

# Board of Directors Meeting Agenda

Date: May 18, 2023

Time: 6:00 p.m.

Location: SMUD Headquarters Building, Auditorium  
6201 S Street, Sacramento, California





## •**AMENDED AGENDA**

•**Remote Telephonic Location Added.**

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

•**Remote Telephonic Location:**  
**Courtyard New York Manhattan/Times Square**  
**114 West 40<sup>th</sup> Street**  
**New York, NY 10018**

***May 18, 2023 – 6:00 p.m.***

Virtual Viewing or Attendance:

Live video streams (view-only) and indexed archives of meetings are available at:  
[http://smud.granicus.com/ViewPublisher.php?view\\_id=16](http://smud.granicus.com/ViewPublisher.php?view_id=16)

**Zoom Webinar Link:** [Join SMUD Board of Directors Meeting Here](#)

**Webinar/Meeting ID:** 161 168 0709

**Passcode:** 071197

**Phone Dial-in Number:** 1-669-254-5252 or 1-833-568-8864 (Toll Free)

Verbal Public Comment:

Members of the public may provide verbal public comment by:

- Registering in advance of a meeting by sending an email to [PublicComment@smud.org](mailto:PublicComment@smud.org), making sure to include the commenter's name, date of the meeting, and topic or agenda item for comment. Microphones will be enabled for virtual or telephonic attendees at the time public comment is called and when the commenter's name is announced.
- Completing a sign-up form at the table outside of the meeting room and giving it to SMUD Security.
- Using the "Raise Hand" feature in Zoom (or pressing \*9 while dialed into the telephone/toll-free number) during the meeting at the time public comment is called. Microphones will be enabled for virtual or telephonic attendees when the commenter's name is announced.

Written Public Comment:

Members of the public may provide written public comment on a specific agenda item or on items not on the agenda (general public comment) by submitting comments via email to [PublicComment@smud.org](mailto:PublicComment@smud.org) or by mailing or bringing physical copies to the meeting. Comments will not be read into the record but will be provided to the Board and placed into the record of the meeting if received within two hours after the meeting ends.

Call to Order.

a. Roll Call.

1. Approval of the Agenda.
2. Youth Energy Summit Projects Presentation.  
*Presenter: Team Sequoia from Folsom High School*
3. Committee Chair Reports.
  - a. Committee Chair report of May 9, 2023, Strategic Development Committee
  - b. Committee Chair report of May 10, 2023, Policy Committee
  - c. Committee Chair report of May 16, 2023, Finance and Audit Committee
  - d. Committee Chair report of May 17, 2023, Energy Resources & Customer Services Committee

**Items 6 and 7 were reviewed by the May 10, 2023, Policy Committee. Items 8 and 10 were reviewed by the May 16, 2023, Finance and Audit Committee. Item 9 was reviewed by the May 17, 2023, Energy Resources & Customer Services Committee.**

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

**Consent Calendar:**

4. Approve Board member compensation for service rendered at the request of the Board (pursuant to Resolution 18-12-15) for the period of April 16, 2023, through May 15, 2023.
5. Approval of the minutes of the regular meeting of April 20, 2023.
6. Accept the monitoring report for **Strategic Direction SD-8, Employee Relations. Policy Committee 5/10. (Jose Bodipo-Memba)**
7. Accept the monitoring report for **Strategic Direction SD-12, Ethics. Policy Committee 5/10. (Jose Bodipo-Memba)**
8. Authorize the Chief Executive Officer and General Manager to award contracts to **AECOM Technical Services, Inc., Ascent Environmental, Inc., Environmental Science Associates, and GEI Consultants, Inc.** to provide Environmental and California Environmental Quality Act (CEQA) support services for a contract term of three years from June 1, 2023, to May 31, 2026, with one optional two-year extension for a total aggregate contract not-to-exceed amount of \$10 million. **Finance and Audit Committee 5/16. (Frankie McDermott)**
9. a. Approve SMUD's participation in the submittal of a grant application or applications by **Calpine Corporation (Calpine)** to the **U.S. Department of Energy (DOE)** or other agencies for the **Sutter Energy Center Carbon Capture and Sequestration Project (CCS Project)** and authorize the Chief Executive Officer and General Manager (CEO/GM), on behalf of SMUD, to execute all grant documents necessary to secure grant funds; and

- b. Authorize the CEO/GM to execute a **Memorandum of Agreement (MOA)**, substantially in form attached, with **Calpine** to negotiate commercial terms of a **Power Purchase Agreement (PPA)** for the output of **Calpine's** proposed **CCS Project**.

