th>Sources</th>
<th>Month</th>
<th>Increase (Decrease)</th>
<th>Year-to-Date</th>
<th>Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Avangrid</td>
<td>1</td>
<td>4</td>
<td>(75.0) %</td>
<td>1</td>
</tr>
<tr>
<td>Feed in Tariff</td>
<td>8</td>
<td>9</td>
<td>(11.1) %</td>
<td>8</td>
</tr>
<tr>
<td>Grady Wind</td>
<td>78</td>
<td>84</td>
<td>(7.1) %</td>
<td>78</td>
</tr>
<tr>
<td>Great Valley Solar</td>
<td>7</td>
<td>7</td>
<td>0.0</td>
<td>7</td>
</tr>
<tr>
<td>Kiefer - Greenergy</td>
<td>10</td>
<td>10</td>
<td>0.0</td>
<td>10</td>
</tr>
<tr>
<td>Patua</td>
<td>14</td>
<td>14</td>
<td>0.0</td>
<td>14</td>
</tr>
<tr>
<td>Simpson</td>
<td>27</td>
<td>16</td>
<td>68.8</td>
<td>27</td>
</tr>
<tr>
<td>WAPA</td>
<td>10</td>
<td>21</td>
<td>(52.4) %</td>
<td>10</td>
</tr>
<tr>
<td>WSPP and other</td>
<td>313</td>
<td>110</td>
<td>184.5 %</td>
<td>313</td>
</tr>
<tr>
<td>Other long term power</td>
<td>18</td>
<td>21</td>
<td>(14.2) %</td>
<td>18</td>
</tr>
<tr>
<td><strong>Total net purchases</strong></td>
<td><strong>486</strong></td>
<td><strong>296</strong></td>
<td><strong>64.2 %</strong></td>
<td><strong>486</strong></td>
</tr>
</tbody>
</table>

#### Total sources of energy

<table>
<thead>
<tr>
<th>Sources</th>
<th>Month</th>
<th>Increase (Decrease)</th>
<th>Year-to-Date</th>
<th>Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>988</td>
<td>1,021</td>
<td>(3.2) %</td>
<td>988</td>
</tr>
</tbody>
</table>

#### Uses of energy:

<table>
<thead>
<tr>
<th>Uses of energy</th>
<th>Month</th>
<th>Increase (Decrease)</th>
<th>Year-to-Date</th>
<th>Increase (Decrease)</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMUD electric sales and usage</td>
<td>834</td>
<td>828</td>
<td>0.8</td>
<td>834</td>
</tr>
<tr>
<td>Surplus power sales</td>
<td>128</td>
<td>130</td>
<td>(1.5) %</td>
<td>128</td>
</tr>
<tr>
<td>System losses</td>
<td>26</td>
<td>63</td>
<td>(58.7) %</td>
<td>26</td>
</tr>
<tr>
<td><strong>Total uses of energy</strong></td>
<td><strong>988</strong></td>
<td><strong>1,021</strong></td>
<td><strong>(3.2) %</strong></td>
<td><strong>988</strong></td>
</tr>
</tbody>
</table>

* Change equals 1000% or more.

---

**Net generation is lower than budget for the one-month period.**
- Hydro generation is lower than planned (83.3 percent).
- JPA generation is lower than planned (25.3 percent).

**Purchased power, less surplus power sales, is higher than plan (115.7 percent).**
* Change equals 1000% or more.
<table>
<thead>
<tr>
<th>ASSETS</th>
<th>Total</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ASSET</strong></td>
<td>SMUD</td>
<td>CVFA</td>
<td>SCA</td>
</tr>
<tr>
<td><strong>ELECTRIC UTILITY PLANT</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Plant in service, original cost</td>
<td>$5,260,070</td>
<td>$153,440</td>
<td>$197,576</td>
</tr>
<tr>
<td>Less accumulated depreciation</td>
<td>2,380,637</td>
<td>115,733</td>
<td>141,923</td>
</tr>
<tr>
<td>Plant in service - net</td>
<td>2,879,433</td>
<td>36,707</td>
<td>55,655</td>
</tr>
<tr>
<td>Construction work in progress</td>
<td>370,312</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Investment in Joint Power Agencies</td>
<td>298,055</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total electric utility plant - net</td>
<td>3,547,800</td>
<td>36,707</td>
<td>55,655</td>
</tr>
<tr>
<td><strong>RESTRICTED ASSETS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue bond reserves</td>
<td>4,748</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Restricted for payment of debt service</td>
<td>88,717</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>JPA funds</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Nuclear decommissioning trust fund</td>
<td>8,806</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Rate stabilization fund</td>
<td>142,264</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other funds</td>
<td>23,769</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Due (to) from unrestricted funds (decommissioning)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total restricted assets</td>
<td>168,860</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>CURRENT ASSETS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash, cash equivalents and investments</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unrestricted</td>
<td>431,601</td>
<td>3,728</td>
<td>16,806</td>
</tr>
<tr>
<td>Unrestricted - collateral obligation</td>
<td>110</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Restricted</td>
<td>99,444</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Accounts receivable - net</td>
<td>210,821</td>
<td>4,213</td>
<td>5,478</td>
</tr>
<tr>
<td>Energy efficiency loans due within one year</td>
<td>3,021</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Interest receivable</td>
<td>3,326</td>
<td>5</td>
<td>25</td>
</tr>
<tr>
<td>Regulatory costs to be recovered within one year</td>
<td>37,051</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Derivative financial instruments maturing within one year</td>
<td>6,639</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Inventories</td>
<td>52,787</td>
<td>2,236</td>
<td>4,354</td>
</tr>
<tr>
<td>Prepaid gas to be delivered within one year</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Prepayments and other</td>
<td>17,670</td>
<td>295</td>
<td>-</td>
</tr>
<tr>
<td>Total current assets</td>
<td>652,467</td>
<td>10,477</td>
<td>26,898</td>
</tr>
<tr>
<td><strong>NONCURRENT ASSETS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulatory costs for future recovery</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Decommissioning</td>
<td>74,535</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Pension</td>
<td>373,180</td>
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<td>-</td>
</tr>
<tr>
<td>OPEB</td>
<td>305,492</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Bond Issues</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Derivative financial instruments</td>
<td>9,660</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Derivative financial instruments</td>
<td>6,411</td>
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<tr>
<td>Prepaid gas</td>
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<td>-</td>
</tr>
<tr>
<td>Prepaid power and capacity</td>
<td>778</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Energy efficiency loans - net</td>
<td>22,913</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Other</td>
<td>46,854</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>Total noncurrent assets</td>
<td>839,823</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>TOTAL ASSETS</td>
<td>$5,418,950</td>
<td>$47,186</td>
<td>$82,555</td>
</tr>
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</table>

