

Board Energy Resources & Customer Services Committee Meeting and Special SMUD Board of Directors Meeting

Date: Wednesday, June 16, 2021

Time: Scheduled to begin at 5:30 p.m.

Location: Virtual Meeting (online)

Powering forward. Together.



AGENDA BOARD ENERGY RESOURCES & CUSTOMER SERVICES COMMITTEE MEETING AND SPECIAL SMUD BOARD OF DIRECTORS MEETING

Wednesday, June 16, 2021

Scheduled to begin at 5:30 p.m.

**Zoom Webinar Link: [Join SMUD Energy Resources & Customer Services
Committee Meeting Here](#)**

Webinar ID: 161 630 5415

Password: 014363

Phone Dial-in Number: 1-669-254-5252

In accordance with the Governor's Executive Order N-29-20 and the Emergency Board Meeting Procedures adopted by the SMUD Board of Directors, the regular Board meeting and other public meetings are closed to the public to align with state, local, and federal guidelines and social distancing recommendations for the containment of the coronavirus.

Live video streams and indexed archives of meetings are available at:

http://smud.granicus.com/ViewPublisher.php?view_id=16

Members of the public may register to provide verbal comments at an upcoming Board or Committee meeting by emailing a request to speak to PublicComment@smud.org. Please include the date of the meeting, name, and topic or agenda item the requestor wishes to speak on. The request may also be submitted while the meeting is in progress during the standard time for the agenda item or topic. **Pre-registration is strongly encouraged by no later than 3:00 p.m. on the day of the meeting.**

Members of the public may provide written public comments on a specific agenda item or on items not on the agenda (general public comment) by submitting comments via e-mail. Comments may be submitted to PublicComment@smud.org and will be placed into the record of the meeting.

Members of the public that are listening to or watching the live stream of a Committee meeting and wish to submit written comments on a specific agenda item as it is being heard may submit their comments, limited to 250 words or less, to PublicComment@smud.org, noting the agenda item number in the subject line. The Committee Chair may read comments for items on the agenda into the record, in his discretion, based upon such factors as the length of the agenda or the number of e-mail comments received. General public comment for items not on the agenda will not be read into the record but will be provided to the Board and placed into the record of the Board meeting if it is received within two hours after the meeting ends.

This Committee meeting is noticed as a joint meeting with the Board of Directors for the purpose of compliance with the Brown Act. In order to preserve the function of the Committee as advisory to the Board, members of the Board may attend and participate in the discussions, but no Board action will be taken. The Energy Resources and Customer Services Committee will review, discuss and provide the Committee's recommendation on the following:

INFORMATIONAL ITEMS

1. Nicholas Tumilowicz
PRINCIPAL MANAGER,
ELECTRIC POWER RESEARCH
INSTITUTE (EPRI)
- a. Provide the Board an overview of **Virtual Power Plants (VPP)** and application within the industry.

Ajit Renjit
SMART GRID SYSTEMS
ENGINEER, ELECTRIC POWER
RESEARCH INSTITUTE (EPRI)

- Rachel Huang
- b. Brief the Board on SMUD's **VPP** pilot.

Presentation: 30 minutes

Discussion: 30 minutes

DISCUSSION ITEMS

2. Patrick Durham
Certify that the **Station H Substation Project (Project) Final Environmental Impact Report (FEIR)** complies with the **California Environmental Quality Act (CEQA)**; adopt the **Mitigation Monitoring and Reporting Plan** for the **Project**; adopt the **California Environmental Quality Act Findings and Statement of Overriding Considerations in Connection with Station H Substation Project**; and approve the **Project**.
Presentation: 10 minutes
Discussion: 10 minutes
3. Mike Roberts
Authorize the Chief Executive Officer and General Manager to negotiate and execute the **Sacramento Valley Energy Center LLC (SVEC) Power Purchase Agreement** for a 27-year term, with one optional three-year extension for a total of 30 years, and all other agreements necessary to facilitate the **SVEC** project for 200 MW of solar photovoltaic power (Solar PV) and 100 MW of battery storage.
Presentation: 10 minutes
Discussion: 10 minutes

INFORMATIONAL ITEMS (cont.)

4. Public Comment

5. Brandon Rose Summary of Committee Direction.
Discussion: 1 minute

Pursuant to Resolution No. 20-06-08 adopted on June 18, 2020, Emergency Board Meeting Procedures are in effect:

Members of the public may make either a general public comment or comment on a specific agenda item by submitting comments via email. Comments may be submitted to PublicComment@smud.org. Comments will be provided to the Board and placed into the record of the Committee meeting if it is received within two hours after the meeting ends.

Members of the public that are listening or watching the live stream of a Board meeting and wish to comment on a specific agenda item as it is being heard, may submit their comments, limited to 250 words or less, to PublicComment@smud.org. The Board Chair may read the comments into the record, in his discretion, based upon such factors as the length of the agenda or the number of email comments received. Comments will be provided to the Board and placed into the record of the Committee meeting if it is received within two hours after the meeting ends.

*Members of the public may register to provide verbal comments at an upcoming Board or Committee meeting by emailing a request to speak to PublicComment@smud.org. Please include the date of the meeting, name, and topic or agenda item the requestor wishes to speak on. The request may also be submitted while the meeting is in progress during the standard time for the agenda item or topic. **Pre-registration is strongly encouraged by no later than 3:00 p.m. on the day of the meeting.***

ADA Accessibility Procedures: Upon request, SMUD will generally provide appropriate aids and services leading to effective communication for qualified persons with disabilities so that they can participate equally in this virtual meeting. If you need a reasonable auxiliary aid or service for effective communication to participate, please email Toni.Stelling@smud.org, or contact by phone at (916) 732-7143, no later than 48 hours before this virtual meeting.

SSS No.

ESR&D 21-023

BOARD AGENDA ITEM

STAFFING SUMMARY SHEET

Committee Meeting & Date

ERCS – 06/16/21

Board Meeting Date

N/A

TO					TO								
1.	Obadiah Bartholomy				6.								
2.	Rachel Huang				7.								
3.	Scott Martin				8.								
4.	Stephen Clemons				9.	Legal							
5.	Frankie McDermott				10.	CEO & General Manager							
Consent Calendar		<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> No	<i>If no, schedule a dry run presentation.</i>				Budgeted	<input checked="" type="checkbox"/>	Yes	No <i>(If no, explain in Cost/Budgeted section.)</i>	
FROM (IPR) James Frasher					DEPARTMENT Enterprise Strategy					MAIL STOP		EXT. 6082	DATE SENT 6/4/2021
NARRATIVE:													
<p>Requested Action:</p> <ul style="list-style-type: none"> a. Provide the Board an overview of Virtual Power Plants (VPP) and application within the industry. b. Brief the Board on SMUD's VPP pilot. <p>Summary: Rachel Huang along with two presenters from Electric Power Research Institute (EPRI) will be providing material to educate the Board on SMUD's efforts to pilot Virtual Power Plant (VPP) and the overall state of the VPP industry. Each presenter will be speaking for approximately 10 minutes. During that time, Rachel will provide an overview of SMUD's past VPP development efforts and a forward-looking summary of the current VPP pilots under development. Presenters from EPRI will address the current state of VPP technologies, provide example case studies, provide an overview of utility-customer partnership programs and a summary of the current vendor landscape. The intent of these presentations is to educate the audience on the complexities, opportunities and risks that come with the development of VPP solutions as well as providing insight into SMUD's efforts to enable these benefits.</p> <p>Board Policy: Strategic Direction SD-10, Innovation <i>(Number & Title)</i></p> <p>Benefits: VPPs have the potential to provide alternatives to conventional gas fired power plants and are likely to be a key component to achieving the 2030 Zero Carbon Plan. Customers are already investing in technology that can support the grid and the zero-carbon transition. VPPs are an advanced tool that can align the operation of those technologies with the needs of the grid.</p> <p>Cost/Budgeted: N/A</p> <p>Alternatives: VPPs are just one component being considered as part of the overall 2030 Zero Carbon Plan. This technology is being evaluated alongside other opportunities such as clean fuels, new renewables, and other new technologies.</p> <p>Affected Parties: N/A</p> <p>Coordination: Development and implementation of VPP solutions requires enterprise-wide coordination.</p> <p>Presenter: Rachel Huang, Dir. Customer & Grid Strategy Nicholas Tumilowicz, Electric Power Research Institute Ajit Renjit, Electric Power Research Institute</p>													

Additional Links:
<https://www.epri.com/>

SUBJECT

Virtual Power Plant (VPP) Efforts and Industry Overview

ITEM NO. (FOR LEGAL USE ONLY)

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

SSS No. ES 21-006

BOARD AGENDA ITEM

STAFFING SUMMARY SHEET

Committee Meeting & Date

ERCS June 16, 2021

Board Meeting Date

June 17, 2021

TO		TO	
1.	Emily Bacchini	6.	Frankie McDermott
2.	Patrick Durham	7.	
3.	Mike Deis	8.	
4.	Gary King	9.	Legal
5.	Stephen Clemons	10.	CEO & General Manager

Consent Calendar	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No <i>If no, schedule a dry run presentation.</i>	Budgeted	<input checked="" type="checkbox"/>	Yes	No <i>(If no, explain in Cost/Budgeted section.)</i>
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FROM (IPR) Rob Ferrera	DEPARTMENT Environmental Services	MAIL STOP B209	EXT. 6676	DATE SENT 5/28/2021
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NARRATIVE:

Requested Action: 1) Certify that the Station H Substation Project (Project) Final Environmental Impact Report (FEIR) complies with the California Environmental Quality Act (CEQA), 2) adopt the Mitigation Monitoring and Reporting Plan for the Project, 3) adopt the California Environmental Quality Act Findings and Statement of Overriding Considerations in Connection with Station H Substation Project, and 4) approve the Project.

Summary: SMUD proposes to construct a new substation, Station H, in the current location of the Station A substation yard. Located at the corner of H and 6th Streets in the City of Sacramento, SMUD's Station A electrical substation is nearing the end of its service life and is being replaced by the new Station G electrical substation (currently under construction) on an adjacent property. Upon completion of Station G, SMUD is proposing to decommission Station A and remove all electrical substation related equipment from within the historical Old Folsom Powerhouse Sacramento Station A building (historic Station A building) and the outdoor substation yard. Following the removal of all Station A equipment, SMUD would construct a new electrical substation (Station H) at the same location of the outdoor substation along the north side of H Street between 6th Street and 7th Street in downtown Sacramento.

The proposed project is anticipated to begin in 2022 and complete in 2024.

As required by CEQA, a Notice of Preparation was made available for public review November 4, 2020, to December 8, 2020. A public meeting was hosted at SMUD on November 16, 2020. The draft EIR was subsequently prepared and issued on March 17, 2021. Staff consulted extensively with Native American Tribes. Public comments were received during a 45-day review period ending April 30, 2021. A public meeting was again hosted by SMUD on April 8, 2021. During the CEQA process, Tribal consultation was completed successfully, and letters were sent to over 500 members of the public and agencies. Four comments were received from local agencies during the comment period. These have been addressed in the final EIR. There was one attendee from the public at the first public meeting and one member from the public who attended the second public meeting.

Responses to comments and issues raised during the comment period were addressed in the final EIR which was made available to commenters June 7, 2021, for a 10-day review period. The ERCS Committee and SMUD Board of Directors meetings were noticed by direct mail to agencies and the public.

The EIR identifies potentially significant and unavoidable impacts to Tribal cultural resources that may result from construction and operation of the project. This will require that the Board make a statement of overriding considerations when certifying the EIR and approving the project. All other categories of impacts (e.g., aesthetics and visual resources, air quality, cultural, biological, geology, climate change, hazards, hydrology, noise, utilities, wildfire) will either experience no impacts or can be mitigated to less-than-significant levels with the implementation of the Mitigation Monitoring Reporting Plan.

Board Policy: (Number & Title) The proposed project supports the following Board adopted policies: SD-4, System Reliability; SD-7, Environmental Leadership. The project supports Policy SD-4 by ensuring electrical service can be delivered while eliminating projected overloads of Station D and E, and allowing for service of additional growth in the downtown area and to keep the electric system in good repair, and to make the necessary upgrades, maintaining load serving capability, and to meet regulatory standards. The project supports Policy SD-7 by ensuring SMUD compliance with CEQA.

Benefits: SMUD owns the land so no purchase is required; Transmission assets are already onsite, no new 115kV line extensions are necessary; Proximity to major load center; Centralized location, able to provide contingency capabilities to Station D and Station E.

Cost/Budgeted: \$40,791,597.00

Alternatives: Alternative A, No project, assumes no new substation equipment would be installed and that the existing would continue to be used until it is no longer considered viable, and then likely decommissioned and removed (this would leave a lack in load serving capability for the downtown area); Alternative B, Site Reorientation, which assumes the project would be reoriented to maximize the distance between the known Tribal cultural resources to the south and on-site ground disturbance (this would increase impacts to offsite Tribal cultural resources and substantially increase costs); and Alternative C, Off-Site, which assumes that a new substation would be constructed in an area generally north of Station G (this would increase impacts to offsite Tribal cultural resources and substantially increase costs).

Affected Parties: United Auburn Indian Community, Shingle Springs Band of Miwok Indians, Ione Band of Miwok Indians, Wilton Rancheria, City of Sacramento, Railyard Development team and the public

Coordination: Grid Assets: Substations, Grid Strategy & Operations; Distribution Operations, Grid Planning; Regional & Local Government; Community Engagement; Marketing & Corporate Communications; Sustainable Communities; Environmental Services; Customer Operations; The City of Sacramento; United Auburn Indian Community, Shingle Springs Band of Miwok Indians, Ione Band of Miwok Indians, Wilton Rancheria, American River College Native American Resource Center

Presenter: Pat Durham, Director of Environmental & Real Estate Services

Additional Links:

SUBJECT

Station H Substation Project (CEQA)

ITEM NO. (FOR LEGAL USE ONLY)

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

Sacramento Municipal Utility District Station H Substation Project

Final Environmental Impact Report • June 2021
State Clearinghouse #2020110057

Powering forward. Together.



Sacramento Municipal Utility District

Station H Substation Project

Final Environmental Impact Report

State Clearinghouse #2020110057

June 2021

Lead Agency:

Sacramento Municipal Utility District
6201 S Street, MS B209
Sacramento, CA 95817-1899

or

P.O. Box 15830 MS B209
Sacramento, CA 95852-1830
Attn: Rob Ferrera
(916) 732-6676 or rob.ferrera@smud.org

Prepared by:

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Cori.Resha@ascentenvironmental.com

Table of Contents

Chapter/Section	Page
1 INTRODUCTION	1-1
1.1 Public Review and Response to Comments	1-1
1.2 Organization of the Responses to Comments	1-2
1.3 Comments that Require Responses	1-2
1.4 Project Decision Process	1-2
1.5 Project Updates	1-3
2 COMMENTS AND RESPONSES TO COMMENTS.....	2-1
2.1 Commenters on the Draft EIR.....	2-1
2.2 Comments and Responses on the Draft EIR	2-1
3 MITIGATION MONITORING AND REPORTING PROGRAM	3-1
3.1 Mitigation Implementation and Monitoring	3-1
3.2 Mitigation Enforcement	3-2
3.3 Reporting	3-2
3.4 Regulatory Considerations.....	3-2
3.5 Mitigation Monitoring and Reporting Program Table.....	3-3
4 REFERENCES	4-1
5 LIST OF PREPARERS.....	5-1

Tables

Table 2-1	List of Commenters	2-1
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Acronyms and Abbreviations

AB	Assembly Bill
ADL	aerially deposited lead
Basin Plan	Fifth Edition of the Water Quality Control Plan
BMP	best management practices
CCR	California Code of Regulations
Central Valley Water Board	Central Valley Regional Water Quality Control Board
City	City of Sacramento's
CSS	combined sewer system
Draft EIR	draft environmental impact report
DTSC	Department of Toxic Substances Control
Final EIR	final environmental impact report
IS	Initial Study
MMRP	Mitigation Monitoring and Reporting Program
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
project	Station H Substation Project
SMUD	Sacramento Municipal Utility District
SQIP	Stormwater Quality Improvement Plan
the Board	Board of Directors
USACE	United States Army Corps of Engineers
WDR	Waste Discharge Requirement

1 Introduction

On March 17, 2021, the Sacramento Municipal Utility District (SMUD) released for public review the draft environmental impact report (Draft EIR) for the proposed Station H Substation Project (project). The EIR describes the existing conditions of the project site (the existing Station A Substation), analyzes the potential environmental impacts of the project, and identifies mitigation measures where necessary and available to avoid or reduce the magnitude of potentially significant impacts of the project. As part of the project, SMUD would decommission and remove outdated Station A equipment that is currently present at the project site and replace the existing equipment within the outdoor area between the historic Station A building and the Mercy Housing Community to the east with new outdoor substation equipment.

1.1 Public Review and Response to Comments

In accordance with Sections 15087 and 15105 of the State CEQA Guidelines, the Draft EIR was circulated for public review and comment to lead and responsible agencies, as well as members of the public, for 45 days (March 17, 2021 through April 30, 2021). SMUD also held a public meeting on April 8, 2021 to receive comments on the Draft EIR. Written comment letters received on the Draft EIR are provided in their entirety in Chapter 2, “Comments and Responses to Comments.”

Responses to each of the comments received are provided in this document as part of the final environmental impact report (Final EIR). None of the comments require changes to the text of the Draft EIR. Therefore, there are no changes that constitute “significant new information,” which would require recirculation of the Draft EIR. Significant new information is defined in Section 15088.5(a) of the State CEQA Guidelines as follows:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it.
- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

None of these circumstances have arisen from comments on the Draft EIR; therefore, recirculation is not required.

The Draft EIR, Final EIR, and associated appendices are available for review online at: <https://www.smud.org/stationh>

and at the following locations:

Sacramento Municipal Utility District
Customer Service Center
6301 S Street
Sacramento, CA 95817

Sacramento Municipal Utility District
East Campus Operations Center
4401 Bradshaw Road
Sacramento, CA 95827

As required by State CEQA Guidelines Section 15088(b), SMUD has provided a printed or electronic copy (through the SMUD's website; see prior discussion) to each public agency that submitted written comments on the Draft EIR with written responses to that public agency's comments at least 10 days prior to consideration of the Final EIR for certification.

1.2 Organization of the Responses to Comments

Chapter 2 of the Final EIR consists of the written comments received on the Draft EIR, and presents responses to environmental issues raised in the comments (as required by State CEQA Guidelines Section 15132). The focus of the responses to comments is on the disposition of significant environmental issues that are raised in the comments, as required by Section 15088(c) of the State CEQA Guidelines.

Each comment letter has been reproduced with individual comments bracketed and numbered. Responses to the comments follow each letter. For example, the response to the second comment of the first letter would be indicated as Response to Comment 1-2.

1.3 Comments that Require Responses

Section 15088(c) of the State CEQA Guidelines specifies that the focus of the responses to comments shall be on the disposition of significant environmental issues. Responses are not required on comments regarding the merits of the project or on issues not related to the project's environmental impacts. Comments on the merits of the proposed project or other comments that do not raise environmental issues will be reviewed by SMUD's Board of Directors (the Board) before an action is taken on the project. The responses address environmental issues and indicate where issues raised are not environmental or address the merits of the projects. In the latter instance, no further response is provided.

1.4 Project Decision Process

This document and the Draft EIR together constitute the Final EIR, which will be considered by the Board before a decision on whether to approve the project. If the Board decides to approve the project, it must first certify that the Final EIR was completed in compliance with CEQA's requirements, was reviewed and considered by the Board, and reflects the Board's independent judgment and analysis, as required by State CEQA

Guidelines Section 15090. The Board would then be required to adopt findings of fact on the disposition of each significant environmental impact, as required by State CEQA Guidelines Section 15091. If significant and unavoidable impacts (those that cannot be mitigated to a less-than-significant level) would result from the project and the Board chooses to approve the project, the Board would need to adopt a statement of overriding considerations, pursuant to State CEQA Guidelines Section 15093, explaining the overriding factors that the Board deems allow the project to move forward. In the case of the proposed Station H Substation Project, there would be significant and unavoidable impacts related to Tribal cultural resources. A Mitigation Monitoring and Reporting Program, which is required by CEQA Guidelines Section 15091(d), has been included as part of Chapter 3 of this Final EIR.

1.5 Project Updates

As discussed in Section 1.1, “Public Review and Response to Comments,” above, CEQA requires recirculation of an EIR when the lead agency adds “significant new information” to an EIR, regarding changes to the project description or the environmental setting, after public notice is given of the availability of a draft EIR for public review under State CEQA Guidelines, California Code of Regulations (CCR) Section 15087, but before EIR certification (State CEQA Guidelines CCR Section 15088.5[a]). Recirculation is not required unless the EIR is changed in a way that would deprive the public of the opportunity to comment on significant new information, including a new significant impact in which no feasible mitigation is available to fully mitigate the impact (thus resulting in a significant and unavoidable impact), a substantial increase in the severity of a disclosed environmental impact, or development of a new feasible alternative or mitigation measures that would clearly lessen environmental impacts but that the project proponent declines to adopt (State CEQA Guidelines CCR Section 15088.5[a]). Recirculation is not required when the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR (State CEQA Guidelines CCR Section 15088.5[b]).

Since release of the Draft EIR, SMUD has continued to coordinate with the Native American Tribes under AB 52. At this time, SMUD and the Tribes have agreed that AB 52 consultation has been completed, though SMUD will continue to coordinate with the Tribes regarding implementation of the mitigation measures as discussed below.

1.5.1 Tribal Consultation Update

Assembly Bill (AB) 52 requires that lead agencies undertaking CEQA consult with California Native American Tribes upon the Tribes’ written request and evaluate in the EIR the potential for projects to affect Tribal cultural resources. Section 3.1, “Tribal Cultural Resources,” of the Draft EIR describes the consultation that has occurred between the tribes and SMUD pursuant to AB 52. In particular, the Draft EIR (refer to pages 3.1-8 and 3.1-9) summarizes the consultation process that occurred prior to release of the Draft EIR for public review. During the Draft EIR public review period, SMUD continued to coordinate with the Tribes, including submitting a draft of the

treatment plan required by Mitigation Measure 3.1-1a (found on page 3.1-13 of the Draft EIR) for Tribes to review. Additionally, SMUD and the Tribes have continued discussions regarding the implementation of Mitigation Measures 3.1-1b and 3.1-1c (found on pages 3.1-13 and 3.1-14 of the Draft EIR).

Based on these further communications, Tribal consultation under AB 52 has been completed. This project update does not constitute significant new information that would require recirculation of the document because no new significant or substantially more severe environmental impacts that cannot be mitigated to a less-than-significant level through mitigation already included in the Draft EIR have been identified.

2 Comments and Responses to Comments

This chapter contains the comment letters received during the public review period for the Draft EIR, which concluded on April 30, 2021. In conformance with Section 15088(a) of the State CEQA Guidelines, written responses were prepared addressing comments on environmental issues received from reviewers of the Draft EIR.

2.1 Commenters on the Draft EIR

Table 2-1 below indicates the alpha-numerical designation for the comment letters received, the author of the comment letter, and the date of the comment letter. Comment letters have been numbered in the order they were received by SMUD.

Table 2-1 List of Commenters

Letter Number	Commenter	Date
<i>State</i>		
S1	California Department of Toxic Substances Control Gavin McCreary, Project Manager, Site Evaluation and Remediation Unit	March 19, 2021
S2	Central Valley Regional Water Quality Control Board Angela Nguyen-Tan, Environmental Scientist	April 23, 2021
<i>Local</i>		
L1	Sacramento Fire Department King Tunson, Program Specialist, Fire Planning Entitlements/Administration	March 18, 2021
L2	Sacramento Metropolitan Air Quality Management District Rachel DuBose, Air Quality Planner/Analyst	April 29, 2021

2.2 Comments and Responses on the Draft EIR

The written comments received on the Draft EIR and the responses to those comments are provided in this section of the Final EIR. The comment letters received are reproduced in their entirety and followed by the response(s) to the letter. Each comment within the letters is indicated by a line bracket and an identifying number in the margin of the comment letter. The responses that follow the letter are numbered, corresponding to the comment number in the bracketed letter.

All comments and provided herein are included within the record for consideration by the SMUD Board of Directors (the Board) as part of the Station H Substation Project.

State



Jared Blumenfeld
Secretary for
Environmental Protection



Department of Toxic Substances Control

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200



Gavin Newsom
Governor

Letter
S1

March 19, 2021

Mr. Rob Ferrera
Sacramento Municipal Utility District
6201 S Street
Sacramento, CA 95817
Rob.Ferrera@smud.org

DRAFT ENVIRONMENTAL IMPACT REPORT FOR STATION H SUBSTATION
PROJECT – DATED MARCH 2021 (STATE CLEARINGHOUSE NUMBER:
2020110057)

Mr. Ferrera:

The Department of Toxic Substances Control (DTSC) received a Draft Environmental Impact Report (EIR) for Station H Substation Project (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, work in close proximity to mining or suspected mining or former mining activities, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

S1-1

DTSC recommends that the following issues be evaluated in the EIR Hazards and Hazardous Materials section:

1. The EIR should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The EIR should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.
2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in

S1-2

S1-3

Mr. Rob Ferrera
March 19, 2021
Page 2

and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the EIR.	S1-3 cont.
3. If any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities, proper investigation for mine waste should be discussed in the EIR. DTSC recommends that any project sites with current and/or former mining operations onsite or in the project site area should be evaluated for mine waste according to DTSC's 1998 Abandoned Mine Land Mines Preliminary Assessment Handbook (https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/11/aml_handbook.pdf).	S1-4
4. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 <i>Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers</i> (https://dtsc.ca.gov/wpcontent/uploads/sites/31/2018/09/Guidance_Lead Contamination_050118.pdf).	S1-5
5. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to DTSC's 2001 <i>Information Advisory Clean Imported Fill Material</i> (https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/SMP_FS_Cleanfill-Schools.pdf).	S1-6
6. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the EIR. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 <i>Interim Guidance for Sampling Agricultural Properties (Third Revision)</i> (https://dtsc.ca.gov/wp-content/uploads/sites/31/2018/09/Ag-Guidance-Rev-3-August-7-2008-2.pdf).	S1-7
DTSC appreciates the opportunity to comment on the EIR. Should you need any assistance with an environmental investigation, please submit a request for Lead Agency Oversight Application, which can be found at: https://dtsc.ca.gov/wp-	S1-8

Mr. Rob Ferrera
March 19, 2021
Page 3

[content/uploads/sites/31/2018/09/VCP_App-1460.doc](#). Additional information regarding voluntary agreements with DTSC can be found at: <https://dtsc.ca.gov/brownfields/>.

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

S1-8
cont.

Sincerely,



Gavin McCreary
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov

<i>Letter S1 Response</i>	<i>California Department of Toxic Substances Control Gavin McCreary, Project Manager March 19, 2021</i>
S1-1	The comment introduces the Department of Toxic Substances Control's (DTSC's) jurisdiction over certain activities that may be part of the project. The comment is introductory in nature and does not address the content, analysis, or conclusions in the Draft EIR. No further response is required.
S1-2	<p>The comment states that the EIR should acknowledge the potential for historic or future activities on or near the project site to result in the release of hazardous wastes/substances on the project site.</p> <p>As discussed on pages 3-9 and 3-10 of the Draft EIR, small quantities of hazardous materials such as fuels and lubricants would be used during project construction and the project would be required to comply with existing laws and regulations regarding the transportation, use, and disposal of hazardous materials. Also, SMUD would conduct testing of soils to be removed from the project site and ongoing groundwater testing (performed by others) would continue to take place in the South Plume Groundwater Study Area. Finally, the project is not located on an active site included on a list of hazardous materials sites. For these reasons, the project would not result in significant impacts related to hazards and hazardous materials, and this issue is not discussed further in the Draft EIR.</p>
S1-3	The comment states that soils could be contaminated with aerially deposited lead (ADL), and DTSC recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project. As discussed in Response to Comment S1-2, SMUD would conduct testing of soils prior to their removal from the project site. Should any contamination be identified during on-site testing, SMUD would follow all applicable regulations regarding transportation and disposal of the contaminated soil.
S1-4	The comment states that proper investigation for mine waste should be discussed if any sites within the project area or sites located within the vicinity of the project have been used or are suspected of having been used for mining activities. As discussed on page 65 of the Initial Study (IS) prepared for the project and included as Appendix B of the Draft EIR, the soils underneath the project site are classified as MRZ-1, which indicates no significant mineral deposits are located beneath ground surface at the project site. Also, based on the known history of the site as an electrical substation and previous Native American and Chinese use of the site, it is not likely that the project site has been used for mining activities.

- S1-5 The comment states that surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. The comment further states that removal, demolition, and disposal of any of these chemicals should be conducted in compliance with California environmental regulations and policies.
- As discussed in Chapter 3, "Project Description," of the Draft EIR, the project would include the removal of existing equipment but would not include demolition of on-site structures that may contain the materials listed by the commenter. Also, SMUD will evaluate soil samples during project construction to determine whether there is any soil contamination. As discussed on pages 56 and 57 of the IS (Appendix B of the Draft EIR), should any hazardous materials or conditions be discovered during project construction activities, the project would comply with existing laws and regulations related to the use, disposal, and transport of hazardous materials.
- S1-6 The comment states that sampling should be conducted on imported soil to ensure that it is free from contamination. As stated on page 2-7 of the Draft EIR, SMUD anticipates excavation and removal of existing soil and import either backfill soil or virgin aggregate base to re-establish grade within the site, though removal and import volumes are not yet known. SMUD will adhere to all applicable regulatory guidance regarding imported soil, including DTSC's 2001 *Information Advisory Clean Imported Fill Material* (DTSC 2001).
- S1-7 The comment states that proper investigation for organochlorinated pesticides should be discussed if any sites included as part of the proposed project have been used for agricultural, weed abatement, or related activities. As discussed in Chapter 3, "Project Description," of the Draft EIR, the project site is in a highly developed area of downtown Sacramento and has been the site of outdoor electrical facilities for approximately 70 years. Thus, it is unlikely that the project site was ever used for agricultural activities that could have involved modern organochlorinated pesticides, and no further investigation is needed.
- S1-8 The comment provides contact information should SMUD require additional information or assistance from DTSC. As the comment does not address the content, analysis, or conclusions in the Draft EIR, no further response is required.

**Letter
S2**

Central Valley Regional Water Quality Control Board

23 April 2021

Rob Ferrera
Sacramento Municipal Utility District
6201 S Street
Sacramento, CA 95817
rob.ferrera@smud.org

**COMMENTS TO REQUEST FOR REVIEW FOR THE DRAFT ENVIRONMENTAL
IMPACT REPORT, STATION H SUBSTATION PROJECT, SCH#2020110057,
SACRAMENTO COUNTY**

Pursuant to the State Clearinghouse's 17 March 2021 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Draft Environmental Impact Report* for the Station H Substation Project, located in Sacramento County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

I. Regulatory Setting**Basin Plan**

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of

KARL E. LONGLEY ScD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

11020 Sun Center Drive #200, Rancho Cordova, CA 95670 | www.waterboards.ca.gov/centralvalley

S2-1

S2-2

Station H Substation Project
Sacramento County

- 2 -

23 April 2021

Administrative Law (OAL) and in some cases, the United States Environmental Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website:
http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

S2-2
cont.**Antidegradation Considerations**

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at:

https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_2018_05.pdf

In part it states:

Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.

S2-3

This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

II. Permitting Requirements**Construction Storm Water General Permit**

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

S2-4

Station H Substation Project
Sacramento County

- 3 -

23 April 2021

Phase I and II Municipal Separate Storm Sewer System (MS4) Permits¹

The Phase I and II MS4 permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using Best Management Practices (BMPs) to the maximum extent practicable (MEP). MS4 Permittees have their own development standards, also known as Low Impact Development (LID)/post-construction standards that include a hydromodification component. The MS4 permits also require specific design concepts for LID/post-construction BMPs in the early stages of a project during the entitlement and CEQA process and the development plan review process.

For more information on which Phase I MS4 Permit this project applies to, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/municipal_permits/

For more information on the Phase II MS4 permit and who it applies to, visit the State Water Resources Control Board at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/phase_ii_municipal.shtml

S2-5

Industrial Storm Water General Permit

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

S2-6

Clean Water Act Section 404 Permit

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

S2-7

Clean Water Act Section 401 Permit – Water Quality Certification

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic

S2-8

¹ Municipal Permits = The Phase I Municipal Separate Storm Water System (MS4) Permit covers medium sized Municipalities (serving between 100,000 and 250,000 people) and large sized municipalities (serving over 250,000 people). The Phase II MS4 provides coverage for small municipalities, including non-traditional Small MS4s, which include military bases, public campuses, prisons and hospitals.

Station H Substation Project
Sacramento County

- 4 -

23 April 2021

General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at:

https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality/certification/

S2-8
cont.

Waste Discharge Requirements – Discharges to Waters of the State

If USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

S2-9

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at:

https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

Dewatering Permit

If the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. Small temporary construction dewatering projects are projects that discharge groundwater to land from excavation activities or dewatering of underground utility vaults. Dischargers seeking coverage under the General Order or Waiver must file a Notice of Intent with the Central Valley Water Board prior to beginning discharge.

S2-10

For more information regarding the Low Threat General Order and the application process, visit the Central Valley Water Board website at:

http://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2003/wqo/wqo2003-0003.pdf

Station H Substation Project
Sacramento County

- 5 -

23 April 2021

For more information regarding the Low Threat Waiver and the application process, visit the Central Valley Water Board website at:
https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/waivers/r5-2018-0085.pdf

S2-10
cont.**Limited Threat General NPDES Permit**

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at:

S2-11

https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

NPDES Permit

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: <https://www.waterboards.ca.gov/centralvalley/help/permit/>

S2-12

If you have questions regarding these comments, please contact me at (916) 464-0335 or Angela.Nguyen-Tan@waterboards.ca.gov.

S2-13



Angela Nguyen-Tan
Environmental Scientist

cc: State Clearinghouse unit, Governor's Office of Planning and Research,
Sacramento

<i>Letter S2 Response</i>	<i>Central Valley Regional Water Quality Control Board Angela Nguyen-Tan, Environmental Scientist April 23, 2021</i>
S2-1	The comment presents introductory information regarding the Central Valley Regional Water Quality Control Board (Central Valley Water Board) and its jurisdiction over certain activities that may be part of the project. The comment is introductory in nature and does not address the content, analysis, or conclusions in the Draft EIR; no further response is required.
S2-2	The comment provides an overview of the regulatory responsibility of the Central Valley Water Board, including its requirement to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act and provides regulatory background. The comment does not address the content, analysis, or conclusions in the Draft EIR; no further response is required.
S2-3	<p>The comment states that all wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The comment also states that environmental review document should evaluate potential impacts to both surface and groundwater quality. As stated on page 59 of the IS (Appendix B of the Draft EIR), drainage from the project flows into the City of Sacramento's (City's) combined sewer system (CSS) where it flows to a wastewater treatment plant and is eventually discharged to the Sacramento River. As such, the applicable water quality standards are listed in the Fifth Edition of the Water Quality Control Plan (Basin Plan) for the Sacramento River and San Joaquin River Basins.</p> <p>The City's Grading, Erosion, and Sediment Control Ordinance (Title 15, City of Sacramento Municipal Code, Chapter 15.88) includes specific standards for project construction related to erosion control. Although the substation component of this project is exempt from this ordinance pursuant to Government Code § 53091(d), SMUD and its contractors will comply with the substance of these standards both during and following the completion of project construction.</p>
S2-4	The comment states that dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. As stated on page 59 of the IS (Appendix B of the Draft

EIR), because the project is not expected to disturb more than one acre of land, coverage would not be needed under the Construction General Permit. However, consistent with City requirements, the project would be required to implement best management practices (BMPs) intended to reduce pollutants in stormwater and other non-point source runoff. The City's Grading, Erosion, and Sediment Control Ordinance (Title 15, City of Sacramento Municipal Code, Chapter 15.88) includes specific standards for project construction related to erosion control. Although the substation component of this project is exempt from this ordinance pursuant to Government Code § 53091(d), SMUD and its contractors will comply with the substance of these standards both during and following the completion of project construction.

- S2-5 The comment states that Phase I and II Municipal Separate Storm Sewer System (MS4) permits require the Permittees reduce pollutants and runoff flows from new development and redevelopment using BMPs. As noted on page 59 of the IS (Appendix B of the Draft EIR), stormwater at the project site drains to the City's CSS where it is then conveyed to one of two facilities for primary treatment before discharge to the Sacramento River. CSS flows and discharges are currently regulated by the provisions of Waste Discharge Requirement Order No. R5-2015-0045 (NPDES No. CA0079111).
- S2-6 The comment states that stormwater discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. The project would include the rebuilding of the site for continued use as an electrical substation, which would not discharge stormwater associated with industrial activity. The City's Grading, Erosion, and Sediment Control Ordinance (Title 15, City of Sacramento Municipal Code, Chapter 15.88) includes specific standards for project construction related to erosion control. Although the substation component of this project is exempt from this ordinance pursuant to Government Code § 53091(d), SMUD and its contractors will comply with the substance of these standards both during and following the completion of project construction.
- S2-7 The comment states that a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE) if the project would involve the discharge of dredged or fill material in navigable waters or wetlands. As discussed on page 40 of the IS (Appendix B of the Draft EIR), the project site does not contain any wetland, stream, or other aquatic habitat that could be considered jurisdictional waters of the United States or state and all project activities would take place within previously developed areas.

- S2-8 The comment states that a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities if a USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States. As discussed in Response to Comment S2-7, the project site does not contain any wetland, stream, or other aquatic habitat that could be considered jurisdictional waters of the United States or state, and no permits from USACE or other federal agency(ies) related to disturbance of waters of the United States would be required.
- S2-9 The comment states that if USACE determines that only non-jurisdictional waters of the State (i.e., “non-federal” waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. As discussed on page 40 of the IS (Appendix B of the Draft EIR), the project site does not contain any wetland, stream, or other aquatic habitat that could be considered jurisdictional waters of the United States or state and all project activities would take place within previously developed areas.
- S2-10 The comment states that if the proposed project includes construction or groundwater dewatering to be discharged to land, the proponent may apply for coverage under State Water Board General Water Quality Order (Low Threat General Order) 2003-0003 or the Central Valley Water Board’s Waiver of Report of Waste Discharge and Waste Discharge Requirements (Low Threat Waiver) R5-2018-0085. As discussed on page 61 of the IS (Appendix B of the Draft EIR), should dewatering be required during project construction, water would be collected and treated prior to discharge, in accordance with City requirements.
- S2-11 The comment states that if the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Please see Response to Comment S2-10.
- S2-12 The comment states that if the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under an NPDES permit. As discussed on page 59 of the IS (Appendix B of the Draft EIR), drainage from the project site flows into the City of Sacramento’s CSS. Therefore, the project would not require coverage under an NPDES permit.

- S2-13 The comment provides contact information should SMUD have any questions about the Central Valley Water Board's comments. As the comment does not address the content, analysis, or conclusions in the Draft EIR, no further response is required.

Local

Letter
L1

From: King Tunson <ktunson@sfd.cityofsacramento.org>
Sent: Friday, March 26, 2021 12:02 PM
To: Rob Ferrera <Rob.Ferrera@smud.org>; Scott Johnson <SRJohnson@cityofsacramento.org>
Cc: Sarai Ochoa <sochoa@cityofsacramento.org>
Subject: [EXTERNAL] RE: SMUD Station H Draft EIR

CAUTION: This email originated from outside of SMUD. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Rob,

Thanks for providing the document. I've reviewed and don't have any comments.

King Tunson
Program Specialist
Fire Planning Entitlements/Administration
Sacramento Fire Department
5770 Freeport Blvd, Ste 200
Sacramento, CA 95822
Office (916) 808-1358
Fax (916) 808-1677
ktunson@sfd.cityofsacramento.org

L1-1

*Letter
L1
Response*

*Sacramento Fire Department
King Tunson, Program Specialist, Fire Planning
Entitlements/Administration
March 18, 2021*

L1-1

The comment states that the Sacramento Fire Department does not have any comments on the Draft EIR. As the comment does not address the content, analysis, or conclusions in the Draft EIR, no further response is required.

Letter
L2

CAUTION: This email originated from outside of SMUD. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Rob,
The Sac Metro Air District has reviewed the Station H DEIR and has no comments.
Best regards,
Rachel DuBose

L2-1

Rachel DuBose
Air Quality Planner/Analyst
Desk: (916) 874-4876
www.AirQuality.org
 [@AQMD](mailto:Rachel.DuBose@AQMD)

*Letter
L2
Response*

*Sacramento Metropolitan Air Quality Management District
Rachel DuBose, Air Quality Planner/Analyst
April 29, 2021*

L2-1

This comment states that the Sacramento Metropolitan Air Quality Management District does not have any comments on the Draft EIR. As the comment does not address the content, analysis, or conclusions in the Draft EIR, no further response is required.

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3 Mitigation Monitoring and Reporting Program

This mitigation monitoring and reporting program (MMRP) summarizes the mitigation measures, implementation schedule, and responsible parties for monitoring the mitigation measures required of the proposed Station H Substation Project, as set forth in the EIR prepared for the project.