Energy Resources & Customer Services Committee 5/17. (Lora Anguay)

#### **Discussion Calendar:**

10. Approve the issuance of **SMUD 2023 Revenue Refunding Bonds, SMUD 2023 Subordinated Electric Revenue Refunding Bonds, SMUD 2023 Electric Revenue Bonds** and/or **SMUD 2023 Subordinated Electric Revenue Bonds**, authorize the distribution of the **Preliminary Official Statement**, and authorize the Chief Executive Officer and General Manager to execute documents necessary to complete the refunding transaction or transactions, including the **Bond Purchase Agreement or Agreements** and **Credit Support Agreements**. Finance and Audit Committee 5/16. (Jennifer Davidson)

*Presenter: Russell Mills*

#### **Public Comment:**

11. Items not on the agenda.

#### **Board and CEO Reports:**

12. Directors' Reports.
13. President's Report.
14. CEO's Report.
  - a. Board Video

#### **Summary of Board Direction**

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

May 16, 2023	Finance and Audit Committee and Special SMUD Board of Directors Meeting	Auditorium*	6:00 p.m.
May 17, 2023	Energy Resources & Customer Services Committee and Special SMUD Board of Directors Meeting	Auditorium	6:00 p.m.
June 6, 2023	Strategic Development Committee and Special SMUD Board of Directors Meeting	Auditorium	6:00 p.m.
June 7, 2023	Policy Committee and Special SMUD Board of Directors Meeting	Auditorium	6:00 p.m.
June 13, 2023	Finance and Audit Committee and Special SMUD Board of Directors Meeting	Auditorium	6:00 p.m.
June 14, 2023	Energy Resources & Customer Services Committee and Special SMUD Board of Directors Meeting	Auditorium	6:00 p.m.

\* \* \* \* \*

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

June 15, 2023	Auditorium*	6:00 p.m.
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*\*The Auditorium is located in the lobby of the SMUD Headquarters Building, 6201 S Street, Sacramento, California.*

*Members of the public shall have up to three (3) minutes to provide public comment on items on the agenda or items not on the agenda, but within the jurisdiction of SMUD. The total time allotted to any individual speaker shall not exceed nine (9) minutes.*

*Members of the public wishing to inspect public documents related to agenda items may click on the Information Packet link for this meeting on the [smud.org](http://smud.org) website or may call 1-916-732-7143 to arrange for inspection of the documents at the SMUD Headquarters Building, 6201 S Street, Sacramento, California.*

*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 meeting. If you need a reasonable auxiliary aid or service for effective communication to participate, please email [Toni.Stelling@smud.org](mailto:Toni.Stelling@smud.org), or contact by phone at 1-916-732-7143, no later than 48 hours before this meeting.*



SSS No.
CDO 23-013

## BOARD AGENDA ITEM STAFFING SUMMARY SHEET

Committee Meeting & Date N/A
Board Meeting Date May 18, 2023

TO					TO				
1.	Jose Bodipo-Memba				6.				
2.					7.				
3.					8.				
4.					9.	<b>Legal</b>			
5.					10.	<b>CEO &amp; General Manager</b>			

<b>Consent Calendar</b>		<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	If no, schedule a dry run presentation.		<b>Budgeted</b>	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	(If no, explain in Cost/Budgeted section.)	
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FROM (IPR) Kaelin Sherrel			DEPARTMENT Workforce, Diversity & Inclusion				MAIL STOP A226	EXT. 5944	DATE SENT 05/10/23
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**NARRATIVE:**

**Requested Action:** Provide the Board the winning presentation from the Youth Energy Summit.

**Summary:** The Youth Energy Summit (YES) is a three-day climate and sustainability summit for junior and senior students at high schools in Sacramento County. Participants attend three days of learning to understand the year's theme, then spend the next couple of months choosing and executing their own community service project.