**DEFERRED OUTFLOWS OF RESOURCES**

| Accumulated decrease in fair value of hedging derivatives | 90,496 | - | - | - | - | - | - | 90,496 | 80,215 |
| Deferred pension outflows | 100,397 | - | - | - | - | - | - | 100,397 | 96,007 |
| Deferred OPEB | 26,300 | - | - | - | - | - | - | 26,300 | 15,330 |
| Deferred ARO outflows | - | - | - | 1,928 | - | - | - | 1,928 | 2,105 |
| Unamortized bond losses | 16,334 | - | - | - | - | 2,164 | - | 18,498 | 22,650 |
| TOTAL DEFERRED OUTFLOWS OF RESOURCES | 233,527 | 1,928 | - | 2,164 | - | - | - | 237,619 | 216,307 |

**TOTAL ASSETS AND DEFERRED OUTFLOWS OF RESOURCES**

| $5,652,477 | $49,114 | $82,555 | $276,885 | $75,148 | $557,274 | $212,804 | $6,549,206 | $6,405,117 |

*Numbers may not add across due to elimination entries not shown on this sheet.*
## Liabilities and Net Assets

### SACRAMENTO MUNICIPAL UTILITY DISTRICT

**STATEMENTS OF NET POSITION**

January 31, 2020 and 2019  
(Thousands of dollars)

<table>
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<th></th>
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<th>SMUD</th>
<th>CVFA</th>
<th>SCA</th>
<th>SFA</th>
<th>SPA</th>
<th>NCEA</th>
<th>NCGA #1</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td><strong>Equity</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>** Liabilities**</td>
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</tr>
<tr>
<td><strong>Mandatory</strong></td>
<td></td>
<td></td>
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<tr>
<td>Long-term debt</td>
<td>3,273,836</td>
<td>2,070,935</td>
<td>-</td>
<td>-</td>
<td>$126,352</td>
<td>-</td>
<td>$561,399</td>
<td>181,935</td>
<td>2,940,621</td>
<td>2,636,221</td>
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<tr>
<td>Current liabilities</td>
<td>477,908</td>
<td>50,000</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>41,488</td>
<td>41,488</td>
<td>20,508</td>
<td>469,623</td>
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<tr>
<td>Noncurrent liabilities</td>
<td>724,993</td>
<td>76,863</td>
<td>8,529</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>23,614</td>
<td>23,614</td>
<td>76</td>
<td>733,598</td>
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<tr>
<td>Deferred inflows of resources</td>
<td>597,212</td>
<td>12,909</td>
<td>44,192</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>47,479</td>
<td>47,479</td>
<td>76</td>
<td>582,275</td>
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<tr>
<td><strong>Total liabilities, deferred inflows of resources and equity</strong></td>
<td>5,652,477</td>
<td>5,652,477</td>
<td>49,114</td>
<td>82,555</td>
<td>276,885</td>
<td>75,148</td>
<td>557,274</td>
<td>212,604</td>
<td>6,549,206</td>
<td>6,405,117</td>
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### Notes

- Numbers may not add across due to elimination entries not shown on this sheet.
RESOLUTION NO. ____________

BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

That this Board hereby approves Board member compensation for service rendered at the request of the Board (pursuant to Resolution 18-12-15) for the period of February 16, 2020, through March 15, 2020.
<table>
<thead>
<tr>
<th>TO</th>
<th>TO</th>
</tr>
</thead>
<tbody>
<tr>
<td>3. Nicole Howard</td>
<td>8.</td>
</tr>
<tr>
<td>4. Jennifer Davidson</td>
<td>9. Legal</td>
</tr>
<tr>
<td>5. Claire Rodgers</td>
<td>10. CEO &amp; General Manager</td>
</tr>
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</table>