Section 21081.6 of the California Public Resources Code and Section 15091(d) and Section 15097 of the State CEQA Guidelines require public agencies “to adopt a reporting or monitoring program for changes to the project which it has adopted or made conditions of project approval to mitigate or avoid significant effects on the environment.” An MMRP is required for the project because the EIR for the project identified potentially significant adverse impacts related to construction and operation of the project, and mitigation measures have been identified to reduce most of those impacts to a less-than-significant-level.

This MMRP will be adopted by SMUD if it approves the project and will be kept on file at SMUD’s Customer Service Center at 6301 S Street, Sacramento, CA 95817; and at SMUD’s East Campus Operations Center at 4401 Bradshaw Road, Sacramento, CA 95827. SMUD will use this MMRP to ensure that identified mitigation measures, adopted as a condition of project approval, are implemented appropriately.

3.1 Mitigation Implementation and Monitoring

SMUD will be responsible for monitoring the implementation of mitigation measures designed to minimize impacts associated with the project. While SMUD has ultimate responsibility for ensuring implementation, others may be assigned the responsibility of actually implementing the mitigation. SMUD will retain the primary responsibility for ensuring that the project meets the requirements of this MMRP and other permit conditions imposed by participating regulatory agencies.

SMUD will designate specific personnel who will be responsible for monitoring implementation of the mitigation that will occur during project construction. The designated personnel will be responsible for submitting documentation and reports to SMUD on a schedule consistent with the mitigation measure and in a manner necessary for demonstrating compliance with mitigation requirements. SMUD will ensure that the designated personnel have authority to require implementation of mitigation requirements and will be capable of terminating project construction activities found to be inconsistent with mitigation objectives or project approval conditions.

SMUD and its appointed contractor will also be responsible for ensuring that its construction personnel understand their responsibilities for adhering to the performance requirements of the mitigation plan and other contractual requirements related to the implementation of mitigation as part of project construction. In addition to the prescribed mitigation measures, Table 3-1 lists each identified environmental resource being affected (in the same order and using the same numbering system as in the EIR), the associated CEQA checklist question (used as the thresholds of significance in the EIR),

the corresponding monitoring and reporting requirement, the party responsible for ensuring implementation of the mitigation measure and monitoring effort, and the project component to which the mitigation measure applies.

If an issue addressed in the EIR does not result in mitigation, it is not included in the table.

3.2 Mitigation Enforcement

SMUD will be responsible for enforcing mitigation measures. If alternative measures are identified that would be equally effective in mitigating the identified impacts, implementation of these alternative measures will not occur until agreed upon by SMUD.

3.3 Reporting

SMUD shall, or may require the developer to, prepare a monitoring report upon completion of the project describing the compliance of the activity with the required mitigation measures. Information regarding inspections and other requirements shall be compiled and explained in the report. The report shall be designed to simply and clearly identify whether mitigation measures have been adequately implemented. At a minimum, each report shall identify the mitigation measures or conditions to be monitored for implementation, whether compliance with the mitigation measures or conditions has occurred, the procedures used to assess compliance, and whether further action is required. The report shall be presented to SMUD's Board of Directors.

3.4 Regulatory Considerations

In addition to the mitigation measures set forth in this MMRP, SMUD complies with all applicable regulations and statutes, including but not limited to the following:

- The City of Sacramento's noise restrictions (Title 8, City of Sacramento Municipal Code, Chapter 8.68), which restricts the days and hours of construction noise, will be followed.
- The City's Grading, Erosion, and Sediment Control Ordinance (Title 15, City of Sacramento Municipal Code, Chapter 15.88) includes specific standards for project construction related to erosion control. Although the substation component of this project is exempt from this ordinance pursuant to Government Code § 53091(d), SMUD and its contractors will comply with the substance of these standards both during and following the completion of project construction.
- Should groundwater be encountered during project construction, testing would occur in accordance with DTSC and Regional Water Quality Control Board (RWQCB) requirements prior to dewatering activities. This may include seeking coverage under RWQCB's General Order for Dewatering (R5-2013-0074). If dewatering activities are needed, they would include the potential use of Baker tanks and/or filtration bags, if needed, to treat water prior to discharge into the City's stormdrain system and/or sewer system.

It should be noted that this discussion of regulatory requirements is not intended to be all-inclusive; site specific conditions and activities may require compliance with other regulations or statutes.

3.5 Mitigation Monitoring and Reporting Program Table

The categories identified in the attached MMRP table are described below.

Checklist Section – This column identifies which CEQA issue area the mitigation measure is attributed to in the EIR.

Impact or Environmental Criteria – This column provides the verbatim text of the impact statement included in the EIR or the CEQA Appendix G checklist questions for issues not further evaluated in the EIR.

Mitigation Measure – This column provides the verbatim text of the adopted mitigation measure.

Implementation Duration – This column identifies when the mitigation measure shall be implemented (e.g., prior to construction, during construction, prior to occupancy, etc.).

Monitoring Duration – This column identifies the period within which monitoring shall be conducted.

Responsibility – This column identifies the party(ies) responsible for implementation and/or enforcing compliance with the requirements of the mitigation measure.

Applicable Project Component – This column identifies with what component or under what conditions the mitigation measure should be implemented (e.g., during high wind conditions, construction within wetlands, etc.).

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
3.18 Tribal Cultural Resources	Impact 3.1-1: Cause a substantial adverse change in the significance of a Tribal cultural resource, including human remains.	Mitigation Measure 3.1-1a: Prepare and implement a treatment plan. Before ground disturbance associated with the project, SMUD shall, in cooperation with UAIC, Wilton Rancheria, Lone Band of Miwok Indians, and Shingle Springs Band of Miwok Indians, finalize a treatment plan specific to the site. The treatment plan shall include, but is not limited to:	Prior to ground disturbance	During construction activities	SMUD	SMUD
	Impact 3.2-3: Change the significance of a prehistoric archaeological resource.	<ul style="list-style-type: none"> • testing, • excavation strategy, • research design, • Tribal monitoring, • resource significance assessment methods, • discovery, preservation, and evaluation methods, • a burial treatment agreement, • reporting requirements, and • health and safety procedures. <p>The testing portion of the treatment plan shall be implemented once Station A has been safely decommissioned; if resources are discovered during testing, the treatment plan would continue to be implemented throughout ground disturbing activities on the project site.</p>				
3.5 Cultural Resources		Mitigation Measure 3.1-1b: Prepare and implement worker cultural resources awareness and respect training program. A cultural resources respect training program will be provided to all construction personnel active on the project site prior to implementation of earth moving activities. A representative or representatives from culturally affiliated Native American Tribe(s) will be	Prior to and during construction activities (ground disturbance)	During construction activities (ground disturbance)	SMUD	SMUD

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		invited to participate in the development and delivery of the cultural resources awareness and respect training program in coordination with a qualified archaeologist meeting the United States Secretary of Interior guidelines for professional archaeologists. The program will include relevant information regarding sensitive Tribal cultural resources, including protocols for resource avoidance, applicable laws regulations, and the consequences of violating them. The program will also underscore the requirement for confidentiality and culturally-appropriate treatment of any find of significance to Native Americans and protocols, consistent, to the extent feasible, with Native American Tribal values.				
		Mitigation Measure 3.1-1c: Memorialize the Tribal cultural values of the project area through public education and awareness. To acknowledge the importance of the project area, particularly the area surrounding <i>Wanoho Pagan</i> , to California Native American Tribes, SMUD shall implement the following additional measures, regardless of whether Tribal cultural deposits related to P-34-2359 are encountered during project implementation: 1. In coordination with UAIC, Wilton Rancheria, Lone Band of Miwok Indians, and Shingle Springs Band of Miwok Indians, SMUD shall develop a program with the American River College Native American Resource Center to benefit Native American students by enhancing areas of need or potential and shall support the program with a financial contribution. The contribution shall begin in 2021 and span a 3-year period. The program and contribution will	Prior to operation	Prior to operation	SMUD	SMUD

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		<p>be developed with the American River College Native American Resource Center.</p> <p>2. In coordination with UAIC, Wilton Rancheria, Lone Band of Miwok Indians, and Shingle Springs Band of Miwok Indians, SMUD shall commission a piece of art or other appropriate monumentation to represent the Tribal cultural values of the project area. The art piece could be in the form of a mural, sculpture, informative plaque, or other representation agreed to by the Tribes.</p>				
3.5 Cultural Resources	Impact 3.2-1: Change in the significance of a historical resource.	<p>Mitigation Measure 3.2-1b: Comply with the Secretary of the Interior's Standards.</p> <ul style="list-style-type: none"> For all interior repairs to the Station A building that do not alter the external visual appearance of the building, review by an architectural historian is not required. For minor exterior repairs to the Station A building that do not alter the visual appearance of the building—such as tuck pointing—if the repairs are conducted in compliance with the Secretary's Standards and consistent with the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (Weeks and Grimmer 1995), then review by an architectural historian is not required. For larger exterior repairs to the Station A building—such as external sheer walls—repairs shall be conducted in compliance with the Secretary's Standards and consistent with the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines 	During construction activities	During construction activities	Contractor	SMUD

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings” (Weeks and Grimmer 1995), and an architectural historian shall be retained to confirm that the repairs do not result in a change to the design of the Station A building such that the building would no longer qualify as a historical resource.				
3.5 Cultural Resources	Impact 3.2-2: Change the significance of a historic-period archaeological resource.	<p>Mitigation Measure 3.2-2: Halt ground-disturbing activity upon discovery of historic-period archaeological features.</p> <p>In the event that a historic-period archaeological site (such as concentrated deposits of bottles or bricks with makers marks, amethyst glass, or other historic refuse) is uncovered during grading or other construction activities, all ground-disturbing activity within 100 feet of the discovery shall be halted until a qualified archaeologist can assess the significance of the find. SMUD will be notified of the potential find and a qualified archeologist shall be retained to investigate its significance. Any previously undiscovered resources found during construction will be recorded on appropriate California Department of Parks and Recreation 523 forms and evaluated for significance under all applicable regulatory criteria. If the archaeologist determines that the find does not meet the CRHR standards of significance for cultural resources, construction may proceed. If the find is determined to be significant by the qualified archaeologist (i.e., because the find is determined to constitute either a historical resource or a unique archaeological resource), the archaeologist shall work with SMUD to follow accepted professional standards such as further testing for evaluation or data recovery, as necessary.</p>	During construction activities (ground disturbance)	During construction activities (ground disturbance)	Contractor	SMUD

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		If artifacts are recovered from significant historic-period archaeological resources, they shall be housed at a qualified curation facility. The results of the identification, evaluation, and/or data recovery program for any unanticipated discoveries shall be presented in a professional-quality report that details all methods and findings, evaluates the nature and significance of the resources, analyzes and interprets the results.				
3.3 Air Quality	<p>Conflict with or obstruct implementation of the applicable air quality plan?</p> <p>Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?</p>	<p>Mitigation Measure 3.3-1: Implement SMAQMD Basic Construction Emission Control Practices.</p> <p>During construction, the contractor shall comply with and implement SMAQMD's Basic Construction Emission Control Practices, which includes SMAQMD-recommended BMPs and BACT, for controlling fugitive dust emissions. Measures to be implemented during construction include the following:</p> <ul style="list-style-type: none"> • Water all exposed surfaces at least two times daily. Exposed surfaces include, but are not limited to, soil piles, graded areas, unpaved parking areas, staging areas, and access roads. • Cover or maintain at least two (2) feet of freeboard space on haul trucks transporting soil, sand, or other loose material on the site. Cover any haul trucks that will be traveling along freeways or major roadways. • Use wet power vacuum street sweepers to remove any visible track-out mud or dirt onto adjacent public roads at least once a day. Use of dry power sweeping is prohibited. 	During construction activities	During construction activities	Contractor	SMUD

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		<ul style="list-style-type: none"> Limit vehicle speed on unpaved roads to 15 miles per hour. All roadways, driveways, sidewalks, parking lots to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used. Minimize idling time either by shutting equipment off when not in use or reducing the time of idling to 5 minutes (required by California Code of Regulations Title 13, Sections 2449[d][3] and 2485). Provide clear signage that posts this requirement for workers at the entrances to the site. Maintain all construction equipment in proper working condition according to manufacturer's specifications. Equipment will be checked by a certified mechanic and determined to be running in proper condition before it is operated. 				
3.4 Biological Resources	Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California	<p>Mitigation Measure 3.4-1: Avoid disturbance of nesting birds</p> <p>If construction will occur during the nesting season (between February 1 and August 31), a SMUD project biologist/biological monitor will conduct pre-construction nesting bird surveys to determine if birds are nesting in the work area or within 0.25 mile for Swainson's hawk and 500 feet for all other nesting birds of the project site.</p> <p>The pre-construction nesting bird surveys will identify on-site bird species and any nest-building behavior. If no nesting Swainson's hawks are found on or within 0.25 mile or if no nesting birds are found on or within 500 feet of the project site during the pre-</p>	Prior to construction activities	Prior to construction activities	Qualified biologist	SMUD

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
	Department of Fish and Wildlife or the U.S. Fish and Wildlife Service?	<p>construction clearance surveys, construction activities may proceed as scheduled.</p> <p>If pre-nesting behavior is observed, but an active nest of common nesting bird has not yet been established (e.g., courtship displays, but no eggs in a constructed nest), a nesting bird deterrence and removal program will be implemented. Such deterrence methods include removal of previous year's nesting materials and removal of partially completed nests in progress. Once a nest is situated and identified with eggs or young, it is considered to be "active" and the nest cannot be removed until the young have fledged.</p> <p>If active Swainson's hawk nests are found within the nest survey area, the construction contractor shall avoid impacts on such nests by establishing a no-disturbance buffer around the nest. Monitoring of the nest by a qualified biologist during construction activities shall be required if the activity has the potential to adversely affect the nest. Based on guidance for determining a project's potential for impacting Swainson's hawks (Swainson's hawk Technical Advisory Committee 2000), projects in urban areas have a low risk of adversely affecting nests greater than 600 feet from project activities. Therefore, 600 feet is anticipated to be the adequate buffer size for protecting nesting Swainson's hawks from disturbances associated with the proposed project. However, the qualified biologist shall consult with the California Department of Fish and Wildlife to confirm the adequacy of the no-disturbance buffer and/or if the buffer is reduced based on the biologist professional judgement.</p>				

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		<p>If an active nest of common bird species is found in or within 500 feet of the project site during construction, a “No Construction” buffer zone will be established around the active nest (usually a minimum radius of 50 feet for passerine birds and 500 feet for raptors) to minimize the potential for disturbance of the nesting activity. The project biologist/biological monitor will determine and flag the appropriate buffer size required, based on the species, specific situation, tolerances of the species, and the nest location. Project activities will resume in the buffer area when the project biologist/biological monitor has determined that the nest(s) is (are) no longer active or the biologist has determined that with implementation of an appropriate buffer, work activities would not disturb the bird’s nesting behavior.</p> <p>If special-status bird species are found nesting on or within 500 feet of the project site, the project biologist/biological monitor shall notify SMUD’s project manager to notify CDFW or USFWS, as appropriate, within 24 hours of first nesting observation.</p>				
3.13 Noise and Vibration	Generation of excessive groundborne vibration or groundborne noise levels? ¹	<p>Mitigation Measure 3.13-a: Implement measures to reduce ground vibration</p> <p>To reduce vibration impacts from construction activities, SMUD will require the design-build team and engineers to implement the following measures:</p> <ul style="list-style-type: none"> To the extent feasible, earthmoving and ground-impacting operations (e.g., pile drilling) will be phased so as not to occur simultaneously in areas close to sensitive receptors. The total vibration level produced could be significantly 	Prior to construction activities	During construction activities	Contractor and qualified acoustical engineer	SMUD
3.5 Cultural Resources	Impact 3.2-1: Change in the significance of a historical resource.					

¹ The evaluation of this impact included consideration of SMUD’s compliance with the construction-related noise restrictions enumerated in the City of Sacramento Noise Ordinance (Title 8, City of Sacramento Municipal Code, Chapter 8.68).

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		<p>less when each vibration source is operated at separate times.</p> <ul style="list-style-type: none"> Where there is flexibility in the location of activating involving the use of heavy-duty construction equipment, especially auger drill rigs for installing auger cast displacement piles, the equipment will be operated as far away from vibration-sensitive receptors as reasonably possible. 				
		<p>Mitigation Measure 3.13-b: Develop and implement a vibration control plan</p> <p>A vibration control plan will be developed by SMUD's design-build team to be submitted to and approved by SMUD prior to initiating any pile drilling activities. Applicable elements of the plan will be implemented before, during, and after pile drilling activity. The plan will consider all potential vibration-inducing activities that would occur and require implementation of sufficient measures to ensure that nearby sensitive receptors, including the historic Station A building, are not exposed to vibration levels that would result in structural damage. Items that will be addressed in the plan include, but are not limited to, the following:</p> <ul style="list-style-type: none"> Identification that the maximum allowable vibration levels at nearby buildings consist of Caltrans-recommended standards with respect to the prevention of architectural building damage, specifically: 0.25 in/sec PPV for the historic Station A building. SMUD or its contractor will conduct pre-construction surveys to identify any pre-existing 	Prior to construction activities	During construction activities	Contractor and qualified acoustical engineer	SMUD

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
		<p>structural damage to the historic Station A building.</p> <ul style="list-style-type: none"> SMUD will identify minimum setback requirements for different types of ground vibration-producing activities (e.g., pile drilling) for the purpose of preventing damage to nearby structures and preventing negative human response will be established based on the proposed construction activities, locations, and the maximum allowable vibration levels identified above. Factors to be considered include the specific nature of the vibration producing activity, local soil conditions, and the fragility/resiliency of the nearby structures. Initial setback requirements can be breached if a project-specific, site specific analysis is conducted by a qualified geotechnical engineer or ground vibration specialist that indicates that no structural damage would occur at nearby buildings or structures. The construction contractor will monitor and document all pile drilling-generated vibration levels at the Station A building to ensure that applicable thresholds are not exceeded. The construction contractor will submit recorded vibration data on a twice-weekly basis to SMUD. If it is found at any time by the design-build team or SMUD that thresholds are exceeded, pile drilling will cease in that location and methods will be implemented to reduce vibration to below applicable thresholds, or an alternative construction method will be used at that location. 				

Checklist Section	Impact or Environmental Criteria	Mitigation Measure	Implementation Duration	Monitoring Duration	Responsibility	
					Implementation	Monitoring
3.17 Traffic and Transportation	<p>Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities?</p> <p>Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?</p> <p>Result in inadequate emergency access?</p>	<p>Mitigation Measure 3.17-1: Traffic Control Plan</p> <p>Prior to project construction within or adjacent to public roadways, SMUD's construction contractor shall develop a traffic control plan for the project and submit the plan to the City of Sacramento's Department of Public Works. The plan shall identify temporary lane, sidewalk, bicycle lane, and transit stop closures and provide information regarding how access and connectivity will be maintained during construction activities. The plan shall include details regarding traffic controls that would be employed, including signage, detours, and flaggers. The traffic control plan shall be implemented by the contractor during construction to allow for the safe passage of vehicles, pedestrians, and cyclists along the project route.</p>	Prior to construction	During construction activities	Contractor	SMUD

4 References

Chapter 1, Introduction

No references cited.

Chapter 2, Comments and Responses

California Department of Toxic Substances Control. 2001 (October). Information Advisory Clean Imported Fill Material Fact Sheet. Available:
<https://dtsc.ca.gov/information-advisory-clean-imported-fill-material-fact-sheet/>.
Accessed May 12, 2021.

Chapter 3, Mitigation Monitoring and Reporting Program

No references cited.

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**CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS AND
STATEMENT OF OVERRIDING CONSIDERATIONS
IN CONNECTION WITH**

Station H Substation Project

SACRAMENTO MUNICIPAL UTILITY DISTRICT, STATION H SUBSTATION

I. Introduction

The Sacramento Municipal Utility District (SMUD) is lead agency under the California Environmental Quality Act (CEQA) for purposes of the Station H Substation Project, hereafter the Project. CEQA prohibits an agency from approving or carrying out a project for which significant effects have been identified, unless the agency can make one or more of a set of three findings set forth in Public Resources Code (PRC) section 21081, subdivision (a):

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report. (See also California Code of Regulations [CCR] Title 14, section 15091.)

When significant effects are subject to a finding under paragraph (3) of subdivision (a), it means that before approving the project the lead agency must find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment. (PRC section 21081, subd.(b).)

CEQA requires public agencies to prepare a program for monitoring or reporting on the revisions which it requires in the project and the measures it has imposed to mitigate or avoid significant environmental effects. (CCR Title 14, section 15097, subd. (a).)

Under PRC section 21002.1, subdivision (d), when issuing an approval for an aspect of a project for which a lead agency has performed CEQA review, a responsible agency considers only the aspects of the project that the agency is required by law to carry out

or approve. SMUD, therefore, provides the following CEQA findings and mitigation monitoring and reporting plan (MMRP) (Attachment 1) that concern potentially significant impacts to resources identified by the lead agency as part of the CEQA review and in fulfillment of CCR Title 14, section 15097, subd. (a).

II. CEQA Compliance

SMUD, as the lead agency pursuant to CEQA, has prepared a Draft and Final Environmental Impact Report (EIR) for the proposed Station H Substation Project (Project). The SMUD Board of Directors (Board) hereby issues these Findings and concurrently certifies the EIR.

The Final EIR has been assigned State Clearinghouse Number 2020110057. The Final EIR consists of both the Draft EIR, as amended through responses to comments, as well as a volume with formal responses to comments received on the Draft EIR and a MMRP. The Final EIR assesses the potential environmental effects of implementation of the Project, identifies the means to eliminate or reduce potentially significant adverse environmental impacts, and evaluates a reasonable range of alternatives to the Project. The Final EIR also responds to comments on the Draft EIR, explains Project updates, and includes a MMRP that outlines the substance and timing of mitigation measures required for the Project.

Pursuant to PRC section 21081 and CCR Title 14, section 15090, the Board hereby certifies that it completed the following activities prior to taking action related to activities/phases evaluated under the Station H Substation Project EIR: the Board has received the Final EIR; the Board has reviewed and considered the information contained in the Final EIR and received through public comments; and the Board has considered all additional written and oral statements received prior to or at its public hearing on the Final EIR. The Board additionally certifies that the Final EIR was completed in compliance with CEQA (PRC section 21000 et seq.), the CEQA Guidelines (CCR Title 14, section 15000 et seq.), and SMUD's policies and procedures for the implementation of CEQA and that the Final EIR reflects the SMUD Board of Directors' independent judgment and analysis. The conclusions presented in these Findings are based on the Final EIR and other evidence in the administrative record.

The Findings set forth below pertain to the certification of the EIR for the Station H Substation Project.

Findings

Having received, reviewed, and considered the Final EIR and all other information in the administrative record, the Board hereby adopts the following Findings for the Station H

Substation Project EIR in compliance with CEQA, the CEQA Guidelines, and SMUD's procedures for implementing CEQA. The Board adopts these Findings and Statement of Overriding Considerations in conjunction with its approval of the Station H Substation Project EIR, as set forth below.

a. Project Description and Background

Located at the corner of H and 6th Streets in the city of Sacramento, SMUD's Station A electrical substation is nearing the end of its service life and is being replaced by the new Station G electrical substation (currently under construction) on an adjacent property to the north. Upon completion of Station G, SMUD is proposing to decommission Station A and remove all electrical substation related equipment from within the historic Old Folsom Powerhouse Sacramento Station A building (historic Station A building) and the outdoor substation yard. Following the removal of all Station A equipment, SMUD would construct a new electrical substation (Station H) at the same location of the outdoor substation along the north side of H Street between 6th Street and 7th Street in downtown Sacramento.

Once equipment associated with Station A has been decommissioned and the existing yard has been cleared, new equipment would be assembled and installed onsite. The proposed substation would include two 115 kV underground transmission lines, two 115/21 kV transformers and a metal building structure with a total of nine 21 kV circuit breakers. Station H would tie into the new Station G (currently under construction) via two new 115 kV transmission lines to be located within Government Alley, immediately north of the project site. The proposed electrical equipment to be located on site is anticipated to be no taller than existing Station A equipment currently located at the site, which is approximately 30 feet tall.

As part of the project, SMUD may use limited amounts of Sulfur Hexafluoride (SF₆), a common insulating gas for high-voltage electrical systems, at the project site. Use of the proposed switchgear equipment would comply with recordkeeping, reporting, and leakage emission limit requirements in accordance with California Air Resources Board regulations for reduction of SF₆ emissions. As part of substation operations and maintenance activities, SMUD would monitor existing substation equipment to accurately and immediately identify any SF₆ leaks and immediately repair leaks that are discovered. SMUD is also an active member of the SF₆ Emission Reduction Partnership, which focuses on reducing emissions of SF₆ from transmission and distribution sources.

A canopy structure is proposed to be located between the new Station H substation yard and the historical Station A building. The canopy would be approximately the same height as the existing equipment in the outdoor area with a maximum height expected to be approximately 30 feet in height at its tallest point. The canopy roof would be angled and is designed to shield the control building in the event that bricks fall from the exterior of

the Station A building. Prior to the decommissioning of Station A, the structural integrity of the historic Station A building would be evaluated to determine whether upgrades would be required to prevent damage to new substation equipment. Should the study determine that the structural failure of the Station A building would not occur or upgrades could be completed that would ensure structural integrity, the canopy may not be needed.

Operation and access of the new substation generally would be similar to the existing Station A substation yard. Maintenance workers and other SMUD employees would periodically access the site through Government Alley. The historical Station A building would remain unoccupied; however, SMUD personnel would periodically conduct routine checks and maintenance, and the Station A building would be used for storage.

The decommissioning of Station A is anticipated to begin in the second half of 2022 and would be completed by early 2023. The construction of Station H is anticipated to begin soon after the decommission of Station A and would be completed in 2024. Construction intensity and hours would be in accordance with the City's Noise Ordinance, contained in Title 8, Chapter 8.68 of the Sacramento City Code. Construction would be limited to the hours between 7 a.m. and 6 p.m. Monday through Saturday, and between the hours of 9 a.m. and 6 p.m. on Sunday.

b. Absence of Significant New Information

CEQA Guidelines section 15088.5 requires a lead agency to recirculate an EIR for further review and comment when significant new information is added to the EIR after public notice is given of the availability of the draft EIR but before certification. New information includes: (i) changes to the project; (ii) changes in the environmental setting; or (iii) additional data or other information. CEQA Guidelines section 15088.5 further provides that "[n]ew information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement."

Comments received on the Draft EIR generally identified standard regulatory requirements, as discussed in Chapter 2, "Comments and Responses to Comments," of the Final EIR. Each comment has been responded to in the Final EIR and none of the comments triggered the need to recirculate the Draft EIR.

Having reviewed the information contained in the Draft and Final EIR, and in the administrative record, including all comments received, as well as the requirements under CEQA Guidelines section 15088.5 and interpretive judicial authority regarding recirculation of draft EIRs, The Board hereby finds that no significant new information was added to the Draft EIR after the public review period. The Board specifically finds that: no

new significant environmental impact would result from the project or from the implementation of a mitigation measure; no substantial increase in the severity of an environmental impact would result, or if such an increase would result, SMUD has adopted mitigation measures to reduce the impact to a level of insignificance; SMUD has not declined to adopt any feasible project alternative or mitigation measures considerably different from others previously analyzed that would clearly lessen the environmental impacts of the project; and the Draft EIR is not so fundamentally and basically inadequate in nature that it precluded meaningful public review.

Having reviewed the information in the Draft EIR, Final EIR, and administrative record, the Board finds that no new significant information was added to the EIR following public review, and recirculation of the EIR is therefore unnecessary and not required by CEQA.

c. Environmental Impacts Summary

As required by CEQA and the CEQA Guidelines, the following section summarizes the direct, indirect, and cumulative environmental impacts of the Project identified in the Final EIR and includes the Board's Findings regarding those impacts and any mitigation measures set forth in the Final EIR, adopted by the Board, and incorporated as requirements of the Project. These Findings summarize the determinations of the Final EIR with respect to the Project's impacts before and after mitigation and do not attempt to describe the full analysis of each environmental impact considered in the Final EIR. Instead, the Findings provide a summary of each impact, describe the applicable mitigation measures identified in the Final EIR and adopted by the Board, and state the Board's Findings regarding the significance of each impact with the adopted mitigation measures. The Final EIR contains a full explanation of each impact, mitigation measure, and the analysis that led SMUD to its conclusions on that impact. These Findings hereby incorporate by reference the discussion and analysis in the Final EIR, which support the Final EIR's determinations regarding the Project's environmental impacts and mitigation measures. In making these Findings, the Board ratifies, adopts, and incorporates by reference the Final EIR's analysis, determinations, and conclusions relating to environmental impacts and mitigation measures. The substantial evidence supporting these findings and conclusions is set forth in the Final EIR and the record of proceedings.

The Board hereby adopts, and incorporates as conditions of approval, the mitigation measures set forth in the findings below to reduce or avoid the potentially significant impacts of the Project. In adopting the mitigation measures described below, the Board intends to adopt each of the mitigation measures recommended in the Final EIR. Accordingly, in the event that a mitigation measure recommended in the Final EIR has been inadvertently omitted from these Findings, that mitigation measure is hereby adopted and incorporated by reference in the Findings. Additionally, in the event that the description of mitigation measures set forth below fails accurately to capture the

substance of a given mitigation measure due to a clerical error (as distinct from specific and express modification by the Board through these Findings), the language of the mitigation measure as set forth in the Final EIR shall govern.

1. Significant and Unavoidable Adverse Impacts and Related Mitigation Measures

Pursuant to PRC section 21081(b) and CEQA Guidelines section 15093, where the lead agency identifies significant adverse environmental impacts that cannot feasibly be mitigated to a less-than-significant level, the lead agency may nonetheless approve the project if it finds that specific economic, legal, social, technological, or other benefits of the project outweigh the unavoidable significant environmental impacts.

Tribal Cultural Resources

Impact 3.1-1: Cause a substantial adverse change in the significance of a Tribal cultural resource, including human remains. The NCIC records search and consultation with Wilton Rancheria, UAIC, Lone Band of Miwok Indians, and Shingle Springs Band of Miwok Indians identified two Tribal cultural resources (P-24-5225 and P-34-2359) as described under AB 52. Because project-related, ground-disturbing activities could result in damage to Tribal cultural resources, the project could cause a potentially significant impact.

Mitigation Measure 3.1-1a: Prepare and implement a treatment plan.

Before ground disturbance associated with the project, SMUD shall, in cooperation with UAIC, Wilton Rancheria, Lone Band of Miwok Indians, and Shingle Springs Band of Miwok Indians, finalize a treatment plan specific to the site. The treatment plan shall include, but is not limited to:

- testing,
- excavation strategy,
- research design,
- Tribal monitoring,
- resource significance assessment methods,
- discovery, preservation, and evaluation methods,
- a burial treatment agreement,
- reporting requirements, and
- health and safety procedures.

The testing portion of the treatment plan shall be implemented once Station A has been safely decommissioned; if resources are discovered during testing, the treatment plan would continue to be implemented throughout ground disturbing activities on the project site.

Mitigation Measure 3.1-1b: Prepare and implement worker cultural resources awareness and respect training program.

A cultural resources respect training program will be provided to all construction personnel active on the project site prior to implementation of earth moving activities. A representative or representatives from culturally affiliated Native American Tribe(s) will be invited to participate in the development and delivery of the cultural resources awareness and respect training program in coordination with a qualified archaeologist meeting the United States Secretary of Interior guidelines for professional archaeologists. The program will include relevant information regarding sensitive Tribal cultural resources, including protocols for resource avoidance, applicable laws regulations, and the consequences of violating them. The program will also underscore the requirement for confidentiality and culturally-appropriate treatment of any find of significance to Native Americans and protocols, consistent, to the extent feasible, with Native American Tribal values.

Mitigation Measure 3.1-1c: Memorialize the Tribal cultural values of the project area through public education and awareness.

To acknowledge the importance of the project area, particularly the area surrounding *Wanoho Pakan*, to California Native American Tribes, SMUD shall implement the following additional measures, regardless of whether Tribal cultural deposits related to P-34-2359 are encountered during project implementation:

1. In coordination with UAIC, Wilton Rancheria, Lone Band of Miwok Indians, and Shingle Springs Band of Miwok Indians, SMUD shall develop a program with the American River College Native American Resource Center to provide education about the history and culture of, among other things, Tribal resources, practices, landscapes and identity within and around the project area, which will benefit Native American students by enhancing areas of need or potential and shall support the program with a financial contribution. The contribution shall begin in 2021 and span a 3-year period. The program and contribution will be developed with the American River College Native American Resource Center.
2. In coordination with UAIC, Wilton Rancheria, Lone Band of Miwok Indians, and Shingle Springs Band of Miwok Indians, SMUD shall commission a piece of art or other appropriate monumentation to represent the Tribal cultural values of the project area. The art piece could be in the form of a mural, sculpture, informative plaque, or other representation agreed to by the Tribes.

Finding: The Board finds that there are no feasible mitigation measures that will reduce the potential identified significant impact to a level below significant. Pursuant to Public Resources Code section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), specific

economic, legal, social, technological, or other considerations make any mitigation measures infeasible. In consultation with the Tribes, staff determined that due to the Tribes consideration of the sacredness of the land in addition to the potential for disturbing important Tribal cultural resources that mitigation will not reduce the impacts to less than significant. Therefore, this impact would remain significant and unavoidable. However, pursuant to Public Resources Code section 21081(b), see Statement of Overriding Considerations for the specific overriding economic, legal, social, technological, and other benefits of the Project that outweigh this significant and unavoidable impact.

Impact 3.1-2: Potential for the Station H Substation project, in combination with other development, to contribute to a significant cumulative impact to Tribal cultural resources including human remains. The Station H Substation project, in combination with other cumulative development in the area, could result in impacts to Tribal cultural resources in the area. Even with the implementation of project-specific mitigation measures, the potential remains for indigenous archaeological and Tribal cultural resources to be damaged, and as a result, the project's potential contribution would remain cumulatively considerable. Potential impacts would, therefore, be significant.

Implement Mitigation Measures 3.1-1a, b, and c listed above.

Finding: The Board finds that there are no feasible mitigation measures that will reduce the identified significant impact to a level below significant. Pursuant to Public Resources Code section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), specific economic, legal, social, technological, or other considerations make any mitigation measures infeasible. Therefore, this impact would remain significant and unavoidable. However, pursuant to Public Resources Code section 21081(b), see Statement of Overriding Considerations for the specific overriding economic, legal, social, technological, and other benefits of the Project that outweigh this significant and unavoidable impact.

2. Issues for which the Project would have a Less-than-Significant Impact with Project-specific Mitigation Measures Incorporated

Pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), the following potentially significant impacts identified in the Final EIR will be reduced to less-than-significant impacts through the implementation of the mitigation measures hereby incorporated into the Project.

Cultural Resources

Impact 3.2-1: Change in the significance of a historical resource. The Station A building has been identified as a historical resource. The project could include possible structural stabilization upgrades to the building. Additionally, construction-related

groundborne vibration could result in damage to the buildings. Therefore, there would be a potentially significant impact on the historical resource.

Mitigation Measure 3.2-1a: Limit ground vibration during construction.

Implement Mitigation Measures 3.13-a: Implement measures to reduce ground vibration; and Mitigation Measure 3.13-b: Develop and implement a vibration control plan.

Mitigation Measure 3.2-1b: Comply with the Secretary of the Interior's Standards.

- For all interior repairs to the Station A building that do not alter the external visual appearance of the building, review by an architectural historian is not required.
- For minor exterior repairs to the Station A building that do not alter the visual appearance of the building—such as tuck pointing—if the repairs are conducted in compliance with the Secretary's Standards and consistent with the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (Weeks and Grimmer 1995), then review by an architectural historian is not required.
- For larger exterior repairs to the Station A building—such as external sheer walls—repairs shall be conducted in compliance with the Secretary's Standards and consistent with the "Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings" (Weeks and Grimmer 1995), and an architectural historian shall be retained to confirm that the repairs do not result in a change to the design of the Station A building such that the building would no longer qualify as a historical resource.

Finding: The Board finds that implementation of the Station H Project could damage historical resources. Adoption and incorporation of Mitigation Measures 3.2-1a and 3.2-1b into the Project would reduce potential impacts from groundborne vibration on historical resources to a less-than-significant level. Therefore, the Project with mitigation will not cause significant impacts to a historical resource.

Impact 3.2-2: Change the significance of a historic-period archaeological resource.

Results of the records search for the project site did not indicate any known historic-period archaeological sites or materials. However, project-related ground-disturbing activities could result in the discovery or damage of undiscovered historic-period archaeological resources. This would be a potentially significant impact.

Mitigation Measure 3.2-2: Halt ground-disturbing activity upon discovery of historic-period archaeological features.

In the event that a historical-period archaeological site (such as concentrated deposits of bottles or bricks with makers marks, amethyst glass, or other historic refuse) is uncovered during grading or other construction activities, all ground-disturbing activity within 100 feet of the discovery shall be halted until a qualified archaeologist can assess the significance of the find. SMUD will be notified of the potential find and a qualified archeologist shall be retained to investigate its significance. Any previously undiscovered resources found during construction will be recorded on appropriate California Department of Parks and Recreation 523 forms and evaluated for significance under all applicable regulatory criteria. If the archaeologist determines that the find does not meet the CRHR standards of significance for cultural resources, construction may proceed. If the find is determined to be significant by the qualified archaeologist (i.e., because the find is determined to constitute either a historical resource or a unique archaeological resource), the archaeologist shall work with SMUD to follow accepted professional standards such as further testing for evaluation or data recovery, as necessary. If artifacts are recovered from significant historic-period archaeological resources, they shall be housed at a qualified curation facility. The results of the identification, evaluation, and/or data recovery program for any unanticipated discoveries shall be presented in a professional-quality report that details all methods and findings, evaluates the nature and significance of the resources, analyzes and interprets the results.

Finding: The Board finds that implementation of the Station H Project could damage historical-period archaeological resources. Adoption and incorporation of Mitigation Measure 3.2-2 into the Project would reduce potential impacts to archaeological resources to a less-than-significant level. Therefore, the Project with mitigation will not cause significant impacts to historic-period archaeological resources.

Impact 3.2-3: Change the significance of a prehistoric archaeological resource. Results of the NCIC records search identified P-34-2359 as a prehistoric archaeological resource. Because project-related ground-disturbing activities could result in damage to this resource, this would be a potentially significant impact.

Mitigation Measure 3.2-3: Identify and protect prehistoric archaeological resources.

Implement Mitigation Measures 3.1-3a: Prepare and implement a treatment plan; and Mitigation Measure 3.1-3b: Prepare and implement worker cultural resources awareness and respect training program.

Finding: The Board finds that implementation of the Station H Project could damage prehistoric archaeological resources. Adoption and incorporation of Mitigation Measure 3.2-3 into the Project would reduce potential impacts to prehistoric archaeological

resources to a less-than-significant level. Therefore, the Project with mitigation will not cause significant impacts to prehistoric archaeological resources.

Impact 3.2-4: Potential for the Station H Substation project, in combination with other development, to contribute to a significant cumulative impact to cultural resources. The Station H Substation project, in combination with other cumulative development in the area, could result in impacts to cultural resources in the area. Through the implementation of project-specific mitigation measures, the contribution of the project would not be cumulatively considerable with respect to historical resources and archaeological resources. Potential impacts would be significant.

See Mitigation Measures 3.2-1a, 3.2-1b, 3.2-2, and 3.2-3.

Finding: The Board finds that implementation of the Station H Project could result in significant cumulative impacts to cultural resources. Adoption and incorporation of Mitigation Measures 3.2-1a, 3.2-1b, 3.2-2, and 3.2-3 into the Project would reduce potential cumulative impacts to cultural resources to a less-than-significant level. Therefore, the Project with mitigation will not cause significant cumulative impacts to cultural resources.

Air Quality

IS Checklist Impact 3.3-a: Conflict with or obstruct implementation of the applicable air quality plan? As shown in Table 3.3-2 of the IS, project construction would generate daily emissions of PM₁₀ and PM_{2.5} in excess of the SMAQMD thresholds during construction activities. Therefore, the impact of construction activities would be potentially significant.

Mitigation Measure 3.3-1: Implement SMAQMD Basic Construction Emission Control Practices.

During construction, the contractor shall comply with and implement SMAQMD's Basic Construction Emission Control Practices, which includes SMAQMD-recommended BMPs and BACT, for controlling fugitive dust emissions. Measures to be implemented during construction include the following:

- Water all exposed surfaces at least two times daily. Exposed surfaces include, but are not limited to, soil piles, graded areas, unpaved parking areas, staging areas, and access roads.
- Cover or maintain at least two (2) feet of freeboard space on haul trucks transporting soil, sand, or other loose material on the site. Cover any haul trucks that will be traveling along freeways or major roadways.

- Use wet power vacuum street sweepers to remove any visible track-out mud or dirt onto adjacent public roads at least once a day. Use of dry power sweeping is prohibited.
- Limit vehicle speed on unpaved roads to 15 miles per hour.
- All roadways, driveways, sidewalks, parking lots to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- Minimize idling time either by shutting equipment off when not in use or reducing the time of idling to 5 minutes (required by California Code of Regulations Title 13, sections 2449[d][3] and 2485). Provide clear signage that posts this requirement for workers at the entrances to the site.
- Maintain all construction equipment in proper working condition according to manufacturer's specifications. Equipment will be checked by a certified mechanic and determined to be running in proper condition before it is operated.