**Board Policy:** Governance Process GP-3, Board Job Description: c) Seek to understand the strategic viewpoints and values of our customers, owners, the community and other interested stakeholders.  
*(Number & Title)*

**Benefits:** Keeps the Board and public apprised of community projects that promote a cleaner, healthier region for all in alignment with the 2030 Zero Carbon Plan.

**Cost/Budgeted:** There is no budgetary impact for this informational presentation.

**Alternatives:** Do not present the winning project.

**Affected Parties:** Workforce, Diversity & Inclusion

**Coordination:** Executive Office, Board Office & Workforce, Diversity & Inclusion

**Presenter:** Team Sequoia (Jessenia Chan, Neha Palani, Harshitha Sheshala, Maisha Yasmin) from Folsom High School

<b>Additional Links:</b> <a href="https://www.smud.org/yes">https://www.smud.org/yes</a>
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SUBJECT	<b>Youth Energy Summit (YES) Presentation</b>	ITEM NO. (FOR LEGAL USE ONLY) <b>2</b>
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ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.







RESOLUTION NO. \_\_\_\_\_

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

That this Board hereby approves Board member compensation for service rendered at the request of the Board (pursuant to Resolution 18-12-15) for the period of April 16, 2023, through May 15, 2023.



Sacramento, California

April 20, 2023

The Board of Directors of the Sacramento Municipal Utility District met in regular session simultaneously in the Auditorium of the SMUD Headquarters Building at 6201 S Street, Sacramento, and via virtual meeting (online) at 5:31 p.m.

Roll Call:

Presiding: President Sanborn

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

Present also were Paul Lau, Chief Executive Officer and General Manager; Laura Lewis, Chief Legal & Government Affairs Officer and General Counsel and Secretary, and members of SMUD's executive management; and SMUD employees and visitors.

Vice President Herber shared the environmental tip.

President Sanborn called for approval of the agenda. Director Tamayo moved for approval of the agenda, Vice President Herber seconded, and the agenda was unanimously approved.

Director Bui-Thompson, Chair, presented the report on the Strategic Development Committee meeting held on April 11, 2023.

Director Tamayo, Chair, presented the report on the Policy Committee meeting held on April 12, 2023.

Director Kerth, Chair, presented the report on the Finance and Audit Committee meeting held on April 18, 2023.

Director Rose, Chair, presented the report on the Energy Resources & Customer Services Committee meeting held on April 19, 2023.

President Sanborn then called for public comment for items on the agenda, but none were forthcoming.

President Sanborn then addressed the consent calendar consisting of Items 3 through 6. Director Fishman moved for approval of the consent

calendar, Vice President Herber seconded, and Resolution No. 23-04-02 was  
unanimously approved.

**RESOLUTION NO. 23-04-02**

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

That this Board hereby approves Board member compensation for service rendered at the request of the Board (pursuant to Resolution 18-12-15) for the period of March 16, 2023, through April 15, 2023.

Approved: April 20, 2023

INTRODUCED: DIRECTOR FISHMAN				
SECONDED: DIRECTOR HERBER				
DIRECTOR	AYE	NO	ABSTAIN	ABSENT
SANBORN	X			
ROSE	X			
BUI-THOMPSON	X			
FISHMAN	X			
HERBER	X			
KERTH	X			
TAMAYO	X			

President Sanborn then turned to Discussion Calendar Item 7, to certify the California Environmental Quality Act (CEQA) Country Acres Solar Project (Project) Final Environmental Impact Report (FEIR), including adoption of the Findings and Statement of Overriding Considerations; adopt the Mitigation Monitoring and Reporting Program for the Project; and approve the Project.

Ellias van Ekelenburg, Director of Environmental, Safety & Real Estate Services gave a presentation on Item 7. A copy of the slides used in his presentation is attached to these minutes.

Public comment on Agenda Item 7, a copy of which is attached to these minutes, was also received from the following members of the public:

- Placer County Resident

After some discussion, Director Fishman moved for approval of Discussion Calendar Item 7, Director Tamayo seconded, and Resolution No. 23-04-03 was unanimously approved.