**CONSENT CALENDAR**

<table>
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<tr>
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<th>Y</th>
<th>Yes</th>
<th>Budgeted</th>
<th>Y</th>
<th>Yes</th>
<th>No (If no, explain in Cost/Budgeted section)</th>
</tr>
</thead>
<tbody>
<tr>
<td>FROM (IPR)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Patrick Durham</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>DEPARTMENT</td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workforce Enterprise Services</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>MAIL STOP</td>
<td>H201</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EXT.</td>
<td>6327</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>DATE SENT</td>
<td>02/25/2020</td>
<td></td>
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</tbody>
</table>

**NARRATIVE:**

**Requested Action:** Accept the monitoring report for **Strategic Direction SD-6, Safety** and informational update on the impact of the coronavirus on SMUD operations and procedures.

**Summary:** Report on the status of Strategic Direction 6 (SD-6) Safety, for safety performance from July through December of 2019.

**Board Policy:** This report supports the SD-6 Core Value of Safety by providing a safety performance status.

**Benefits:** Provide the scheduled bi-annual monitoring report as requested by the Board of Directors and Executive Staff. The report provides an opportunity to make recommendations or policy revisions, as necessary.

**Cost/Budgeted:** None

**Alternatives:** Provide the Board monitoring report without a presentation.

**Affected Parties:** Board of Directors, Executive Staff

**Coordination:** Organization-wide

**Presenter:** Patrick Durham, Director of Environmental, Safety, and Real Estate Services

**Additional Links:**

**ITEM NO. (FOR LEGAL USE ONLY)**

SD-6, Safety Board Monitoring Report

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.
TO: Board of Directors  
FROM: Claire Rogers  
SUBJECT: Audit Report No. 28007202  
Board Monitoring Report; SD-6: Safety

Audit and Quality Services (AQS) reviewed the SD-6 Safety Q3–Q4 2019 Annual Board Monitoring Report and performed the following:

- Reviewed the information presented in the report to determine the possible existence of material misstatements;
- Interviewed report contributors and verified the methodology used to prepare the monitoring report; and
- Validated the reasonableness of a selection of the report's statements and assertions.

During the course of the review, nothing came to AQS' attention that would suggest the report did not fairly represent the source data available at the time of the review.

CC: Arlen Orchard
1) **Background**

Creating a safe environment for employees and the public is a core value of SMUD.

Through continuous improvement, SMUD will be recognized as a leader in employee safety while also ensuring the safety of the public related to SMUD operations and facilities. This includes a comprehensive approach to monitoring organizational and public safety performance.

Therefore, SMUD will continue to improve safety results to:

**Workplace Safety**

a) Reduce SMUD’s injury severity rate to 1.4 by 2020, as measured by OSHA’s Days Away Restricted Time (DART), a rate that demonstrates strong safety performance.

b) Provide timely, quality health care for injured employees that aids their recovery while maintaining positive financial performance of the workers’ compensation program.

**Public Safety**

a) Track and report public injuries related to SMUD operations or facilities.

b) Implement measures to protect the public from injuries related to SMUD operations or facilities.

2) **Executive Summary**

**SMUD is in compliance with the SD-6 direction and is in alignment with SMUD’s 5-year strategy of working toward a zero-incident culture.** In 2019, SMUD met its safety performance targets related to SD-6.

**Workplace Safety**

SMUD recorded 48 OSHA Recordables injuries in 2019. This is a 44% decrease from 2018 (85 OSHA Recordables). Of the 48 injuries, 24 (3 Lost Time & 21 Modified Duty injuries) resulted in a 1.1 DART rate for 2019. Forty-two percent of the DART cases resulted in soft tissue related injuries and 79% occurring in a field environment. This represents a continued decrease in injuries which is trending downward to meet our 2020 Target (See Appendix A).
Quality care of injured employees is measured through the Workers’ Compensation program’s performance, which is assessed annually by an independent actuary. SMUD continues to have a reduction in claims over the past three years, a reduction in injury frequency rates, and a reduction in indemnity benefits as presented below as of September 2019:

<table>
<thead>
<tr>
<th></th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. of Claims</td>
<td>168</td>
<td>150</td>
<td>118</td>
</tr>
<tr>
<td>Frequency rate per 100 employees</td>
<td>4.96</td>
<td>5.07</td>
<td>3.60</td>
</tr>
<tr>
<td>Reduction in indemnity benefits</td>
<td>29%</td>
<td>32%</td>
<td>21%</td>
</tr>
</tbody>
</table>

To better support the health and wellness of employees at work, Workers Compensation contracted with a new onsite medical services provider, Sacramento-OMC, to provide non-emergency on-site medical care for our employees who have suffered injuries or illness (caused by work) as well as employee/pre-employment related evaluations and testing. New services started in late September of 2019.

Public and Community Safety

SMUD tracks public and community incidents in the Safety Incident Tracking System (SITS) including car-pole collisions, electrical contact, dig-in incidents and injuries to the public that are related to SMUD’s operations or facilities.

From January through December of 2019, there were 252 incidents where the public hit SMUD equipment. Of those incidents, two resulted in fatalities and an additional two resulted in hospitalizations with no claims being filed at this time. Eight electrical contacts were reported resulting in seven minor shocks and one hospitalization. Forty-eight dig-ins were reported resulting in four injuries, all minor electrical shocks which occurred while hand digging.