Finding: The Board finds that implementation of the Station H Project would result in temporary construction-generated emissions of air pollutants in excess of SMAQMD thresholds. Adoption and incorporation of Mitigation Measure 3.3-1 into the Project will reduce the impact to a less-than-significant level. Therefore, the Project with mitigation will not cause significant air quality impacts during construction activities associated with project implementation.

IS Checklist Impact 3.3-b: Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard? Sacramento County is currently in nonattainment for federal and State ozone, State PM₁₀, and federal PM_{2.5}. Ozone impacts are the result of cumulative emissions from numerous sources in the region and transport from outside the region. Ozone is formed in chemical reactions involving NO_x, ROG, and sunlight. Particulate matter also has the potential to cause significant local problems during periods of dry conditions accompanied by high winds, and during periods of heavy earth disturbing activities. Particulate matter (PM₁₀ and PM_{2.5}) may have cumulative local impacts if, for example, several unrelated grading or earth moving activities are underway simultaneously at nearby sites. This impact would be potentially significant.

Mitigation Measure 3.3-1: Implement SMAQMD Basic Construction Emission Control Practices.

During construction, the contractor shall comply with and implement SMAQMD's Basic Construction Emission Control Practices, which includes SMAQMD-

recommended BMPs and BACT, for controlling fugitive dust emissions. Measures to be implemented during construction include the following:

- Water all exposed surfaces at least two times daily. Exposed surfaces include, but are not limited to, soil piles, graded areas, unpaved parking areas, staging areas, and access roads.
- Cover or maintain at least two (2) feet of freeboard space on haul trucks transporting soil, sand, or other loose material on the site. Cover any haul trucks that will be traveling along freeways or major roadways.
- Use wet power vacuum street sweepers to remove any visible track-out mud or dirt onto adjacent public roads at least once a day. Use of dry power sweeping is prohibited.
- Limit vehicle speed on unpaved roads to 15 miles per hour.
- All roadways, driveways, sidewalks, parking lots to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
- Minimize idling time either by shutting equipment off when not in use or reducing the time of idling to 5 minutes (required by California Code of Regulations Title 13, sections 2449[d][3] and 2485). Provide clear signage that posts this requirement for workers at the entrances to the site.
- Maintain all construction equipment in proper working condition according to manufacturer's specifications. Equipment will be checked by a certified mechanic and determined to be running in proper condition before it is operated.

Finding: The Board finds that implementation of the Station H Project would result in temporary construction-generated emissions of air pollutants in excess of SMAQMD thresholds. Adoption and incorporation of Mitigation Measure 3.3-1 into the Project will reduce the cumulative impact to a less-than-significant level. Therefore, the Project with mitigation will not cause significant cumulative air quality impacts during construction activities associated with project implementation.

Biological Resources

IS Checklist Impact 3.4-a: Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or the U.S. Fish and Wildlife Service?

Project construction could include removal of one of the landscape trees and therefore has the potential to result in direct removal of bird nests. Additionally, construction activities occurring during the nesting season (between approximately February 1 and August 31), such as demolition, ground disturbance, and presence of construction equipment and crews, could generate noise and visual stimuli that may result in disturbance to active bird nests, if present, potentially resulting in nest abandonment.

Mitigation Measure 3.4-1: Avoid disturbance of nesting birds.

If construction will occur during the nesting season (between February 1 and August 31), a SMUD project biologist/biological monitor will conduct pre-construction nesting bird surveys to determine if birds are nesting in the work area or within 0.25 mile for Swainson's hawk and 500 feet for all other nesting birds of the project site.

The pre-construction nesting bird surveys will identify on-site bird species and any nest-building behavior. If no nesting Swainson's hawks are found on or within 0.25 mile or if no nesting birds are found on or within 500 feet of the project site during the pre-construction clearance surveys, construction activities may proceed as scheduled.

If pre-nesting behavior is observed, but an active nest of common nesting bird has not yet been established (e.g., courtship displays, but no eggs in a constructed nest), a nesting bird deterrence and removal program will be implemented. Such deterrence methods include removal of previous year's nesting materials and removal of partially completed nests in progress. Once a nest is situated and identified with eggs or young, it is considered to be "active" and the nest cannot be removed until the young have fledged.

If active Swainson's hawk nests are found within the nest survey area, the construction contractor shall avoid impacts on such nests by establishing a no-disturbance buffer around the nest. Monitoring of the nest by a qualified biologist during construction activities shall be required if the activity has the potential to adversely affect the nest. Based on guidance for determining a project's potential for impacting Swainson's hawks (Swainson's hawk Technical Advisory Committee 2000), projects in urban areas have a low risk of adversely affecting nests greater than 600 feet from project activities. Therefore, 600 feet is anticipated to be the adequate buffer size for protecting nesting Swainson's hawks from disturbances associated with the proposed project. However, the qualified biologist shall consult with the California Department of Fish and Wildlife to confirm the adequacy of the no-disturbance buffer and/or if the buffer is reduced based on the biologist professional judgement.

If an active nest of common bird species is found in or within 500 feet of the project site during construction, a “No Construction” buffer zone will be established around the active nest (usually a minimum radius of 50 feet for passerine birds and 500 feet for raptors) to minimize the potential for disturbance of the nesting activity. The project biologist/biological monitor will determine and flag the appropriate buffer size required, based on the species, specific situation, tolerances of the species, and the nest location. Project activities will resume in the buffer area when the project biologist/biological monitor has determined that the nest(s) is (are) no longer active or the biologist has determined that with implementation of an appropriate buffer, work activities would not disturb the bird’s nesting behavior.

If special-status bird species are found nesting on or within 500 feet of the project site, the project biologist/biological monitor shall notify SMUD’s project manager to notify CDFW or USFWS, as appropriate, within 24 hours of first nesting observation.

Finding: The Board finds that implementation of the Station H Project could disturb nesting avian species as a result of construction. Adoption and incorporation of Mitigation Measure 3.4-1 into the Project will reduce the impact to a less-than-significant level. Therefore, the Project with mitigation will not cause significant impacts to nesting avian species.

Noise and Vibration

IS Checklist Impact 3.13-b: Generation of excessive groundborne vibration or groundborne noise levels? Because construction would be temporary and would occur during the less sensitive daytime hours, human annoyance associated with construction vibration would have a less-than-significant impact. However, because of the potential for structural damage at the historic Station A building, this impact would be potentially significant.

Mitigation Measure 3.13-a: Implement measures to reduce ground vibration.

To reduce vibration impacts from construction activities, SMUD will require the design-build team and engineers to implement the following measures:

- To the extent feasible, earthmoving and ground-impacting operations (e.g., pile drilling) will be phased so as not to occur simultaneously in areas close to sensitive receptors. The total vibration level produced could be significantly less when each vibration source is operated at separate times.
- Where there is flexibility in the location of activating involving the use of heavy-duty construction equipment, especially auger drill rigs for installing auger cast

displacement piles, the equipment will be operated as far away from vibration-sensitive receptors as reasonably possible.

Mitigation Measure 3.13-b: Develop and implement a vibration control plan.

A vibration control plan will be developed by SMUD's design-build team to be submitted to and approved by SMUD prior to initiating any pile drilling activities. Applicable elements of the plan will be implemented before, during, and after pile drilling activity. The plan will consider all potential vibration-inducing activities that would occur and require implementation of sufficient measures to ensure that nearby sensitive receptors, including the historic Station A building, are not exposed to vibration levels that would result in structural damage. Items that will be addressed in the plan include, but are not limited to, the following:

- Identification that the maximum allowable vibration levels at nearby buildings consist of Caltrans-recommended standards with respect to the prevention of architectural building damage, specifically: 0.25 in/sec PPV for the historic Station A building.
- SMUD or its contractor will conduct pre-construction surveys to identify any pre-existing structural damage to the historic Station A building.
- SMUD will identify minimum setback requirements for different types of ground vibration-producing activities (e.g., pile drilling) for the purpose of preventing damage to nearby structures and preventing negative human response will be established based on the proposed construction activities, locations, and the maximum allowable vibration levels identified above. Factors to be considered include the specific nature of the vibration producing activity, local soil conditions, and the fragility/resiliency of the nearby structures. Initial setback requirements can be breached if a project-specific, site specific analysis is conducted by a qualified geotechnical engineer or ground vibration specialist that indicates that no structural damage would occur at nearby buildings or structures.
- The construction contractor will monitor and document all pile drilling-generated vibration levels at the Station A building to ensure that applicable thresholds are not exceeded. The construction contractor will submit recorded vibration data on a twice-weekly basis to SMUD. If it is found at any time by the design-build team or SMUD that thresholds are exceeded, pile drilling will cease in that location and methods will be implemented to reduce vibration to below applicable thresholds, or an alternative construction method will be used at that location.

Finding: The Board finds that implementation of the Station H Project could generate vibration that could damage the historic Station A building. Adoption and incorporation of Mitigation Measures 3.13-a and 3.13-b into the Project would reduce the impact to a less-than-significant level. Therefore, the Project with mitigation will not cause damage to a historic resource from groundborne vibration.

Traffic and Transportation

IS Checklist Impact 3.17-a: Conflict with a program, plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities? Project construction would temporarily interfere with existing vehicle, transit, bicycle, and pedestrian circulation as it would include temporary closures of roads, sidewalks, and bike lanes. Section 12.20.030 of the Sacramento Municipal Code requires Because project construction activities could affect the existing circulation system, this impact would be potentially significant.

Mitigation Measure 3.17-1: Traffic Control Plan.

Prior to project construction within or adjacent to public roadways, SMUD's construction contractor shall develop a traffic control plan for the project and submit the plan to the City of Sacramento's Department of Public Works. The plan shall identify temporary lane, sidewalk, bicycle lane, and transit stop closures and provide information regarding how access and connectivity will be maintained during construction activities. The plan shall include details regarding traffic controls that would be employed, including signage, detours, and flaggers. The traffic control plan shall be implemented by the contractor during construction to allow for the safe passage of vehicles, pedestrians, and cyclists along the project route.

Finding: The Board finds that implementation of the Station H Project would potentially temporarily interfere with the existing circulation system during construction activities. Adoption and incorporation of Mitigation Measure 3.17-1 into the Project will reduce the impact to a less-than-significant level. Therefore, the Project with mitigation will not cause significant transportation impacts related to the circulation system.

IS Checklist Impact 3.17-c: Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? Project construction would require temporary closure of vehicle lanes as well as sidewalks, bike lanes, and transit stops. This impact would be potentially significant.

Mitigation Measure 3.17-1: Traffic Control Plan.

Prior to project construction within or adjacent to public roadways, SMUD's construction contractor shall develop a traffic control plan for the project and submit the plan to the City of Sacramento's Department of Public Works. The plan shall identify temporary lane, sidewalk, bicycle lane, and transit stop closures and provide information regarding how access and connectivity will be maintained during construction activities. The plan shall include details regarding traffic controls that would be employed, including signage, detours, and flaggers. The traffic control plan shall be implemented by the contractor during construction to allow for the safe passage of vehicles, pedestrians, and cyclists along the project route.

Finding: The Board finds that implementation of the Station H Project would potentially temporarily interfere with the safe movement in the area during construction activities. Adoption and incorporation of Mitigation Measure 3.17-1 into the Project will reduce the impact to a less-than-significant level. Therefore, the Project with mitigation will not cause significant transportation impacts related to transportation hazards.

d. Alternatives

In compliance with CEQA and the CEQA Guidelines, Chapter 5, "Alternatives" of the Draft EIR evaluated a reasonable range of alternatives to the Project, including the No Project Alternative, followed by identification of an environmentally superior alternative. The EIR examined each alternative's feasibility and ability to meet the following Project Objectives:

- Provide safe and reliable electrical service to existing and proposed development in the downtown Sacramento area.
- Meet SMUD's goals of ensuring electrical service reliability in the downtown Sacramento area by 2024.
- Provide greater operational flexibility between circuits and substations in the area.
- Maximize the use of available SMUD property and resources.
- Minimize impacts to nearby sensitive receptors.
- Minimize potential conflicts with existing planning efforts within the City of Sacramento.

Potential alternatives found to be clearly infeasible, including a No Ground Disturbance Alternative, were rejected because they would not achieve most of the basic project objectives without further environmental review in Section 5.2.3 of the Draft EIR.

The No Project Alternative (Alternative A) and Alternatives that might have been feasible and that would attain many of the Project Objectives to some extent – including Alternative B (Site Reorientation) and Alternative C (Off-Site Alternative) – were carried forward and analyzed with regard to whether they would reduce or avoid significant impacts of the Project.

In connection with certification of the Final EIR for the Project, the Board certifies that it has independently reviewed and considered the information on alternatives provided in the Final EIR and the record of proceedings. The Board finds that no new alternatives have been identified and that the feasibility of the analyzed alternatives has not changed since the Draft EIR was circulated for public review. The Board certifies that it has independently reviewed and considered the information on alternatives provided in the Final EIR and the administrative record, and find, for the reasons set forth below, that each of the following alternatives cannot feasibly attain, either at all or to the same extent as the proposed Project, one or more of the Project Objectives, is otherwise infeasible or fails to avoid or substantially lessen the significant effects of the Station H Substation Project.

1. Alternative A (No Project)

Under this alternative, no new substation equipment would be installed within the yard of the former Station A. It is assumed that the existing equipment would continue to be used until it is no longer considered viable and then likely decommissioned and removed. Under this alternative, SMUD would not be able to provide reliable and safe electrical service to the anticipated level of development within the downtown Sacramento area.

This alternative would not meet any of the objectives identified above for the Project. Because this alternative would not attain any project objectives and for the reasons set forth above, Alternative A is rejected by the Board from further consideration.

2. Alternative B (Site Reorientation)

Under this alternative, new substation uses would be reoriented to maximize the distance between the known Tribal cultural resources and on-site ground disturbance. This would involve the removal of existing Station A equipment and abandonment in place of any subsurface equipment associated with Station A that is present within 35 feet of the southern boundary of the project site. Where feasible, any equipment to be placed within this area would be installed on concrete pads to minimize ground disturbance. Where feasible, all necessary subsurface utilities would also be routed north from the project site and then westward along Government Alley. This alternative would not remove any existing or otherwise planned subsurface utilities, including those associated with Station G, that extend through the eastern portion of the project site.

This alternative would achieve most of the project objectives but not to the degree of the project. It would not maximize the use of available SMUD property and resources and would not minimize impacts on nearby sensitive receptors. It would also potentially conflict with existing planning efforts within the City of Sacramento, such as the Central City Design Guidelines which requires utility connections to be designed to minimize their occurrence and mitigate their visual impact (City of Sacramento 2018:4-12). This alternative would also not meet the project objective of providing greater operational flexibility between circuits and substations in the area because no ground disturbance on the project site would necessitate additional connections in Government Alley, which is already crowded with various utility connections. Due to the site restrictions associated with this alternative, the overall capacity of the onsite substation would be reduced (up to one half of capacity), and depending on future development and electrical service needs in the area, the construction of additional substation facilities within the downtown Sacramento area may be required at a later date. Because this alternative would not attain project objectives and for the reasons set forth above, Alternative B is rejected by the Board from further consideration.

3. Alternative C (Off-Site Alternative)

Under this alternative, a new substation would be constructed at an offsite location generally north of Station G and south of the Union Pacific Railroad (UPRR) tracks. This analysis assumes an off-site location would be generally located north of Station G based on current development (i.e., currently undeveloped or under-utilized land). In addition, because of the challenges associated with routing substation lines under the UPRR tracks, it is further assumed that any off-site alternative location would need to be located south of the UPRR tracks. Based on these locational constraints development of a substation would impact the planning and approved development that is underway or has currently been completed on these parcels within this area. Obtaining approvals for the substation would be very difficult with this alternative. Given the feasibility considerations associated with off-site locations (e.g., cost increases and logistical challenges due to proximity to connecting infrastructure) that would come with locating the substation more distant to the service area and the required transmission infrastructure, this analysis focuses on a potential site that represents the nearest feasible off-site location as it would represent the least increase in impacts related to construction length and disturbance area. This is considered to be consistent with CEQA Guidelines Section 15126.6 and the intent/purpose of alternatives within an EIR. As potential off-site locations get farther away from the existing connections near Station G and H Street, there would be greater environmental effects from the increased construction.

The parcels located within the aforementioned area sites are zoned C-3 (Central Business District Zone), similar to the project site. The parcels are located within the Railyards Specific Plan (RSP) area. Currently, the parcels are mostly vacant but are within the RSP and planned for future development. Further, none of the parcels are

currently owned or otherwise controlled by SMUD. Existing equipment at the former Station A would be removed and subsurface facilities would be abandoned in place. However, this alternative would not remove any existing or otherwise planned subsurface utilities, including those associated with Station G, that extend through the eastern portion of the project site.

This alternative would require trenching to connect an off-site substation facility to existing infrastructure at the southeastern corner of the current Station A yard along H Street. Because of existing utility lines in 6th Street, the new connections required for this alternative would likely need to travel east along G Street, south along 7th Street, and west along H Street to the southeastern corner of the Station A yard for a range of approximately 1,000 feet to 2,000 feet of trenching and/or boring. Along 7th Street, there are light rail tracks located within the street, as well as numerous underground dry and wet utilities, which could require the installation of project features at greater depth (i.e., deeper excavation). Depending on the location of an off-site alternative, SMUD may be required to bore beneath these features if open trenching is not feasible, which would require the negotiation of easements to install necessary connections.

This alternative would achieve most of the project objectives but not to the degree of the project. By locating the new substation farther away from Station G and existing connections, Alternative C would not provide maximum operational flexibility. Because an offsite parcel is not owned or controlled by SMUD, this alternative would also not maximize the use of available SMUD properties and resources.

Because SMUD has long been planning for the reuse of the Station A yard, the location of Alternative C would require substantial changes to planned infrastructure and connections. These changes could take a substantial amount of time such that this alternative would not meet SMUD's goal of ensuring electrical service reliability in the downtown Sacramento area by 2024. Finally, this alternative would not minimize impacts to nearby sensitive receptors because it would require a greater amount of construction (including 1,000 to 2,000 feet of trenching, boring, and underground utility installation) and disruption to roadways, bike lanes, sidewalks, and, potentially, to existing light rail tracks along H Street. Because this alternative would not attain project objectives and for the reasons set forth above, Alternative C is rejected by the Board from further consideration.

4. Environmentally Superior Alternative

CCR section 15126.6 suggests that an EIR should identify the “environmentally superior” alternative. “If the environmentally superior alternative is the ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.” As shown in Summary of Project Impacts, Impact 3.1-1 (Change the significance of a Tribal cultural resources) and Impact 3.1-2 (Potential for the Station H

Substation project, in combination with other development, to contribute to a significant cumulative impact to Tribal cultural resources) would be significant and unavoidable. Feasible mitigation is available for all other potentially significant impacts associated with project implementation.

When considering objectives, the proposed project would best meet the project objectives, as stated in Chapter 2, "Project Description." In contrast, Alternative B would not minimize impacts on nearby sensitive receptors, nor would it maximize the use of available SMUD resources and property to the extent of the project. Similarly, Alternative C, by relocating a substation needed for SMUD to provide reliable and safe electrical service in the area, would limit SMUD's operational flexibility by locating this substation at a greater distance from Station G, which is currently under construction. Furthermore, while it would be expected to reduce impacts to the known resources along H Street, the site is located within an archaeologically sensitive area and could result in impacts to previously unknown cultural and Tribal cultural resources.

Consistent with CEQA Guidelines (CCR section 15126.6 [e][2]), because the environmentally superior alternative was identified as the No Project Alternative, another environmentally superior alternative shall be identified. Based on the environmental analysis contained in this Draft EIR, Alternative B would result in lesser impacts compared to the project. However, and as noted above, Alternative B could still result in significant and unavoidable impacts on archaeological, historical, and Tribal cultural resources. Therefore, the environmental impact differences between the project and Alternative B are not substantial enough that one is clearly environmentally superior over the other.

e. Additional Findings

1. These Findings incorporate by reference in their entirety the text of the Final EIR prepared for the Station H Substation project. Without limitation, this incorporation is intended to elaborate on the scope and nature of the Project, related mitigation measures, and the basis for determining the significance of such impacts.
2. All of the environmental effects of the Station H Substation Project have been adequately addressed in the Final EIR and have been mitigated or avoided, where feasible.
3. Section 15093(b) of the CEQA Guidelines provides that when the decision of the public agency results in the occurrence of significant impacts that are not avoided or substantially lessened, the agency must state in writing the reasons to support its actions. The Findings adopted by the Board, in connection with its approval of the Station H Substation Project and certification of the associated EIR, addressed all of the potentially significant impacts associated with implementation of the Station H Substation Project. The EIR concluded that the Tribal cultural resources impacts

(project-specific and cumulative) associated with the Project would be potentially significant and unavoidable even with the adoption of identified mitigation measures. As a result, the adoption of a Statement of Overriding Considerations for the Station H Substation is required.

4. CEQA Guidelines section 15074 requires the Lead Agency approving a Project to adopt an MMRP for changes to the Project that it adopts or makes a condition of Project approval in order to ensure compliance during Project implementation. The Board adopts the MMRP for Station H Substation Project and the specific mitigation measures will be monitored in conjunction with SMUD's Final EIR MMRP and Reporting process.

f. Record of Proceedings

For purposes of CEQA and these Findings, the record of proceedings for the Project (Record of Proceedings) consists of the following documents and other evidence, at a minimum:

- The Notice of Preparation (NOP) distributed on November 4, 2020 and comments received during its 30-day public review;
- The EIR for the Project, including, without limitation, the Draft EIR, Final EIR, and all of its appendices;
- All studies, EIRs, maps, rules, regulations, guidelines, permits and other documents and materials incorporated by reference in any portion of the EIR;
- All presentation materials from every noticed public meeting and public hearing for the Project;
- The MMRP for the proposed Project;
- Matters of common knowledge, including but not limited to federal, state and local laws and regulations, including, without limitation, SMUD's adopted CEQA Procedures and other adopted plans, policies and programs;
- Any documents expressly cited in these Findings and/or in the Statement of Overriding Considerations; and
- All materials not otherwise identified which are expressly required to be in the Record of Proceedings by PRC section 21167.6(e).



g. Custodian and Location of Records

The documents and other materials which constitute the Record of Proceedings are located at SMUD Headquarters. Copies of those documents are and at all relevant times have been and will be available upon request at the Customer Service Center (6300 S Street, Sacramento, CA 95817). The custodian of the Record of Proceedings may be contacted as follows:

Rob Ferrera
Sacramento Municipal Utility District
6201 S Street, MS B203
Sacramento, CA 95817-1899
(916) 732-6676
rob.ferrera@smud.org

This information is provided in compliance with PRC section 21081.6(a)(2) and CEQA Guidelines section 15091(e).

III. Project Benefits

The fundamental purpose of the Station H Substation Project is to provide safe and reliable electrical service to existing and proposed development in the downtown Sacramento area. The additional capacity provided by the Station H Substation Project will help meet the anticipated growth in electric demand, meet SMUD's goals of ensuring the reliability of electrical service in the downtown Sacramento area, provide greater operational flexibility between circuits and substations in the area, maximize the use of available SMUD property and resources, minimize impacts to nearby sensitive receptors, and minimize potential conflicts with existing planning efforts within the City of Sacramento. SMUD has long-anticipated the continued use of the project site for substation purposes, which has been a key component of SMUD's efforts for planning to meet future electrical service demand in the downtown Sacramento area.

a. Need for Power in SMUD's Downtown Service Area

SMUD generates, transmits, and distributes electric power to a 900-square-mile service area that includes most of Sacramento County and small portions of Placer and Yolo counties. The City of Sacramento estimates that between 2012 and 2035, it is expected to grow by approximately 165,000 residents and 86,000 jobs (City of Sacramento 2014:3-5). As the city continues to grow, SMUD will need to provide electricity for this expanding base of customers. Without the additional transforming capacity that would be provided by the new Station H, SMUD would not be able to fully provide for the electrical needs of this projected growth, which is critical for the continued buildout and development of the surrounding area, and to support the expanding cultural and business needs of the City

and its people. As the sole electrical utility in the City, SMUD has a legal obligation to serve this load.

b. Electrical Reliability

Responsibility for maintaining safe, reliable, and dependable operation of the electric grid in California is divided among various “balancing authorities,” including Balancing Authority of Northern California (BANC), of which SMUD is a principal member. A balancing authority assumes responsibility for operational and system reliability for electric customers within a specific electrical and geographic area. The Station H Substation is a necessary component of SMUD’s future plans for electrical reliability.

c. Environmental Benefits

The existing equipment at Station A is nearing the end of its useful life and needs to be replaced. The replacement of existing equipment will allow SMUD to take advantage of newer technologies by installing and operating new, more efficient equipment. As a general rule, newer equipment is more efficient and provides a corresponding benefit to the environment. By replacing the outdated equipment with newer equipment, SMUD will improve the efficiency of its operations.

During removal of the existing equipment, SMUD will test soil samples from the project site to determine if there is any soil contamination of the site. Prior to construction of the new Station H substation, SMUD would remove and/or remediate and contaminated soils.

As discussed in the EIR, there are known Tribal cultural resources in close proximity to the Station H Substation project site and it is possible that the Project could disturb Tribal cultural resources that may be located beneath the Project site. As part of its mitigation commitment, SMUD is developing a treatment plan for the site that will include Tribal monitoring, worker respect training, and methods for preservation and protection. SMUD will also develop a program encompassing historical tribal cultural information about the project area with the American River College Native American Resource Center to benefit Native American students as well as commission a piece of art or other appropriate monumentation to represent the Tribal cultural values of the Project area. While no measures are available to reduce Project impacts to a less-than-significant level, these measures will protect resources to the maximum extent feasible and enhance awareness of Tribal cultural values.

Finding: The SMUD Board finds the approval of the proposed Station H Substation Project will result in continuing and enhanced benefits to SMUD customers in form of an important and reliable power supply.

IV. Statement of Overriding Considerations

This section of the findings document addresses the requirement in CEQA Guidelines section 15093. It requires the approving agency to balance the benefits of a proposed project against its unavoidable significant impacts and to determine whether the impacts are acceptably overridden by the project benefits. As described below, unavoidable significant impact would occur in the areas of Tribal cultural resources.

a. Tribal Cultural Resources

Under the proposed Station H Substation Project, SMUD will engage in ground-disturbing activities during the construction of the substation. Given the close proximity of known Tribal cultural resources, it is possible that Project activities could disturb previously-unknown Tribal cultural resources that may extend from the known site to beneath the project site. SMUD will implement mitigation measures designed to minimize impacts on Tribal cultural resources, but acknowledges that potential impacts could be significant and unavoidable. While implementation of these measures, such as the treatment plan required by Mitigation Measure 3.1-1a, seeks to reduce impacts by implementing a testing plan, Tribal monitoring, and other means, the potential remains for unknown resources or their immediate surroundings to be inadvertently affected. Because all feasible mitigation has been included and no additional measures are available to SMUD to ensure that previously undiscovered Tribal cultural resources will not be affected, impacts on Tribal cultural resources are considered significant and unavoidable.

Finding: The SMUD Board finds that the project benefits identified in Section III above outweigh the unavoidable significant adverse environmental effect on Tribal cultural resources. The project benefits described in Section III are hereby determined to be, independent of other potential project benefits, a basis for overriding all significant and unavoidable environmental impacts identified in the Final EIR and in these findings.

V. Summary

Based on the foregoing findings and the information contained in the record, it is hereby determined that:

1. The Project will result in a significant and unavoidable impact related to Tribal cultural resources, but project benefits identified in Section III outweigh the unavoidable significant adverse environmental effects.
2. The environmentally superior alternative would lessen the significant and unavoidable impacts of the proposed project. However, the environmentally superior alternative,



Station H Substation Project CEQA Findings June 2021

as well as the other alternatives evaluated in the EIR, are rejected as infeasible because they fail to achieve project objectives.

This determination reflects the Board's independent judgment and analysis.

References

City of Sacramento. 2014 (August). *City of Sacramento 2035 General Plan Update Draft Master Environmental Impact Report*. SCH #2012122006. Prepared by Ascent Environmental, Inc., Sacramento, CA.

———. 2018. *Sacramento Central City Design Guidelines*. Sacramento, CA.

Swainson's Hawk Technical Advisory Committee. 2000 (May 31). *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley*.

SSS No.

ET&C 21-026

BOARD AGENDA ITEM

STAFFING SUMMARY SHEET

Committee Meeting & Date

ERCS June 16, 2021

Board Meeting Date

June 17, 2021

TO				TO			
1.	Jessica Kasparian			6.	Tracy Carlson		
2.	Jon Olson			7.	Stephen Clemons		
3.	Mark Willis			8.	Frankie McDermott		
4.	Scott Martin			9.	Legal		
5.	Jennifer Davidson			10.	CEO & General Manager		
Consent Calendar		X	Yes	No		If no, schedule a dry run presentation.	
Budgeted		X	Yes	No (If no, explain in Cost/Budgeted section.)			
FROM (IPR)		DEPARTMENT		MAIL STOP		EXT.	
Mike Roberts		Energy Trading & Contracts		A404		6952	
DATE SENT		5/28/2021					
NARRATIVE:							
<p>Requested Action: Authorize the Chief Executive Officer and General Manager, or his designee, to negotiate and execute the Sacramento Valley Energy Center LLC (SVEC) Power Purchase Agreement (PPA) with a 27-year (with an option to extend for an additional 3 years for a total of 30 years) term, substantially in the form attached, and all other agreements necessary to facilitate the SVEC project for 200 MW of solar photovoltaic power (Solar PV) and 100 MW of battery storage.</p> <p>Summary: In 2020, SMUD received a competitive offer from DE Shaw Renewables Investment company (DESRI). SMUD conducted an evaluation of the market and determined that the SVEC project offer provided superior value vs. alternatives. SMUD and DESRI negotiated a mutually beneficial PPA under which SMUD will purchase the energy, capacity, and environmental attributes, including Portfolio Content Category 1 Renewable Energy Credits (PCC1 RECs). The SVEC project provides SMUD full dispatch rights to 200 MW of Solar PV energy at a fixed price of \$33.20 per MWh plus 100 MW/4-hour battery storage at a fixed price of \$8.48 per kilowatt-month, with a combined maximum output of 250 MW at the Point of Interconnection to SMUD's transmission system. The scheduled commercial operation date is Dec 31, 2023. SMUD has an option to purchase the facility after year 10. The project is located in the eastern portion of SMUD's service territory.</p> <p>In addition to the PPA, SMUD is negotiating a Large Generator Interconnection Agreement, a Reimbursement and Waiver Agreement, and a Station Service Agreement that define the requirements for interconnection and certain project development responsibilities and terms.</p> <p>Board Policy: SD-2, Competitive Rates: SD-7, Environmental Leadership: SD-9 Resource Planning: This contract provides economic, zero carbon power and will be a key contributor to achieving our 2030 Zero Carbon Plan. Allows access to relatively low cost and carbon free power generated within SMUD's territory and delivered directly to SMUD.</p> <p>Benefits: Over 500,000 MWh/year of carbon free energy generated locally, or roughly 5% of our load, and 100 MW of dispatchable energy storage for a 4-hour duration.</p> <p>Cost/Budgeted: The expenses for the project have been included in our budget and financial forecast. The average annual cost is approximately \$17.4 million for the solar and \$10.1 million for the battery storage.</p> <p>Alternatives: Rely on other sources for carbon free energy.</p> <p>Affected Parties: Energy Trading & Contracts, Energy Settlements, Resource Planning, Budget Office, Grid Operations, Treasury, Real Estate, Power Generation, Grid Planning, Research and Development.</p>							

Coordination: Energy Contracts

Presenter: Mike Roberts, Principal, Energy Contracts

Additional Links:

SUBJECT

SVEC 200 MW Solar PV & 100 MW Battery Storage PPA

ITEM NO. (FOR LEGAL USE ONLY)

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

DRAFT

POWER PURCHASE AGREEMENT
BETWEEN
SACRAMENTO MUNICIPAL UTILITY DISTRICT
AND
SACRAMENTO VALLEY ENERGY CENTER, LLC
DATED []

TABLE OF CONTENTS

1. DEFINITION OF TERMS; RULES OF INTERPRETATION.....	6
1.1 DEFINITION OF TERMS	6
1.2 RULES OF INTERPRETATION	21
2. PROJECT; PURCHASE AND SALE OF PRODUCTS	22
2.1 Project and Expected PV Capacity	22
2.2 Products Purchased	22
2.3 Delivery Term, Delivery Point, and Commercial Operation	22
2.4 Payment for Products Purchased.....	26
3. CERTIFICATION AS AN ELIGIBLE RENEWABLE ENERGY RESOURCE.....	29
3.1 CEC RPS and Green-e Certifications	29
3.2 Environmental Attribute Delivery Obligation	29
3.3 WREGIS Registration	30
3.4 Change in Law	30
3.5 Additional Evidence of Environmental Attribute Conveyance.....	31
3.6 Modification of Environmental Attribute Reporting and Conveyance Procedure	31
3.7 Reporting of Ownership of Environmental Attributes.....	31
3.8 Greenhouse Gas (GHG) Emissions	31
4. CONVEYANCE OF CAPACITY ATTRIBUTES	31
4.1 Conveyance of Capacity Attributes	31
4.2 Reporting of Ownership of Capacity Attributes.....	32
4.3 Modification of Capacity Attribute Conveyance Procedure	32
4.4 Energy Market Participation	32
5. INTERCONNECTION; TELEMETERING; STORAGE DISPATCH	32
5.1 Interconnection Agreement	32
5.2 Station Service Load	32
5.3 No Additional Loads	32
5.4 Charging Energy Management	33
6. PERMITTING; STANDARD OF CARE; OPERATIONS; CURTAILMENT	34
6.1 Permitting	34
6.2 Standard of Care.....	34
6.3 Curtailment - Notice Following Outage or Curtailment	35
6.4 SMUD Performance Excuse	35

6.5	Dispatchability	35
6.6	Dispatch Down Instruction.....	36
6.7	SMUD Curtailment	36
6.8	Determination of Deemed Delivered Energy	36
7.	SCHEDULING AND FORECASTING; OUTAGES; ACCESS RIGHTS	37
7.1	Scheduling and Forecasting.....	37
7.2	Scheduling Coordinator.....	37
7.3	Energy Imbalance Market – EIM or other.....	38
7.4	Seller Available PV Capacity Notification Requirements; Penalties	38
7.5	Planned Outages	38
7.6	Forced Outages	38
7.7	Modification of Outage Notification Procedure	38
7.8	Access Rights	39
8.	TERM, TERMINATION EVENT AND TERMINATION	39
8.1	Term.....	39
8.2	Events of Default; Remedies.....	39
8.3	Termination Rights	40
8.4	Declaration of a Termination Event.....	42
8.5	Termination Payment Calculation	42
9.	CREDITWORTHINESS	43
9.1	Project Development Security	43
9.2	Delivery Term Security	44
10.	[RESERVED].....	44
11.	FORCE MAJEURE	44
11.1	Effect of Force Majeure.....	44
11.2	Notice of Force Majeure.....	44
11.3	Termination Due to Force Majeure Event	44
12.	INDEMNITY	44
12.1	Indemnity by Seller	44
12.2	Indemnity by SMUD	45
13.	LIMITATION OF DAMAGES.....	45
14.	REPRESENTATION AND WARRANTIES; COVENANTS	45
14.1	Representations and Warranties	45
14.2	General Covenants	46

14.3 SMUD Representations and Warranties	46
15. NOTICES.....	46
16. SET OFF	47
17. ASSIGNMENT	47
18. SMUD CLEAN ENERGY COMMUNITY LEADERS – MARK GALL MEMORIAL SCHOLARSHIP.	48
19. PROJECT PURCHASE OPTION	48
20. APPLICABLE LAW	50
21. DISPUTE RESOLUTION.....	50
22. SEVERABILITY	50
23. COUNTERPARTS	50
24. GENERAL	50
25. MOBILE SIERRA.....	51
26. SERVICE CONTRACT; FORWARD AGREEMENT	51

This POWER PURCHASE AGREEMENT (the "Agreement") for an Eligible Renewable Energy Resource is made and entered into this _____ day of _____, 2021, ("Effective Date"), by and between the Sacramento Municipal Utility District ("SMUD"), and Sacramento Valley Energy Center, LLC ("Seller"). SMUD and Seller are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

- A. Seller desires to interconnect and operate a fully integrated solar photovoltaic generation plus battery storage facility (the "Project"), as described in Exhibit A, to be located within SMUD's service territory and interconnected to SMUD's 230 kV transmission line, in parallel with the SMUD Transmission System.
- B. The Parties wish to enter into a power purchase agreement for the sale and purchase of all Energy, Capacity, Capacity Attributes, and Environmental Attributes from the Project directly to SMUD.
- C. In conjunction with this Agreement, the Parties wish to execute a Large Generator Interconnection Agreement (together the two agreements are referred to as the "Definitive Agreements").
- D. This Agreement requires the Seller to be a retail customer and to obtain retail electrical service from SMUD to serve certain electrical loads at the premises identified in Exhibit A, except as otherwise permitted under SMUD's tariffs. This Agreement does not constitute an agreement by SMUD to provide retail electrical service to Seller. Such arrangements must be made separately between SMUD and Seller.
- E. An affiliate of Navajo Tribal Utility Authority may provide development assistance to the Project alongside the Seller, and as such, a portion of the Project proceeds may go to support electrification on the Navajo Nation.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and of other good and valuable considerations, the sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITION OF TERMS; RULES OF INTERPRETATION

1.1 DEFINITION OF TERMS

10-year Purchase Option: Has the meaning set forth in Section 19.1.

Accepted Compliance Expenditures: Has the meaning set forth in Section 3.4.3.

Actual Annual Solar Insolation: The actual amount of solar insolation at the Project site for each Contract Year, as reflected in the Solar Irradiance Data obtained from Solar Anywhere or other mutually agreeable third party, or as derived using another mutually agreeable mechanism.

Adjusted EAEP (AEAEP): The Expected Annual Energy Production adjusted for Actual Annual Solar Insolation according to the formula set forth in the definition of Expected Annual Energy Production (EAEP).

Adjusted MAEP (AMAEP): The Minimum Annual Energy Production adjusted for Actual Annual Solar Insolation according to the formula set forth in the definition of Minimum Annual Energy Production (MAEP).

Affiliate: Has the meaning set forth in Section 17.1.2.

Agreement: Has the meaning set forth in the Preamble.

Annual Availability Liquidated Damages: Has the meaning set forth in Exhibit O.

Annual Average Storage Availability: Has the meaning set forth in Exhibit O.

Annual Energy Production (AEP): For any particular Contract Year, is equal to the total MWh generated by the Solar Project and delivered to SMUD measured at the Solar Meter. Any impact on production due to Force Majeure, SMUD Curtailment or SMUD's breach of this Agreement or the Interconnection Agreement that prevents or excuses Seller from delivering Energy to the Delivery Point, and Dispatch Down Periods, shall adjust the AEP according to the AAEP formula.

Adjusted Annual Energy Production (AAEP) =

AEP + Deemed Delivered Energy that could have been generated by the Project and delivered to SMUD but for (i) Force Majeure, (ii) SMUD Curtailment, (iii) SMUD's breach of this Agreement or the Interconnection Agreement that prevents or excuses Seller from delivering Energy to the Delivery Point, or (iv) Dispatch Down Periods.

Pre-COD Index Price: The applicable hourly Locational Marginal Price "LMP" for the Project, or if the LMP has not been established for the Project, the applicable hourly NP-15 EZ Gen Hub Price.

Available PV Capacity: The power output from the Solar Project, expressed in megawatts (AC), that is available to generate Energy.

Balancing Authority: Entity responsible for the reliable planning and operation of the bulk power system in a defined area.

Bank: Has the meaning set forth in Section 9.2.

Bankrupt: Means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

Bid: Has the meaning set forth in the CAISO Tariff.

Business Day: Any Monday through Friday, inclusive, but excluding days that are observed as business holidays by either Party or days that are NERC Holidays.

CAISO: The California Independent System Operator Corporation or its successor.

CAISO Balancing Authority Area: The system of transmission lines and associated facilities that is operated by the CAISO and for which the CAISO has operational control and responsibility for grid reliability.

CAISO Tariff: The California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Restrictions, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

California Energy Commission (CEC): The agency responsible for certifying eligible renewable resources and tracking the procurement of such resources.

California Renewables Portfolio Standard (RPS): The standard, codified in Public Utilities Code (PUC) Sections 399.11 through 399.20, and Public Resources Code Sections 25740 through 25751, as may be amended from time to time.

Capacity: The instantaneous ability of a generator to produce Energy (real power) at a specified output. Capacity is measured in megawatts (“MW”) AC or kilowatts (“kW”) AC.

Capacity Attributes: Any current or future defined characteristic, status, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce energy, charge and discharge energy or provide ancillary services, including, but not limited to, any accounting construct so that the full output of the Project may be counted toward a Resource Adequacy requirement or any other measure by an entity invested with the authority under federal or state law, to require SMUD to procure, or to procure at SMUD’s expense, Resource Adequacy or other such products. For the avoidance of doubt, Capacity Attributes shall not include, and Seller shall have the right in its sole discretion to seek compensation for, reactive power and/or reactive power capability of the Project, and any such compensation shall be the sole property of Seller.

Change of Control: Any circumstance in which Ultimate Parent ceases (i) to retain the ability to control, directly or indirectly, the decision-making of Seller, or (ii) to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests (measured by either voting power or economic interests) in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

- a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests (measured by either voting power or economic interests) in each such intermediate entity; and
- b) ownership interests in Seller owned directly or indirectly by any lender (including any tax equity provider and any agent acting for or on behalf of such lender) shall be excluded from the total outstanding equity interests in Seller;

Provided that any Permitted Transfer shall not constitute or be deemed a “Change of Control.” Furthermore, a foreclosure by any lender on the direct or indirect ownership interests in Seller (including a transfer in lieu of foreclosure or any transfer to a Permitted Transferee) shall not constitute or be deemed a “Change of Control”.

Charging Energy: means (i) during the Compliance Period, solely Solar Charging Energy, and (ii) following the Compliance Period, both Solar Charging Energy and Grid Charging Energy.

Charging Notice: The operating instruction, and any subsequent updates, given by SMUD to Seller, (i) directing the Storage Project to charge at a specific MW rate to a specified Stored Energy Level and (ii) identifying the quantity of Solar Charging Energy (and/or following the Compliance Period, Grid Charging Energy), when the Solar Project and Storage Project are operated under Independent Control Mode as specified in LGIA, provided that any such operating instruction or updates shall be in compliance with Section 5.4 and the Operating Restrictions. For the avoidance of doubt, any SMUD request to initiate a Storage Capacity Test shall not be considered a Charging Notice. For the avoidance of doubt, (a) when the Solar Project and Storage Project are operated under Combined Control Mode as specified in LGIA, no Charging Notice will be issued by SMUD to the Storage Project and (b) Project Plant Controller shall automatically determine the amount of Charging Energy based on the MW setpoint for the combined total output of the Solar Project and Storage Project given by SMUD.

Clear Sky Model Report: A document which will contain agreed-upon irradiance and energy parameters for use in connection with Section 6.8 of this Agreement, and which has been acknowledged by the Parties as of the date hereof and is incorporated herein by reference; provided, however, that the Parties agree to amend and update the Clear Sky Model Report to the extent necessary to reflect the final equipment selection and actual size of the Project as of 180 days after the Commercial Operation Date. This document shall include an 8760 hourly representation of solar insolation at the Project, and shall include one minute data for every hour.

Closing: Has the meaning set forth in Section 19.3.

Closing Date: Has the meaning set forth in Section 19.3.

COD Conditions: Has the meaning set forth in Section 2.3.4.

COD Notice: Has the meaning set forth in Section 2.3.4.

Co-located Resource: Has the meaning as defined in the CAISO Tariff.

Commercial Operation: The period of operation of the Project once the Commercial Operation Date has occurred.

Commercial Operation Date (COD): The date specified in the Commercial Operation Date Confirmation Letter on which the Project shall conform to the requirements for Commercial Operation.

Commercial Operation Date Confirmation Letter: A letter that the Parties execute and exchange in accordance with this Agreement, the form of which is attached as Exhibit E.

Compliance Expenditure Cap: Has the meaning set forth in Section 3.4.1.

Compliance Expenditure(s): Has the meaning set forth in Section 3.4.1.

Compliance Period: The date commencing on the date hereof and ending on the date that is six (6) years after the Storage Project achieves Commercial Operation.

Contract Price: Each of the Solar Price and the Storage Price, as set forth on Exhibit B, as may be adjusted in accordance with this Agreement.

Contract Year: Any of the one-year periods during the Delivery Term, with the first Contract Year commencing on the COD and ending on the last day of the twelfth (12th) full month thereafter and each subsequent Contract Year commencing on the applicable anniversary of such date.

Costs: Has the meaning set forth in Section 8.5.1(c).

Day-Ahead Market: Has the meaning set forth in the CAISO Tariff.

Deemed Delivered Energy: The amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a SMUD Curtailment, Dispatch Down Period, Force Majeure period or otherwise due to SMUD's breach of this Agreement or the Interconnection Agreement that prevents or excuses Seller from delivering Energy to the Delivery Point, which amount shall be calculated as set forth in Section 6.8 Determination of Deemed Delivered Energy.

Defaulting Party: Has the meaning set forth in Section 8.2.1.

Deficit Damages: Has the meaning set forth in Section 2.3.8(b).

Definitive Agreements: Has the meaning set forth in the Preamble.

Delay Damages: The compensation paid by Seller to SMUD due to a failure of Seller to meet the Scheduled Commercial Operation Date.

Delay LD Start Date: Has the meaning set forth in Section 2.3.7.

Delivery Point: The interconnection location of the Project on the high-side of the step-up transformer that interconnects to the SMUD Transmission System, where SMUD accepts title to the Product and associated attributes as described herein. The Delivery Point is identified in Exhibit A and is the same location as the Point of Interconnection.

Delivery Term: Has the meaning set forth in Section 2.3.1.

Delivery Term Security: Has the meaning set forth in Section 9.2.

Development Security: Has the meaning set forth in Section 9.1.

Discharging Energy: All Energy delivered to the Delivery Point from the Storage Project, net of the transformation and transmission losses, if any, as measured by the Storage Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Project as Charging Energy.

Discharging Notice: The operating instruction, and any subsequent updates, given by SMUD to Seller, directing the Storage Project to discharge Discharging Energy at a specific MW rate or to a specified Stored Energy Level, when the Solar Project and Storage Project are operated under Independent Control Mode as specified in LGIA,; provided that (a) any such operating instruction or update shall be in accordance with Section 5.4 and the Operating Restrictions, and (b) if, during a period when the Storage Project is instructed by SMUD to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall (for purposes of this PPA) be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as SMUD issues a further modified Discharging Notice. Note: For the avoidance of doubt, (a) when the Solar Project and Storage Project are operated under Combined Control Mode as specified in LGIA, no Discharging Notice will be issued by SMUD and (b) the Project Plant Controller shall automatically determine the amount of Discharging Energy based on the MW setpoint for the combined total output of the Solar Project and Storage Project given by SMUD.

Dispatch; Dispatchability: The ability of a generating unit to increase or decrease generation, or to be brought on line or shut down at the request of a utility's system operator.

Dispatch Down Instruction: Any direction, instruction or order to reduce the generation or delivery of PV Energy for the following reasons:

- a) An Emergency Condition;
- b) Any abnormal situation or condition that in the reasonable judgment of Seller, is imminently likely to cause a material adverse effect on the security of, or damage to, the Project or Seller's interconnection facilities. System restoration or black start shall be considered an Emergency Condition; provided, however, that the Project shall not be obligated to possess black start capability;
- c) Any direction, instruction, or order given by RC West Reliability Coordinator or its successor (whether through the scheduling coordinator, Balancing Area Authority, or Host Electric Utility) for warnings of an Emergency Condition, or imminent condition or situation, which jeopardizes SMUD's Electric System or other Electric System integrity

or the integrity of other systems to which they are connected; such direction, instruction, or order may result from a warning or forecast of overgeneration conditions but only to the extent such overgeneration is an imminent reliability issue. To the extent practicable under the circumstances and consistent with Prudent Utility Practice, any such curtailment of the Project shall be on an equitable, non-discriminatory basis. For purposes of clarity, any direction instruction, or order for overgeneration resulting from any economic scheduling or bidding of the Project is not a Dispatch Down Instruction and is a SMUD Curtailment.

- d) Any direction, instruction or order given by the Host Electric Utility, or any Transmission Provider (including SMUD, in its function as a Host Electric Utility, Balancing Authority or Transmission Provider) for reasons to prevent equipment damage, loss of load, abnormal voltage conditions, or any warning, forecast or anticipation of conditions or situations that jeopardize the Host Electric Utility or Transmission Provider's system integrity or due to scheduled or unscheduled maintenance or construction on the Host Electric Utility or Transmission Provider's transmission or distribution facilities that prevent SMUD from receiving or the Seller from delivering Energy at the Delivery Point; such direction, instruction, or order may result from a warning or forecast of overgeneration conditions but only to the extent such overgeneration is an imminent reliability issue. To the extent practicable under the circumstances and consistent with Prudent Utility Practice, any such curtailment of the Project shall be on an equitable, non-discriminatory basis. For purposes of clarity, any direction instruction, or order for overgeneration resulting from any economic scheduling or bidding of the Project is not a Dispatch Down Instruction and is a SMUD Curtailment;

provided, however, Dispatch Down Instructions shall not include any SMUD Curtailment.

Dispatch Down Period: Any period of reduction of the Project output or its generation of Products arising out of a Dispatch Down Instruction, including any ramp up and ramp down periods.

Distribution System: The relatively low voltage wires, transformers and related equipment generally used by an electric utility to deliver electric power to retail customers (as opposed to using it to move bulk quantities of power between different electric utilities or from large electric generators to a Distribution System).

Early Termination Date: Has the meaning set forth in Section 8.4.

Effective Date: Has the meaning set forth in the Preamble.

EIM: Shall mean the Western Energy Imbalance Market.

EIM Participating Resource: has the meaning set forth in the CAISO Tariff.

Electric System: The integrated electric generation, transmission, and distribution facilities owned or controlled by an electric utility.

Electrical Losses: All transmission or transformation losses between the Project and the Delivery Point, including losses associated with (i) delivery of Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Project and (iii) delivery of Discharging Energy to the Delivery Point.

Eligible Renewable Energy Resource (ERR): An Eligible Renewable Energy Resource as defined in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25471, as either code may be amended or supplemented from time to time, as defined in the CEC Renewables Portfolio Standard Eligibility Guidebook, as may be amended or supplemented from time to time.

Emergency Condition: A condition or situation: (1) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect, on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; including the conditions of System Operating Limit (SOL) (as defined in the LGIA) exceedance where the pre-contingency or post-contingency mitigation actions are required by NERC or WECC Reliability Standards; or (3) that, in the case of Seller, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Facility or Seller's Interconnection Facilities (as defined in the LGIA).

EMS: Has the meaning set forth in Section 5.5.

Energy: Electrical energy produced by the Solar Project and delivered with the voltage and quality required by SMUD in accordance with the LGIA, and measured in megawatt-hours (MWh) or kilowatt-hours (kWh).

Energy Deviation: Has the meaning set forth in Section 7.4.

Environmental Attributes: All Environmental Attributes, as that term is defined in D.08-08-028 of the California Public Utilities Commission, as may be amended, and all renewable energy credits as that term is defined under section 399.12 of the California Public Utilities Code, as may be amended, all Renewable and Environmental Attributes as defined by WREGIS, as well as any credits, carbon benefits, carbon emission reductions, carbon offsets or allowances, howsoever entitled, attributed to the Energy produced at the Solar Project and delivered to the Delivery Point recognized under Assembly Bill 32 Global Warming Solutions Act of 2006, as may be amended.

ETR: Has the meaning set forth in Section 7.6.

Event of Default: Has the meaning set forth in Section 8.2.1.

Excusable Delay: Any delay that is caused by one or more of the following: (i) an event of Force Majeure, (ii) breach of this Agreement by SMUD or other material action or inaction on the part of SMUD that prevents the Seller from fulfilling its obligations, in whole or in part, under this Agreement, (iii) an unforeseen delay in the Permitting process (including any delay by a Governmental Authority in the issuance or maintenance of a Permit) or any other challenge to a Permit that is not a result of any breach by Seller, (iv) a breach by SMUD under the Interconnection Agreement, or (v) a delay in completion of any interconnection or transmission facilities or upgrades related to the Project.

Expected Annual Energy Production (EAEP): The Energy that the Project can be expected to produce during a typical year of operation, factoring in typical weather patterns, expected solar irradiance, etc.

The EAEP for each Contract Year is set forth in Exhibit C. Any variance in the Actual Annual Solar Insolation from typical (up or down) shall adjust the EAEP according to the following formula:

Adjusted Expected Annual Energy Production (AEAEP) =

EAEP * (Actual Annual Solar Insolation/Typical Annual Solar Insolation)

Expected PV Capacity: Is as specified in Exhibit A.

Expected Storage Capacity: Has the meaning set forth in Exhibit A.

Extended Term: Has the meaning set forth in Section 2.3.1.

Facility Debt: Means the obligations of Seller or its Affiliates to any lender or tax equity investor pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any fees or interest due with respect to any of the foregoing plus an amount sufficient to ensure that the tax equity investor recovers the greater of (1) its investment balance under generally accepted accounting principles (as determined immediately prior to exercise of the applicable purchase option) and any investment tax credit recaptured as result of such exercise and (2) the amount necessary to allow all tax equity investors to achieve their hurdle rate required for the partnership flip to occur under any tax equity financing (or if any tax equity financing has a fixed date as the flip date, the amount necessary to allow all tax equity investors to achieve a rate of return equal to the rate of return used to determine the flip date under such tax equity financing).

Fair Market Value: Has the meaning set forth in Section 19.6.

FERC: The Federal Energy Regulatory Commission or any successor government agency.

Final Purchase Option: Has the meaning set forth in Section 19.1.

Force Majeure: An event or circumstance occurring after the Effective Date that prevents or delays the ability of one Party from performing obligations under this Agreement, and which is not in the reasonable control of, or the result of negligence of, the Party claiming Force Majeure, and which the claiming Party is unable to overcome or cause to be avoided by the exercise of due diligence. Force Majeure shall include the following events, to the extent consistent with the prior sentence: (a) An act of nature, riot, insurrection, war, explosion, labor dispute, fire, flood, earthquake, volcanic eruption, storm, lightning, tsunami, backwater caused by flood, act of the public enemy, terrorism, or epidemic; (b) Interruption of transmission or generation services as a result of a physical Emergency Condition (and not SMUD Curtailment) not caused by the fault or negligence of the Party claiming Force Majeure and reasonably relied upon and without a reasonable source of substitution to make or receive deliveries hereunder, civil disturbances, strike, labor disturbances, labor or material shortage, national emergency, court order or other action by a Governmental Authority that prevents a Party from fulfilling its obligations under this Agreement (excluding, with respect to any claim by SMUD, any action or inaction of the SMUD Board of Directors or any person with the authority to bind SMUD); (c) any delays in obtaining any permits, authorizations, or entitlements to construct or operate the Project beyond the date as set forth in Exhibit N Project Milestone Schedule, except to the extent caused by the affected Party, and the requirement to obtain any additional permit, authorization or entitlement to construct or operate the Project that is not included in Exhibit N Project Milestone Scheduled that arises after the Effective Date if the timeline for obtaining such permit, authorization and entitlement affects Seller's ability to achieve any milestone hereunder. Under no circumstances shall either Party's financial incapacity, Seller's ability to sell Solar Products or Storage Products at a more favorable price or under more favorable conditions or SMUD's ability to acquire Solar Products or Storage Products at a more favorable price or under more favorable conditions or other economic reasons constitute an event of Force Majeure. The term "Force Majeure" does not include Forced Outages to the extent such are not caused or exacerbated by an event of Force Majeure as described above, nor does it include Seller's inability to obtain financing or other equipment and instruments necessary to plan for, construct, or operate the Project.

Forced Outage: Means an unplanned outage of one or more of the Project's components that results in a reduction of the ability of the Project to produce Energy, and that is not the result of a Force Majeure event and specifically excludes any planned maintenance or Planned Outage.

Forced Outage Notification Procedures: Means the procedures set forth in Exhibits G and I with respect to notification of Forced Outages and return to service.

Full Access: Has the meaning set forth in Section 19.2.

GHG: Means greenhouse gas.

Governmental Authority: The federal government of the United States, and any state, county, municipal or local government or regulatory department, body, political subdivision, commission, agency, instrumentality, ministry, court, judicial or administrative body, taxing authority, or other authority thereof (including any corporation or other entity owned or controlled by any of the foregoing) having jurisdiction over any Party, the Project, the site of the Project, or the rights or obligations of any Party under this Agreement, whether acting under actual or assumed authority, provided, however, that SMUD and Seller shall not be considered a Governmental Authority hereunder. The CAISO shall be considered a Governmental Authority.

Green-e: The national independent certification and verification program for renewable energy. Green-e developed the Green-e Renewable Energy Standard of Canada and the United States, as may be amended from time to time, or replacement verification program.

Green-e Standard: The Green-e Energy Tracking Attestation Form for generators participating in a tracking system, currently available at <https://www.tfaforms.com/4652008> as such form may be updated from time to time, with Seller electing WREGIS on such form.

Grid Charging Energy: Energy withdrawn from Interconnection Provider's or Transmission Provider's electrical system and delivered at the Delivery Point and any energy from any source other than the solar photovoltaic electric energy produced by the Solar Project used to charge the Storage Project and discharged at a later time.

Guaranteed Commercial Operation Date or Guaranteed COD: The date that is nine (9) months after the Scheduled Commercial Operation Date, as specified in Exhibit A and subject to day-for-day extension to the extent the Scheduled Commercial Operation Date is extended as provided in Section 2.3.7.

Guaranteed Round Trip Efficiency: Has the meaning set forth in Exhibit O.

Guaranteed Storage Availability: Ninety-seven percent (97%).

Host Electric Utility: An electric utility that provides, at the general location of the Project, any of the following: electric transmission service, distribution service and/or retail electricity sales.

Hybrid Resource: Has the meaning as defined in the CAISO Tariff.

Integral Station Service Load: That subset of station service load that is so integrated with the Project design that it is not feasible for SMUD to meter and serve such demand during Project operations on a stand-alone basis.

Interconnection Agreement or LGIA: The Large Generator Interconnection Agreement (LGIA) between SMUD and Seller specific to the interconnection of the Project to the SMUD Transmission System.

Interconnection Capacity Limit: the maximum instantaneous amount of Energy that is permitted to be delivered to the Point of Interconnection, in the amount of 250 MW.

Interest Rate: Shall be the lesser of (a) 4% plus the "prime rate" of interest as published on that date in the Wall Street Journal, and generally defined therein as "the base rate on corporate loans posted by at least 75% of the nation's 30 largest banks," or if the Wall Street Journal is not published on a date for which such interest rate must be determined, the "prime rate" published in the Wall Street Journal on the nearest-preceding date on which the Wall Street Journal was published, or if the Wall Street Journal is no longer in publication, such other similar interest rate reasonably agreed to by the Parties, and (b) the highest rate permitted under applicable law.

ITC or Investment Tax Credit: The investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986, as it may be amended from time to time.

ITC Recapture Amount: The amount payable (determined on an after-tax basis) to the IRS by Seller (or its Affiliate or tax equity investor) under Code §50(a) due to Seller's ineligibility for all or a portion of ITC after such time as Seller or its Affiliate or tax equity investor has claimed the ITC.

J. Aron: Has the meaning set forth in Section 17.2.

Law: Any statute, law, treaty, rule, regulation, ordinance, code, enactment, injunction, order, writ, decision, authorization, judgment, decree or other written legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction.

Letter of Credit: One or more irrevocable, standby letters of credit issued by a Qualified Issuer in substantially the form set forth in Exhibit Q.

Loss: Has the meaning set forth in Section 8.5.1(a).

Maximum Hourly Energy Delivery: The maximum energy (MW) that SMUD will make payment for in any delivery hour, which is equal to Expected PV Capacity * 1 hour.

Measurement Period: Any two consecutive Contract Year periods during the Delivery Term.

Minimum Annual Energy Production (MAEP): For the first Contract Year, an amount equal to 90% of the Expected Annual Energy Production (EAEP) amount for such Contract Year and thereafter, the amount equal to 90% of the sum of the two Expected Annual Energy Production (EAEP) amounts during a Measurement Period, as set forth in Exhibit C. Any variance in the Actual Annual Solar Insolation from typical (up or down) shall adjust the MAEP according to the following formula.

Adjusted Minimum Annual Energy Production (AMAEP) =

MAEP * (Sum of Actual Annual Solar Insolation amounts for the two Contract Years in the Measurement Period / Sum of the Typical Annual Solar Insolation amounts for the two Contract Years in the Measurement Period)

Monthly Settlement Amount: On and after COD, the monthly settlement amount will equal (a) the Energy delivered to and metered at the Solar Meter (in MWh) plus Deemed Delivered Energy during SMUD Curtailment or SMUD's breach of the Agreement or the Interconnection Agreement that prevents or excuses Seller from delivering Energy to the Delivery Point, times (b) the Solar Price, subject to adjustment as set forth in Section 2.4.2(b) for REC delivery shortfalls.

Moody's: Moody's Investors Service, Inc., or any successor organization thereto.

MW: Megawatt(s) of alternating current.

MWh (Megawatt-hours): A unit of energy measurement corresponding to 1,000 kilowatt-hours.

NERC: The North American Electric Reliability Corporation, or any successor organization.

NERC Holidays: Days that NERC establishes as holidays for electric energy trading.

Non-Defaulting Party: Has the meaning set forth in Section 8.2.2(a).

NP-15: The zone within the CAISO Balancing Authority area designated as North of Path 15 by the CAISO for congestion settlement purposes.

NP-15 EZ Gen Hub Price: The day-ahead hourly locational marginal price as published by the CAISO for generator transactions in the NP-15 zone of the CAISO.

Operating Restrictions: Those rules, requirements and procedures set forth in Exhibit J.

Option Notice: Has the meaning set forth in Section 19.1.

Outage Notification Procedure: The outage notification procedure outlined in Exhibit G.

Party/Parties: SMUD and Seller are referred to individually as a “Party” and collectively as “Parties.”

PCC1 REC Price: Has the meaning set forth in Section 2.4.2(b).

Performance Tolerance Band: Has the meaning set forth in Section 7.4.

Permits: Permits, licenses, certificates, concessions, consents, waivers, exemptions, variances, franchises, orders, decrees, rights, registrations, submissions, determinations, authorizations, approvals, registrations, orders, and filings.

Permitted Transfer: Means

- a) Foreclosure by any lender on the direct or indirect ownership interests in Seller (including a transfer in lieu of foreclosure or any transfer to a Qualified Transferee);
- b) Any direct or indirect transfer of equity interests in Seller in connection with a tax equity financing (for purposes of clarity, this does not prohibit or otherwise restrict any transfer of interests in the Solar Project or the Storage Project);
- c) Any direct or indirect transfer of this Agreement or equity interests in Seller to an Affiliate of Seller (including any investment fund or partnership for which an Affiliate of Seller is the managing member), provided that in the case of a transfer of this Agreement only, such Affiliate’s creditworthiness is equal to or better than that of Seller;
- d) Any direct or indirect transfer of this Agreement or any equity interests in Seller to a person succeeding to all or substantially all of the assets of Seller; or
- e) Any direct or indirect transfer of this Agreement or any equity interests in Seller to a Qualified Transferee.

PG Damages: Has the meaning set forth in Section 2.4.8.

PG Shortfall: Has the meaning set forth in Section 2.4.8.

Planned Outage: An outage that has been scheduled in advance pursuant to the provisions of Section 7.5 of one or more of the Project’s components that results in a reduction of the ability of the Project to produce Energy.

Plant Controller: Device or compilation of devices used to take inputs either directly or indirectly from transmission provider, power system operator, or other affiliated group and provide outputs or feedback in the implementation of controls of the Solar Project and Storage Project. Plant controller must be capable to interface with Supervisory Control and Data Acquisition System SCADA using industry standard protocol such as DNP3.0.

Point of Interconnection: The specific location at the 230kV side of the disconnect switch inside the Sacramento Valley Energy Center Switching Station.

Portfolio Content Category 1 (PCC1): Renewable energy comprised of Energy and Environmental Attributes meeting the criteria defined by the CEC Renewables Portfolio Standard Eligibility Guidebook, for

Portfolio Content Category 1, as may be amended or supplemented from time to time, and meeting any applicable regulations promulgated by the CEC.

Product: Collectively, all of the Storage Product and the Solar Product. Product includes, but is not limited to, all Energy and energy-related products and energy-related attributes currently defined as Energy, Capacity, Capacity rights, flexibility, Frequency Response, ancillary services, and green attributes. Any energy product or feature that can be valued intrinsically or extrinsically is included in Product. For the avoidance of doubt, there are no products or energy-related products or energy-related attributes retained by Seller.

Project: Has the meaning provided in the recitals and shall include the Solar Project and the Storage Project.

Proposed Purchase Notice: Has the meaning provided in Section 2.3.2.

Proposed Sale Notice: Has the meaning provided in Section 2.3.2.

Prudent Utility Practice: Those practices, methods and acts that would be implemented and followed by prudent operators of solar photovoltaic electric energy generating facilities and battery storage facilities in the Western United States, similar to the Project, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with prudent business practices, reliability, and safety. Seller acknowledges that the use of Prudent Utility Practice by Seller does not exempt Seller from any obligations set forth in this Agreement.

Prudent Utility Practice includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding paragraph that comply with manufacturers' warranties, restrictions in this Agreement, the LGIA, the requirements of Governmental Authorities, and WECC and NERC standards. Prudent Utility Practice is not required to be the optimum practice, method or act to the exclusion of all others.

Prudent Utility Practice also includes taking reasonable steps in accordance with the first sentence of this definition to ensure that:

- a) Equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;
- b) Sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Project and emergencies whether caused by events on or off the Project site;
- c) Preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation of the Project, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;
- d) Appropriate monitoring and testing are performed to ensure equipment is functioning as designed;
- e) Equipment is not operated in a reckless manner, in violation of manufacturer's guidelines, warranty requirements, or in a manner unsafe to workers, the general public, or the connecting utility's Electric System or contrary to environmental laws, permits or regulations or without regard to defined limitations such as, flood conditions,

safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and

- f) Equipment and components are designed and manufactured to meet or exceed the standard of durability that is generally used for hybrid solar photovoltaic electric energy generating plus battery storage facilities operating in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Project site and under both normal and emergency conditions.

Purchase Option: Has the meaning set forth in Section 19.1.

Purchase Option Due Diligence Period: Has the meaning set forth in Section 19.2.

Purchase Price: Has the meaning set forth in Section 19.1.

PV: Photovoltaic.

PV Capacity: The PV Capacity (MWac) is the maximum amount of Capacity that shall be provided from the Solar Project to SMUD at the Delivery Point. PV Capacity is measured at the Delivery Point, after any applicable Project step-up transformer losses, and where applicable, transmission and distribution losses up to the Delivery Point.

PV Capacity Shortfall: The Expected PV Capacity of the Solar Project less the PV Capacity of the Solar Project that has been commissioned and is capable of reliably delivering Energy and meeting minimum functionality requirements under Section 2.3.7.

PV Deficit Damages: Has the meaning set forth in Section 2.3.8(a).

PV Energy: That portion of Energy that is delivered directly from the Solar Project to the Delivery Point, as measured at the Solar Meter, and is not Discharging Energy.

Qualified Issuer: Has the meaning set forth in Section 9.2.

Qualified Transferee: Means a person that (a) for the three (3) preceding years, has owned or operated (or had access to the expertise required to operate through committed management agreements with its Affiliates or through a committed operations and maintenance agreement with any person) at least 100 MWs of renewable energy generation facilities and (b) either itself or its direct or indirect parent, has (i) a tangible net worth of at least \$50,000,000 or (ii) a credit rating of “BBB-” or higher by S&P or “Baa3” or higher by Moody’s.

RC West Reliability Coordinator: The entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by the WECC, for its Reliability Coordinator Area in the western United States and western Canada, or CAISO Reliability Coordinator or any successor organization.

Real-Time Market: Has the meaning as defined in the CAISO Tariff.

Real-Time Price: The CAISO LMP at the Project as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the shortest time interval.

Reimbursement Agreement: means that certain Reimbursement and Waiver Agreement entered into between the Parties as of the date hereof.

Renewable Energy Credit (REC): A certificate of proof issued by WREGIS that an Eligible Renewable Energy Resource (ERR) has generated one megawatt hour (MWh or 1,000 kWh) of electricity. A REC shall also have the same meaning as in California Public Utilities Code Section 399.12(h). Currently RECs are used to convey Environmental Attributes associated with electricity production by a renewable energy resource. For purposes of this Agreement, the term REC shall be synonymous with bundled or unbundled renewable energy credit, tradable renewable energy certificates, WREGIS certificate, or any other term used to describe the documentation that evidences the renewable and Environmental Attributes associated with electricity production by an Eligible Renewable Energy Resource.

Required Percentage: The Required Percentage shall be (i) with respect to the Solar Project, ninety percent (90%) of the Expected PV Capacity, and (ii) with respect to the Storage Project, ninety percent (90%) of the Expected Storage Capacity.

Resource Adequacy: A requirement by a Governmental Authority or in accordance with its FERC-approved tariff, or a policy approved by a local regulatory authority, that is binding upon either Party and that requires such Party procure a certain amount of electric generating Capacity.

Resource ID: Has the meaning set forth in the CAISO Tariff.

Round Trip Efficiency: Has the meaning set forth in Exhibit O.

Round Trip Efficiency Liquidated Damages: Has the meaning set forth in Exhibit O.

RPS Certification: A certification by the CEC that the Project is eligible for the purposes of the California Renewable Portfolio Standard, and that all Energy produced by the Project, qualifies as generation from an Eligible Renewable Energy Resource.

RPS Pre-Certification: A pre-certification by the CEC, obtained by Seller that the Project is eligible for purposes of the California Renewables Portfolio Standard.

RTU: Has the meaning set forth in Section 6.5.1.

S&P: Standard & Poor's Financial Services, LLC (a subsidiary of McGraw-Hill Companies), or any successor organization thereto.

Scheduled Commercial Operation Date: The planned Commercial Operation Date of the Project set forth in Exhibit A, as such date may be extended as provided in Section 2.3.7.

Scheduling: The act of producing, or relating to the production of, a schedule for the delivery, production or use of Energy, Capacity, and/or transmission that is in compliance with NERC Scheduling (NERC tagging) requirements.

Scheduling Coordinator: Has the meaning set forth in the CAISO Tariff.

Scheduling Penalties: Has the meaning set forth in Section 7.4.

Seller: The Party so identified in the preamble of this Agreement, and its successors and permitted assigns.

Settlement Interval: Has the meaning set forth in Section 7.4.

Settlement Period: Has the meaning set forth in Section 2.4.7(a).

SMUD: The Sacramento Municipal Utility District

SMUD Curtailment: Any curtailments, interruptions, or reductions of Solar Project output that are not due to a Dispatch Down Instruction, as further described in Section 6.7. For the avoidance of doubt, SMUD Curtailment includes (i) any discretionary curtailment ordered by or arising from SMUD, (ii) any economic curtailments, including any curtailment arising out of any pre-scheduling, scheduling, bidding or offering activities with respect to the Project, and (iii) any curtailments that are deemed SMUD Curtailment under Section 7.6.

SMUD Revenue Meter: A revenue meter operated by SMUD that determines the amount of Energy measured at the applicable meter location.

SMUD Service Territory: The geographical area in which SMUD is the provider of distribution service. This includes virtually all of Sacramento County and a small part of neighboring Placer County.

Solar Charging Energy: All solar photovoltaic Energy produced by the Solar Project, less transformation and transmission losses, if any, delivered to the Storage Project in accordance with a Charging Notice pursuant to Section 5.4.

Solar Irradiance Data: Data used for measuring solar insolation comprising global horizontal irradiance (GHI, W/m²), diffuse horizontal irradiance (DHI, W/m²), and direct normal irradiance (DNI, W/m²), and as otherwise agreed upon by the Parties.

Solar Meter: The bi-directional revenue quality meter or meters, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Energy produced by the Solar Project. For clarity, (i) the Project will contain multiple measurement devices that will make up the Solar Meter, and, unless otherwise indicated, references to the Solar Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together, and (ii) the Solar Meter will be located, and the Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with any meter requirements of SMUD and Prudent Utility Practices to account for the applicable Electrical Losses and station service load.

Solar Price: Has the meaning set forth on Exhibit B.

Solar Product: All Energy, Environmental Attributes (including but not limited to Renewable Energy Certificates (RECs)), PV Capacity, and Capacity Attributes of the Solar Project, in each case which are or can be produced by or associated with generation from the Solar Project. Solar Product must count in SMUD's Renewables Portfolio Standard (RPS) portfolio as a Portfolio Content Category One (PCC 1) resource, as defined by the CEC RPS Eligibility Guidebook, as may be amended or supplemented from time to time or otherwise consistent with applicable regulations promulgated by the CEC as generated by the Project and delivered to the Delivery Point under this Agreement.

Solar Project: Means the solar panels, buildings, collection lines, substation, and other improvements related thereto owned by Seller for the generation of Energy by Seller for delivery to SMUD hereunder and more particularly described on Exhibit A attached hereto.

Station Service Load Letter of Agreement: That certain Station Service Load Letter of Agreement by and between Seller and SMUD, entered into after the Effective Date of this Agreement.

Storage Capacity: The maximum dependable operating capability of the Storage Project to charge or discharge electric energy.

Storage Capacity Shortfall: The Expected Storage Capacity of the Storage Project less the Capacity of the Storage Project that has been commissioned and is capable of reliably charging and discharging Energy.

Storage Capacity Test: Any test or retest of the Storage Capacity conducted in accordance with the testing procedures, requirements and protocols set forth in Exhibit M.

Storage Commercial Operation Test: Has the meaning set forth in Section 2.3.10.

Storage Contract Capacity: The total capacity (in MW) of the Storage Project determined in accordance with Section 2.3.8, Section 2.3.10 and Exhibit M, as the same may be adjusted from time to time pursuant to Section 2.3.10 to reflect the results of the most recently performed Storage Capacity Test.

Storage Deficit Damages: Has the meaning set forth in Section 2.3.8(b).

Storage Meter: The bi-directional revenue quality meter or meters, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Project and the amount of Discharging Energy discharged from the Storage Project to the Delivery Point. For clarity, (i) the Project will contain multiple measurement devices that will make up the Storage Meter, and, unless otherwise indicated, references to the Storage Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together, and (ii) the Storage Meter will be located, and the Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with any meter requirements of SMUD and Prudent Utility Practices to account for applicable Electrical Losses and station service load.

Storage Payment: Has the meaning set forth in Section 2.4.3.

Storage Price: Has the meaning set forth on Exhibit B.

Storage Product: (a) Discharging Energy, (b) Capacity Attributes of the Storage Project, if any, (c) Storage Capacity, and (d) ancillary services, if any, in each case arising from or relating to the Storage Project.

Storage Project: Seller's energy storage project described in Exhibit A, located at the Project site and including the mechanical equipment and associated facilities and equipment required to deliver Storage Product, as such Storage Project may be modified from time to time in accordance with the terms hereof.

Stored Energy Level: At a particular time, the amount of electric energy stored in the Storage Project, expressed in MWh.

Surety Bond: A surety bond issued for the benefit of the SMUD that (i) is duly licensed or authorized in the State of California to issue bonds for the limits required and (ii) is otherwise mutually agreed to by Seller and Buyer.

Suspension Date: Has the meaning set forth in Section 8.2.2(b)(ii).

Term: Has the meaning set forth in Section 8.1.

Termination Event: Has the meaning set forth in Section 8.3.

Termination Payment: Has the meaning set forth in Section 8.5.

Test Energy: The Solar Product produced by the Solar Project, delivered to SMUD at the Delivery Point, and purchased by SMUD pursuant to Section 2.4.1 of this Agreement, prior to the Commercial Operation Date.

Third-Party SC: Has the meaning set forth in Section 7.2

Transfer: Has the meaning set forth in Section 17.1.

Transmission Provider: An entity that directs the operation of a Transmission System and provides transmission service.

Transmission System: The relatively high voltage wires, transformers and related equipment owned or controlled by a particular electric utility or grid operator, and generally used to move bulk quantities of power between different electric utilities or from large electric generators to a utility's Distribution System; as opposed to being used to make final delivery of electric power to retail customers.

Typical Annual Solar Insolation: The typical annual solar insolation at the Project site, derived from Solar Irradiance Data provided from 3rd Party source as mutually agreed by the Parties. The Typical Annual Solar Insolation is set forth in Exhibit D.

Ultimate Parent: DESRI Holdings, L.P.

VER Forecast: The CAISO or SMUD process covering variable energy resources scheduling in Day Ahead and forward markets where automated forecast updates displace placeholder energy schedules at the fifteen-minute and five-minute intervals of each hour.

WECC: The Western Electricity Coordinating Council, which is the regional entity responsible for coordinating and promoting bulk electric system reliability in the western United States and western Canada, or any successor organization.

WREGIS: Has the meaning set forth in Exhibit H.

WREGIS Certificate: Has the meaning set forth in Exhibit H.

WREGIS Operating Rules: Has the meaning set forth in Exhibit H.

WREGIS Shortfall: Has the meaning set forth in Section 2.4.2(b).

1.2 RULES OF INTERPRETATION

In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

1.2.1 headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

1.2.2 words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

1.2.3 the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

1.2.4 a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

1.2.5 a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

1.2.6 a reference to a person or entity includes that person's or entity's successors and permitted assigns;

1.2.7 the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

1.2.8 references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

1.2.9 in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

1.2.10 references to any amount of money shall mean a reference to the amount in United States Dollars;

1.2.11 the expression “and/or” when used as a conjunction shall connote “any or all of”;

1.2.12 words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Utility Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Utility Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

1.2.13 each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

2. PROJECT; PURCHASE AND SALE OF PRODUCTS

2.1 Project and Expected PV Capacity

This Agreement governs SMUD’s purchase of the Product from the Project as described in Exhibit A.

2.1.1 The Expected PV Capacity and the Expected Storage Capacity are shown in Exhibit A. Seller shall be permitted to modify, augment and/or replace the Project and its equipment and components with other equipment and components, at any time prior to or following Commercial Operation, so long as the Expected PV Capacity and the Expected Storage Capacity, in each case as measured at the Delivery Point, are not modified. Notwithstanding the foregoing, at least ninety (90) days prior to the date on which Seller reasonably anticipates that Commercial Operation will occur, Seller will provide SMUD with a written notice that sets forth the Expected PV Capacity and the Expected Storage Capacity based on the final design of the Project and a final version of Exhibit A, which shall identify any updates or changes to certain of the equipment and components set forth in Exhibit A as attached to this Agreement. During the Delivery Term, Seller may modify the Project and its equipment and components from time to time so long as Seller provides SMUD with reasonably prompt written notice setting forth any modifications to Exhibit A. Once provided by Seller, this Agreement shall be deemed amended to include such final or modified version of Exhibit A.

2.1.2 The Parties agree that the Project configuration will be initially two (2) Co-located Resources with separate CAISO Resource IDs for each of the Storage Project and Solar Project. If requested by SMUD in writing not later than June 30, 2022, or during the Delivery

Period following reasonable notice by SMUD to Seller, which notice shall be a minimum of three (3) months, and commensurate with the CAISO process for implementing the conversion from Co-located Resource to Hybrid Resource, or vice-versa, Seller shall exercise commercially reasonable efforts to convert the Project from a storage facility co-located with solar to a Hybrid Resource with a single CAISO Resource ID in accordance with the CAISO Tariff, provided that such efforts and conversion (a) do not require Seller to incur any additional actual or potential obligations, liabilities or non-administrative expenses above a cap of \$10,000 (administrative expenses include staff time and overhead), (b) do not reduce Seller's actual or expected compensation under this Agreement, and (c) are subject to the Parties' mutual agreement on amendments to this Agreement that may be required to effectuate such conversion.

2.2 Products Purchased

During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and SMUD shall purchase and receive, or cause to be received, (i) all Solar Products at the Solar Price, and (ii) all Storage Product at the Storage Price. All Products shall be supplied only from the Project, and shall be supplied from the Project only to SMUD and all Products are supplied "as-available". Seller may not interrupt deliveries for economic reasons, unless directed by SMUD pursuant to Section 6.7. Notwithstanding the foregoing, Seller may interrupt or reduce deliveries due to Force Majeure, Planned Outages, Forced Outages, Dispatch Down Instructions, SMUD Curtailments, reduced solar insolation, and in mitigation of a SMUD breach of this Agreement preventing or excusing Seller from delivering Product at the Delivery Point.

As of the Effective Date and during the Delivery Term and except as otherwise provided in Section 3.4, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that the Solar Project's output delivered to SMUD qualified under the requirements of California Public Utilities Code 399.16(b)(1) of the Public Utilities Code for a Portfolio Content Category 1 transaction.

2.3 Delivery Term, Delivery Point, and Commercial Operation

2.3.1 Delivery Term

The "**Delivery Term**" shall commence at the start of the hour ending 01:00 PST on the COD and shall expire at the completion of the hour ending 24:00 PST on the last day of the twenty-seventh (27th) Contract Year thereafter unless terminated earlier as set forth herein, including for exercise of the Project Purchase Option, or extended pursuant to this Section 2.3.1; provided, that either Party may extend the Delivery Term beyond the initial 27 Contract Years for three (3) additional Contract Years (the "**Extended Term**") by providing notice to the other Party within twelve (12) months prior to the end of the 27th Contract Year; provided that an independent, licensed appraisal and valuation consultant that is mutually agreed upon by SMUD and Seller has determined that the Delivery Term and the Extended Term shall not extend for more than eighty percent (80%) of the estimated useful life of the Project and the estimated remaining residual value of the Project at the conclusion of the Extended Term shall be equal to at least twenty percent (20%) of the original cost of the Project.