3) Additional Supporting Information

The new SD-6 Safety Direction became effective August 21, 2014. Our goal is to achieve the desired performance objectives by year-end 2020. A discussion concerning how to maintain and continue to lower SMUD’s incident rates is presented in the Challenges section of this report. This report summarizes the performance for the second half of 2019.

Safety Leadership. In 2019, SMUD hired a new Safety Manager to support Executive Leadership’s 5-year plan that emphasized zero incidents and injuries and a focus on a zero-accident safety culture. SMUD’s Chief Executive Officer (CEO), Arlen Orchard, re-emphasized the need to improve safety at SMUD with a greater focus of developing a” Safety for Life” culture at SMUD, reducing ergonomic risk and soft tissue injuries, promoting public and contractor safety, and improving the analysis of injury and incident
trends. These goals will be outlined in the updated Safety Road Map in that is being finalized in early 2020.

**Safety Management System.** SMUD’s new Safety Manager is partnering with IT to develop a Request for Proposal (RFP) for a safety management system. During the past six months, five vendors have presented demonstrations of the technology offerings. Safety and IT are developing a RFP for posting in early 2020. In addition, the Safety team is working to evaluate core safety competencies that address roles and responsibilities, development of safety standards, training, change management, human performance engineering, field observations, job hazard analyses, contractor, and public safety improvements.

**Safety Standards Development.** During 2019, Safety initiated the development of several new standards and updated existing standards to assist in the improved safety of SMUD operations. These included Wildfire Smoke Hazards; Injury and Illness Prevention Program updates; Serious Injury and Illness Reporting; Silica; Lead; Lock-Out Tag-Out; and Special Motorized Equipment. As part of the standard development and review process, Safety developed a new tracking program to assist in the review and intake of standard comments from business units throughout SMUD.

**Supervisor-Employee Interactions.** Safety staff updated and strengthened its supervisor-employee interaction quality program. Improvements included data governance definitions for Supervisor-Employee Interactions, Safety Contacts, Field and Office visits. Emphasis is placed on field visits for work with the highest hazard potential. For office personnel, an emphasis is placed on observing personnel pertaining to ergonomic risk, and slip/trip/fall hazards in walking areas, etc. During 2019, a total of 16,536 Supervisor-Employee interactions were complete that resulted in a percentage observed of 158%.

**Near Miss Reporting.** Leadership continues to support and encourage near miss reporting. The process improvements that were initiated in SMUD’s Safety Incident Tracking System (SITS) provide a method to more effectively track and implement near miss reporting and public incident tracking. The goal of this process is to identify opportunities for learning before injuries and accidents occur. During 2019, SMUD reported and investigated 66 near misses through SITS.

**Community and Public Safety.** With electrical contacts being a prime area of concern, SMUD continues its customer and contractor education as a key incident prevention component. This year SMUD developed a new training program on Electrical Hazards. This training was tailored to educate the public on how to safely avoid interaction with SMUD infrastructure during car-pole collisions or other emergency situations.

In 2019, SMUD also held fourteen public safety outreach sessions that included outreach to emergency personnel, local contractors, local companies, and Sacramento community members. Training topics included electrical hazards training, and emergency preparedness training through tabletop scenarios. SMUD has also partnered with Pacific Gas and Electric (PG&E) and 8-1-1 to train local contractors on
dig-in prevention. Training for local companies and the greater Sacramento community focused on protecting and preparing them for emergency situations around the electrical system. One such event was the California Preparedness Day in August, where SMUD partnering with other local utilities and emergency responders to focus on preparing the Sacramento region for emergency situations.

**Contractor Safety.** A contractor safety pilot program, ISN, is an online contractor prequalification program that is used in the evaluation of our contractor’s safety record and program. The pilot is focused on SMUD contractors in Power Generation and Environmental Services that perform high risk work, such as high voltage work, working at heights, confined spaces, excavations, etc.

SMUD started the pilot using the 37 SMUD contractors and we have grown the number of SMUD contractors in the pilot to 53 contractors. We are continuing to network and perform benchmarking with the other utilities, who are using ISN as part of their contractor safety program to further enhance SMUD’s process. As part of the second phase of the pilot we have been validating our prequalification criteria and processes. The prequalification criteria focuses on Contractor Fatality History, OSHA Citation History, DART and Total Recordable Incident Rates (TRIR), Insurance Experience Ratio, Safety Culture Questions, and Safety Program Review during this period we are adjusting the weighting for some of these areas to put more emphasis on more critical safety items as a result raising the bar on safety performance of our contractors.

In addition, Safety is working with Procurement during the pilot and we have updated SMUD’s contract language as it relates to contractor safety requirements, developed a site safety evaluation and inspection process, and tested a contractor onboarding program.

**Safely Conducted Observations Reduce Common Hazards (SCORCH).** For 2019, SCORCH team members conducted 3,989 Office and Professional interactions whereas the SCORCH Field groups employee interactions were 1,272. These interactions resulted in the removal of 9 barriers to safety. SCORCH partnered with Safety and held nine Driver’s Rodeo events where employees participated in vehicle inspections, blind spot demonstrations, backing courses and scales and ergo station activities. SCORCH trained 88 new observers. SCORCH had hands on informational booths at the Bring Your Child to Work Day, SMUD’S Safety Day, SMUD Day, Wellness’ Summer Fitness Festival, and at the Safety in Action Conference.