2.3.2 Right of First Refusal for Project Energy after Delivery Term

No later than twelve (12) months prior to the end of the thirtieth (30th) Contract Year, if Seller chooses to sell Energy from the Project to any third party, Seller shall first provide notice of such intended sale to SMUD ("**Proposed Sale Notice**"). Upon receipt of such Proposed Sale Notice, SMUD will have thirty (30) days in which to provide notice to Seller indicating SMUD's interest in negotiating with Seller to purchase Solar Products and Storage Products from the Project, which notice shall include SMUD's proposed contract price for such continued purchase ("**Proposed Purchase Notice**"). If SMUD provides such Proposed Purchase Notice to Seller, then the Parties shall undertake for a period of sixty (60) days from the date of SMUD's Proposed Purchase Notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale under a separate agreement of the Products to SMUD after the end of the thirtieth

(30th) Contract Year. If SMUD does not timely provide a Proposed Purchase Notice to Seller or if the Parties are unable to agree upon the terms and conditions of any sale of Products to SMUD within such 60-day negotiation period set forth above, then Seller shall be free to negotiate for the sale of energy and other products from the Project to any third party thereafter. For the avoidance of doubt, Seller is not obligated to provide such Proposed Sale Notice if it does not intend to make third party sales after the end of the Delivery Term or if Seller determines in its reasonable discretion that sales to SMUD after the thirtieth (30th) Contract Year would negatively impact its ability to qualify for the Investment Tax Credit, due to extension of the Term for more than eighty percent (80%) of the estimated useful life of the Project, or the estimated remaining residual value of the Project at the conclusion of the extended Term would be less than twenty percent (20%) of the original cost of the Project; and neither Party is obligated to enter into any agreement as a result of any negotiations after the Proposed Purchase Notice is provided.

2.3.3 Scheduled Commercial Operation Date

The Scheduled Commercial Operation Date of the Project is shown in Exhibit A.

2.3.4 Requirements for Commercial Operation

Commercial Operation shall have been achieved when each of the following conditions have been satisfied or waived by the Parties ("**COD Conditions**"):

- a) The Required Percentage of the Expected PV Capacity of the Solar Project and the Required Percentage of the Expected Storage Capacity of the Storage Project has been installed, fully commissioned, and satisfactorily completed all startup testing;
- b) An independent engineer, that is a registered professional engineer in California, has provided a certificate with a PE stamp, certifying that testing pursuant to ASTM E2848-13 (2018) (Standard Test Method for Reporting Photovoltaic Non-Concentrator System Performance) over a data collection period of seven days or once the minimum quantity of data has been collected if such minimum quantity of data is collected over less than seven days has (i) reported the PV Capacity of the Solar Project and such PV Capacity is capable of delivering the Required Percentage of the Expected PV Capacity at the Delivery Point, in accordance with Prudent Utility Practice, on a reliable and a continuous basis without operator intervention, with the exception of normal daily shut-down during hours of insufficient solar irradiation, as demonstrated through a 168-hour continuous operation test of the Solar Project (taking into account the photovoltaic nature of the Solar Project), (ii) the Storage Capacity of the Storage Project is installed and capable of charging and discharging Energy and (iii) Seller has completed the Storage Commercial Operation Test in accordance with Section 2.3.10;
- c) Seller has provided for and SMUD has successfully completed Pre-Commercial Operation Date Testing and Modifications as specified in the LGIA Section 6 and Appendix G and Appendix H;
- d) Meteorological and any other site data as specified in LGIA Appendix H are capable of being received by SMUD and/or a third party for the purposes of creating a generation forecast;
- e) The Control Facilities (as defined in the LGIA) required pursuant to the LGIA are operational;
- f) Seller has provided documentation demonstrating a NERC Generator Owner (GO) registration and a NERC Generator Operator (GOP) registration are in progress or

have completed for the Project, such as a screenshot of the registration request demonstrating that the pertinent NERC registration is in progress.

- g) Seller has provided official contact information, including direct telephone numbers and email addresses for the Project GOP's Control Center personnel and the corresponding Supervisor/Manager/Director responsible for the Control Center operations;
- h) A Permission To Operate (PTO) letter has been signed and executed by SMUD's Director of Grid Operations (consistent with Prudent Utility Practice and LGIA requirements), not to be unreasonably withheld, conditioned or delayed (it being understood and agreed that this condition shall be deemed to be achieved upon issuance of the permission to operate notice in accordance with Section 6 of the LGIA); and
- i) Seller has issued the notice of Commercial Operation.

Seller shall issue a notice of Commercial Operation to SMUD when it believes that the Project has satisfied all COD Conditions (a "**COD Notice**"). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. SMUD shall have ten (10) days to review the COD Notice and raise any reasonable objections to Seller's satisfaction of any COD Conditions; provided, however, that Seller's COD Notice shall be deemed accepted by SMUD if SMUD fails to object within such time period. The Commercial Operation Date will be the date upon which Seller submits its COD Notice to SMUD, unless SMUD timely objects to Seller's evidence of the COD Conditions, then the Commercial Operation Date will be the date upon which such evidence is provided to SMUD's reasonable satisfaction or is deemed to have been accepted by SMUD.

2.3.5 [Reserved]

2.3.6 Commercial Operation Date Confirmation Letter

Upon satisfaction of the COD Conditions, SMUD shall execute and then provide to Seller for execution, the "Commercial Operation Date Confirmation Letter." The fully executed version shall be attached as Exhibit E to this Agreement.

2.3.7 Payment for Delay of Commercial Operation; Extension of Scheduled COD

If (a) the Solar Project fails to achieve Commercial Operation of the Required Percentage of the Expected PV Capacity or (b) the Storage Project fails to achieve Commercial Operation of the Required Percentage of the Expected Storage Capacity, in each case, on or before the date that is three (3) months after the Scheduled Commercial Operation Date (as such date may be extended as provided herein) (the "**Delay LD Start Date**"), then Seller shall pay SMUD Delay Damages of \$74/MW/day for each day following the Delay LD Start Date for each MW or portion thereof by which (i) the Capacity of the Solar Project that has been commissioned and is capable of reliably delivering Energy and minimum functionality for such capacity consistent with Appendices G and H of the Interconnection Agreement (provided that SMUD's inability to receive data shall not be deemed the Project's inability to satisfy the minimum functionality requirement) to the Delivery Point is less than the full Expected PV Capacity of the Solar Project, to be adjusted daily for as additional parts of the Solar Project are commissioned and become capable of reliably delivering Energy to the Delivery Point and (ii) the Capacity of the Storage Project that has been commissioned and capable of charging and discharging Energy is less than the full Expected Storage Capacity, until the earlier of (A) Commercial Operation, or (B) the Guaranteed Commercial Operation Date. The Parties agree that SMUD's receipt of Delay Damages shall be SMUD's sole and exclusive remedy for any default prior to the Commercial Operation Date, but shall not be construed as SMUD's declaration that an Event of Default or Termination Event has occurred under any provision of Article 8.

The Scheduled Commercial Operation Date shall be extended on a day-for day basis and Seller shall not owe SMUD Delay Damages for any Excusable Delay.

2.3.8 Payment for PV Deficit Damages or Storage Deficit Damages

- a) If Seller achieves Commercial Operation with less than the Expected PV Capacity, then Seller shall use commercially reasonable efforts following the Commercial Operation Date to cause the remaining portion of the Expected PV Capacity to achieve Commercial Operation. If Seller has not caused the PV Capacity Shortfall to achieve Commercial Operation on or before one hundred eighty (180) days after the COD, then Seller shall pay SMUD damages equal to the PV Capacity Shortfall multiplied by \$320,000/MW ("**PV Deficit Damages**"). However, if the reason for the PV Capacity Shortfall is the result of permitting or local fire jurisdiction restrictions (e.g. reduced site size), not due to the breach of Seller, then Seller shall not be obligated to pay any PV Deficit Damages associated directly with the portion of PV Capacity not built because of such restrictions. The Expected Annual Energy Production and Minimum Annual Energy Production will be reduced proportionately to account for the final PV Capacity at the end of such one hundred eighty (180)-day period, and thereafter, the Capacity of the Solar Project will be equal to such final amount for all purposes under this Agreement.
- b) If Seller achieves Commercial Operation with less than the Expected Storage Capacity, then Seller shall use commercially reasonable efforts following the Commercial Operation Date to cause the remaining portion of the Expected Storage Capacity to achieve Commercial Operation. If Seller has not caused the delayed Capacity to achieve Commercial Operation on or before three hundred sixty five (365) days after the COD, then Seller shall pay SMUD damages equal to the Storage Capacity Shortfall or multiplied by \$320,000/MW ("**Storage Deficit Damages**") and together with the PV Deficit Damages, the "**Deficit Damages**"). However, if the reason for the Storage Capacity Shortfall is the result of permitting or local fire jurisdiction restrictions (e.g. reduced site size), not due to the breach of Seller, then Seller shall not be obligated to pay any Storage Deficit Damages associated directly with the portion of Storage Capacity not built because of such restrictions. The Storage Contract Capacity will be reduced proportionately to account for the final Storage Capacity at the end of such three hundred-sixty five (365)-day period for all purposes under this Agreement.
- c) Parties agree that SMUD's receipt of Deficit Damages shall be SMUD's sole and exclusive remedy for failure to achieve Commercial Operation with less than one hundred percent (100%) of the Expected PV Capacity or Expected Storage Capacity, as applicable. Parties further agree that (i) payment of any PV Deficit Damages and any corresponding decrease in the PV Capacity shall not in any way affect the Expected Storage Capacity or final Storage Capacity and (ii) payment of any Storage Deficit Damages and any corresponding decrease in the Storage Capacity shall not in any way affect the Expected PV Capacity or final PV Capacity.

2.3.9 Cap on Damages.

Notwithstanding anything in this Agreement to the contrary, Delay Damages owed by Seller to SMUD hereunder together with any Deficit Damages shall not exceed the Development Security provided by Seller pursuant to Section 9.1.

2.3.10 Storage Project Testing.

Prior to the Commercial Operation Date, Seller shall schedule and complete a performance test (the "**Storage Commercial Operation Test**"). Subject to this Section 2.3.10, such

Storage Commercial Operation Test shall be performed in accordance with Exhibit M and shall establish the initial Storage Contract Capacity. Thereafter, Seller and SMUD shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit M.

2.4 Payment for Products Purchased

2.4.1 Pre-Commercial Energy Price

If the Pre-COD Index Price is greater than zero dollars (\$0) prior to the Commercial Operation Date, SMUD will pay (a) for Test Energy produced by the Solar Project, by multiplying (i) 70% of the Pre-COD Index Price by (ii) the applicable hourly Energy quantity (in MWh) as measured by the Solar Meter and (b) \$10 for each REC associated with the Test Energy that is confirmed to be a valid PCC-1 REC and is transferred into Buyer's WREGIS subaccount. If the Pre-COD Index Price is less than zero dollars (\$0) prior to the Commercial Operation Date, SMUD will pay (A) for Test Energy produced by the Solar Project by multiplying (1) 100% of the Pre-COD Index Price by (2) the applicable hourly Energy quantity (in MWh) as measured by the Solar Meter, and (B) \$10 for each REC associated with the Test Energy that is confirmed to be a valid PCC-1 REC and is transferred into Buyer's WREGIS subaccount.

2.4.2 Solar Price after Commercial Operation Date

- a) Subject to Sections 2.4.2(b) and 2.4.2(c), once the Project has achieved Commercial Operation, SMUD shall pay Seller the Monthly Settlement Amount.
- b) In the event that Seller fails to transfer to SMUD WREGIS Certificates associated with the amount of PV Energy delivered to the Delivery Point within one hundred ten (110) days after the end of the month that the Energy was generated and delivered to SMUD at the Delivery Point and the cause of such failure is due to Seller's actions or inactions inconsistent with its obligations under this Agreement ("**WREGIS Shortfall**"), then the Solar Price associated with such Energy previously delivered at the Delivery Point and paid for by SMUD will be discounted by an amount equal to the PCC1 REC Price. The "**PCC1 REC Price**" means the market value as determined by SMUD using commercially reasonable efforts for PCC1 RECs based on the average of 3 broker quotes for NP-15 Solar PV CEC RPS PCC-1 RECs but in no event more than \$15/MWh. SMUD will provide notice to Seller of any WREGIS Shortfall, including SMUD's calculation and supporting evidence for the PCC1 REC Price and volume of Energy for which Seller owes SMUD a refund. Any WREGIS Shortfall will be presumed to be due to Seller's actions or inactions inconsistent with the requirements of this Agreement unless Seller demonstrates to SMUD's commercially reasonable satisfaction that such shortfall was not the result of Seller's actions or inactions inconsistent with its obligations under this Agreement. Any disputes with respect to the cause of a WREGIS Shortfall or the calculation of the PCC1 REC Price will be resolved pursuant to the provisions of Section 21. Seller shall provide a true-up payment to SMUD or SMUD may offset its payment to Seller in the next regular settlement for any amounts owed by Seller to SMUD pursuant to this Section 2.4.2(b). If Seller cures a WREGIS Shortfall within thirty (30) days after Seller has refunded the PCC 1 REC Price to SMUD, then SMUD shall refund all or part of the true-up amounts associated with such cure to Seller in the next invoice after such WREGIS shortfall is cured. If, within the six (6) month period the REC is not delivered, Seller shall provide a true-up settlement to reflect the discounted Solar Price.

2.4.3 Storage Price after Commercial Operation Date

From and after the Commercial Operation Date, SMUD shall pay Seller the Storage Price for the Storage Product based on the Storage Contract Capacity of the Storage Project, as

such Storage Contract Capacity may be adjusted from time to time in accordance with Section 2.3.10 (“**Storage Payment**”).

2.4.4 Energy in Excess of PV Capacity

Seller shall not receive payment for Solar Products delivered in any hour to SMUD in excess of the Maximum Hourly Energy Delivery.

2.4.5 System Losses

Energy produced by this Project, which is interconnected to the SMUD Transmission System, shall be measured using a SMUD Revenue Meter at the Point of Interconnection as defined in the LGIA.

2.4.6 Title and Risk of Loss

Title to and risk of loss related to the Products produced from the Solar Project shall transfer from Seller to SMUD at the Delivery Point. Except as provided hereunder, Seller warrants that it will deliver to SMUD all Products from the Solar Project free and clear of all liens, security interests, claims and encumbrances, or any interest therein or thereto by any person arising prior to the Delivery Point.

2.4.7 Settlement Payments

- a) Following the end of each calendar month (“**Settlement Period**”), Seller shall deliver to SMUD Seller’s calculation of Deemed Delivered Energy within ten (10) calendar days after the end of such Settlement Period. SMUD shall deliver to Seller a settlement checkout statement which shall include (i) a calculation of the Monthly Settlement Amount, (ii) the Storage Payment amount with respect to such month, (iii) a summary of Energy produced by the Solar Project as measured by the Solar Meter in each hour of the Settlement Period, the amount of Solar Charging Energy and Grid Charging Energy charged by the Storage Project in each hour of the Settlement Period as measured by the Storage Meter, and the amount of Discharging Energy delivered from the Storage Project in each hour of the Settlement Period as measured by the Storage Meter, by the 25th of each month. SMUD shall pay the Monthly Settlement Amount and the the Storage Payment amount with respect to such month on the last day of the month, subject to the provisions of Section 2.4.7(b).
- b) A Party may in good faith, dispute the correctness or absence of any settlement or adjustment to a settlement rendered under this Agreement or adjust any settlement for any arithmetic or computational error within twenty-four (24) months of the end of the Contract Year of which the subject settlement was rendered. In the event a settlement or portion thereof, or any other claim or adjustment arising hereunder is disputed, payment of the undisputed portion of the settlement shall be required to be made when due in accordance with this Section 2.4.7, with notice of the objection given to the Party issuing such settlement. Any billing dispute or billing adjustment shall be in writing and shall state the basis for such dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved, however the Party in receipt of the dispute notice is required to respond to such dispute notice with reasonable supporting documentation no later than ten (10) Business Days following delivery of such notice. If it is determined that an adjustment to the settlement is appropriate or an underpayment was made, then such payment shall be required to be made within ten (10) Business Days of such determination along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Overpayments by a Party shall, at the option of the Party making such overpayment, be returned upon request or deducted by the Party receiving such overpayment from subsequent payments,

with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to a settlement is waived unless the other Party is notified in accordance with this Section 2.4.7 within twenty-four (24) months after the settlement is rendered or any specific adjustment to the settlement is made.

SMUD shall have the right, but not the obligation, to read the Project's meter on a daily basis.

2.4.8 Production Guarantee (PG); Solar Project Performance; PG Damages

Seller shall make any necessary and commercially reasonable repairs with the intent of optimizing (to the extent commercially reasonable) the availability of Energy from the Project to SMUD.

Within thirty (30) days after the end of each Contract Year, Seller shall submit (i) its calculation of the AAEP for the previous Contract Year based on Seller's records related to Project generation, Dispatch Down Periods, SMUD Curtailment, Force Majeure and any SMUD breach and (ii) an annual report of actual annual solar insolation data for SMUD's review and use in calculating the AAEP and the Minimum Annual Energy Production for the previous Measurement Period.

If, at the end of any Measurement Period, the sum of the Adjusted AEP amounts for the two Contract Years in the Measurement Period is less than the AMAEP for such Measurement Period (such shortfall, if any, the "**PG Shortfall**"), then Seller shall pay SMUD PG Damages for each MWh of PG Shortfall for such Measurement Period. The "**PG Damages**" shall equal the market price for shortfall energy at CAISO NP-15 EZ Gen Hub Price and RECs as determined by SMUD using commercially reasonable efforts based on the average of three broker quotes for NP-15 Solar PV CEC RPS PCC1 RECs but in no event shall the PG Damages rate exceed the Solar Price.

The PG Damages provided above shall be Seller's sole obligation and SMUD's sole remedy in the event of a failure by Seller to meet the Measurement Period production guarantee under this Agreement.

2.4.9 Storage Availability

Within forty-five (45) days after the end of each Contract Year, Seller shall submit its calculation of the Annual Average Storage Availability in accordance with Exhibit O. During the Delivery Term, the Storage Project shall maintain an Annual Average Storage Availability during each Contract Year of no less than the Guaranteed Storage Availability, which Annual Average Storage Availability shall be calculated in accordance with Exhibit O. If the Annual Average Storage Availability during any Contract Year is less than the Guaranteed Storage Availability, then Seller shall pay Annual Availability Liquidated Damages, as defined in and determined in accordance with Exhibit O. The Annual Availability Liquidated Damages shall be SMUD's sole and exclusive remedy for Seller's failure to satisfy the Guaranteed Storage Availability.

2.4.10 Round Trip Efficiency

Within forty-five (45) days after the end of each Contract Year, Seller shall submit its calculation of the Round Trip Efficiency in accordance with Exhibit O. During the Delivery Term, the Storage Project shall maintain a Round Trip Efficiency of no less than the Guaranteed Round Trip Efficiency. If the Round Trip Efficiency following any Storage Capacity Test is less than the Guaranteed Round Trip Efficiency, then Seller shall pay Round Trip Efficiency Liquidated Damages, as defined and determined in accordance with Exhibit O. Such Round Trip Efficiency Liquidated Damages shall be SMUD's sole and exclusive remedy for Seller's failure to satisfy the Guaranteed Round Trip Efficiency.

3. CERTIFICATION AS AN ELIGIBLE RENEWABLE ENERGY RESOURCE

3.1 CEC RPS and Green-e Certifications

Subject to Section 3.4, SMUD requires that all renewable energy sold under this Agreement will meet the RPS requirements. At its own expense but subject to Section 3.4, Seller shall comply with the following:

- a) Commensurate with the Commercial Operation Date or as soon as reasonably practicable thereafter, Seller shall also provide a completed Green-e generator registration and attestation form (under the Green-e Standard) to SMUD and the Center for Resource Solutions, and Seller shall provide evidence of Green-e eligibility.
- b) Seller shall file an application with the CEC for RPS Pre-Certification as soon as possible after the Effective Date and shall obtain CEC Pre-Certification no later than the start of construction of the Project.
- c) In no event later than thirty (30) business days after the Commercial Operation Date (COD), Seller shall file for full RPS Certification of the Project with the CEC.
- d) Seller shall respond to inquiries from the CEC related to its applications for CEC Pre-Certification and RPS Certification within five (5) Business Days of receipt of such inquiry.
- e) Except as otherwise provided in Section 3.4, Seller shall maintain such RPS Certification throughout the Delivery Term at its own expense.
- f) Seller shall ensure that throughout the Delivery Term, Energy and Environmental Attributes from the Project delivered to the Delivery Point (not including Energy and Environmental Attributes associated with any Energy that is not PV Energy delivered to the Delivery Point) meet the criteria of California Public Utilities Code 399.16(b)(1); and ensure that the electricity and RECs from the Project are bundled according to the applicable CEC RPS Eligibility Guidebook.

3.2 Environmental Attribute Delivery Obligation

Seller shall sell and deliver, and SMUD shall receive and purchase from Seller, all rights, title, and interest in all Environmental Attributes associated with Energy produced by the Project and delivered to SMUD at the Delivery Point whether now existing or that hereafter come into existence prior to and including the Delivery Term. Seller agrees to sell to SMUD all such Environmental Attributes to the fullest extent allowable by applicable Law, and convey the same to SMUD in accordance with the procedures in Exhibit H. Seller warrants that all Environmental Attributes provided to SMUD shall be free and clear of all liens, security interests, claims and encumbrances.

3.3 WREGIS Registration

Documentation of Environmental Attributes associated with the Energy produced under this Agreement shall be tracked through WREGIS. Seller shall assign rights to register the Project in WREGIS to SMUD, such that RECs are deposited directly into SMUD's WREGIS account. Subject to Exhibit H and Section 3.4, Seller shall be responsible for all WREGIS costs and fees associated with the issuance/creation of WREGIS RECs for the Project, and SMUD shall be responsible for any fees associated with the transfer and/or retirement of such WREGIS RECs to SMUD. WREGIS REC identification information shall support both CEC RPS and Green-e Standard REC retirements. At least forty-five (45) days before the end of the Term, or as soon as practicable before the date of any early termination of this Agreement before the end

of the Term, SMUD shall take all actions necessary to terminate the assignment of registration rights in WREGIS associated with the Project as of the last day of the Term.

3.4 Change in Law

3.4.1 The Parties agree that expenditures to comply with the requirements of this Agreement (“**Compliance Expenditures**”) that Seller shall be required to bear during the term of this Agreement shall be capped at a total of \$100,000 per Contract Year and \$1,500,000 in the aggregate over the Term (“**Compliance Expenditure Cap**”). Compliance Expenditures does not include non-administrative costs up to the \$10,000 cap associated with switching from a Co-located Resource to Hybrid Resource, or vice-versa, under Section 2.1.2.

3.4.2 If a change in Law occurs after the Effective Date that affects Seller's compliance with its obligations under this Section 3, Seller shall not be in breach of such obligations if Seller has used commercially reasonable efforts to comply with such change in Law as it pertains to such obligations. For purposes of this Section 3.4.2, the term “commercially reasonable efforts” shall not require additional out-of-pocket expenditures in the aggregate in excess of the Compliance Expenditure Cap in complying with the changes in Law described in this Section 3 unless SMUD and Seller have agreed in writing for SMUD to reimburse Seller for or to pay directly such excess expenditures.

3.4.3 Within thirty (30) calendar days after the end of each calendar quarter during the Term, Seller shall provide SMUD with a report describing the Compliance Expenditures that Seller incurred during that calendar quarter and the total Compliance Expenditures incurred during the Contract Year that includes such calendar quarter. Prior to incurring Compliance Expenditures that are anticipated to exceed \$25,000, Seller shall notify SMUD of the expected Compliance Expenditures. Following such notice, the Parties shall attempt to agree to limit such Compliance Expenditures to the extent practicable; provided, however, that nothing herein limits Seller's right to incur Compliance Expenditures that Seller believes in good faith must be incurred for Seller to comply with its obligations under this Agreement, as long as the above notification provisions are met. If Seller determines that costs in excess of the Compliance Expenditure Cap will have to be incurred, then Seller shall notify SMUD and provide documentation and calculations to support the expected excess costs. SMUD may then: (1) approve the expected excess costs and notify Seller of such approval, and Seller shall comply upon receipt of notice of SMUD's approval and SMUD's payment for the expected excess costs (such costs, “**Accepted Compliance Expenditures**”); or (2) elect not to pay Seller for the expected excess costs and notify Seller of such decision, in which case this Agreement shall continue in full force and effect and Seller shall continue to be excused from performing any obligation that causes, or would cause, the incurrence of such Compliance Expenditures in excess of the Compliance Expenditure Cap. SMUD is not required to reimburse Seller for any Compliance Expenditures unless and until SMUD agrees to the expected Compliance Expenditures in excess of the Compliance Expenditure Cap. To the extent that SMUD has not agreed to reimburse, or has not reimbursed, Seller for any Accepted Compliance Expenditures, then SMUD is deemed to have waived Seller's obligation that causes, or would cause, the incurrence of such Compliance Expenditures in excess of the Compliance Expenditure Cap and (x) Seller will not be in default under this Agreement for failure to satisfy any such obligation and (y) payments to Seller under this Agreement during the entirety of the Delivery Term will not decrease as a result of such change in Law and will be maintained as if all such obligations were taken.

3.5 Additional Evidence of Environmental Attribute Conveyance

At SMUD's reasonable request, Seller shall provide additional reasonable evidence to SMUD or to third parties of SMUD's right, title, and interest in Environmental Attributes and information with respect to

Environmental Attributes; provided that no such request may impose any material (non-administrative) additional costs on the Seller.

3.6 Modification of Environmental Attribute Reporting and Conveyance Procedure

The Parties shall revise Exhibit H as appropriate and issue a new Exhibit H which shall then become part of the Agreement, subject to Seller acceptance of any changes impacting costs, in order to reflect changes necessary in the Environmental Attribute conveyance procedure for SMUD to be able to receive and report the Environmental Attributes purchased under the Agreement as belonging to SMUD, in the event that:

- a) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with Exhibit H after the Effective Date; or,
- b) WREGIS is replaced as the primary method that SMUD uses for conveyance of Environmental Attributes, or additional methods to convey all Environmental Attributes are required.

In no event will such revised Exhibit H cause Seller to incur any category of cost for which it is not already otherwise responsible under this Agreement, without prior notice by SMUD and agreement of the Parties as to the appropriateness of such cost belonging with the Seller and subject to Section 3.4.

3.7 Reporting of Ownership of Environmental Attributes

Seller shall not report to any person or entity that the Environmental Attributes sold and conveyed hereunder to SMUD belong to anyone other than SMUD, and SMUD may report under any such program that such Environmental Attributes purchased hereunder belong to SMUD.

3.8 Greenhouse Gas (GHG) Emissions

Seller shall bear all liability for reporting any and all GHG emissions from the Project, and for any compliance obligations under federal, state (including AB 32) and local laws for such emissions.

4. CONVEYANCE OF CAPACITY ATTRIBUTES

4.1 Conveyance of Capacity Attributes

Seller shall provide to SMUD any attestation SMUD requires in order for SMUD to show evidence that it has procured the Capacity Attributes associated with the Project in accordance with the procedure in Exhibit F. At SMUD's reasonable request, provided that no such request may impose any material (non-administrative) additional costs on the Seller, Seller shall execute such documents and instruments as may be reasonably required to affect recognition and transfer of the Capacity Attributes.

4.2 Reporting of Ownership of Capacity Attributes

Seller shall not report to any person or entity that the Capacity Attributes sold and conveyed hereunder to SMUD belong to anyone other than SMUD, and SMUD may report under any such program that such Capacity Attributes purchased hereunder belong to it.

4.3 Modification of Capacity Attribute Conveyance Procedure

SMUD may revise Exhibit F as appropriate, give written notice to Seller regarding the revision, and issue a new Exhibit F which shall then become part of the Agreement, provided that no such modification may impose any material (non-administrative) additional costs or obligations on the Seller, or reduce Seller's compensation hereunder, in order to reflect changes necessary in the Capacity Attribute conveyance

procedure for SMUD to be able to receive and report the Capacity Attributes purchased under the Agreement as belonging to SMUD.

In no event will such revised Exhibit F cause Seller to incur any category of cost for which it is not already otherwise responsible under this Agreement without prior notice by SMUD and agreement of the Parties as to the appropriateness of such cost belonging with the Seller.

4.4 Energy Market Participation

The Parties acknowledge and agree that as of the date hereof, SMUD is participating in the EIM and/or other energy markets. The Parties have agreed to a structure in this Agreement to facilitate SMUD's use of the Project to participate in such markets. Notwithstanding, SMUD's joining or continued participation in such markets shall not require Seller to perform any additional measures or incur any additional or increased cost, liability or obligation, in each case other than what Seller is already otherwise expressly obligated under this Agreement, unless compensated by SMUD. If in the future, market rules or policies change, then without limiting Seller's and SMUD's rights under Section 3.4, the Parties shall meet and confer to discuss the new market rules and whether updates to the scheduling, settlements, or other procedures are required and to preserve the economic "benefit of the bargain" to both Parties to this Agreement.

5. INTERCONNECTION; TELEMETERING; STORAGE DISPATCH

5.1 Interconnection Agreement

Seller shall execute a LGIA with SMUD at the same time as execution of this Agreement. The LGIA specifies the obligations of the parties thereto with respect to the construction, operation and maintenance of certain interconnection facilities.

5.2 Station Service Load

Station service load for the Project shall be governed by the Station Service Load Letter of Agreement; provided, that Seller may service Integral Station Service Load of the Storage Product with output of the Solar Project. For the avoidance of doubt, the use of Storage Energy for Seller's Station Service Load is prohibited as this energy has already been sold and received by SMUD.

5.3 No Additional Loads

Seller shall not connect any loads not associated with Integral Station Service Loads at the location of the Project in a manner that would reduce the Energy provided from the Project to SMUD hereunder. Seller shall obtain separate retail electric service under existing SMUD tariffs for the service of any such additional loads.

5.4 Charging Energy Management

5.4.1 Upon receipt of a valid Charging Notice, Seller shall take all actions necessary to deliver Charging Energy to the Storage Project in order to deliver the Storage Product in accordance with the terms of this Agreement. SMUD shall be responsible for arranging, managing, purchasing, scheduling and paying all costs and charges (including all CAISO costs and charges) associated with all of the Charging Energy for the Storage Project in accordance with the terms of this Section 5.4 and the Operating Restrictions. Seller will be responsible for delivery of Solar Charging Energy from the Solar Project to the Storage Project. SMUD shall be responsible for delivery of, and shall be deemed in control of, Grid Charging Energy to and at the Delivery Point, and Seller shall be responsible for accepting and transferring, and shall be deemed in control of, Grid Charging Energy from the Delivery Point to the Storage Project. Seller shall be responsible for delivering all Discharging

Energy up to the Delivery Point. SMUD shall be responsible for accepting and transferring all Discharging Energy at and from the Delivery Point.

5.4.2 SMUD will have the right to charge the Storage Project seven (7) days per week and twenty-four (24) hours per day (including holidays), subject to, for the avoidance of doubt, Solar Charging Energy being available during the Compliance Period, by providing Charging Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 5.4.1. Each Charging Notice issued in accordance with this Agreement will be effective unless and until SMUD modifies such Charging Notice by providing Seller with an updated Charging Notice.

5.4.3 Seller shall not charge the Storage Project during the Delivery Term other than (a) pursuant to a valid Charging Notice, (b) in connection with a Storage Capacity Test, (c) following the MW setpoint given by SMUD for the combined total output of the Solar Project and Storage Project when the Solar Project and Storage Project are operated under Combined Control Mode as specified in LGIA in accordance with Section 5.4.6, or (d) pursuant to a notice from SMUD under the LGIA, or any Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Project to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage Project in violation of the first sentence of this Section 5.4.3, then (A) Seller shall be responsible for all energy costs associated with such charging of the Storage Project, (B) SMUD shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (C) SMUD shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

5.4.4 SMUD will have the right to discharge the Storage Project seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until SMUD modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

5.4.5 When the Solar Project and Storage Project are operated under Combined Control Mode as specified in LGIA, no Charging Notice or Discharging Notice will be issued by SMUD. The Project Plant Controller shall automatically determine the amount of Charging Energy or Discharging Energy based on the MW setpoint for the combined total output of the Solar Project and Storage Project given by SMUD.

5.4.6 Notwithstanding any other provision of this Agreement,

- a) during the Compliance Period:
 - i) the Storage Project shall not be charged using Grid Charging Energy;
 - ii) the Storage Project shall only be charged using Solar Charging Energy and Seller shall not be required to charge the Storage Project during any period if Solar Charging Energy is unavailable; and
 - iii) SMUD shall not issue any instruction, order, Charging Notice, Discharging Notice or other communication requesting or requiring the Storage Project to be charged from any source other than the Solar Project.

b) at any and all times:

i) the Storage Project may not be, and SMUD shall not issue any instruction, order, Charging Notice, Discharging Notice or other communication requesting or requiring the Storage Project to be, charged, discharged or operated in any manner which results in, or gives rise to:

A.any reduction in PV Energy or Energy generated from the Solar Project;

B.any inconsistency with the Operating Restrictions; or

C.any inconsistency with or breach of the Interconnection Agreement; and

ii) in the event of any conflict or inconsistency between or among this Section 5.4.6, the Operating Restrictions or the other terms of this Agreement, the terms and conditions of this Section 5.4.6 will prevail.

5.4.7 Prior to January 30, 2022, if requested by SMUD, Seller and SMUD shall enter into good faith discussions to amend this PPA to permit the Storage Project to be charged with Grid Charging Energy during the Compliance Period and to make any related amendments, including any change to the Storage Price required to accommodate Grid Charging Energy during the Compliance Period. Each Party acknowledges and agrees that this Section 5.4.7 does not create any legally binding obligation on either Party to enter into such amendment.

5.5 Telemetering

The Project will require telemetering equipment connected to SMUD's energy management system ("**EMS**") including the automated dispatch system (ADS) as provided in LGIA Appendix H, Data Points List.

6. PERMITTING; STANDARD OF CARE; OPERATIONS; CURTAILMENT

6.1 Permitting

Seller shall be responsible for securing all land use and building permits and any other regulatory approvals required for the Project, including but not limited to those required for the interconnection facilities. Milestones for permitting shall be provided to the Seller to support the expected construction schedule for all of the facilities to meet the COD and Seller shall be responsible for ensuring milestones are met.

6.2 Standard of Care

Seller shall pay and be responsible for designing, installing, operating, and maintaining the Project in accordance with all applicable Laws and Prudent Utility Practice.

Seller shall: (a) operate and maintain the Project in a safe manner in accordance with Prudent Utility Practice and (b) maintain any governmental authorizations and permits required for the construction and operation thereof.

SMUD shall: (a) operate and maintain its Transmission System in a safe manner in accordance with Prudent Utility Practice and all applicable Laws, as such Laws may be amended from time to time; and (b) maintain any governmental authorizations and permits required for the construction and operation thereof.

Seller shall provide SMUD a mitigation plan, which shall include a grazing plan developed in consultation with SMUD specifying grazing as a method of vegetation management at the Project site.

6.3 Curtailment - Notice Following Outage or Curtailment

In the monthly settlements process, following any outage by Transmission Provider or any curtailment SMUD will provide Seller a notice describing whether such curtailment was due to a Dispatch Down Instruction (uncompensated in accordance with Section 6.6) versus SMUD Curtailment (compensated in accordance with Section 6.7), SMUD shall provide such additional information concerning any curtailment claimed to be due to Dispatch Down Instruction as Seller may reasonably request.

6.4 SMUD Performance Excuse

SMUD shall not be obligated to accept or pay for Energy produced by or Capacity provided from the Project during a Force Majeure event that prevents SMUD's ability to accept Energy from the Project, unless the failure to accept such Energy is also a curtailment under Sections 6.6 or 6.7, in which case the terms of Sections 6.6 or 6.7, as applicable, shall apply.

6.5 Dispatchability

Seller shall respond to Dispatch signals from SMUD as required pursuant to Dispatch Down Instructions in accordance with Section 6.6 or SMUD Curtailments in accordance with Section 6.7. Dispatch signals issued pursuant to Section 6.6 or 6.7 are to curtail the generation or deliveries from the Project or to terminate (in whole or in part) any such curtailment. SMUD's communication to Seller in advance of a curtailment need not be greater than that required to support the dispatch interval in the Real-Time Market.

6.5.1 SMUD will have the ability to Dispatch the output of the Solar Project and to curtail the Solar Project in full or in part from 0% to 100% of nominal capability up to the PV Capacity and, subject to the Operating Restrictions, the ability to Dispatch the charging or discharging of the Storage Project from 0% to 100% of nominal capability up to the Storage Capacity, by sending a control signal to the Project's Plant Controller for a set level of power generation (MW) at any time. The MW control signal can be one combined output of the Solar Project and Storage Project when the Project is operated under Combined Control Mode as specified in LGIA or the two separate outputs for the Solar Project and the Storage Project when the Project is operated under Independent Control Mode as specified in LGIA. Seller shall install a Plant Controller with the ability to accept a control signal from SMUD's Energy Management System (EMS) through a local SMUD remote terminal unit (RTU) to curtail the Project. The Plant Controller must be able to control both the solar generation and battery storage as one integrated system with requisite metering and controls necessary to bifurcate energy delivered from each subsystem (panels and battery storage). The Plant Controller shall run in mutually exclusive local or remote control modes. In local control mode, controller modes and setpoints can be selected by an operator from the plant SCADA. In remote control mode, controller modes and setpoints are selected via the SMUD remote terminal unit. Transition between local and remote modes shall be initiated by the SMUD operator via SMUD's EMS. In remote control mode the controller shall track remote setpoints and provide seamless transitioning from remote to local control mode.

6.5.2 The Plant Controller shall have a "No Grid Charging" control flag.

- a) When this "No Grid Charging" flag is turned "On", the Plant Controller shall take automatic action to immediately stop charging the Storage Project upon detecting that the Charging Energy of the Storage Project is from the Transmission Provider's transmission grid, not from the Solar Project.

- b) When this “No Grid Charging” flag is turned “Off”, the Plant Controller shall take no action regarding grid charging.

6.5.3 The Plant Controller shall have the capability to limit the total combined instantaneous energy delivered to the Point of Interconnection (POI) by the Solar Project and Storage Project to not higher than the Interconnection Capacity Limit. When the Plant Controller detects that the instantaneous total combined energy delivered to POI is higher than the Interconnection Capacity Limit, the Plant Controller shall take automatic action to immediately reduce the Discharging Energy from the Storage Project such that the total combined instantaneous energy delivered to POI is no more than the Interconnection Capacity Limit. The Plant Controller shall also have the capability to limit PV Energy to the low side of the GSU transformer to an amount equal to the PV Capacity plus estimated delivery losses plus estimated station service load.

6.5.4 Active power ramp rate control shall provide for the transition between generation levels at a controlled ramp rate. The controller shall support a power generation ramp rate in compliance with LGIA requirements (currently 5% to 20% of Pmax per minute).

6.5.5 Dispatchability control accuracy shall be better than a +/- 2 MW average over a five (5) minute interval. Seller shall provide SMUD evidence of this accuracy upon SMUD's request.

6.5.6 Any documented costs, penalties, and CAISO imbalance charges reasonably incurred by SMUD due to Seller's failure to respond to Dispatch signals (including Dispatch Down Instruction and SMUD Curtailment) in accordance with the terms and conditions of this Agreement and in compliance with the Operating Restrictions shall be the responsibility of Seller; provided that SMUD shall provide Seller with notice of the incurrence of any such documented costs, penalties and/or charges reasonably incurred by SMUD in the next relevant settlement period .

6.5.7 Notwithstanding any other provision of this Agreement, the Storage Project shall not be required to comply with any instructions, requests or directions for the Storage Project to perform or operate in a manner inconsistent with the Operating Restrictions.

6.6 Dispatch Down Instruction

6.6.1 SMUD may require Seller to interrupt or reduce deliveries of Energy pursuant to a Dispatch Down Instruction. SMUD will not compensate Seller for Deemed Delivered Energy during a Dispatch Down Period.

6.6.2 In the event of a Dispatch Down Instruction, SMUD shall, whenever possible, give Seller reasonable notice of the possibility that the interruption or reduction of deliveries may be required, and shall use commercially reasonable efforts to minimize the impact thereon on Project operations and to minimize the duration of the Dispatch Down Period.

6.6.3 Seller shall have the right, upon reasonable notice, to examine SMUD's records relating to any Dispatch Down Instructions to determine whether any such curtailment meets the criteria set forth in the definition of “Dispatch Down Instruction”.

6.7 SMUD Curtailment

6.7.1 Subject to the remainder of this Section 6.7, SMUD shall have the right to instruct Seller to curtail production on an economic basis.

6.7.2 Without limiting SMUD's obligations under Section 6.7.5, for SMUD Curtailments, SMUD will pay the Seller the Solar Price for Energy that would have been generated had it not been curtailed due to SMUD Curtailments.

6.7.3 [Reserved]

6.7.4 SMUD will pay Seller the Solar Price for Deemed Delivered Energy due to a SMUD Curtailment, or a breach by SMUD of this Agreement or the Interconnection Agreement. Deemed Delivered Energy due to SMUD Curtailment or a breach by SMUD of this Agreement or the Interconnection Agreement will be included in the calculation of that month's payment to Seller for Energy generated, as described by Exhibit K – Deemed Delivered Energy Calculation Procedure. For the avoidance of doubt, any curtailment as a result of SMUD's economic bidding shall be deemed a SMUD Curtailment.

6.8 Determination of Deemed Delivered Energy

Deemed Delivered Energy Shall be equal to the result of the equation below calculated and provided by Seller, as described in Exhibit K, to reflect the potential generation from the Project, and such calculation shall be validated by Buyer

$$E_{Deemed} = E_{Scaled} * (1 - D) * EA - E_{Measured}$$

Where:

- (a) D = Degradation of 0.5%/year beginning on the first day of the second full Contract Year of this Agreement, and annually thereafter;
- (b) EA = Effective availability of 99%; provided that SMUD reserves the right to request from Seller and review data related to a particular Contract Year, and Seller agrees to adjustment of EA to an appropriate value for any Contract Year in which an unusual generation pattern results in a reduced level of generation.
- (c) E_{Deemed} = Deemed Delivered Energy (kWh);
- (d) $E_{Measured}$ = Actual Energy measured at the Solar Meter in kWh

$$(e) E_{Scaled} = \sum_{i=1}^n \left[\frac{POA_{Measured-i}}{POA_{Modeled-i}} * E_{Modeled-i} \right] \text{ limited to Maximum Hourly Energy Delivery kWh for any given hour.}$$

Where:

- i. $E_{Modeled-i}$ = AC energy produced by the PVSyst clear sky model as shown in the Clear Sky Model Report Parameters (kWh), as adjusted each year to reflect differences in local time as a result of daylight savings time;
- ii. $POA_{Measured-i}$ = The average of the measured plane-of-array irradiance for the i^{th} hour (W/m^2);
- iii. $POA_{Modeled-i}$ = Modeled plane-of-array irradiance produced by the PVSyst clear sky model for the i^{th} hour (W/m^2) as shown in the Clear

Sky Model Report, as adjusted each year to reflect differences in local time as a result of daylight savings time.

- iv. Seller must provide PVsyst clear sky modeled data, with 5 minute granularity, for POA irradiance and AC energy used in calculation to Buyer each year

Note that Parties may mutually agree to select alternate model report to provide more accurate settlement data. The alternative models include, without limitation, an AWS True Power or VER Forecast Model.

7. SCHEDULING AND FORECASTING; OUTAGES; ACCESS RIGHTS

7.1 Scheduling and Forecasting

The Project is located within the SMUD Service Territory, and SMUD will make its own forecasts or contract with a third party for forecasting of Project Energy production for use in its Scheduling process. SMUD shall (1) be responsible for all costs, charges and penalties associated with SMUD's bidding and scheduling rights under this Agreement for scheduling of the Project's Products, and any SMUD Curtailment and all imbalance energy costs, charges and penalties and (2) be entitled to all revenues assessed or provided associated with SMUD's bidding and scheduling of the Project's Products, and any SMUD Curtailment.

Seller shall comply with Exhibit G – Available PV Capacity Notification Requirements and Outage Notification Procedure.

7.2 Scheduling Coordinator; CAISO Settlements

SMUD shall be the Scheduling Coordinator for scheduling services for the Project, and for both the delivery and receipt of the Product at the Delivery Point, or contract with a third party for Scheduling Coordinator responsibilities (any such third party, a **"Third-Party SC"**). Seller shall pay SMUD an annual fee of \$56,000 with a 2% annual escalator factor during the Term for Scheduling coordination and settlement service. The Scheduling Coordinator requirements include the SMUD's EIM or other energy market resource portfolio. As between Seller and SMUD, SMUD is responsible for all acts and omissions of any Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that SMUD would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by SMUD directly. Seller shall have no liability to a Third-Party SC for any reason under this Agreement. SMUD (as the Scheduling Coordinator) shall be responsible for all settlement functions with the CAISO related to the Project, and shall submit bids to the CAISO in accordance with this PPA, the applicable CAISO Tariff, protocols and scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real-time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

7.3 Energy Imbalance Market – EIM or other

SMUD participates in the EIM, and the Parties acknowledge that the Project will be an EIM Participating Resource and such participation will incur imbalance deviation charges. Extensions of the EIM into the Day-Ahead Market may result in additional imbalance deviations, the responsibility for which shall be governed by Section 7.1

7.4 Seller Available PV Capacity Notification Requirements; Penalties

Seller shall comply with the Available PV Capacity notification requirements as defined in Exhibit G as it relates to a schedule of the hourly Available PV Capacity. If in any hour of any month during the Delivery Term both (a) Seller fails to comply with the notification procedures requirements, and (b) the sum of Energy Deviations (defined below) for each of the 12 Settlement Intervals (defined below) in that hour exceed the

Performance Tolerance Band (defined below), then Seller is liable for scheduling penalties (“**Scheduling Penalties**”) equal to the greater of (i) one hundred fifty percent (150%) of the Solar Price (expressed in \$ / kWh) or (ii) the absolute value of the Real-Time Price, in each case for each kWh of Energy Deviation outside the Performance Tolerance Band. The term “**Energy Deviation**” means the absolute value of the difference, in kWh, in any Settlement Interval between (i) the final accepted Bid (as defined in the CAISO Tariff) submitted for the Project for the hour of the Settlement Interval divided by the number of Settlement Intervals in the hour; and (ii) energy actually delivered from the Project, measured in kWh, such Settlement Interval. The term “**Performance Tolerance Band**” means, in kWh, is equal to: (i) three percent (3%) times; (ii) forecasted Available PV Capacity times; (iii) one (1) hour; and (c) the term “**Settlement Interval**” means any one of the twelve (12) five (5) minute time intervals beginning on any hour and ending on the next hour.

7.5 Planned Outages

For the purposes of this Agreement a maintenance outage shall constitute a Planned Outage. Planned Outages may only be taken upon thirty (30) days written notice to SMUD. Seller shall use commercially reasonable efforts to not schedule or take any Planned Outages from 6:00 a.m. through 10:00 p.m. Pacific Prevailing Time during the months of May through September unless required by Prudent Utility Practice or applicable Law. Seller shall use commercially reasonable efforts in accordance with Prudent Utility Practice to minimize the frequency and actual duration of Planned Outages and optimize the availability of Energy from the Project. Seller shall provide Planned Outage notifications in accordance with the Outage Notification Procedure detailed in Exhibit G.

7.6 Forced Outages

Seller shall provide Forced Outage notifications in accordance with the Outage Notification Procedures detailed in Exhibit G and I, which notification shall include the expected duration of the Forced Outage and the estimated time of return (“**ETR**”) of the Project. When Seller desires to return the Project to service, Seller shall notify SMUD of the same. SMUD shall use commercially reasonable efforts to accommodate the return to service as soon as practicable after such request; provided that SMUD shall permit the Project to return to service no later than the ETR. If Seller’s notice to return the Project to service occurs prior to the ETR, the following will occur: (i) SMUD will permit the Project to return to service, or (ii) if SMUD is not able to accommodate all or a portion of the Project’s Energy due to SMUD’s scheduling of replacement energy prior to the ETR, SMUD may deny or reduce such Energy until the occurrence of the ETR on a non-compensable basis, or (iii) if SMUD is not able to accommodate all or a portion of the Project’s Energy due to SMUD’s scheduling of replacement energy or any other economic reason at or following the ETR, SMUD may curtail such Energy and such curtailment shall be considered a SMUD Curtailment. However, notwithstanding the prior sentence, SMUD may require Seller to interrupt or reduce deliveries of Energy pursuant to a Dispatch Down Instruction due to an event or circumstance at or following the ETR.

7.7 Modification of Outage Notification Procedure

Upon mutual consent of both Parties, SMUD shall modify Exhibit G to reflect changes necessary in the Outage Notification Procedure, give written notice to Seller regarding the revision, and issue a new Exhibit G which shall then become part of the Agreement to reflect changes in the Outage Notification Procedure.

7.8 Access Rights

SMUD, its authorized agents, employees and inspectors, upon advance notice to Seller and at their own cost and expense and subject to Section 12.2, shall have the right to reasonably, periodically visit the Project site and inspect the Project in accordance with the Definitive Agreements.

8. TERM, TERMINATION EVENT AND TERMINATION

8.1 Term

The term of this Agreement (the “**Term**”) shall commence upon the last execution by the duly authorized representatives of each of SMUD and Seller, and shall remain in effect until the conclusion of the Delivery Term, unless terminated sooner pursuant to the terms of this Agreement. All indemnity rights shall survive the termination of this Agreement for twelve (12) months.

8.2 Events of Default; Remedies

8.2.1 An “**Event of Default**” shall mean, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

- a) the Defaulting Party fails to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) calendar days after receipt of notice from the Non-Defaulting Party;
- b) any representation or warranty made by such Defaulting Party herein is false or misleading in any material respect when made, and such failure is not cured within thirty (30) calendar days after receipt of notice from the Non-Defaulting Party, or such longer period not to exceed sixty (60) days if the failure is not capable of being cured within such thirty (30) days with the exercise of reasonable diligence, so long as the Defaulting Party has commenced and is diligently pursuing a cure during such initial thirty (30)-day period;
- c) the Defaulting Party fails to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate default under this Section 8.2.1 or otherwise has a specific remedy provided in this Agreement), if such failure is not remedied within thirty (30) days of receipt of notice from the Non-Defaulting Party, or such longer period not to exceed ninety (90) days if the failure is not capable of being cured within such thirty (30) days with the exercise of reasonable diligence, so long as the Defaulting Party has commenced and is diligently pursuing a cure during such initial thirty (30)-day period; and/or
- d) the Defaulting Party becomes Bankrupt.

8.2.2 Remedies

- a) Termination for Default. Except as otherwise expressly provided in this Agreement, an Event of Default by a Defaulting Party, the other Party (the “**Non-Defaulting Party**”) shall have the right to (a) terminate this Agreement by providing notice of such termination to the Defaulting Party, which termination shall be effective on a day no earlier than five (5) days after such notice is deemed to be received (as provided in Section 15) and no later than twenty (20) days after such notice is deemed to be received (as provided in Section 15) and, except as provided in Section 8.3 to the contrary, the Defaulting Party shall pay the Non-Defaulting Party a Termination Payment calculated in accordance with Section 8.5, or (b) pursue any other remedies available at law or in equity, including where appropriate, specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement. If the Non-Defaulting Party fails to terminate this Agreement under clause (a) of this paragraph by notice to the Defaulting Party within six (6) months following the Non-Defaulting Party's declaration of an Event of Default, then the Non-Defaulting Party shall be deemed to have waived its rights to terminate this Agreement pursuant to clause (a) of this

paragraph with respect to such Event of Default. If the Non-Defaulting Party elects to terminate this Agreement under clause (a) of this paragraph, then the sole and exclusive remedy available to the Non-Defaulting Party shall be the Termination Payment calculated in accordance with Section 8.5. Notwithstanding any provision herein to the contrary, if Seller commits an Event of Default under this Agreement prior to the Commercial Operation Date, SMUD's sole and exclusive remedy in respect of such Event of Default shall be to terminate this Agreement and retain the Development Security then-held by SMUD pursuant to Section 9.1 of this Agreement (less any Delay Damages already paid by Seller).

b) Suspension.

- i) **Duty to Mitigate Damages.** In addition to (and without limiting) the remedies for an Event of Default otherwise available at law or in equity, during the existence of an Event of Default, the Non-Defaulting Party shall use commercially reasonable efforts to mitigate the damages incurred as a result of such Event of Default.
 - ii) **Right to Suspend.** In addition, during the existence of an Event of Default, the Non-Defaulting Party may, by notice to the Defaulting Party, suspend (the date of such notice, the "**Suspension Date**") in whole or in part its payment (excluding accrued payment obligations prior to such Suspension Date) or performance under this Agreement.
 - iii) **Responsibility for damages during Suspension.** Such suspension shall not relieve the Defaulting Party of its obligations to pay damages arising out of such Event of Default.
 - iv) **Resumption of Performance Following Suspension.** After the Defaulting Party's cure of such Event of Default, and provided there is no other Event of Default by such Defaulting Party then occurring and this Agreement has not been terminated, the Non-Defaulting Party will resume performance of its obligations under this Agreement.
- c) **Termination or Suspension without Cause.** Except for the rights to terminate and suspend expressly set forth in this Agreement, neither Party shall have any right to terminate this Agreement or suspend its performance for any reason.

8.3 Termination Rights

SMUD shall have the right but not the obligation to terminate this Agreement if any of the following occur, each of which is a "**Termination Event**":

8.3.1 Failure to achieve Commercial Operation

In the event Seller fails to achieve Commercial Operation of the Required Percentage of the Expected PV Capacity by the Guaranteed COD, as that date may be extended by Seller in accordance with the terms and conditions, then SMUD shall have the right, but not the obligation, to terminate this Agreement. To exercise this right, SMUD shall provide Seller with a ten (10) day advance written notice. If Seller achieves the Commercial Operation Date prior to the end of the ten (10) day notice period, SMUD shall not exercise its right to terminate the Agreement. This deadline shall be extended on a day for day basis if Seller's failure to achieve Commercial Operation in the designated timeframe was caused by an Excusable Delay.

8.3.2 Failure to sell or deliver Energy

If, after the Commercial Operation Date, Seller has not sold or delivered Energy and Environmental Attributes from the Project to SMUD for a period of twelve (12) consecutive months, except due to Force Majeure events, Dispatch Down Periods, SMUD Curtailments and/or SMUD breaches that prevents or excuses Seller from delivering Energy at the Delivery Point, then SMUD shall have the right to terminate this Agreement.

8.3.3 Failure to meet the Minimum Annual Energy Production

If the Adjusted AEP is less than ninety percent (90%) of the Adjusted MAEP, as decreased by one half of one percent ($MAEP \times .005$) beginning on the first day of the second full Contract Year of this Agreement, and annually thereafter, and as adjusted for the Actual Annual Solar Insolation, for any two consecutive Contract Years.

Notice of such termination for this Event of Default shall be given in writing a minimum of sixty (60) calendar days prior to the effectiveness of such termination and within one hundred twenty (120) calendar days following the end of the second of the applicable two Contract Years. SMUD's ability to exercise such termination right in respect of any two consecutive Contract Years shall be deferred for up to one year if Seller has reasonably demonstrated to SMUD, and is actively implementing in good faith, a cure plan for any such failure as described below.

A cure plan may include, but is not limited to, the addition of solar modules to the system at Seller's sole expense. A cure plan that reasonably shows the Project's ability to achieve 90% of the Adjusted MAEP in that current two consecutive Contract Year period (i.e. the cure plan Contract Year and the preceding Contract Year) must be submitted to SMUD in writing within fifteen (15) calendar days of Seller's receipt of SMUD's notice of termination. SMUD shall then have fifteen (15) calendar days after receipt of the cure plan to inform Seller in writing of any reasonable objections to the cure plan. SMUD's non-objection to, or requested modifications to, Seller's cure plan does not waive SMUD's termination rights in the event that the cure plan is not ultimately effective to cause the Adjusted MAEP for the two consecutive Contract Year period of which it is a part to equal or exceed 90%. Any disagreements regarding the cure plan will be resolved in accordance with the dispute resolution provisions in Section 21 hereof.

8.3.4 Failure to Comply with RPS Covenants

Except as otherwise provided in Section 3.4, in which case, for the avoidance of doubt there will be no termination right if the cause of such non-compliance is SMUD's choice to not pay costs in excess of the Compliance Expenditure Cap:

- a) (Seller fails to obtain RPS Certification for the Project within six (6) months after COD, except if failure to obtain RPS Certification within this six (6) month period is not due to Seller's action or inaction, then Seller shall be provided a day-for-day delay right to obtain RPS Certification up to an additional of six (6) months for a total of no more that twelve (12) months after COD as long as such day-for-day delay is not due to Seller's action or inaction. Seller shall present to SMUD a reasonable plan of action laying out those steps that Seller shall take in order to obtain such certification as quickly as possible, for acceptance by SMUD, which acceptance shall not be unreasonably withheld; or
- b) Subject to Section 3.4, Seller's failure to maintain RPS Certification for the Project, if such failure is not cured within thirty (30) days after written notice; provided that during any period where Seller has not maintained RPS Certification for the Project, whether before or after written notice, SMUD shall not be obligated to purchase any Energy or other Products from Seller hereunder, but Seller may sell such Energy and other Products to third parties.

8.4 Declaration of a Termination Event

If a Termination Event has occurred, SMUD shall have the right to: (a) send notice, designating a day, no earlier than five (5) days after such notice is deemed to be received (as provided in Section 15) and no later than twenty (20) days after such notice is deemed to be received (as provided in Section 15) (unless, in each case, a longer notice period is set forth in Section 8.3), as an early termination date of this Agreement ("**Early Termination Date**") unless the Parties have agreed to resolve the circumstances giving rise to the Termination Event; (b) except for a termination pursuant to Section 8.3.1 or as elsewhere provided in this Agreement to the contrary, calculate the Termination Payment in accordance with Section 8.5 owed in connection with such Termination Event; and (c) terminate this Agreement and end the Delivery Term effective as of the Early Termination Date. With respect to any Termination Event prior to the Commercial Operation Date, including pursuant to Section 8.3.1, Seller's sole and exclusive liability and SMUD's sole and exclusive remedy aside from terminating this Agreement shall be the forfeiture of Seller's Development Security to SMUD less any Delay Damages already paid by Seller.

8.5 Termination Payment Calculation

If a Termination Event occurs or if this Agreement is terminated following a breach or default as provided in Section 8.2 of this Agreement, in each case ultimately resulting in termination of the Agreement, a "**Termination Payment**" shall be determined in accordance with this Section 8.5. Notwithstanding any provision herein to the contrary, prior to the Commercial Operation Date, the Termination Payment shall be zero dollars (\$0.00).

8.5.1 The Termination Payment payable by the Defaulting Party to the Non-Defaulting Party shall equal: (i) Non-Defaulting Party's Loss as calculated under Section 8.5.1(a) below and discounted to present value as set forth under Section 8.5.1(b) below; plus (ii) Non-Defaulting Party's Cost as calculated under Section 8.5.1(c) below; which will then be aggregated with any amounts owed to the Non-Defaulting Party as of the Early Termination Date, and any set-offs to which Defaulting Party is entitled as set forth under Section 8.5.1(d) below. If the Termination Payment as so calculated would be less than zero, it shall be deemed to be zero.

- a) The Parties intend that Non-Defaulting Party's "**Loss**" shall be the net economic loss (exclusive of Costs), if any, resulting from the termination of the Agreement, determined in a commercially reasonable manner as calculated in accordance with this Section 8.5. The Loss, if any, suffered by Non-Defaulting Party shall be determined by comparing the value of the remaining Term, applying the lesser of (i) the Adjusted AEP for the most recently completed Contract Year, or (ii) the Minimum Annual Energy Production, and the Solar Price, and Storage Price (loss is computed separately for Solar Project and Storage Project) for each year of the remaining Term under the Agreement had it not been terminated to the equivalent quantity with each party obtaining, in good faith and from non-affiliated market participants in the relevant market, two quotes for prices of CARPS PCC 1 bundled renewable energy and RECs for the affected period of a similar quality and quantity in the geographical location closest in proximity to the Delivery Point and averaging the four quotes. If either Party fails to provide two quotes, then the average of the other Party's two quotes shall determine the replacement price. For clarity, if SMUD is the Non-Defaulting Party, the Non-Defaulting Party's Loss equals the amount by which the market price of replacement Products exceeds the Contract Price therefor, and if the Seller is the Non-Defaulting Party, the Non-Defaulting Party's Loss equals the amount by which the Contract Price hereunder exceeds the market price of such replacement Products, less the expenses saved by Seller due to SMUD's default (if any), which includes, but is not limited to, the cost of production of the Products. To ascertain the market price of a replacement contract, Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in ERR contracts, and other bona fide third party offers, all

adjusted for the length of the remaining Term and differences in transmission. It is expressly agreed that Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment. For the avoidance of doubt, if this Agreement is terminated as a result of a SMUD Event of Default and the Interconnection Agreement is also terminated, then the Parties agree it shall be reasonable for Seller to assume no replacement sales will occur in calculating the Termination Payment and therefore, in calculating Seller's Loss, the "market price of replacement Products" shall be deemed to be zero.

- b) The Loss calculated under paragraph (a) shall be discounted to present value using a discount rate of six percent (6%) as of the time of termination (to take into account the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to this Agreement).
- c) Non-Defaulting Party's "**Costs**" shall be calculated as the sum of the brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating and replacing the Agreement, including, reasonable transmission costs associated with any replacement contract, if any, incurred in connection with Non-Defaulting Party enforcing its rights with regard to the Agreement. Non-Defaulting shall use reasonable efforts to mitigate or eliminate Costs. Consistent with Section 21.2, each Party shall pay and be responsible for their own attorney fees.
- d) Non-Defaulting Party shall add any amounts owed by the Defaulting Party to the Non-Defaulting Party as of the Early Termination Date to, and shall set-off any amounts owing by the Non-Defaulting Party to the Defaulting Party as of the Early Termination Date against, the Termination Payment so that all such amounts are aggregated and/or netted to a single amount. The net amount due shall be paid within thirty (30) Business Days following the effective date of termination, or, if the Parties disagree regarding the calculation of the Termination Payment, the date that the calculation of the Termination Payment is resolved pursuant to Section 8.5.2 below.
- e) In no event, however, shall the calculation of Loss or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

8.5.2 If the Defaulting Party reasonably disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be resolved in accordance with Section 21 of this Agreement

9. CREDITWORTHINESS

9.1 Project Development Security

Within thirty (30) days of the Effective Date, Seller shall provide project development security in the amount equal to the sum of (a) the product of (i) \$30/kWac multiplied by (ii) two hundred fifty (250) MWac plus (b) \$250,000, in the form of cash, Letter of Credit, Surety Bond or guaranty acceptable to SMUD ("**Development Security**"); to be maintained until the start of the Delivery Term.

9.2 Delivery Term Security

Prior to commencement of the Delivery Term, Seller to provide Delivery Term Security in the amount equal to the product of (a) \$75/kWac multiplied by (b) two hundred fifty (250) MWac in the form of cash, Surety Bond, Letter of Credit, or guaranty acceptable to SMUD; for the duration of the Delivery Term ("**Delivery**

Term Security") and SMUD shall return the Development Security provided pursuant to Section 9.1 to Seller. Seller shall maintain the Delivery Term Security for the duration of the Delivery Term.

No lien or other security will be required and SMUD's recourse against Seller shall be limited to the security provided.

"Qualified Issuer" is a major U.S. commercial bank or a U.S. branch of a foreign bank ("**Bank**") that, at the time of delivery of a letter of credit, (i) has a combined capital surplus of \$10,000,000,000 and (ii) has a senior unsecured long-term credit rating of at least "A-" by S&P or "A3" by Moody's. If Qualified Issuer fails to meet the foregoing capital surplus and unsecured long-term credit rating requirements, Seller must replace credit support with another Bank.

10. [RESERVED]

11. FORCE MAJEURE

11.1 Effect of Force Majeure

Buyer or Seller, as the case may be, shall be excused from performance under this Agreement to the extent, but only to the extent, that performance hereunder is prevented by an act or event of Force Majeure. The Party invoking Force Majeure shall exercise due diligence to overcome or mitigate the effects of such an act or event of Force Majeure; *provided*, however, that nothing in this Agreement shall be deemed to obligate the Party invoking Force Majeure (a) to forestall or settle any strike, lock-out or other labor dispute against its will; or (b) for Force Majeure affecting Seller only, to purchase electric power to cure the event of Force Majeure.

11.2 Notice of Force Majeure

In the event of any delay or nonperformance resulting from an event of Force Majeure, the Party invoking Force Majeure shall, as soon as practicable under the circumstances, notify the other Party in writing of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

11.3 Termination Due to Force Majeure Event

If a Party is prevented from performing its material obligations under this Agreement for a period of twelve (12) consecutive months or longer due to Force Majeure, the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) days written notice at any time during the Force Majeure event.

12. INDEMNITY

12.1 Indemnity by Seller

Seller shall defend, release, indemnify and hold harmless SMUD, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees, resulting from, or arising out of or in any way connected with claims by third parties associated with the acts or omissions of Seller, its directors, officers, employees, agents and representatives relating to: (i) the Energy delivered at the Delivery Point; (ii) Seller's operation and/or maintenance of the Project; or (iii) this Agreement; excepting only such loss, claim, action or suit to the extent caused by the willful misconduct or gross negligence of SMUD, its agents, employees, directors or officers.

12.2 Indemnity by SMUD

SMUD shall defend, release, indemnify and hold harmless Seller, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees resulting from, or arising out of or in any way connected with claims by third parties associated with acts or omissions of SMUD, its directors, officers, employees, agents, and representatives, relating to: (i) the Energy delivered by Seller under this Agreement after the Delivery Point, (ii) SMUD's operation and/or maintenance of its Electric System; or (iii) this Agreement; excepting only such loss, claim, action or suit to the extent caused by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

13. LIMITATION OF DAMAGES

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY; SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. EXCEPT WITH REGARD TO INDEMNIFICATION OF THIRD PARTY CLAIMS IN ACCORDANCE WITH SECTION 12, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 12, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE TERMINATION PAYMENT UNDER SECTION 8.5.1 IS NOT SUBJECT TO THE LIMITATION OF DAMAGES PROVISION SET FORTH IN THIS SECTION 13. THE PARTIES EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE LIMITATION OF DAMAGES PROVISIONS CONTAINED IN THIS SECTION 13 WILL NOT LIMIT THE RECOVERY BY SELLER OF DAMAGES BASED ON THE VALUE OF ANY ITC (AS DEFINED IN DEFINITIONS) OR OTHER TAX BENEFITS THAT ARE LOST, UNAVAILABLE, DISALLOWED, REDUCED OR RECAPTURED AND ITC RECAPTURE AMOUNTS (AS DEFINED IN DEFINITIONS) THAT ARE REQUIRED TO BE REPAID, DETERMINED ON AN AFTER-TAX BASIS, BY SELLER, SELLER'S DIRECT OR INDIRECT OWNERS, A LENDER, A TAX EQUITY INVESTOR OR ANY OF THEIR AFFILIATES DUE TO AN EVENT OF DEFAULT BY SMUD THAT SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF COMMERCIALY REASONABLE EFFORTS (WHICH SUCH AMOUNTS WILL BE DEEMED TO BE DIRECT DAMAGES RECOVERABLE BY SELLER).

14. REPRESENTATION AND WARRANTIES; COVENANTS

14.1 Representations and Warranties

On the Effective Date, each Party represents and warrants to the other Party that:

14.1.1 It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

14.1.2 The execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

14.1.3 This Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

14.1.4 It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its actual knowledge, threatened against it which would result in it being or becoming Bankrupt;

14.1.5 There are not pending or to its actual knowledge threatened legal proceedings against it or any of its affiliates that could materially adversely affect its ability to perform its obligations under this Agreement; and

14.1.6 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

14.2 General Covenants

Each Party covenants that throughout the Term of this Agreement:

14.2.1 It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

14.2.2 It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

14.2.3 It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it.

14.3 SMUD Representations and Warranties

14.3.1 As of the Effective Date and throughout the Delivery Term, SMUD represents and warrants to Seller that:

14.3.2 SMUD is subject to claims and to suit for damages in connection with its obligations under this Agreement pursuant to and in accordance with the laws of the State of California applicable to municipal utility districts;

14.3.3 SMUD is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

15. NOTICES

Notices shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). Whenever this Agreement requires or permits delivery of a "notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile transmission or email will be recognized and shall be deemed received on the Business Day on which such notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party

unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice of same in accordance with this provision. All written notices shall be directed as shown in Exhibit I. Either Party may request a change to Exhibit I as necessary to keep the Exhibit I information current without amendment to this Agreement.

16. SET OFF

Each Party shall be entitled to offset amounts owed by the other Party under this Agreement from the amounts owed to it under the Agreement.

17. ASSIGNMENT

17.1 There shall be no Change of Control of any interest in the Project or sale, transfer or assignment of this Agreement (collectively, a "**Transfer**") without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however;

17.1.1 A Transfer of (i) this Agreement or (ii) any direct or indirect ownership interests in Seller, in each case to any lender or its designee as collateral for any financing or refinancing of the Project, shall not constitute an assignment, Change of Control or Transfer requiring the consent of SMUD under this Agreement. Any such Transfer shall not relieve Seller of its obligations under this Agreement arising prior to the effective date of such Transfer. To facilitate Seller's obtaining of financing in connection with the Project, SMUD shall provide such consents to assignments, certifications, estoppels, opinions, representations, information or other documents as may be reasonably requested by Seller or the lenders in connection with the debt or tax equity financing of the Project, as applicable; provided that in responding to any such request, SMUD shall have no obligation to (a) provide any consent, certification, representation, information or other document, or enter into any agreement, that materially and adversely affects, or that could reasonably be expected to have or result in a material adverse effect on, any of SMUD's rights, benefits, risks and/or obligations under this Agreement (other than terms customary in connection with the applicable financing) or (b) incur any unreimbursed third-party expense. Seller shall reimburse, or shall cause the lender(s) to reimburse, SMUD for the incremental direct third party expenses (including the reasonably documented fees and expenses of SMUD's counsel) incurred by SMUD in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the lenders, and provided by SMUD, pursuant to this Section 17.1.1. Upon written request of Seller, SMUD will negotiate a Consent and Agreement between Seller and Seller's lender and/or tax equity investor in the form reasonably acceptable to SMUD, substantially in the form attached herein as Exhibit L.

17.1.2 Without limitation as to other reasonable grounds for withholding consent, the Parties hereby agree that it shall be reasonable under this Agreement and under any applicable Law for SMUD to withhold consent to any proposed Transfer, where at the time of the Assignment, the assignee is not concurrently assuming all of the future obligations under the LGIA as well as the future obligations under this Agreement; provided that if the Seller is not in default under the this Agreement and notwithstanding the foregoing, no consent shall be required for any Permitted Transfer. Any such Transfer shall not relieve Seller of its obligations under this Agreement arising prior to the effective date of such Transfer. Notwithstanding the foregoing, Seller shall, within thirty (30) days prior to such Transfer, provide SMUD with written notice of any Transfer permitted under this Section, which notice shall identify the transferee and contain evidence that the transferee has assumed or will assume all of the obligations under this Agreement arising after the date of the Transfer, and reasonable proof that the Transfer qualifies as an exempt transfer under this Section. The term "Affiliate" as used herein means, with respect to Seller, any

corporation or limited liability company that directly or indirectly controls, is controlled by, or is under common control with, Seller.

17.2 SMUD may request that Seller enter negotiations to permit SMUD's limited assignment of a portion of SMUD's rights and obligations under this Agreement to J. Aron and Company, LLC ("J. Aron") at any time upon not less than 30 days' notice by delivering a written request for such assignment. Following any such request by SMUD, (a) Seller, SMUD and J. Aron shall negotiate in good faith the execution of a limited assignment agreement based on the form attached hereto as Exhibit R, and (b) if requested by Seller, Seller and SMUD shall negotiate in good faith an indemnity and/or a legal opinion, to be provided by SMUD for the benefit of Seller, in form and substance satisfactory to Seller.

18. SMUD CLEAN ENERGY COMMUNITY LEADERS – MARK GALL MEMORIAL SCHOLARSHIP.

Seller shall pay SMUD twenty thousand dollars (\$20,000) in each of Contract Years 1 through 6, for SMUD to use for the purposes of administering a scholarship program for high school seniors attending post-secondary two- or four-year colleges in SMUD partner communities who have a demonstrated interest in renewable energy development in the greater Sacramento area.

19. PROJECT PURCHASE OPTION

Seller hereby grants to SMUD the right and option to purchase all of Seller's right, title and interest in and to the Project and Products the terms set forth herein.

19.1 SMUD shall have the option (the "**Purchase Option**") to terminate this Agreement and purchase from Seller the Project and Products for the greater of (a) the Fair Market Value of the Project and Products, as described in Section 19.6 and (b) the amount of Facility Debt as of the date of the issuance of the Purchase Option, (the higher of (a) and (b), the "**Purchase Price**"), in accordance with this Section 19. SMUD may exercise the Purchase Option upon (i) the tenth (10th) anniversary of the Commercial Operation Date, or (ii) the expiration of the Delivery Term. In the event SMUD desires to exercise the Purchase Option, SMUD shall deliver to Seller a notice indicating SMUD's intent to exercise the Purchase Option (an "**Option Notice**") on or before the date which is no less than six (6) months prior to the no less than six (6) months prior to the tenth (10th) anniversary of the Commercial Operation Date (the "**10-year Purchase Option**"), or no less than six (6) months prior to the end of the Delivery Term (the "**Final Purchase Option**").

19.2 For a period of six (6) months following delivery of the Option Notice with respect to the 10-year Purchase Option, and the Final Purchase Option (the "**Purchase Option Due Diligence Period**"), SMUD and its representatives shall have the right to conduct any and all due diligence which SMUD may reasonably deem necessary with respect to the Project and Products. Seller shall during the Purchase Option Due Diligence Period make available to SMUD and its representatives full access to the Project, related title work, surveys, contracts, data and records and operating personnel ("**Full Access**"). The Purchase Option Due Diligence Period will be extended day-for-day to the extent that, due to Seller's default, Force Majeure or any other reason not attributable to Seller, Full Access cannot be provided.

19.3 SMUD and Seller shall execute a Purchase and Sale Agreement under which Seller will sell and SMUD, or its assign, will purchase the Project at a closing for the purchase and sale of the Project (the "**Closing**") to be held on a date which is within six (6) months following the 12-year Purchase Option or the Final Purchase Option, as applicable, (the "**Closing Date**") at a location selected by SMUD.

19.4 Between the date of the Option Notice and the Closing Date, Seller may not take any actions that would materially adversely affect the Project site, the Project and Products or SMUD's

interest in purchasing the Project and Products. Under this Agreement, among other standard provisions, effective as of the Closing:

19.4.1 Seller shall transfer the Project and Products to SMUD on an as-is, where-is basis, and Seller shall not be required to make any representations or warranties with regard to the Project and Products; *provided, however*, that Seller shall remove any encumbrances placed on the Project and Products by Seller at Seller's expense. No such transfer shall relieve Seller of any liability whatsoever arising from the violation, breach or default by Seller of this Agreement, any transferred contract, transferred permit, transferred intellectual property or other transferred asset, or resulting from any act or omission by Seller that occurred prior to the Closing Date.

19.4.2 Seller shall transfer the Project and Products to SMUD, free and clear of all liens and encumbrances. Seller shall assign and transfer to SMUD all of its right, title and interest in the following: (a) all raw materials, consumables and spare parts, in each case, to the extent relating to the Project and Products; (b) all tangible personal property to the extent relating to the Project and Products; (c) all intangible personal property, including permits, patents, patent licenses, patent applications, trade names, trademarks, trademark registrations and applications therefore, trade secrets, copyrights, know-how, secret formulae and any other intellectual property rights, in each case, to the extent exclusively used by Seller in the operation of the Project and Products; (d) all buildings and fixtures to the extent relating to the Project and Products; (e) computerized and non-computerized records, reports, data, files, and information, in each case, to the extent exclusively used by Seller in the operation of the Project and Products; (f) all design, construction and equipment warranties and guarantees related to the Project and Products in which Seller has any remaining rights against engineers, contractors, suppliers, equipment manufacturers or other persons; and (g) all permits and entitlements. Notwithstanding this Section 19.4.2, Seller shall have the right to retain copies of, and shall have the right to use, any and all records, reports, data, files and information assigned and transferred by Seller to SMUD pursuant to Section 19.4.2(e) for its internal business use, which may include by way of illustration and not be way of limitation: (i) use in accordance with Seller's standard document retention policies; (ii) responding to or otherwise complying with regulatory audits or requests; (iii) responding to third party due diligence requests; (iv) complying with applicable Laws; (v) responding to or defending third party claims or allegations; or (vi) enforcing, defending or interpreting Seller's rights, claims or remedies under this Agreement.

19.4.3 All items relating to the ownership and operation of the Project and Products, which are customarily prorated, shall be prorated as of the Closing Date. Seller shall be liable with respect to items or obligations that relate to any time period prior to the Closing Date and SMUD shall be liable with respect to items or obligations relating to time periods after the Closing Date, and to the extent practicable, shall be credited to Seller's settlement account.

19.5 This and the other Definitive Agreements shall terminate upon the Closing Date and (a) the payment in full to Seller of the Purchase Price and (b) the satisfaction or payment of all other obligations due to either Party under this Agreement.

19.6 The "**Fair Market Value**" of the Project and Products shall be the value determined by the mutual agreement of SMUD and Seller after receipt by Seller of SMUD's Option Notice requesting a determination of the Fair Market Value, or if there is no such agreement, the value determined by an independent appraiser as provided under this Section 19.6. Within ten (10) days of Seller's receipt of an Option Notice, SMUD and Seller shall jointly select a recognized independent appraiser, with experience and expertise in the solar photovoltaic and energy storage industry to value such Project and Products with whom the Parties will discuss methods and assumptions. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall

set forth such determination in a written opinion delivered to the Parties within a timeframe established upon appointment of the appraiser, aspirationally no later than thirty (30) days after the date of appointment. The valuation made by the appraiser shall be the Fair Market Value in the absence of fraud or manifest error. The costs of the appraisal shall be borne by SMUD. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by SMUD and the appraiser firm proposed by the Seller. The appraiser shall determine the Fair Market Value as the amount a willing buyer would pay for the Project and Products and all rights and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell, assuming that this Agreement remains in full force and effect, and that the Project is able to generate revenue for the then-remaining Term at the prices set forth in this Agreement, assuming that thereafter the Project is able to generate revenue at a rate equal to the then fair market rates for the Products and any other products and services associated with and/or produced by the Project, and assuming that the Project will remain in place on the site for the remaining useful life of the Project.

20. APPLICABLE LAW

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

21. DISPUTE RESOLUTION

21.1 Trial; Venue

The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the courts of the State of California sitting in the County of Sacramento, California.

21.2 Dispute Resolution

If the Parties are unable to resolve a dispute with respect to this Agreement, either Party shall send a notice to the other requesting a meeting at which senior officers or officials of the Parties shall attempt to resolve the dispute. If the Parties are unable to resolve the dispute within ten (10) calendar days after the meeting notice is received by the Party to whom it is directed, or such longer period as the Parties may agree, then either Party may elect to resolve such dispute in the courts of the State of California. The venue shall be the Superior Court in Sacramento County. Each Party shall pay and be responsible for their own attorney fees.

22. SEVERABILITY

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court or arbitration panel having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use commercially reasonable efforts to modify this Agreement to give effect to the original intention of the Parties.

23. COUNTERPARTS

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or PDF transmission will be deemed as effective as delivery of an originally executed counterpart. Each Party delivering an executed counterpart of this Agreement by facsimile or PDF transmission will also deliver an originally executed counterpart, but the failure of any Party to deliver

an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

24. GENERAL

No amendment to, modification of, or waiver under this Agreement shall be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only.

25. MOBILE SIERRA

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S. Ct. 2733 (2008) and *NRG Power Mktg., LLC v. Maine Pub. Util. Comm’n*, 130 S. Ct. 503 (2010).

26. SERVICE CONTRACT; FORWARD AGREEMENT

The Parties intend that this Agreement will be treated as a service contract pursuant to Section 7701(e)(3) of the Internal Revenue Code for the sale to SMUD of energy produced at an alternative energy Project, and the Parties shall not file any tax returns inconsistent with such treatment. The Parties agree that this Agreement constitutes a ‘forward contract’ as defined in the United States Bankruptcy Code and that each Party is a “Forward Contract Merchant” within the meaning of the United States Bankruptcy Code.

27. ENTIRE AGREEMENT

This Agreement, together with the LGIA, the Reimbursement Agreement, and the Station Service Load Letter of Agreement constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter hereof and thereof. Other than the LGIA, the Reimbursement Agreement, and the Station Service Load Letter of Agreement there are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party’s compliance with its obligations under this Agreement.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below.

**SACRAMENTO
DISTRICT**

MUNICIPAL

UTILITY

**SACRAMENTO VALLEY ENERGY CENTER,
LLC**

By: _____

Name:
Title:

By: _____

Name:
Title:

Date: _____

Date: _____

EXHIBITS

Exhibit A – Description and Location of Project

Exhibit B – Contract Price

Exhibit C – Project Performance Benchmarks

Exhibit D – Average Solar Irradiance by Month

Exhibit E – Commercial Operation Date Confirmation Letter

Exhibit F – Capacity Attribute Reporting and Conveyance Procedure

Exhibit G – Available PV Capacity Notification Requirements and Outage Notification Procedure

Exhibit H – Environmental Attribute Reporting and Conveyance Procedure

Exhibit I – Notices

Exhibit J – Operating Restrictions

Exhibit K – Deemed Delivered Energy Calculation Procedure

Exhibit L – Form of Consent and Agreement to Collateral Assignment

Exhibit M – Storage Capacity Testing

Exhibit N – Project Milestone Schedule

Exhibit O – Storage Guarantees

Exhibit P – Metering Diagram

Exhibit Q – Form of Letter of Credit

Exhibit R – Form of Limited Assignment Agreement

Exhibit A

DESCRIPTION AND LOCATION OF PROJECT

- A.1 The Project is described as a fully integrated PV system plus battery storage facility, comprised of PV arrays, inverters, battery cells, and associated facilities and equipment. Final inverter count to be provided after commissioning testing.
- A.2 The Project is located in Sacramento County approximately near the following coordinates 38°35'30.5"N 121°09'54.6"W .
- A.3 The Project's primary fuel is solar.
- A.4 The Expected PV Capacity is 200 MW AC at the Delivery Point, or such lesser amount as calculated pursuant to PPA Section 2.3.8(a).
- The Expected Storage Capacity is 100MW AC at the Delivery Point, or such lesser amount as calculated pursuant to Section 2.3.8(b).
- A.5 The PV Capacity is 200 MWac measured at the Delivery Point. The Storage Capacity is 100 MWac measured at the Delivery Point. Final capacity to be reported by Seller to SMUD in accordance with Sections 2.3.4 and 2.3.8, but shall not exceed 200 MWac PV Capacity and 100 MWac Storage Capacity.
- A.6 The Delivery Point is the location of the interconnection of the Project on the high-side of the step-up transformer that interconnects to the SMUD Transmission System, as shown in Exhibit C to the LGIA.
- A.7 The Scheduled Commercial Operation Date is December 31, 2023.
- A.8 The Guaranteed COD for Commercial Operation is twelve (12) months after the Scheduled COD; i.e., December 31, 2024, subject to day-for-day extension to the extent the Scheduled COD is extended.
- A.9 The Operating Characteristics of Storage Project:
- a. Maximum Charging Capacity: See Exhibit J
 - b. Maximum Discharging Capacity: See Exhibit J
 - c. Maximum Stored Energy Level: See Exhibit J
- A.10 Operating Restrictions of Storage Project: See Exhibit J
- A.11 Meters
- a. Solar Meter: See Exhibit P
 - b. Storage Meter: See Exhibit P
 - c. SMUD Revenue Meter: See Exhibit P
- A.12 Design Standards
- Electrical subsystems, including but not limited to the solar array equipment, medium voltage collection system, and solar 230kV substation, shall comply with relevant IEEE, NESC, NEC, ANSI, NFPA, ASCE, IBC, ASTM, CPUC General Orders, and SMUD specific design standards set forth in **the SVEC Large Generator Interconnect Agreement (LGIA)**. Operator shall operate the Project as required by its registration as NERC Generator Owner and Generator Operator under the NERC Functional Model or successor models.