In addition, Safety dedicated one of its existing positions as a SCORCH Coordinator. A new SCORCH Coordinator was hired to the team in Q4, 2019. The new coordinator is now working with different groups throughout SMUD to learn about opportunities to enhance and drive improve effectiveness of the program.
4) **Challenges**

**Incidents and Injuries.** Soft tissue injuries continue to decrease across SMUD. There is a continued focus on the implementation of quality Supervisor-Employee interactions and SMUD’s near miss and corrective action tracking processes to proactively identify and correct workplace hazards and remove safety barriers. In addition, During Q3 and Q4, Safety continued to initiate field ergonomic programs in the UARP that provide individualized physical assessments, guided instruction on self-care, and injury prevention for field employees. In addition, Safety re-established SMUD’s Field Ergonomics committee in working toward the expansion of activities to Grid Assets. Other efforts include work by Grid Assets Joint Labor Management Subcommittee (JLMSC) to improve the capture and review of incident corrective actions.

**Data Management.** Improving the quality, automation, and use of safety data is an ongoing challenge. Efforts are underway with SMUD’s IT staff to select a Safety Management System to automate the generation of data and so that Safety can trend recorded incidents using data analytics. In addition, Safety expanded its dashboard reporting and real-time DART, OSHA Recordable, and Preventable Vehicle Accident (PVA) reporting. The new SMS will also allow improved data management of employee suggestions, correction action closure rates, and tailboard status.

**Zero Accident Culture.** As presented in this report, SMUD continues to work toward a reduction in all incidents. To date, this reduction has been achieved by SMUD leadership and employees working together to build trust and create effective JLMSC Teams, SCORCH (behavior-based) Committees, Safety for Life efforts, and program development that imbeds safety into core and project work. The challenge for Safety and the organization are the efforts to continue working towards a zero-accident rate. In 2019, new efforts continue to focus on more leading safety indicators, which include greater emphasis on reductions of soft tissue injuries, revised safety standards, updated roles and responsibilities, root cause analysis of potentially serious incidents, contractor safety; and implementation of Serious Incident and Fatality reduction efforts.

5) **Recommendation**

SMUD is committed to becoming a recognized leader in safety. Both SMUD’s leadership team and employees recognize that to achieve success we must integrate safety into all that we do. It is recommended that the Board accept the Monitoring Report for SD-6.

6) **Appendices - Business Segment Safety Program Improvement Initiatives**

**Grid Assets (GA).** In July 2019, Grid Assets Leadership announced a focused approach of its Joint Labor Management Safety Committee, to encourage field staff input and participation. On August 21, 2019, Line Division held its first Monthly Joint Labor Management Safety Committee, with representatives from Field, Supervision, Union and Safety in attendance. This is in addition to the Quarterly Business Segment Joint Labor Management Safety Committee. In 2019, Grid Assets continued the
expanded corrective action review and held additional Foremen’s and Supervisor’s TapRooT® trainings in efforts to identify causal factors, root causes; and reduce workplace hazards and the potential for repeat incidents.

In addition, Safety continues to work with the SMUD Power Academy to review internal and external safety training programs. Staff is assisting in e-learning courses through the digitization of several training programs to support online and remote safety training in conjunction with onsite crew training.

**Energy Supply/Power Generation (ES).** The Upper American River Project (UARP) underwent a Voluntary Protection Program (VPP) certification in 2019 and was awarded VPP status in November 2019. This effort highlighted the UARP’s commitment to Safety and high-quality safety program that the Business Unit developed and implemented. The Gas Pipeline Operations (GPO) continued their preparation for a VPP audit to occur in 2020. In addition to the VPP application and inspection process, Safety continued to develop and advance the contractor safety program with improvements in contractor pre-qualification, onboarding, and inspection. Power generation continued their soft tissue injury reduction plan by continuing to have employees participate in the functional movement screening program. As an improved leading indicator Power generation observed an overall increase in the number of near-misses reported, investigated and corrected reducing the likelihood of an actual incident.

**Customer & Community Services (CCS).** The Customer Operations Leadership Team safety efforts have continued to emphasize leadership involvement, and employee engagement. Leadership has demonstrated visible involvement through written and verbal communications, as well as through regular supervisory inspections and observations to identify and reinforce the importance of smart set-up of workstations, as well as safe ergonomic behaviors. In addition, Safety worked with CCS and Security in developing new safety guidelines for customer service staff in managing an improved customer/employee emergency response program for the building. Safety will be working with CCS and Security on a SMUD-wide situational awareness program in 2020.

**Workforce Enterprise Services (WES).** Workforce Enterprise Services continued efforts to identify and update procedures, and/or work practices for areas of high-risk work. These efforts have been consistently applied through the fleet, warehouse, and facility operations. Other injury prevention efforts have included updating of ergonomic training to address methodologies for self-help for employees to maintain strength, mobility, and conditioning. In addition, the Environmental Services team is also participating in the beta testing of the contractor safety pre-qualification program.

**Driver Safety.** In 2019, Safety partnered with SCORCH hosted several Driving Rodeos in May, June, July, and August of this year. The objective of the rodeos is to reinforce safe SMITH driving principles and reduce SMUD’s Preventable Vehicle Accidents (PVAs). Safety Rodeo stations included vehicle inspection, blind spot demonstration, backing and parallel parking courses, as well as vehicle weight checks and a driver ergo station that included the inspection and/or replacement of vehicle fire extinguishers and
first aid kits. Additional SMITHS driver safety classes were conducted in the second half of 2019. In addition, Safety has developed a 3-year plan to improve the Driver Safety Program and PVA reduction. This program leverages the use of GPS data, driver ergonomics, training, driver safety data trending analysis and increased communication of safe driving behaviors.

**Safety for Life.** Safety Day was on May 4th at East Campus Operations Center (EC-OC). The day was filled with fun and educational booths all geared towards “Safety at Work, Home, and Play.” Impact Teen Driver participated in the event and showed a documentary about distracted driving and the impact it can have on all those involved. Participants learned about the electrical safety board and what to do in the event of a downed wire. There were also vendors such as United Healthcare, Sac Zoo, Safe Kids, Effie Yaw Nature Center, and Savvy Fit, just to name a few. Safety continues to promote Safety for Life and completed two Family Cardiac Pulmonary Resuscitation (CPR)/First Aid training session in February and November of 2019. In addition to the Family/CPR and First Aid training, Safety partnered with SCORCH and security to facilitate two self-defense courses in 2019.

**Safety Support.** SMUD Safety Services and Roebbelen Construction (RC) have been collaborating to improve their health and safety processes during the Headquarters’ rehabilitation process. As the construction project is finished up, SMUD Safety conducted a Polychlorinated biphenyls (PCBs) and Volatile Organic Compound air sampling, worked with Environmental Services in completing a PCB risk assessment, and is supporting and reviewing a PCB Close Out report that will be sent to the U.S. Environmental Protection Agency, and is conducting joint safety assessments with RC to ensure that work practices are being performed properly. In addition, Safety is developing an ergonomic checklist and pamphlet for employees returning to the Headquarters building.

**Wellness.** Employee health and wellness continues to be a priority for SMUD. We foster and promote wellness through a holistic approach that recognizes all areas of employee health and well-being including physical, financial, emotional, spiritual and social wellness. SMUD's Health Assessment Program (HAP) helps employees understand their health risk factors and is designed to improve their health, well-being and productivity. It also provides employees the opportunity to identify baseline health benchmarks and establish realistic wellness goals for ongoing health and vitality. We reward them for making healthy lifestyle choices and give them the tools to improve their overall well-being. Additionally, our expanded Functional Movement Screening program has provided our Wellness staff the ability to work directly with employees to address movement patterns that lead to soft tissue injuries and then develop individualized programs to help mitigate these muscular imbalances. The Wellness team is also increasing their partnership with the Occupational Health & Safety Department.
Appendix A

DART Count and OSHA Recordable 2004-2019
RESOLUTION NO. ______________

BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

This Board accepts the monitoring report for Strategic Direction SD-6, Safety, substantially in the form set forth in Attachment _____ hereto and made a part hereof.
## BOARD AGENDA ITEM

### STAFFING SUMMARY SHEET

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<thead>
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<th>TO</th>
<th>TO</th>
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<tbody>
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<td>1.</td>
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<td>2.</td>
<td>7.</td>
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<tr>
<td>3.</td>
<td>8.</td>
</tr>
<tr>
<td>4.</td>
<td>9. Legal</td>
</tr>
<tr>
<td>5.</td>
<td>10. CEO &amp; General Manager</td>
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<th>X</th>
<th>Yes</th>
<th>No If no, schedule a dry run presentation.</th>
<th>Budgeted</th>
<th>Yes</th>
<th>No (If no, explain in Cost/Budgeted section.)</th>
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<tr>
<td>FROM (IPR)</td>
<td></td>
<td></td>
<td>Laura Lewis</td>
<td>Office of the General Counsel</td>
<td>B308</td>
<td>6123</td>
</tr>
</tbody>
</table>

**NARRATIVE:**

**Requested Action:** Approve proposed revisions to Governance Process GP-6, Role of the Board President.

**Summary:** At the March 11, 2020, Policy Committee, the Board conducted a holistic policy review to include GP-6, Role of the Board President, facilitated by Board consultant, Eric Douglas. Changes were recommended to the existing policy. A redline copy of the proposed revision to GP-6, Role of the Board President is attached, as well as a “clean” copy.

**Board Policy:** (Number & Title) GP-1, Purpose of Board – Subsection a) Identify and define the purpose, values and vision of SMUD…and communicate them in the form of policy.; GP-6, Role of the Board President

**Benefits:** Enables Board Members to review the policy with the opportunity to make corrections, additions, or changes if necessary.