[Effective Date]

Upon issuance of a new Exhibit, the Parties will insert a new effective date for this Exhibit, which will replace the prior Exhibit.

Month, Day, Year

Signature of Seller

Signature of SMUD

Exhibit B

Contract Price

Solar Price

The “Solar Price” with respect to each Contract Year is set forth in the table immediately below:

Contract Year	Solar Price
1 – 27	\$33.20/MWh (flat) with no escalation,
28 – 30 (if the Delivery Term is extended hereunder)	\$33.20/MWh (flat) with no escalation,

The “Storage Price” with respect to each Contract Year is set forth in the table immediately below:

Contract Year	Storage Price
1 – 27	\$8.48/kW-mo. (flat) with no escalation
28 – 30 (if the Delivery Term is extended hereunder)	\$8.48/kW-mo. (flat) with no escalation

Exhibit C

PROJECT PERFORMANCE BENCHMARKS

Year of Term	Expected Annual Energy Production (MWh)	Minimum Annual Energy Production (MWh)
1	524,426	471,983.40
2	521,804	469,623.48
3	519,182	467,263.57
4	516,560	464,903.65
5	513,937	462,543.73
6	511,315	460,183.82
7	508,693	457,823.90
8	506,071	455,463.98
9	503,449	453,104.06
10	500,827	450,744.15
11	498,205	448,384.23
12	495,583	446,024.31
13	492,960	443,664.40
14	490,338	441,304.48
15	487,716	438,944.56
16	485,094	436,584.65
17	482,472	434,224.73
18	479,850	431,864.81

19	477,228	429,504.89
20	474,606	427,144.98
21	471,983	424,785.06
22	469,361	422,425.14
23	466,739	420,065.23
24	464,117	417,705.31
25	461,495	415,345.39
26	458,873	412,985.48
27	456,251	410,625.56
28	453,628	408,265.64
29	451,006	405,905.72
30	448,384	403,545.81

Both the Expected Annual Energy Production (EAEP) and Minimum Annual Energy Production (MAEP) include an annual degradation rate of 0.5%.

The Expected Annual Energy Production and Minimum Annual Energy Production will be updated by Seller to account for the final equipment selection of the Project and the Parties will revise this Exhibit to update such values and issue a new Exhibit which shall then become part of the Agreement. No formal amendment of the Agreement is required to update this Exhibit.

Effective Date

Upon issuance of a new Exhibit, the Parties will insert a new effective date for this Exhibit, which will replace the prior Exhibit.

Month, Day, Year

Signature of Seller

Signature of SMUD

Exhibit D
AVERAGE SOLAR IRRADIANCE BY MONTH

To be updated within 180 days prior to the Commercial Operation Date.

For Typical Weather Year Energy Calculation

Month	Solar Irradiance (kWh/m ² /day)
January	60.90
February	86.00
March	142.30
April	182.60
May	226.00
June	240.60
July	246.70
August	220.00
September	172.80
October	128.50
November	77.30
December	58.90
Annual Average	153.55
Annual Total	1842.50

Source of data: Clean Power Research – Solar Anywhere 1 km grid, Typical GHI/DNI year, V3.2, average values, 60-minute resolution reviewed, scaled and rebalanced by AWS Truepower on 04/20/18.

The Parties will revise this Exhibit as appropriate and issue a new Exhibit which shall then become part of the Agreement. No formal amendment of the Agreement is required to update this Exhibit.

Effective Date

Upon issuance of a new Exhibit, the Parties will insert a new effective date for this Exhibit, which will replace the prior Exhibit.

Month, Day, Year

Signature of Seller

Signature of SMUD

Exhibit E

COMMERCIAL OPERATION DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase Agreement dated _____ ("Agreement") by and between the Sacramento Municipal Utility District ("SMUD") and Sacramento Valley Energy Center, LLC ("Seller"), this letter serves to document the parties further agreement that (i) the COD Conditions for the occurrence of the Commercial Operation Date have been satisfied, and (ii) SMUD has received the energy, as specified in the Agreement, as of this ____ day of ____.

This letter shall confirm the Commercial Operation Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

SELLER

Sacramento Municipal Utility
District

By: _____

By: _____

Name:

Name:

Title:

Title: Director, Energy Trading &
Contracts

Date: _____

Date: _____

Exhibit F

CAPACITY ATTRIBUTE REPORTING AND CONVEYANCE PROCEDURE

F.1 Additional Definitions for the Conveyance of Capacity:

None.

F.2 Reporting of Capacity Attributes. SMUD will report the Capacity Attributes acquired herein in any regulatory filing that SMUD is required to make in order to declare the Capacity of the Solar Project (or any portion thereof) and the Storage Contract Capacity as meeting SMUD's Capacity planning requirement (also known as Resource Adequacy).

F.3 Changes in Capacity Attribute Conveyance Procedure. Subject to Section 4.3, SMUD may revise this Exhibit F as appropriate, give written notice to Seller regarding the revision, and issue a new Exhibit F, which shall then become part of the Agreement in the event that the method for reporting and conveying Capacity Attributes changes from the process described herein provided that no update to this Exhibit F shall be permitted to impose any material (non-administrative) additional costs on Seller.

Exhibit G

AVAILABLE PV CAPACITY NOTIFICATION

REQUIREMENTS AND OUTAGE NOTIFICATION PROCEDURE

G.1 Additional Definitions for the Outage Notification Procedure: None.

G.2 Available PV Capacity Notification Requirements.

G.2.1 No later than (a) three (3) months prior to the Commercial Operation Date, and (b) on or before July 1 for each calendar year thereafter for every subsequent Contract Year during the Delivery Term, Seller shall provide to SMUD a schedule of the hourly Available PV Capacity for each day in each month of the following calendar year in a form reasonably acceptable to SMUD.

G.2.2 Ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to SMUD a schedule of the hourly Available PV Capacity for each day of the following month in a form reasonably acceptable to SMUD.

G.2.3 Weekly Notification of Available PV Capacity

G.2.3.1 The SELLER will contact the SMUD Day Ahead Trading Desk, as provided in Exhibit I Notices, on a weekly basis in order to provide information on expected plant usage during the following week.

G.2.3.2 The information shall include the available capacity, by hour, expected for the Generating.

G.2.3.3 SELLER shall provide such information on the Wednesday prior to the affected week which begins on Monday and shall be communicated in an agreed upon format by email (primary) or fax (secondary), and confirmed by phone.

G.2.3.4 A sample Schedule is shown in Section G.2.6, herein.

G.2.4 Day Ahead Notification of Available PV Capacity (Prescheduling)

G.2.4.1 Preschedule days are days when the SMUD Day Ahead Trader plans for the resources and generation necessary to serve SMUD load for a day or number of days subsequent to the day of prescheduling. The following is the current typical prescheduling pattern followed by SMUD Day Ahead Traders: on Monday for Tuesday, On Tuesday for Wednesday, on Wednesday for Thursday, on Thursday for Friday and Saturday, and on Friday for Sunday and Monday. This pattern will change periodically to accommodate WECC stipulated designated holidays, and may change due to changes in WECC scheduling practices or adoption by SMUD of the prevailing Regional Transmission Organization/Independent System Operator, or its replacement's scheduling protocols. Said changes shall be communicated telephonically to the SELLER by SMUD and confirmed by email or fax. The WECC preschedule days can be found on the WECC web site at <https://www.wecc.biz>.

G.2.4.2 No later than 0600 of each preschedule day, the SELLER shall provide the SMUD Day Ahead Trader with an Available PV Capacity schedule. The information shall include the available capacity, by hour, expected for the Solar Project ("Day-Ahead Notification of Available PV Capacity").

G.2.4.3 If Seller fails to provide SMUD with a Day-Ahead Notification of Available PV Capacity Notification as required in Section G.2.4.2, then, (a) until Seller provides a Day-Ahead Available PV Capacity Notification, SMUD may rely on the most recent Day-Ahead Available PV Capacity Notification submitted by Seller to SMUD and (b) Seller shall be subject to Scheduling Penalties as provided in Section 7.2 of the Agreement to the extent incurred by SMUD.

G.2.5 Active Day Notification of Available PV Capacity

G.2.5.1 In the event of a change of at least 1 MW of Available PV Capacity that may be expected by the SELLER from the pre-scheduled quantities of power, such as for unplanned Project outages, the SELLER will provide the SMUD Real Time Trader with the changes in hourly power quantities provided during pre-scheduling ("Active Day Notification").

G.2.5.2 If Seller fails to provide SMUD with an Active Day Notification of Available PV Capacity as required in Section G.2.5.1, then, (a) until Seller provides an Active Day Available PV Capacity Notification, SMUD may rely on the most recent Day-Ahead Notification of Available PV Capacity submitted by Seller to SMUD and (b) Seller shall be subject to Scheduling Penalties as provided in Section 7.4 of the Agreement to the extent incurred by SMUD.

G.2.6 Sample Prescheduling Table

Date: ____/____/____							
Weekly Preschedule Template			Prepared & Sent By:				
	Monday ____/____/____	Tuesday ____/____/____	Wednesday ____/____/____	Thursday ____/____/____	Friday ____/____/____	Saturday ____/____/____	Sunday ____/____/____
Hour Ending	Day Ahead Schedule (MW)	Day Ahead Schedule (MW)	Day Ahead Schedule (MW)	Day Ahead Schedule (MW)	Day Ahead Schedule (MW)	Day Ahead Schedule (MW)	Day Ahead Schedule (MW)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
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22							
23							
24							
AVG.							

- G.3 Planned Outage Notifications. In addition to the 30 days advance written notice in regard to a Planned Outage as per Section 7.5, Seller shall notify SMUD at least 72 hours in advance of Planned Outages that result in a reduction in the effective output of the Project during period over which the Planned Outage is scheduled. Notification should be by email to the addresses shown in the Outages section of the Notices, Exhibit I.
- G.4 Notification of PV Array Cleaning. If Seller has scheduled cleaning for PV arrays, Seller shall notify SMUD at least 72 hours in advance of scheduled cleaning, and should include details of the cleaning plan. Seller shall also follow-up with SMUD after cleaning of the Project in order to verify the actual cleaning dates and times. Notification should be made by email to the addresses shown in the Planned Outages section of the Notices, Exhibit I.
- G.5 Forced Outage Notifications. Pursuant to Section 7.6, as soon as reasonably practicable after Seller is aware of a Forced Outage of the Project that impacts the ability of the Project to produce Energy in excess of 1 MW_{AC} of the Expected PV Capacity, Seller shall notify SMUD of the Forced Outage, including the Capacity of the Project that is impacted, and the expected duration of the Forced Outage. As soon as is possible, but not less than two (2) hours prior to the return of the Project to service following such Forced Outage Seller shall notify SMUD of the return to service details. Notification shall be made in accordance with the Outages section of the Notices, Exhibit I.
- G.6 Changes in Outage Notification Procedure. Upon mutual consent of both Parties, SMUD shall revise this Exhibit G as appropriate, give written notice to Seller regarding the revision, and issue a new Exhibit G, which shall then become part of the Agreement to reflect changes in the Outage Notification Procedure.
- G.7 Automated Data Reporting: Seller's LGIA specifies automatic data reporting requirement (LGIA Appendix H).

Exhibit H

ENVIRONMENTAL ATTRIBUTE REPORTING AND CONVEYANCE PROCEDURE

H.1 Additional Definitions for the Conveyance of Environmental Attributes:

“Certificate Transfers” means the process, as described in the WREGIS Operating Rules whereby a WREGIS account holder may request that WREGIS Certificates from a specific generating unit be directly deposited into another WREGIS account.

“WREGIS” means the Western Renewable Energy Generation Information System, sponsored by the WECC and utilized by the CEC and Green-e for tracking the generation and transfer of RECs. The URL for WREGIS is www.WREGIS.org.

“WREGIS Certificates” means a certificate created within the WREGIS system that represents all Renewable and Environmental Attributes from one MWh of electricity generation from an Eligible Renewable Energy Resource that is registered with WREGIS.

“WREGIS Operating Rules” means the document published by WREGIS that govern the operation of the WREGIS system for registering, tracking, conveying, etc. Renewable Energy Credits produced from Eligible Renewable Energy Resources that are registered with WREGIS.

H.2 Renewable Energy Credits. Environmental Attributes shall be conveyed by Seller to SMUD through Renewable Energy Credits (“RECs”) which shall be registered tracked and conveyed to SMUD using WREGIS.

H.3 WREGIS Registration. Prior to the Commercial Operation Date, SMUD will initiate registration of the Project in SMUD’s WREGIS account on behalf of Seller. Final acceptance by WREGIS requires submittal by SMUD of Exhibit E, “Commercial Operation Date Confirmation Letter.” SMUD shall charge back to Seller any costs for issuance or creation of WREGIS Certificates for the Project.

H.4 SMUD’s WREGIS Account. SMUD shall, at its sole expense, establish and maintain SMUD’s WREGIS account sufficient to accommodate the WREGIS Certificates produced by the output of the Project. SMUD shall be responsible for all expenses associated with (A) establishing and maintaining SMUD’s WREGIS Account, and (B) subsequently transferring or retiring WREGIS Certificates.

H.5 Qualified Reporting Entity. SMUD shall be the Qualified Reporting Entity for Project, and shall be responsible for providing metered Project output data to WREGIS in accordance with WREGIS reporting guidelines

H.6 Reporting of Environmental Attributes. In lieu of Seller transferring the WREGIS Certificates using Certificate Transfers from Seller’s WREGIS account to the WREGIS account of SMUD, SMUD shall report the Project as being directly in its WREGIS account, which will preclude Seller from reporting the Project in its own WREGIS account.

H.6.1 By avoiding the use of Certificate Transfers, there will be no transaction costs to Seller or SMUD for the Certificate Transfers that would otherwise be used.

H.6.2 WREGIS Certificates for the Project will be created on a calendar month basis in accordance with the certification procedure established by the WREGIS Operating Rules in an amount equal to the Energy generated by the Project and delivered to SMUD in the same calendar month.

H.6.3 WREGIS Certificates will only be created for whole MWh amounts of energy generated. Any fractional MWh amounts (*i.e.*, kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate and all such accumulated MWh of Environmental Attributes will then be available to SMUD.

H.6.4 Should a WREGIS Certificate Modification be required to reflect any errors or omissions regarding the Environmental Attributes from the Project SMUD will manage the submission of the WREGIS Certificate Modification.

H.6.5 Due to the expected delay in the creation of WREGIS Certificates relative to the timing of settlement payments under Section 2.4, SMUD shall make a settlement payment for a given month in accordance with Section 2.4 before the WREGIS Certificates for such month may be created in SMUD's WREGIS account. Notwithstanding this delay, SMUD shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 2.4.

H.7 Changes in Environmental Attributes Reporting and Conveyance Procedure. Subject to Sections 3.4 and 3.6, SMUD may revise this Exhibit H as appropriate, give written notice Seller regarding the revision, and issue a new Exhibit H which shall then become part of the Agreement, in order to reflect changes necessary in the Environmental Attribute conveyance procedure for SMUD to be able to receive and report the Environmental Attributes purchased under this Agreement as belonging to SMUD provided that no such updated Exhibit H may impose new material (non-administrative) additional costs on Seller.

Exhibit I

NOTICES

All notices shall be directed as follows:

I.1 For Contract Administration

To SMUD:

Sacramento Municipal Utility District
Power Contracts Administration

6301 S Street
Sacramento, CA 95817-1899

Or,

P.O. Box 15830
Sacramento, CA 95852-1830

Phone: (916) 732-6244

Email: PowerContractsAdministration@smud.org

To Seller:

Sacramento Valley Energy Center, LLC
1166 Avenue of the Americas, Ninth Floor
New York, NY 10036
c/o D. E. Shaw Renewable Investments
Attn: Hy Martin, Chief Development Officer
Phone: 212-478-0000

Fax: 212-478-0100

Email: desri-notices@world.deshaw.com, hy.martin@deshaw.com

I.2 For Billing and Settlements

To SMUD:

Energy Settlements

Phone: (916) 732-6312

Email: EnergySettlements@smud.org

To Seller:

Sacramento Valley Energy Center, LLC
1166 Avenue of the Americas, Ninth Floor
New York, NY 10036
c/o D. E. Shaw Renewable Investments
Attn: Hy Martin, Chief Development Officer
Phone: 212-478-0000

Fax: 212-478-0100

Email: desri-notices@world.deshaw.com, hy.martin@deshaw.com

I.3 For Scheduling

To SMUD:

Day Ahead Trading Desk

Phone: (916) 732-5669

Email: dayaheadtrading@smud.org;

To Seller:

Sacramento Valley Energy Center, LLC

1166 Avenue of the Americas, Ninth Floor

New York, NY 10036

c/o D. E. Shaw Renewable Investments

Attn: Hy Martin, Chief Development Officer

Phone: 212-478-0000

Fax: 212-478-0100

Email: desri-notices@world.deshaw.com, hy.martin@deshaw.com

I.4 For Planned Outages

To SMUD:

Day Ahead Trading Desk

Phone: (916) 732-5669

Email: psoc@smud.org, rtt1@smud.org, rtt2@smud.org, dayaheadtrading@smud.org

Power System Operations Outage Coordination

Phone: (916) 732-5242

To Seller:

Sacramento Valley Energy Center, LLC

1166 Avenue of the Americas, Ninth Floor

New York, NY 10036

c/o D. E. Shaw Renewable Investments

Attn: Hy Martin, Chief Development Officer

Phone: 212-478-0000

Fax: 212-478-0100

Email: desri-notices@world.deshaw.com, hy.martin@deshaw.com

I.5 For Forced Outages

To SMUD:

Real Time Scheduling Desks

Phone: (916) 732-5177

And

Power System Grid Operations

916-732-6225 (Generation Desk), or 916-732-6730 (Shift Senior Power System Operator)

Email: psoc@smud.org, rtt1@smud.org, rtt2@smud.org, dayaheadtrading@smud.org

To Seller:

Sacramento Valley Energy Center, LLC

1166 Avenue of the Americas, Ninth Floor

New York, NY 10036

c/o D. E. Shaw Renewable Investments

Attn: Hy Martin, Chief Development Officer

Phone: 212-478-0000

Fax: 212-478-0100
Email: desri-notices@world.deshaw.com, hy.martin@deshaw.com

I.6 Same-day Phone Notification of Outages

In addition to the email distribution, phone notification is required for planned or forced outages, or requests for energization, as follows:

To SMUD:

Distribution System Operations

Phone: 916-455-1671. Call first thing in the morning with regard to outages.

And

Power System Grid Operations

916-732-6225 (Generation Desk), or 916-732-6730 (Shift Senior Power System Operator)

To Seller:

Sacramento Valley Energy Center, LLC

1166 Avenue of the Americas, Ninth Floor

New York, NY 10036

c/o D. E. Shaw Renewable Investments

Attn: Hy Martin, Chief Development Officer

Phone: 212-478-0000

Fax: 212-478-0100

Email: desri-notices@world.deshaw.com, hy.martin@deshaw.com

I.7 Notification Requirements for Start/Completion of Planned Outages & Normal Start-up/Shutdown

Prior to starting, and at the completion of, a Planned Outage, contact the Power System Operator to report and coordinate the start or completion time of the Planned Outage.

Prior to paralleling or after disconnection from the SMUD transmission system, always contact the Power System Operator with the following as applicable:

- Intent to parallel before any start-up,
- After the unit has paralleled, report the parallel time and intended unit output,
- After any separation, report the separation time as well as the date and time estimated for return to service.

Power System Operations

916-732-6225 (Generation Desk) or 916-732-6730 (Shift Senior Power System Operator)

I.8 Changes to Exhibit I

Either Party may request a change to Exhibit I as necessary to keep the information current. Such changes to Notices generally do not require a PPA amendment

I.9 General Requirements for Forced and Scheduled Outages – SMUD coordination process

These general requirements are incorporated into this PPA and are extracted from SMUD Standard Practice SP-116 entitled “Solar Operating Process” as may be amended or replaced from time to time. Updates to relevant procedural documents are to be incorporated herein upon effectiveness of the Standard Practice (when approved by SMUD management) without a requirement to amend this PPA; *provided that*

no such updates shall be effective under this PPA unless and until such updates have been provided in writing to Seller. Notwithstanding anything herein to the contrary, to the extent of any conflict between Section 7.6 and this Section 1.9 (as modified), Section 7.6 shall control.

Planned Outages including the ETR are to be scheduled and logged in iTOA (integrated Tools for Operations Application) as other generating resources in compliance with SP-116 and ETC 15-046. The Seller's operator will send planned outage requests to SMUD [Power Generation department] who will input the data into iTOA for processing. SMUD Outage Coordination will process the requests as outlined in SP-116 and ETC 15-046. SMUD planned outages of facilities that limit or restrict the output of the generator shall be coordinated with the Seller's operator to the extent practicable[, provided that in the event that the parties cannot agree, SMUD may establish the outage times and return dates].

Seller shall notify SMUD [Power Generation department] of all planned outages at least thirty (30) days in advance of outage with an email containing the outage start date and time and return date and time, emergency restoration time and description of the planned maintenance or other work that curtails the energy output to SMUD. SMUD [Power Generation department] will create an iTOA request and provide SVEC via email confirmation of the Planned Outage.

Rescheduling Planned Outages

In the event that the Planned Outage period (either start or end date & time) of the Project is revised the Seller's operator shall:

(a) Prior to Outage Start

- (i) Greater than 6 days prior to start of outage advise SMUD [Power Generation] department via email with the new start or end date & time
- (ii) Less than 6 days and greater than 48 hours prior to start of outage advise SMUD [Power Generation] department and [Energy Trading & Contracts] via email and phone notification
- (iii) Less than 48 hours prior to start of outage advise SMUD [Power Generation] department via phone notification followed up with email to also include [Energy Trading & Contracts]

(b) Active Outage (after planned start date & time)

- (i) Advise SMUD [PSO]; who will promptly review the request, coordinate internally with other SMUD departments
- (ii) Seller may revise the ETR [so long as the request can be accommodated without creating a reliability concern for SMUD].
- (iii) Once the revised ETR is logged into iTOA it becomes the new ETR for the Project.

In any case SMUD requires a minimum of 2 hours' prior notice of ETR (end date & time) changes to allow SMUD sufficient time to coordinate internally and effectuate the power market processes. SMUD has the discretion to allow an early return or retain the scheduled return time.

SMUD will endeavor to accommodate changes to the Project's ETR as described in Section 7.6. In the event that the return date is modified by SMUD, SMUD shall promptly advise the Seller's operator accordingly.

Real-Time Outage Management

[The SMUD PSO is responsible for the bulk electric system connected to the Project and to ensure changes in generation do not create an adverse impact to the safe operation of the SMUD bulk electric system. The SMUD PSO is also responsible for ensuring that Project's generating facilities data is input into EMS for energy and capacity purposes, iTOA and external market outage management system is updated and to keep track of the photovoltaic facilities status so that after-the-fact accounting may take place. SMUD shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries may be required.

The SVEC operator shall communicate real-time operating details to the PSO. This includes parallel, separation times, coordinating planned maintenance to start, planned or forced maintenance start and end date and times changes and any issues relating to AGC, voltage control or protection systems.

Forced Outages

The Seller's operator is obligated to report Forced Outages to the SMUD [PSO] as soon as reasonably practicable but not more than 1 hour after Seller is aware of a Forced Outage that impacts the ability of the Project to produce Energy in excess of 5 MWAC. This does not include limitations associated with solar radiance.

Forced Outage notification to SMUD PSO via phone notification shall include

- (a) Start date and time the outage occurred,
- (b) Estimated capability or availability,
- (c) Expected end date and time of the outage or estimated time of return (ETR),
- (d) Cause or any outage details if known, such as impacted equipment.

The SMUD PSO will create a Forced Outage card in iTOA, update external outage management system and notify the [Real-Time Energy Traders] with the details including the ETR as logged in iTOA.

Active Outages

The Seller's operator is obligated to report any material change in outage status to the SMUD [PSO], as soon as reasonably practicable but not more than 1 hour after Seller is aware of a Forced Outage that impacts the ability of the Project to produce Energy in excess of a 5 MWAC.

Rescheduled Forced or Active Outages

In the event that Forced Outage [or Active Outage] period (during outage, until ETR) or currently reported capability of the facility is revised the Seller's operator shall:

- (a) Greater than 6 days before ETR:
 - (i) Advise SMUD [Power Generation department] via email who will communicate changes internally to SMUD PSO and [Energy Trading & Contracts].
 - (ii) SMUD [PSO] will update iTOA and external outage management system for the new ETR.
 - (iii) SMUD [Power Generation department] to provide confirmation of new ETR
- (b) Less than 6 days, but greater than 48-hours before ETR
 - (i) Contact SMUD [PSO] via phone
 - (ii) Email SMUD [Power Generation department and Energy Trading & Contracts]
- (c) Less than 48-hour notification before ETR
 - (i) Contact SMUD [PSO] via phone

In any case SMUD requires a minimum of 2 hours' notice to allow SMUD sufficient time to coordinate internally and effectuate the power market process. SMUD has the discretion to allow an early return or retain the scheduled return time.

SMUD PSO will promptly review the request, coordinate internally with other SMUD departments, revise the ETR and update external outage management systems so long as the request can be accommodated without creating a reliability concern for SMUD. Once the revised ETR is logged into iTOA it becomes the new ETR for the generator.

SMUD will endeavor to accommodate changes to the generator's ETR as described in PPA Section 7.6 Forced Outages. In the event that the return date is modified SMUD, SMUD shall promptly advise the Seller's operator accordingly.

When a bulk electric system disturbance impacts Seller the SMUD PSO will notify the Seller's operator with necessary information and then create a forced iTOA card to document the outage and then shall notify the SMUD Real-Time Energy Trader.

Exhibit J

Operating Restrictions

The Operating Restrictions include the limitations, conditions and restrictions set forth in this Exhibit J. Prior to the Commercial Operation Date and from time to time during the Delivery Term, Seller may update these Operating Restrictions by written notice to SMUD.

The operation of the Storage Project shall be subject to the following limitations:

- a. If the year-to-date average State of Charge exceeds 50% at any time during the second half of a Contract Year, then the maximum allowed State of Charge shall be limited to the State of Charge that, if held for the rest of the Contract Year, would equal an annual averaged State of Charge of 50%. If the allowable State of Charge has been limited, the State of Charge limitation will be released once the year-to-date State of Charge is less than 49%. At any time following the Compliance Period throughout the remainder of the Delivery Term, the State of Charge is permitted to be less than five percent (5%) for up to four (4) hours in any twenty-four (24) hour period.
- b. The limitations set forth in the chart below ***[Bracketed items in chart to be provided.]***

#	OPERATING PARAMETER	VALUES	OPERATING RESTRICTIONS
1	Charging method	Constant Power (CP)-Constant Voltage (CV)	Except during real-time dispatch signals, in which case charging rates should follow real time dispatch command
2	Discharging method	Constant Power (CP)	Except during real-time dispatch signals, in which case discharging rates should follow real time dispatch command
3	Maximum CP-rate for Charging and Discharging the Storage Facility	100 MW, which can be adjusted accordingly, as reasonably agreed upon by the Parties, based up on the final design of the Storage Project	
4	Charging source	Solar Project is the only charging source until the expiration of the Compliance Period.	If Seller or SMUD curtails the Solar Project due to grid charging or Storage Project discharging, such curtailment shall constitute SMUD Curtailment.
5	Operational State of Charge (SOC) limits	0%-100%	As defined in the Energy Management System. The 100% SOC represents the amount of Storage Capacity available to SMUD.
6	Maximum State of Charge (SOC) during Charging	100 %	In the event State of Charge during charging exceeds the Maximum State of Charge, then []
7	Minimum State of Charge (SOC) during Discharging	0 %	In the event State of Charge during charging is less than the Minimum State of Charge, then []
8	Maximum number of Cycles per Contract Year	365	Notwithstanding any other provision of this Agreement, (i) SMUD will not be permitted to utilize more than Cycles per Contract Year

9	Daily Dispatch Limits	Two cycles per operating day	One (1) cycle is equal to 1 kWh throughput per kWh calculated by the product of the Storage Contract Capacity and discharge hours Not to exceed the stated value
10	Maximum Cycles Per Year	365 Cycles	
11	Maximum charging capacity (MW)	When charging from the Solar Project, the lesser of, as-available generation (MW) from the Solar Project that could be delivered to the Storage Meter or the charge capacity 100 MW as defined in the Operating Restrictions	
12	Minimum Charging Capacity	0 MW	
13	Maximum discharging capacity [MW]	Net Energy dispatched directly to the grid plus Discharging Energy shall not exceed the Interconnection Capacity Limit	Discharging the Storage Project shall not curtail the as-available generation from the Solar Project
14	Maximum Continuous Discharging Energy (MWh)	400 MWh	As measured at the Delivery Point
15	Minimum Discharging Capacity	0 MW	
16	Maximum Stored Energy Level	400 MWh	
17	Minimum Stored Energy Level	0 MWh	
18	Ramp rate	0-3,000 MW/min	Maximum Discharging Capacity in 2 seconds
19	Maximum ambient operating temperature with de-rate	De-rate above 43C	The rated power of the Storage Project will be reduced by 78 kVA per each Degree C above 43 Degrees C, up to 50 C, at which point the Storage Project may shut down in Seller's discretion; <i>provided</i> , any such de-rate or Storage Project shut down shall not be considered in calculating any Annual Average Storage Availability under <u>Exhibit O</u>

20	Minimum ambient operating temperature with de-rate	De-rate below -20C	Below – 20 C, the Storage Project may shut down in Seller's discretion; <i>provided</i> , any such de-rate or Storage Project shut down shall not be considered in calculating any Annual Average Storage Availability under <u>Exhibit O</u>
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As used in this Exhibit J,

“Cycle” means the Storage Project is charged, then discharged at a MWh quantity equal to the energy capacity in MWh. For example, SOC starts at 1%, the Storage Facility is charged to 100% and then discharged to 1%.

Exhibit K

DEEMED DELIVERED ENERGY CALCULATION PROCEDURE

K.1 Additional Definitions for this Procedure:

None.

K.2 Calculation of Deemed Delivered Energy. Following a curtailment that is caused by (i) Force Majeure, (ii) SMUD Curtailment, (iii) SMUD's breach of this Agreement or the Interconnection Agreement that prevents or excuses Seller from delivering Energy to the Delivery Point, (iv) Forced Outages or Planned Outages and (v) Dispatch Down Periods, Seller shall submit to SMUD calculation of the hourly energy that would have been generated in accordance with Section 6.8.

K.3 Verification of Deemed Delivered Energy. SMUD may perform a verification of Deemed Delivered Energy utilizing data from either 1) SMUD's POA sensor mounted on a tracking arrays; or 2) data received directly from Seller's POA sensor mounted on a tracking array.

K.4 Changes in Exhibit K Procedure. Upon mutual consent of both Parties, SMUD shall revise this Exhibit K as appropriate, give written notice to Seller regarding the revision, and issue a new Exhibit K, which shall then become part of the Agreement to reflect changes in this Procedure.

Exhibit L

FORM OF CONSENT AND AGREEMENT TO COLLATERAL ASSIGNMENT

This CONSENT AND AGREEMENT (this "Consent"), dated as of _____, 20____, is entered into by and among the Sacramento Municipal Utility District, a California Municipal Utility District formed and existing under the laws of the State of California (together with its successors and permitted assigns, "SMUD") ("Buyer"), _____ (together with its successors, designees and assigns in its capacity, "Lender"), Sacramento Valley Energy Center, LLC, a limited liability company formed and existing under the laws of the State of XX (together with its successors and permitted assigns, "Seller"). Unless otherwise defined, all capitalized terms have the meaning given in the Power Purchase Agreement (as hereinafter defined).

RECITALS

A. Seller intends to develop, construct, install, test, own, operate and use (i) an approximately 200MW_{ac} photovoltaic electric Solar Project (the "Solar Project"), and (ii) an approximately 100MW_{ac} battery energy storage system (the "Storage Project", together with the Solar Project, the "Project"), both located in Sacramento County XXXX.

B. In order to partially finance the development, construction, installation, testing, operation and use of the Project, the Seller and/or one or more of its Affiliates has entered into that certain **[Financing Agreement,]** dated as of _____ (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Financing Agreement"), among Seller and/or one or more of its Affiliates, the financial institutions from time to time parties thereto as lenders and/or issuing banks, and Lender as agent on behalf of such financial institutions, pursuant to which, among other things, such financial institutions have extended commitments to make loans and other financial accommodations to, and for the benefit of, Seller.

C. Buyer and Seller have entered into that certain Power Purchase Agreement, dated as of _____ (attached hereto and incorporated herein by reference, as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Power Purchase Agreement").

D. Pursuant to a [security agreement] executed by Seller and Lender (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), Seller has agreed, among other things, to assign, as collateral security for [its] [their] obligations under the Financing Agreement and related documents (collectively, the "Financing Documents"), all of its right, title and interest in, to and under the Power Purchase Agreement [and the Project PPA] to Lender for the benefit of Lender and each other entity or person providing collateral security under the Financing Documents.

E. It is a requirement under the Financing Agreement that SMUD and the other parties hereto execute this Consent.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO ASSIGNMENT. Subject to the terms and conditions below, SMUD consents to a complete assignment of all rights and obligations of the Power Purchase Agreement by Seller to Lender pursuant to the Financing Documents.

2. LIMITATIONS ON ASSIGNMENT.

(a) Lender shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Seller under the Power Purchase Agreement, subject to applicable notice and cure periods provided in the Power Purchase Agreement and as set forth herein. Upon receipt of notice from Lender, SMUD agrees to accept such exercise and cure by Lender if timely made by Lender under the Power Purchase Agreement and this Consent. Upon receipt of Lender's written instructions and to the extent allowed by law, SMUD agrees to make directly to such account as Lender may direct SMUD in writing from time to time, all payments to be made by SMUD to Seller under the Power Purchase Agreement from and after SMUD's receipt of such instructions, and Seller consents to any such action. SMUD shall have no liability to Seller under the Power Purchase Agreement or this Consent for directing such payments to Lender in accordance with this subsection (a).

(b) SMUD agrees to deliver duplicates or copies of all notices of default delivered by SMUD under or pursuant to the Power Purchase Agreement to Lender in accordance with the notice provisions of this Consent. SMUD shall deliver any such notices concurrently with delivery of the notice to Seller under the Power Purchase Agreement. In the event of a default or breach by Seller in the performance of any of its obligations under the Power Purchase Agreement, or upon the occurrence or non-occurrence of any event or condition under the Power Purchase Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Buyer to terminate the Power Purchase Agreement or to suspend performance of its obligations thereunder (hereinafter, a "Default"), Buyer shall not terminate the Power Purchase Agreement or suspend performance of its obligations thereunder until it first gives written notice of such Default to Lender and affords Lender a period of time until (i) the expiration of the Seller's cure period under the Power Purchase Agreement, if any, plus (ii) (x) thirty (30) days after expiration of such cure period if such Default is the failure to pay amounts to Buyer which are due and payable under the Power Purchase Agreement, or (y) sixty (60) days after expiration of such cure period if such Default is a non-payment Default, in each such case, to cure such Default (provided that during the applicable cure period Lender or Seller continues to perform each of Seller's other obligations under the Power Purchase Agreement). If (i) possession of the Project is necessary to cure such Default or (ii) if the Default can only be cured by the Seller and is not curable by Lender, such as the insolvency, bankruptcy, general assignment for the benefit of the secured parties under the Financing Agreement, or appointment of a receiver, trustee, custodian or liquidator of the Seller or its properties, and, in each such case, Lender or its successor(s), assignee(s) and/or designee(s) declares an "Event of Default" under the Financing Agreement and Lender commences foreclosure proceedings or any other proceedings necessary to take possession of the Project, Lender or its successors(s), assignee(s) and/or designee(s) will be allowed a reasonable period to complete such proceedings; provided that, once commenced, Lender, or its successor(s), assignee(s) and/or designee(s) shall pursue such proceedings with due dispatch; and provided further, that if the Default can only be cured by the Seller and is not curable by Lender, such as the insolvency, bankruptcy, general assignment for the benefit of the secured parties under the Financing Agreement, or appointment of a receiver, trustee, custodian or liquidator of the Seller or its properties, Lender shall be entitled to assume in writing the rights and obligations of Seller under the Power Purchase Agreement and provided such assumption occurs, Buyer shall not be entitled to terminate the Power Purchase Agreement or suspend its performance thereunder as a result of such Default so long as Lender or its successor(s), assignee(s) and/or designee(s) continue to perform all of Seller's obligations (other than those that can only be performed by Seller). If either the Lender or its successor(s), assignee(s) and/or designee(s) is prohibited by any court order or bankruptcy or insolvency proceedings of Seller from curing the Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition, provided that Lender or its successor(s), assignee(s) and/or designee(s) is pursuing relief from such prohibition with due dispatch. SMUD shall recognize the Lenders or their designee(s) or assignee(s) as the applicable party under the Power Purchase Agreement provided that such Lender or their designee(s) or assignee(s) assume in writing the obligations of Seller under the Power Purchase Agreement, including, without limitation, satisfaction and compliance with all credit provisions of the Power Purchase Agreement and provided further that such Lender or their designee(s) or assignee(s) has a creditworthiness and total credit support at least equal to that of Seller as of the date hereof. Seller shall pay Buyer \$20,000 per assignment of PPA and/or LGIA to cover Buyer's internal and external costs associated with such assignment. For the avoidance of doubt, Seller's payment of \$20,000 is the full reimbursement of expenses for assignment of both the PPA and LGIA.

I In the event that the Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within thirty (30) days after such rejection, the Lender shall so request, SMUD will execute and deliver to Lender a new power purchase agreement, which shall be on the same terms and conditions as the original Agreement for the remaining term of the original Power Purchase Agreement before giving effect to such rejection, and which shall require Lender to cure any defaults then existing under the original Power Purchase Agreement. Notwithstanding the foregoing, the execution of any new power purchase agreement will be subject to approval by SMUD's Board of Directors to the extent required by SMUD's policies and receipt of all regulatory approvals required by law, including those associated with any renewable energy or environmental objectives met by, or required of, the original Power Purchase Agreement. SMUD will use good faith efforts to promptly obtain (if applicable) such Board approval and any necessary regulatory approvals.

(d) In the event Lender or its designee(s) or assignee(s) elect(s) to perform Seller's obligations under the Agreement, succeed to Seller's interest under the Power Purchase Agreement, or enter into a new power purchase agreement as provided in subparagraph 2I above, the recourse of SMUD against Lender or its designee(s) and assignee(s) shall be limited to such party or parties' interests in the Project, the credit support required under the Power Purchase Agreement, and any currently existing guaranties made to the benefit of SMUD by Seller, Seller's Affiliates or Seller's insurers to the extent such guaranties have not been exhausted at the time of assignment.

I In the event Lender or its designee(s) or assignee(s) succeed to Seller's interest under the Power Purchase Agreement, Lender or its designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Power Purchase Agreement, except any performance defaults of Seller itself, which by their nature are not susceptible of being cured. Lender and its designee(s) or assignee(s) shall have the right to assign their interest in the Power Purchase Agreement to a person or entity to whom Seller's interest in the Project is transferred, provided such transferee assumes in writing the obligations of Seller under the Power Purchase Agreement and has a creditworthiness and total credit support at least equal to that of Seller as of the date hereof. Upon such assignment and assumption in writing, Lender and its designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

3. REPRESENTATIONS AND WARRANTIES.

- (a) SMUD hereby represents and warrants that as of the date of this Consent:
- i. It (1) is duly formed and validly existing under the laws of the State of California, and (2) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Power Purchase Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;
 - ii. the execution, delivery and performance of this Consent and the Power Purchase Agreement have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;
 - iii. this Consent and the Power Purchase Agreement are in full force and effect;
 - iv. this Consent and the Power Purchase Agreement have been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (1) bankruptcy,

insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (2) general equitable principles (whether considered in a proceeding in equity or at law);

- v. there is no litigation, investigation or other proceeding pending for which SMUD has received service of process or, to SMUD's actual knowledge, threatened against SMUD relating solely to this Consent, the Power Purchase Agreement and the transactions contemplated hereby and thereby;
- vi. the execution, delivery and performance by it of this Consent, the Agreement, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;
- vii. neither SMUD nor, to SMUD's actual knowledge, any other party to the Power Purchase Agreement, is in default of any of its obligations thereunder, and no disputes exist between Buyer and Seller thereunder; and
- viii. to SMUD's actual knowledge, (1) no Force Majeure event exists under, and as defined in, the Power Purchase Agreement and (2) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either SMUD or Seller to terminate or suspend its obligations under the Power Purchase Agreement.