**Cost/Budgeted:** This item has no direct budgetary impact.

**Alternatives:** Maintain the existing policy.

**Affected Parties:** Board of Directors

**Coordination:** Board Office, Executive Office, Legal

**Presenter:** Eric Douglas, Leading Resources, Inc.

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**SUBJECT**

Revisions to GP-6, Role of the Board President

**ITEM NO. (FOR LEGAL USE ONLY)**

6

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.
SMUD BOARD POLICY

Title: ROLE OF THE BOARD PRESIDENT
Policy Number: GP-6

Category: Governance Process

Date of Adoption: December 19, 2002
Revision Date: October 16, 2003
Revision Date: June 3, 2004
Revision Date: January 12, 2006
Revision Date: December 21, 2006
Revision Date: January 20, 2011
Revision Date: February 20, 2014
Revision Date: March 19, 2020

Resolution No. 02-12-14
Resolution No. 03-10-14
Resolution No. 04-06-07
Resolution No. 06-01-04
Resolution No. 06-12-14
Resolution No. 11-01-08
Resolution No. 14-02-10
Resolution No. 20-03-XX

The President of the Board shall assure the integrity of the Board’s processes and assure Board representation to outside parties:

Specifically:

a) The President shall ensure that the Board behaves consistently within its own rules and policies, and those legitimately imposed on it from outside the organization.

b) The President shall preside over and facilitate Board meetings.

c) The President shall ensure that meeting discussion focuses on those issues which, according to Board policy, belong to the Board to decide.

d) The President shall ensure that deliberation is fair, open and thorough, but also timely, orderly and kept to the point.

e) The President shall appoint the chairs of standing committees.
f) The President shall schedule and coordinate the annual process of evaluating the General Manager.

g) The President shall ensure that the Board’s agendas meet the goals of the annual work plan.

h) The President shall ensure a process is in place for regularly evaluating the Board’s adherence to Board policies.

i) The President shall appoint one or more Board members to meet with the external auditor.

j) The President (or Vice President, as appropriate) shall approve expense reimbursement requests of other Board members.

k) The President shall assure a Board meeting procedures manual is adopted.

l) The President shall ensure the Board is effectively represented to outside stakeholders, organizations, and other groups.

m) The President has no authority to supervise or direct the General Manager, apart from authority expressly granted him or her by the Board.

n) The President may delegate his or her authority, but remains accountable for its use.

**Monitoring Method:** Board Report  
**Frequency:** Annual
SMUD BOARD POLICY

<table>
<thead>
<tr>
<th>Category: Governance Process</th>
<th>Title: ROLE OF THE BOARD PRESIDENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of Adoption: December 19, 2002</td>
<td>Policy Number: GP-6</td>
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<tr>
<td>Revision Date: October 16, 2003</td>
<td>Resolution No. 02-12-14</td>
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<td>Revision Date: June 3, 2004</td>
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</tr>
<tr>
<td>Revision Date: March 19, 2020</td>
<td>Resolution No. 20-03-XX</td>
</tr>
</tbody>
</table>

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**Monitoring Method:** Board Report  
**Frequency:** Annual
RESOLUTION NO. ________________

BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

This Board approves the revisions to the Governance Process GP-6,

Role of the Board President, substantially in the form as set forth in Attachment ____.
### Requested Action:
Approve proposed revisions to Governance Process GP-14, External Auditor Relationship.

### Summary:
At the March 11, 2020, Policy Committee, the Board conducted a holistic policy review to include GP-14, External Auditor Relationship, facilitated by Board consultant, Eric Douglas. Changes were recommended to the existing policy. A redline copy of the proposed revision to GP-14, External Auditor Relationship is attached, as well as a “clean” copy.

### Board Policy:
GP-1, Purpose of Board – Subsection a) Identify and define the purpose, values and vision of SMUD…and communicate them in the form of policy.; GP-14, External Auditor Relationship

### Benefits:
Enables Board Members to review the policy with the opportunity to make corrections, additions, or changes if necessary.

### Cost/Budgeted:
This item has no direct budgetary impact.

### Alternatives:
Maintain the existing policy.

### Affected Parties:
Board of Directors, Accounting

### Coordination:
Board Office, Executive Office, Legal, Accounting

### Presenter:
Eric Douglas, Leading Resources, Inc.

### Additional Links:

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**Items Submitted After Deadline Will Be Postponed Until Next Meeting.**
The Board is responsible for hiring SMUD’s external auditor to perform the annual independent audit.

Specifically:

a) The Board will make the choice of external auditor, based on input from staff and others it deems necessary to exercise prudent, independent judgment.

b) After consulting with Board members, the Board PresidentChair of the Finance and Audit Committee shall appoint one or more Board members each year to meet with the external auditor after the audit is complete. The meeting will be independent of staff. The Board member(s) will report their findings to the Board on a timely basis.

Monitoring Method: Board Report
Frequency: Annual
The Board is responsible for hiring SMUD’s external auditor to perform the annual independent audit.

Specifically:

a) The Board will make the choice of external auditor, based on input from staff and others it deems necessary to exercise prudent, independent judgment.

b) After consulting with Board members, the Chair of the Finance and Audit Committee shall meet with the external auditor after the audit is complete. The meeting will be independent of staff. The Board member(s) will report their findings to the Board on a timely basis.
RESOLUTION NO. _______________

BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

This Board approves the revisions to the Governance Process GP-14, 

External Auditor Relationship, substantially in the form as set forth in Attachment ____.
### Requested Action:
Authorize the Chief Executive Officer and General Manager to award contracts to The Original Mowbray’s Tree Service, Inc. (Mowbray’s Tree Service) and Wright Tree Service of the West, Inc. (Wright Tree Service) for Vegetation Management – Utility Line and Subject Pole Clearance Services for a three-year term starting March 23, 2020, with two optional one-year extensions for each contract, for a total not-to-exceed aggregate amount of $156,000,000.

### Summary:
Request for Proposal (RFP) No. 190197.JM was issued in November 2019 to solicit qualified firms to furnish all supervision, labor, materials, equipment, and incidentals necessary to perform right-of-way vegetation maintenance work on SMUD’s Transmission and Distribution Systems on a task order basis. A pre-proposal conference was held on November 20, 2019 of which six vendors attended. On December 18, 2019 four responsive proposals were received and evaluated in accordance with the advertised criteria. SMUD negotiated with all four responsive vendors resulting in the below recommended awards. Of the recommended awards to Mowbray’s Tree Service and Wright Tree Service, SMUD has achieved a total cost savings of 34% from Mowbray’s Tree Service. These negotiated unit prices include the provisions of Senate Bill No. 247 and have been determined to be fair and reasonable for all parties. SMUD intends on issuing two zero-dollar contracts to Mowbray’s Tree Service and Wright Tree Service with an aggregate amount of all tasks not-to-exceed $156,000,000 for the full five-years.

### Board Policy:
BL-8; Delegation to the Chief Executive Officer and General Manager with Respect to Procurement; This award supports SD-4 – Reliability.

### Recommendation:
Award to the Highest Evaluated Responsive Proposers

<table>
<thead>
<tr>
<th>Award to:</th>
</tr>
</thead>
<tbody>
<tr>
<td>WRIGHT TREE SERVICE OF THE WEST, INC.</td>
</tr>
<tr>
<td>5930 GRAND AVE.</td>
</tr>
<tr>
<td>WEST DES MOINES, IA 50266</td>
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<p>| Proposers Notified by Procurement: | 28 |
| Proposers Downloaded: | 14 |
| Pre-Proposal Conference Attendance: | 6 |
| Proposals Received: | 4 |</p>
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<th>P/F</th>
<th>10 Points SEED</th>
<th>35 Points Technical</th>
<th>55 Points Pricing</th>
<th>Total Score</th>
<th>Overall Rank</th>
<th>Proposal Amount</th>
<th>Evaluated Proposal Amount</th>
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<tr>
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<td>28.19</td>
<td>55.00</td>
<td>83.19</td>
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<td>NTE $156,000,000, Aggregate of all Task Authorizations</td>
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<tr>
<td>THE ORIGINAL MOWBRAY’S TREE SERVICE, INC.</td>
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<td>27.63</td>
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<td>MOUNTAIN F. ENTERPRISES, INC.</td>
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<td>DAVEY TREE SURGERY COMPANY</td>
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</tbody>
</table>

**Comments:** Type here

**Supplier Diversity Program:**

The two highest evaluated responsive proposers are non-SEED vendors and are self-performing this work.

- **Benefits:** Award will enable continued maintenance of vegetation around SMUD’s overhead energized conductors for purposes of safety and electric reliability for SMUD’s customers.
- **Cost/Budgeted:** $156,000,000; Budgeted through March 2025 by Grid Assets.
- **Alternatives:** Revise the scope of work and solicit new proposals.
- **Affected Parties:** Grid Assets, Supply Chain Services, and Contractor.
- **Coordination:** Grid Assets – Eric Brown, and Supply Chain Services.
- **Presenter:** Attila Miszti, Director, Line Assets

**Additional Links:**

**SUBJECT** Approve contract awards to The Original Mowbray’s Tree Service and Wright Tree Service of the West, Inc. for Vegetation Management – Utility Line and Subject Pole Clearance Services

**ITEM NO.** (FOR LEGAL USE ONLY) 8

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.
RESOLUTION NO. ________________

WHEREAS, in November 2019, SMUD issued Request for Proposal No. 190197.JM (RFP) to solicit qualified firms to furnish all supervision, labor, materials, equipment and incidentals necessary to perform right-of-way vegetation maintenance on SMUD’s Transmission and Distribution Systems on a task order basis; and

WHEREAS, four proposals submitted in response to the RFP were evaluated; NOW, THEREFORE,

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO MUNICIPAL UTILITY DISTRICT:

Section 1. As a result of such examination, The Original Mowbray’s Tree Service, Inc. and Wright Tree Service of the West, Inc. are hereby determined and declared to be the highest evaluated responsive proposers to provide Vegetation Management – Utility Line and Subject Pole Clearance Services.

Section 2. The Chief Executive Officer and General Manager, or his designee, is authorized, on behalf of SMUD, to award contracts to The Original Mowbray’s Tree Service, Inc. and Wright Tree Service of the West, Inc. for Vegetation Management – Utility Line and Subject Pole Clearance Services for a three-year term starting March 23, 2020, with two optional one-year extensions for each contract, for a total not-to-exceed aggregate amount of $156,000,000.
Section 3. The Chief Executive Officer and General Manager, or his designee, is authorized to make future changes to the terms and conditions of the contracts that, in his prudent judgment: (a) further the primary purpose of the contracts; (b) are intended to provide a net benefit to SMUD; and (c) do not exceed the authorized contract amounts and applicable contingencies.