4. CONFIRMATION. SMUD will not, without the prior written consent of Lender (such consent not to be unreasonably withheld), (i) cancel or terminate the Power Purchase Agreement, or consent to or accept any cancellation, termination or suspension thereof by Seller, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Power Purchase Agreement, except as provided in the Power Purchase Agreement, or (iii) amend or modify the Power Purchase Agreement.

5. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or seven (7) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to SMUD:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Telecopy No.: [_____]

Attn: [_____]

If to Lender:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Telecopy No.: [_____]

Attn: [_____]

If to Seller:

[_____]

[_____]

[_____]

Telephone No.: [_____]

Telecopy No.: [_____]

Attn: [_____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days' written notice to the other parties in the manner set forth above.

6. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreement). SMUD agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Seller, Lender or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to SMUD with respect to its interest in the Power Purchase Agreement to assume, in writing in form and substance reasonably satisfactory to Lender, the obligations of SMUD hereunder. Any purported assignment or transfer of the Power Purchase Agreement not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, or variation of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto. No waiver of any provisions of this Consent shall be effective unless in writing and signed by the party waiving any of its rights hereunder.

7 **GOVERNING LAW.** This Consent shall be governed by the laws of the State of California applicable to contracts made and to be performed in such State. THE STATE COURTS SITUATED IN THE STATE OF CALIFORNIA SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS CONSENT AND AGREEMENT WITH SMUD, SELLER, ASSIGNOR, AND LENDER IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT.

8 **COUNTERPARTS.** This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

9 **SEVERABILITY.** In case any provision of this Consent or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

10. **ACKNOWLEDGMENTS BY SELLER.** Seller, by its execution hereof, acknowledges and agrees that neither the execution of this Consent, the performance by SMUD of any of the obligations of SMUD hereunder, the exercise of any of the rights of SMUD hereunder, or the acceptance by SMUD of performance of the Power Purchase Agreement by any party other than Seller shall (1) release Seller from any obligation of Seller under the Power Purchase Agreement, (2) constitute a consent by SMUD to, or impute knowledge to SMUD of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) except as expressly set forth in this Consent, constitute a waiver by SMUD of any of its rights under the Power Purchase Agreement. Seller and Lender acknowledge hereby for the benefit of SMUD that this Consent does not alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Power Purchase Agreement except as provided herein.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: _____

Name: _____

Title: _____,

a _____

[LENDER]

By: _____

Name: _____

Title: _____, as Lender

Sacramento Valley Energy Center, LLC

By: _____

Name: _____

Title: _____

Exhibit M

Storage Capacity Testing

This Exhibit M sets forth the Performance Criteria and protocols for testing of the Storage Project under this Agreement, including the Storage Commercial Operation Test and subsequent Storage Capacity Tests (“Test” or “Tests”).

I. OVERVIEW

A. Commercial Operation Date Storage Capacity Test.

- i. Test Dates. Seller shall schedule and complete a Storage Commercial Operation Test prior to the Commercial Operation Date. Seller shall provide SMUD with at least five (5) Business Days’ notice of Seller’s proposed dates for the Storage Commercial Operation Test. SMUD shall confirm the dates in writing prior to the first date of the Test.
- ii. Test Plan. Such Storage Commercial Operation Test shall be performed in accordance with the Storage Capacity Test procedures set forth in this Exhibit M and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Project determined by such Storage Commercial Operation Test.
- iii. Costs. Responsibility for the costs for testing are as set forth in Section B(iii) below.

B. Subsequent Storage Capacity Tests.

- i. Test Dates. Following the Commercial Operation Date, but not more than once per Contract Year, SMUD shall have the right to require Seller to schedule and complete a Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days’ prior written notice to SMUD (or any shorter period reasonably acceptable to SMUD consistent with Prudent Utility Practice). Seller is responsible for scheduling each Storage Capacity Test. The date of any such Storage Capacity Test shall be confirmed in writing by SMUD to Seller prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that SMUD will or is likely to dispatch the Storage Project.
- ii. Test Plan. Such Storage Capacity Test shall be performed in accordance with the Storage Capacity Test procedures set forth in this Exhibit M and shall establish the current Storage Contract Capacity hereunder based on the actual capacity of the Storage Project determined by such Storage Capacity Test.
- iii. Costs. Any testing of the Storage Project requested by SMUD pursuant to Section B(i) of this Exhibit O shall be deemed Buyer-instructed dispatches of the Storage Project (“SMUD Dispatched Test”). Any test of the Storage Project that is not a SMUD Dispatched Test (including all tests conducted prior to Commercial Operation, the Storage Commercial Operation Tests and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by SMUD, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Project or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “Seller Initiated Test”. For all SMUD Dispatched

Tests, SMUD shall direct only PV Charging Energy to be used to charge the Storage Project, SMUD shall be entitled to all revenues associated with a Storage Project discharge during a SMUD Dispatched Test, and for the avoidance of doubt, SMUD shall pay all PV Charging Energy costs and pay Seller the Price for all PV Energy used as Charging Energy. For all Seller Initiated Tests, (1) Seller shall reimburse SMUD the amount of SMUD's payment of the Solar Price to Seller for all PV Charging Energy for such Seller Initiated Test, and (2) Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy, but all Environmental Attributes associated therewith shall be for SMUD's account at no additional cost to SMUD. SMUD shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any test. Except as set forth in this clause (iii) all other costs of any testing of the Storage Facility shall be borne by Seller.

C. **Test Results and Resetting of Storage Contract Capacity.**

No later than ten (10) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the Test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Project.

II. **REQUIREMENTS AND DEFINITIONS**

A. **General.**

- i. Each Storage Capacity Test (including the Storage Commercial Operation Test and all subsequent Storage Capacity Tests) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit M. SMUD or its representative may be present for the Storage Capacity Test and may, for informational purposes only, use its own metering equipment (at SMUD's sole cost).
- ii. This document provides the procedure for Storage Capacity Test and evaluation of the Storage Project. This document shall be the template to develop the final Storage Capacity Test procedures as mutually agreed to between the Parties. The complete final Storage Capacity Test procedure shall be provided by Seller to SMUD sixty (60) days prior to the Test
- iii. The sole purpose of the Storage Capacity Test will be the determination of Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency of the Storage Project for comparison to the Guaranteed Performance values set forth in Part IV. Uncertainties and test tolerance of 0.5% will be applied to any guarantee.
- iv. Prior to each Test, a pre-test meeting shall be held and recorded. The meeting shall review the applicable approved Test procedure, the applicable requirements of such Storage Capacity Test, as well as all instrumentation locations, calibration sheets, and other relevant topics including safety requirements.
- v. Data shall be recorded by the SCADA/EWIS system data logging functions. The use of alternative means for data acquisition shall be used only with prior written consent of Seller. SMUD shall supply all raw data from the SCADA/EWIS system, daily during pre-test activities and during testing phase.

- vi. Prior to the start of testing the Storage Project, the control settings (tuning and constants) shall be verified.
- vii. Any alteration or modifications to test measurement devices, or to the Storage Project, which could reasonably be expected to influence the outcome of the applicable Storage Capacity Test, shall not be permitted, without prior written consent of SMUD, and if accepted by SMUD, shall be fully documented by Seller and SMUD.
- viii. "Enterprise Wide Information System" ("EWIS") means the SMUD supplied OSI/PI Servers and software used by the Storage Project to record historical operations parameters or compatible replacement.
- ix. "Battery Management System" or "BMS" is defined as the electronic control and communication system that manages and protects the Storage Project.

B. **Responsibilities**. Specific responsibilities for this Storage Capacity Test program are as follows:

- i. Seller:
 - a. Perform commissioning.
 - b. Manage the application of proper commissioning procedures until the Tests have been completed.
 - c. Support SMUD with testing and interface with SMUD as required to schedule and perform testing.
- ii. SMUD:
 - a. Support Seller with testing as required to schedule and perform testing.
 - b. Witness energy testing and/or review test documentation.

C. Provide energy for the Test. **Required Performance Criteria**. Tests conducted pursuant to this Exhibit M shall include the following elements (the "Performance Criteria"), with guaranteed levels for relevant items set forth in Part IV below (unless SMUD otherwise agrees in writing in its sole discretion):

- i. "Grid Charging Capability" means the ability for the Storage Project to charge and store Grid Charging Energy delivered from an offsite source by the Transmission Provider's electrical system.
- ii. Storage Capacity (as defined in the Agreement).
- iii. "Minimum Charging Time" is defined as the amount of time between a measurement of 0% State of Charge (SOC) to reaching full Storage Capacity (expressed in units of time).
- iv. "Minimum Discharging Time" is defined as the amount of time between full Storage Capacity to reaching a measurement of 0% SOC (expressed in units of time).

- v. "Maximum Charging Rate" is defined as the maximum rate of charging (expressed in MW).
- vi. "Maximum Discharging Rate" is defined as the maximum rate of discharging (expressed in MW).
- vii. "Round Trip Efficiency" is defined as the amount of Discharging Energy discharged by the Storage Project and delivered to the Delivery Point relative to the amount of Charging Energy, measured at the Storage Meter, calculated as shown below, and with formula inputs as described further below.

$$\text{Round Trip Efficiency (RTE)} = \frac{\text{Discharging Energy (WhD)}}{\text{Charging Energy (WhI)}}$$

- viii. "Ramp Rate" shall have the meaning set forth in the CAISO Tariff.
- ix. "Response Time" is defined as the amount of time for the Storage Project to dispatch instructions from SMUD's SCADA.

D. Test Parameters.

- i. During any Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the Storage Project at the level of granularity necessary to assess the measured criteria and at least every four (4) seconds:
 - a. Time;
 - b. Net electrical energy output to the Delivery Point (kWh);
 - c. Net electrical energy input from the Delivery Point (kWh);
 - d. Reactive power (VARS);
 - e. State of Charge (%);
- ii. During any Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the Storage Project at least every thirty (30) minutes:
 - a. Relative humidity (%);
 - b. Ambient temperature (°F); and
 - c. Max, min, average, and stdev battery temperature (°F).

E. Test Showing. Seller must demonstrate to SMUD's reasonable satisfaction, that the Storage Project:

- i. is capable of storing and delivering the MW and MWh amount identified by Seller as the maximum rated power and energy;

- ii. can deliver full rated power (MW) to the Delivery Point for four (4) consecutive hours, with the sum of MWh delivered over this test period totaling to the Storage Capacity, inclusive of identified Round Trip Efficiency losses.

F. Equipment Definition.

The test configuration will consist of the Storage Project and its associated equipment.

G. Measurement and Instrumentation.

- i. Instrumentation for the Storage Capacity Test will consist of Storage Project instruments. Calibration certificates will be provided with the instruments.
- ii. The State of Charge during all tests shall be read from the Battery Management System.
- iii. The charge rate and discharge rates shall be measured using the Storage Project Storage Meter and concurrently at the SMUD Revenue Meter.

H. For purposes of testing the Round Trip Efficiency, the Charging Energy and Discharging Energy shall be measured by the Storage Meter without normalizing for electrical losses between the Storage Meter and the SMUD Revenue Meter located at the Delivery Point.

I. Data Collection.

- i. All measurements of charge rate, discharge rate, input current and voltage, output current and voltage, thermal output, system temperatures, ambient conditions, and other parameters that must be measured shall be collected simultaneously at a temporal resolution applicable to the function of the system application and system metrics to which they are being applied and in accordance with recognized standards applicable to the measurements being taken.
- ii. Data collection rate shall be 4 seconds or faster for all tests.

J. Cancellation or cessation of testing under certain circumstances

In connection with any of the acceptance and other testing pursuant to this Agreement, including the Storage Capacity Tests, Seller shall have the unilateral right to cease such tests if Seller determines that a matter or event is occurring that may damage or adversely affect the equipment or system. Seller shall promptly remedy such condition and shall thereafter promptly reschedule the testing.

III. TEST PROCEDURES

Definitions/Acronyms

BMS	Battery Management System
CT	Current Transformer
CT Error	Current Transformer Error
CPR	Cardio Pulmonary Resuscitation

Performance Metrics; Guaranteed Values	The specific requirements for each Test identify certain performance metrics (each, a “Performance Metric”) and a guaranteed value for each Performance Metric (each, a “Guaranteed Value”).
Point of Guarantee	Point where the Guaranteed Value for each Performance Metric is required to be achieved
Point of Measurement	Point where the meter used to measure each Performance Metric is located
Loss Adjustment Factor	If the Point of Measurement is different from the Point of Guarantee, then the Specific Requirements for the Test shall identify an agreed “Loss Adjustment Factor” which shall be applied when determining whether the Guaranteed Value for the relevant Performance Metric has been achieved.
JHA	Job Hazard Analysis
LOTO	Lock Out / Tag Out
Meter Error	Battery system metering error at the MV switchgear
Metering System Error	The error of all meters i.e. Meter Error, CT Error and PT Error involved in the test for measuring the performance metrics is identified as the “Metering System Error”
PCS	Power Conversion System, i.e. bi-directional grid connected power converter
Plant Controller	Plant Controller is the prime controller responsible for coordinating the combined Facility (solar and BESS) operating functions.
BESS Controller	Master controller for the BESS System
PPE	Personal Protective Equipment
PT	Potential Transformer
PT Error	Potential Transformer Error
PU	Power Unit; a combination of PCS modules with associated battery modules, and associated control system
Reference Meter	Calibrated meter such as Fluke 435
RTAC	Real Time Automation Controller – SEL 3530 device or equivalent
SCADA	Supervisory Control And Data Acquisition
SOC	State of Charge
SOH	State of Health

1. ENCLOSURE UNIT SMOKE DETECTION

Fire protection system will be verified after installation. Detailed test items will include heat sensor, smoke sensor, releasing system, battery system and fuse.

- Purpose: Verify smoke detection circuit operates correctly and shuts down the PCS Units when smoke is introduced in the enclosure. The fire suppression agent tank will be temporarily disconnected from the firing pin assembly during this test. It will be reconnected for normal operations once the entire Storage Project has been commissioned.
- Procedure:

Step	Description	Comments/Notes	Initials	
			Own	Con
A	Verify all PCS are running as appropriately demonstrated on the HMI.			
B	Locate the smoke detector.			

C	Use canned smoke sprayed on the smoke detector to activate the detector.			
D	Verify the PCSs have shutdown, only in tested Enclosure and not in the other Enclosures.			
E	Verify that the fire suppression tank pin has fired out of its housing.			
F	Verify that the alarm has been reported with a Fire Suppression Alarm to the HMI.			
G	Open the Enclosure doors to clear out the smoke.			
H	Reset the firing pin for the fire suppression tank.			
I	Reset the system fault from the HMI.			

Pass/Fail Criteria					
All fire suppression systems performed as stated in steps D, E, & F of this procedure.					
Unit	Passed	Failed	Date	Initial	
1					
2					
Test Performed by:					
Test Witnessed by:					

Notes/Test Conditions:

2. POWER TEST

- Purpose: This test will demonstrate the real power dispatch capability of the BESS Facility; the requirement is to achieve Guaranteed Power of output within 1s and hold for 10 minutes. This capability is representative of the maximum active power levels.
- Pre-test conditions:
 - A. Prior to the commencement of the test, if the ambient temperature is below 10°C or above 50°C, the test shall be rescheduled.
 - B. Owner is responsible for facilitating the test conditions such that the Storage Project can discharge at the [Contracted Discharge Power].
- Procedure:
 - A. Storage Project Starting State: The Storage Project will be in the on-line state with each Storage Project subsystem at approximately 50% usable SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR.
 - B. Record the Storage Project active power level at the Storage Project Meter.
 - C. Command the Storage Project to charge at the [Guaranteed Charge Power]
 - D. Hold the command for 10 minutes after completing the ramp.
 - E. Command the Storage Project to discharge at the [Guaranteed Discharge Power]
 - F. Hold the command for 10 minutes after completing the ramp.

- G. Command the Storage Project to 0 MW and 0 MVAR.
- H. Record and store the Storage Project power responses. Measurements will be made at the Storage Project Meter and by the BESS control system with a recording in the Owner's Storage Project historian.
- I. System End State: The Storage Project will be in the on-line state and at a commanded power level of 0 MW and 0 MVAR.

- A. Recorded Values: The lesser of the absolute value of (the "Qualified Power Capacity (MW)"):
 - a. The Average Real Charging Power, in MW measured during charge portion of the test, or
 - b. The Average Real Discharge Power, in MW measured during discharge portion of the test
- B. The Average Apparent Power, in MVA measured during both charge and discharge portion of the test

Pass/Fail Criteria		
<p>The difference between the BESS active power response and the commanded level shall be no more than $\pm 2\%$.</p> <p>Except in cases where Owner elects to define a ramp rate, the time to full output shall be less than 1s.</p> <p>The Response Time (seconds) is measured as the time between the Storage Project Controller receiving a command (when the Storage Project Controller Modbus values are updated) and the Storage Project charge/discharge power output first reaching within 2% of the commanded power. The command is read from the Storage Project Controller Modbus interface and the power output is read directly from the Storage Project Meter.</p>		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

3. ROUND-TRIP EFFICIENCY AND DISCHARGE ENERGY CAPACITY TEST

- Pre-test conditions:
 - A. Prior to the commencement of the test, if the ambient temperature is below 10°C or above 50°C, the test shall be rescheduled.
 - B. Owner is responsible for facilitating the test conditions such that the Storage Project can discharge at the [Contracted Discharge Power.]

- Procedure:
 - C. Storage Project Starting State: The Storage Project will be in the on-line state with each Storage Project subsystem at 0% SOE with a commanded power level of 0 MW and 0 MVAR.
 - D. Allow the Storage Project to idle at 0% SOE for 5 minutes. The Storage Project shall remain grid-connected.
 - E. Record the [Battery Import Energy], start value (as read by the Storage Project Meter)
 - F. Send a charge command equal to the [Guaranteed Charge Power.]
 - G. Hold the charge command until the input power drops below 2% of the command for more than one minute or six (6) hours have elapsed, then command a power level of 0 MW and 0 MVAR. Record the [Battery Import Energy], end (as reported by the Storage Project Meter).
 - H. Allow the system to idle for five (5) minutes. The Storage Project shall remain grid-connected during the rest period.
 - I. Record the [Battery Export Energy], start value (as reported by the Storage Project Meter).
 - J. Send a discharge command equal to the [Guaranteed Discharge Power]. If the grid operator requires a ramp rate, the energy discharged during the ramp shall be included in the calculation of [Discharge Energy Capacity].
 - K. Hold the discharge command until the Storage Project power drops below 2% of the command for more than one minute, then command a power level of 0 MW and 0 MVAR.
 - L. Record the [Battery Export Energy], end value (as reported by the Storage Project Meter).
- Recorded Values (via Storage Project Meter):
 - A. Battery Real Power (MW) and Reactive Power (MVAR) for each timestamp
 - B. Battery Export Energy (MWh) End and Start values
 - C. Battery Import Energy (MWh) End and Start values

Pass/Fail Criteria		
$\text{Measured RTE} = 100\% * \frac{\text{Qualified Energy Capacity (MWh)}}{\text{Battery Import Energy (MWh)}}$ <p>The measured Round-Trip Efficiency is greater than or equal to the Guaranteed Round-Trip Efficiency. The Qualified Energy Capacity is greater than or equal to the Guaranteed Energy Capacity.</p> <ul style="list-style-type: none"> Qualified Energy Capacity is calculated as (Battery Export Energy, End) minus (Battery Export Energy, Start) Battery Import Energy is calculated as (Battery Import Energy, End) minus (Battery Import Energy, Start) Storage Contract Capacity is the Qualified Energy Capacity divided by four (4) hours 		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

Exhibit N

PROJECT MILESTONE SCHEDULE

Below is a list of key project milestones and the targeted completion date for each.

Milestone	Responsible Party	Completion Date	Contract
Secured Real Estate and provide option for SMUD ownership of transmission assets location	Seller	10/1/2022	PPA
Secure Real Estate to build the project	Seller	12/31/21	
Completed Environmental Review (CEQA/NEPA)	Seller	6/1/2022	PPA
Secure Land Use/Environmental Permits	Seller	6/1/2022	PPA
PV Plant 100% Construction Documents	Seller	10/1/2022	LGIA
Substation 100% Construction Documents	Seller	10/1/2022	LGIA
Issue for construction loop in line 100% Documents	Seller	11/1/2022	LGIA
Construction Permitting	Seller	11/1/2022	PPA
Start Construction	Seller	11/1/2022	LGIA
Energization—indoor/outdoor Equipment Testing	SMUD/Seller	7/1/2023	LGIA
Return of SMUD Transmission Line to operations (230kV line outage)	SMUD	8/1/2023	LGIA
Pre-commercial Operation Data Testing, LGIA Sec.6/Appendixes G-H (Start six months prior to completion date)	Seller	8/1/2023	LGIA
COD	Seller	12/31/2023	PPA
GCOD	Seller	12/31/2024	PPA

Exhibit O
Storage Guarantees

Performance Guarantee:

- A. Guaranteed Storage Availability means 97%
- B. Guaranteed Power means 100 MW
- C. Guaranteed Energy means 400 MWh
- D. Guaranteed Round Trip Efficiency means the Round Trip Efficiency Guarantee Table found below

1. **Availability:**

A. Annual Average Storage Availability: The “Annual Average Storage Availability” of the Storage Project for a Contract Year is calculated by dividing the sum of the minimum of the Available Energy Measured (AEM) and the Available Power Measured (APM) of every hour of the Contract Year by the total number of hours in the Contract Year. All Excused Event Hours are removed from the calculation. This calculation is illustrated in the following formula:

$$\text{Annual Average Storage Availability} = \frac{1}{HM - HE} * \sum_{h=1}^{HM - HE} \text{MIN}[(AEM(h)), (APM(h))]$$

- B. Where the following terms have the following meanings:

$H_M(h)$ = The number of Hours in the Contract Year.

$H_E(h)$ = The number of Excused Event Hours in the Contract Year.

$AEM(h)$ = For any Hour (h), AEM is calculated in accordance with the following formula.

$$AEM = \text{MIN}\left[1, \frac{\text{Available Energy}(h)}{\text{Guaranteed Energy}(h)}\right]$$

$APM(h)$ = For any Hour (h), APM is calculated in accordance with the following formula.

$$APM = \text{MIN}\left[1, \frac{\text{Available Power}(h)}{\text{Guaranteed Power}(h)}\right]$$

Excused Event Hours means, with respect to a Contract Year, the sum of all Hours during which the Storage Project is operating below one hundred percent (100%) of Storage Contract Capacity as result of (a) Planned Outages; (b) Forced Outages; (c) Force Majeure; (c) SMUD Curtailment; (d) Dispatch Down Instructions; (e) SMUD’s energy charging management; (f) the Operating Restrictions; or (g) SMUD’s breach of the Agreement.

Hour = The consecutive sixty-minute period commencing on the hour, every hour, using local time at the Project.

Available Power (h) = For any Hour (h), the lesser of (i) the average percentage of available inverters multiplied by the Qualified Power Capacity or (ii) the [Guaranteed Power Capacity].

Available Energy (h) = For any Hour (h), the lesser of (i) the average percentage of available racks multiplied by the Qualified Energy Capacity, or (ii) the [Guaranteed Energy Capacity].

Qualified Power Capacity shall be assessed annually pursuant to a Storage Capacity Test in accordance with Exhibit M and is the lesser, in absolute value, of the [Discharge Capacity Test] or [Charge Capacity Test].

Qualified Energy Capacity shall be assessed at least annually and is performed according to the "Round-Trip Efficiency and Discharge Energy Capacity Test" described in Exhibit M.

- C. Annual Availability Liquidated Damages: If, for any Contract Year, the Annual Availability is less than the Guaranteed Storage Availability, the following liquidated damages will apply:

"Infraction Days" shall be calculated on an annual basis, if Annual Availability is less than Guaranteed Storage Availability, using the following formula: $[(HM - HE) / 24] * [Guaranteed Storage Availability - Annual Availability]$

"Annual Availability Liquidated Damages" shall be calculated on an annual basis using the following formula: $[Infraction Days] * [(\$25/MWh) * (Guaranteed Energy)]$. For example, if in a Contract Year the Storage had the following: Days in Contract Year = 365 days

- HM (h) = 8760
- Planned Outages = 80 hours
 - HE (h) = 80
- Forced Outages = 1000 hours
 - 50% Partially Available during Unscheduled Maintenance
- Annual Availability = $[1 / (8760 - 80)] * [(50\% * 1000) + (100\% * 7680)] = 95.25\%$
- Infraction Days = $[8680 / 24] * (97\% - 95.25\%) = 9.982$
- Monthly Availability Liquidated Damages = $9.982 * [(\$25/MWh) * (400 MWh)] = \$99,820$

2. **Round Trip Efficiency:**

- A. Round Trip Efficiency:

$$\text{Round Trip Efficiency} = \frac{\text{Discharging Energy}}{\text{Charging Enregy}}$$

- B. "**Guaranteed Round Trip Efficiency**" for any Contract Year has the following meaning:

Round Trip Efficiency Guarantee Table	
Contract Year	Guaranteed Round Trip Efficiency (%)
0	84.00%
1	84.00%
2	84.00%
3	83.50%
4	83.50%
5	83.50%
6	83.00%
7	83.00%
8	83.00%
9	82.50%
10	82.50%
11	82.50%

12	82.00%
13	82.00%
14	82.00%
15	81.50%
16	81.50%
17	81.50%
18	81.00%
19	81.00%
20	81.00%
21	80.50%
22	80.50%
23	80.00%
24	80.00%
25	79.50%
26	79.50%
27	79.00%
28	79.00%
29	78.50%
30	78.50%

C. Round Trip Efficiency Liquidated Damages: If, for any Contract Year, the Round Trip Efficiency determined by the annual Storage Capacity Test conducted for such Contract Year is less than the corresponding Guaranteed Round Trip Efficiency or such Contract Year, the following liquidated damages will apply on an annual basis:

a) **(the simple average of the Locational Marginal Price for the hours the Storage Project is dispatched during the period x Round-Trip Efficiency Shortfall x the amount of Charging Energy used to charge the Storage Project during the period), where**

Round-Trip Efficiency Shortfall = Guaranteed Round-Trip Efficiency *minus* the Round Trip Efficiency determined by the relevant annual Storage Capacity Test

EXHIBIT P METERING DIAGRAM

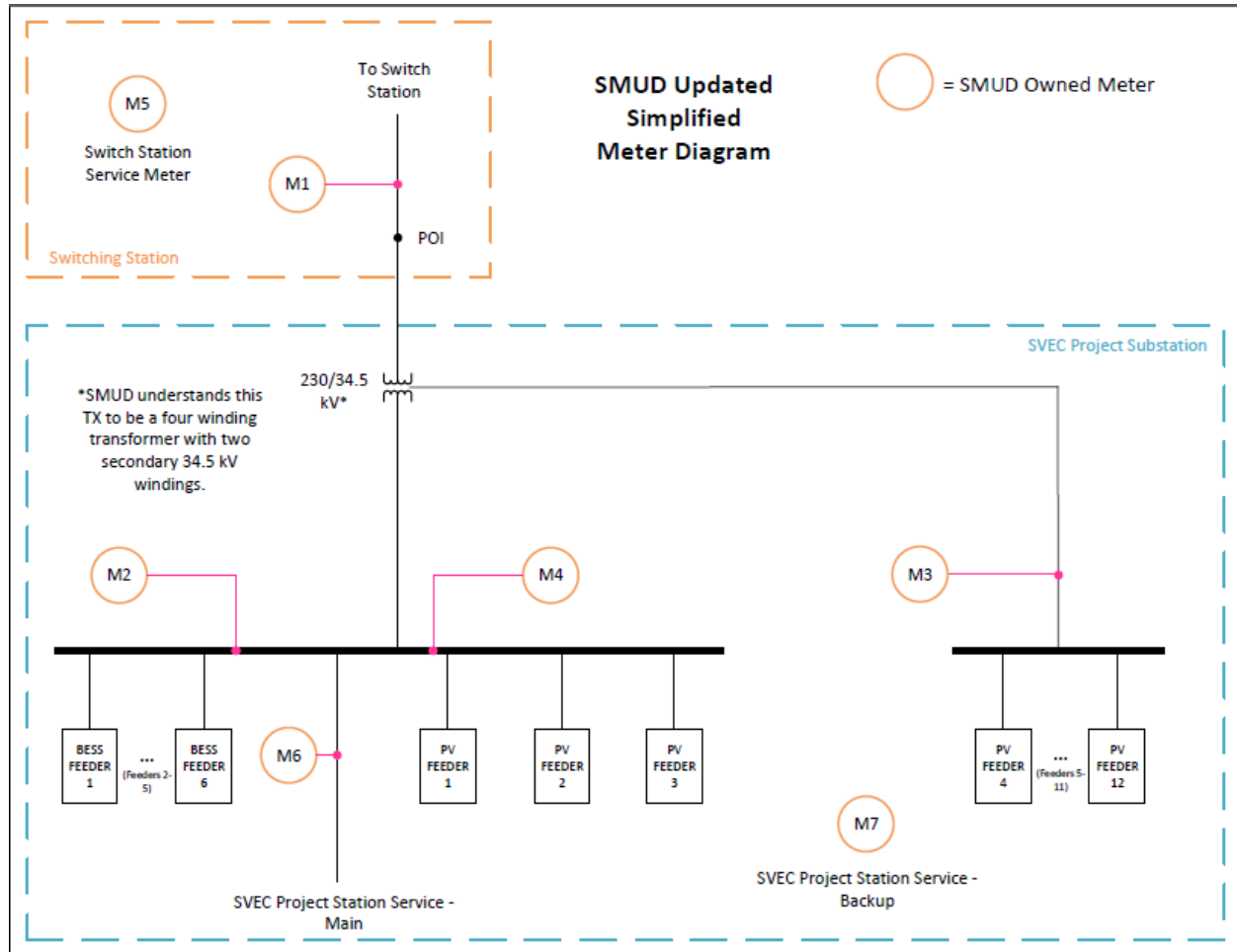


EXHIBIT Q
FORM OF LETTER OF CREDIT

LETTER OF CREDIT

To: Sacramento Municipal Utility District
Energy Contracts Administration
6301 S Street, MS A404
Sacramento, CA 95817-1899

Re: Our Irrevocable Standby Letter of Credit No. [_____]
In the Amount of US\$ [_____] ([_____] and xx/100 U.S. Dollars)

Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number No.[_____] in favor of the Sacramento Municipal Utility District ("Beneficiary"), by order and for account of Sacramento Valley Energy Center, LLC ("Account Party"), 1166 Avenue of the Americas, Third Floor, New York, NY 10036, c/o D. E. Shaw Renewable Investments, L.L.C, available at sight upon demand at our counters, at [_____] , or upon presentation by facsimile transmission at [_____] , for an amount of US\$ [_____] ([_____] and xx/100 U.S. Dollars) and against presentation one of the following documents:

1- Statement signed by a person purported to be an authorized representative of Beneficiary stating that: Sacramento Valley Energy Center, LLC (the "Seller") is in default under the agreement between Beneficiary and Seller, dated [_____] , or under any transaction contemplated thereby (whether by failure to perform or pay any obligation thereunder or by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Beneficiary and Seller, or otherwise). The amount due to Beneficiary is US \$_____."

Or

2. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "Sacramento Valley Energy Center, LLC ("Seller") has terminated the agreement between Beneficiary and Seller dated [_____] pursuant to such agreement. The amount due to Beneficiary is US \$_____."

Or

3. Statement signed by a person purported to be an authorized representative of Beneficiary stating that: "as of the close of business on _____[insert date, which is less than forty-five (45) days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Beneficiary, whether or not a default has occurred, is U.S. \$_____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Account Party.
- Partial and multiple drawings are permitted.
- Presentation of the Letter of Credit and Documents 1, 2 or 3 above may be made (i) in person, (ii) by first class certified and registered U.S. mail, by (iii) overnight mail on or before the expiration date or (iv) by facsimile transmission.

This Letter of Credit expires on [one year anniversary of date of issuance] at our counters.

We hereby engage with Beneficiary that upon presentation or facsimile transmission of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1, 2 or 3 above. If presentation is made by facsimile transaction, original documents are not required. If a document or facsimile transmission is so presented by 1:00 pm New York time on any banking day, we will honor the same in full in immediately available funds on the next banking day and, if so presented after 1:00 pm New York time on a banking day, we will honor the same in full in immediately available funds by noon on the second succeeding banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by registered mail or overnight courier service that we elect not to permit this Letter of Credit to be so extended beyond the then current expiry date, and it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

Except as stated herein, this letter of credit is not subject to any condition or qualification and is our individual obligation which is in no way contingent upon reimbursement or any right of subrogation. We irrevocably waive any and all rights of subrogation, whether as provided by statute or otherwise, now or hereafter that might, but for such waiver exist, in respect to this letter of credit or any payment we make under it, as to the Applicant, Beneficiary, or the transaction between Beneficiary and Sacramento Valley Energy Center, LLC. We further give irrevocable notice that we are not now and will not be the secondary obligor or co-obligor of Sacramento Valley Energy Center, LLC's obligation and liabilities to Beneficiary for any purpose. Our obligations to Beneficiary under this letter of credit are our primary obligations and are strictly as stated herein

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit shall be governed by the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 ("ISP98"), except to the extent that the terms hereof are inconsistent with the provisions of the ISP98, in which case the terms of this Letter of Credit shall govern.

[____], a [_____]

Authorized Signature(s)

EXHIBIT R
FORM OF LIMITED ASSIGNMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [] (the “**Effective Date**”) by and among _____, LLC, a Delaware limited liability company (“**PPA Seller**”), _____, a California municipal utility district (“**PPA Buyer**” or “**SMUD**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and J. Aron (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of PPA Buyer under the PPA to purchase and accept delivery of the products described on Appendix 1 (the “**Assigned Products**”) in accordance with the terms of the PPA during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on [Appendix 1] (the “**Assigned Product Rights**”). All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.
- (b) PPA Buyer hereby delegates to J. Aron the obligation to pay for all Assigned Products that are actually purchased and delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**”) and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”). Notwithstanding the foregoing, all obligations of PPA Buyer under the PPA (including all Delivered Product Payment Obligations) are expressly retained by PPA Buyer, and remain an obligation of PPA Buyer notwithstanding the assignment of the Assigned Products or the delegation to J. Aron of any Delivered Product Payment Obligations. To the extent J. Aron fails to make any payment under the PPA for the Assigned Products under and in accordance with the PPA by the applicable due date for set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment and shall make such payment to PPA Seller within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.
- (c) J. Aron hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above, subject to PPA Buyer's retention and assumption of all obligations of the PPA Buyer under the PPA.
- (d) All rights to dispatch and schedule the Project and the Assigned Products shall be retained by PPA Buyer and, for avoidance of doubt, J. Aron shall not have any such rights. All dispatch and scheduling of the Project and the Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer will provide to J. Aron copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to J. Aron upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by J. Aron to and shall act as J. Aron's agent with regard to exercising any and all rights under the PPA relating to dispatching the Project and scheduling Assigned Product.
- (e) PPA Seller acknowledges that J. Aron has the right to purchase receivables due from PPA Buyer for any Assigned Products purchased and delivered under the PPA. To the extent J. Aron purchases any such receivables due from PPA Buyer, J. Aron may transfer such receivables to

PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation. Notwithstanding the foregoing, (i) PPA Buyer shall ensure that all payments due to PPA Seller under the terms of the PPA are made to PPA Seller in accordance with the terms of the PPA and (ii) to the extent either (x) J. Aron does not pay PPA Seller for any Delivered Product Payment Obligation, or (y) any Delivered Product Payment Obligation is reduced as described in the preceding sentence, PPA Buyer shall pay PPA Seller for any such failure to pay or reduction, such that PPA Seller receives all payments due to PPA Seller in accordance with the terms of the PPA.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

- (1) delivery of a written notice of termination by either J. Aron or PPA Buyer to each of the other Parties hereto;
- (2) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following J. Aron's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one business day following receipt by J. Aron of written notice thereof;
- (3) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following (i) J. Aron's breach of any term of this Assignment or (ii) PPA Buyer's breach of any term of this Assignment;
- (4) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following PPA Buyer's failure to pay when due any amounts owed to PPA Seller in respect of any receivables due from PPA Buyer for any Assigned Products;
- (5) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following (i) PPA Buyer's breach of the PPA or (ii) J. Aron's breach of the PPA; or
- (6) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following PPA Buyer's breach of the [Indemnity Agreement].

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2).

(c) All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period. Notwithstanding anything herein to the contrary, PPA Buyer's obligations under the second and third sentence of Section 1(b) and the last sentence of Section 1(e) shall survive any termination of this Assignment.

3. Representations and Warranties. The PPA Buyer represents and warrants to J. Aron that (a) the PPA is in full force and effect; (b) no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either Party the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the Assignment Period Start Date have been fulfilled.

4. Notices. Any notice, demand, or request required or authorized by this Assignment Agreement to be given by one Party to another Party shall be delivered in accordance with Article 15 and Exhibit I of the PPA

and to the addresses of each of PPA Seller and PPA Buyer specified in the PPA. PPA Seller and PPA Buyer agree to notify J. Aron of any updates to such notice information. Notices to J. Aron shall be provided to the following address, as such address may be updated by J. Aron from time to time by notice to the other Parties:

J. Aron & Company LLC
200 West Street
New York, New York 10282-2198
Email: gs-prepay-notices@gs.com

5. Miscellaneous. Articles 1.2 (Rules of Interpretation), 22 (Severability), 23 (Counterparts), and 24 (General) of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

6. Governing Law, Jurisdiction, Waiver of Jury Trial

(a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of [California], without reference to any conflicts of laws provisions that would direct the application of another jurisdiction's laws.

(b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of the [state courts of California], or the federal courts of the United States of America for the Northern District of California, sitting in the city and county of San Francisco. Where a lawsuit arises under or in relation to the PPA, or [Indemnity Agreement], the PPA Seller may, at its option, consolidate the disputes, and PPA Buyer and J. Aron hereby consent to any such consolidation to the maximum extent permitted by applicable Law. PPA Buyer and J. Aron agree to join as defendants in any lawsuit or other legal action under or arising out of the PPA or [Indemnity Agreement].

(c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

7. Assignment. PPA Buyer and J. Aron shall not assign, transfer or sell this Agreement without PPA Seller's prior written consent. PPA Seller may, without the consent of PPA Buyer or J. Aron, assign this Agreement (i) together with any permitted assignment of the PPA or (ii) as collateral to any financing party. In connection with any financing by PPA Seller for the Project, PPA Buyer and J. Aron shall each provide such consents to collateral assignments (which consent(s) from J. Aron shall not require any extended cure periods or any requirement for a replacement agreement), estoppels, opinions (which opinions may only be requested to be provided by PPA Buyer), information or other documents as may be reasonably requested, in accordance with market practice, by PPA Seller or the financing parties in connection with the execution of the debt, tax equity or other financing of the Project. Without limiting the foregoing, at the reasonable request of PPA Seller, PPA Buyer shall confirm in writing to the applicable financing parties under any such financing and J. Aron shall acknowledge, PPA Buyer's obligations under the second and third sentence of Section 1(b) and the last sentence of Section 1(e).

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

[Add signature blocks]

Authorized Signature(s)

SSS No.
BOD 2021-003

BOARD AGENDA ITEM

STAFFING SUMMARY SHEET

Committee Meeting & Date
ERCS 2021
Board Meeting Date
N/A

TO				TO								
1.	Stephen Clemons			6.								
2.	Frankie McDermott			7.								
3.				8.								
4.				9.	Legal							
5.				10.	CEO & General Manager							
Consent Calendar			Yes	x	No If no, schedule a dry run presentation.		Budgeted		Yes	No (If no, explain in Cost/Budgeted section.)		
FROM (IPR) Brandon Rose / Donna Lofton				DEPARTMENT Board Office				MAIL STOP B307		EXT. 5079		DATE SENT 12/22/20

NARRATIVE:

Requested Action: Provide a summary of committee direction from the Board to Staff.

Summary: During a Board discussion at the January 2017 Policy Committee, the Board requested having an on-going opportunity to do a wrap up period at the end of each committee meeting to summarize various Board member suggestions and requests that were made at the meeting in an effort to make clear the will of the Board. The Committee Chair will summarize Board member requests that come out of the committee presentations for this meeting.

Board Policy: GP-4 Agenda Planning states the Board will focus on the results the Board wants the organization to achieve.
(Number & Title)

Benefits: Having an agendaized opportunity to summarize the Board's requests and suggestions that arise during the committee meeting will help clarify what the will of the Board.

Cost/Budgeted: N/A

Alternatives: Not summarize the Board's requests at this meeting.

Affected Parties: Board of Directors and Executive Staff

Coordination: Donna Lofton, Special Assistant to the Board

Presenter: Brandon Rose, ERCS Committee Chair

Additional Links:

SUBJECT
Summary of Committee Direction

ITEM NO. (FOR LEGAL USE ONLY)

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.