## RESOLUTION NO. 23-04-03

**WHEREAS**, this Board has adopted policies stating this Board is committed to meeting customers' electrical energy needs (SD-4); demonstrating energy reliability and environmental leadership (SD-7); and ensuring high levels of customer satisfaction (SD-5); and

**WHEREAS**, SMUD's primary purpose is to supply electrical energy to customers in the Sacramento area; and

**WHEREAS**, the **Country Acres Solar Project (Project)** was prepared as part of SMUD's efforts to continue providing carbon-free, reliable energy by planning a solar and battery energy storage project connected to SMUD's grid; and

**WHEREAS**, the **Project** would include installation, operation, and maintenance of a photovoltaic (PV) solar power facility on up to 945 acres of land leased to SMUD and up to approximately 230 acres of land purchased by SMUD in southwestern Placer County; and

**WHEREAS**, the **Project** will generally comprise PV solar modules, foundation piles, racking, direct current (DC) collection, alternate current (AC) collection, fencing, roads, inverters, medium voltage transformers, an interconnection line between the general substation and switch station, battery energy storage system equipment, a substation, a switching yard, and interconnection lines to the existing SMUD transmission system; and

**WHEREAS**, the Project layout has been sited to minimize and avoid natural resources and will integrate compatible agricultural activities such as grazing, agricultural production, and pollinator habitat into solar operations; and

**WHEREAS**, a **Notice of Preparation** was made available for public review on November 19, 2021, and a public meeting was held on December 8, 2021; and

**WHEREAS**, SMUD prepared the draft **Environmental Impact Report (EIR)**, which provides the **California Environmental Quality Act (CEQA)** analysis for the **Project**, and the **Mitigation Monitoring and Reporting**

**Program** incorporated environmental avoidance, mitigation and improvement measures; and

**WHEREAS**, the **EIR** and **Mitigation Monitoring and Reporting Program** were posted on the SMUD website, distributed to interested parties including agencies and members of the public within 0.5 miles of the **Project**, inviting public comment; the comment period was open for a 45-day period from September 13, 2022, through October 28, 2022; a public meeting was held on October 13, 2022, and nine comments were received; and

**WHEREAS**, the **Final Environmental Impact Report (FEIR)** included mitigation measures for most impacts (e.g., biological, archaeological, historical, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, transportation, and Tribal cultural resources) to reduce impacts to a less-than-significant level; and

**WHEREAS**, impacts to agricultural and air quality cannot be reduced to a less-than-significant level even with mitigation and would remain significant and unavoidable; and

**WHEREAS**, due to potential significant and unavoidable impacts to agricultural resources and air quality, the SMUD Board of Directors cannot approve the **Project** without first making a **Statement of Overriding Considerations**, which declares that the public benefits of the **Project** outweigh any potential significant and unavoidable impacts; and

**WHEREAS**, all comments received during the public review period have been responded to as appropriate and incorporated into the **FEIR** and **Mitigation Monitoring and Reporting Program**, which were made available for comments on April 10, 2023, and will require certification and approval, respectively, by the SMUD Board of Directors; and

**WHEREAS**, the **FEIR** and **Mitigation Monitoring and Reporting Program** are located in the records of SMUD under the custody of the Environmental Management Department; **NOW THEREFORE**,



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

**Section 1.** This Board has reviewed and considered information in the **Country Acres Solar Project (Project) Final Environmental Impact Report (FEIR)** and **Mitigation Monitoring and Reporting Program** and (1) certifies that the **Project FEIR** complies with the **California Environmental Quality Act (CEQA)**; (2) adopts the **Mitigation Monitoring and Reporting Program**, as set forth in **Attachment A**; (3) adopts the **California Environmental Quality Act Findings and Statement of Overriding Considerations in Connection with the Country Acres Solar Project** as set forth in **Attachment B**; and (4) approves the **Project**.

**Section 3.** The Environmental Services Department is directed to file with the County Clerk of Placer County a Notice of Determination, which shall set forth the information required by **CEQA**.

Approved: April 20, 2023

INTRODUCED: DIRECTOR FISHMAN				
SECONDED: DIRECTOR TAMAYO				
DIRECTOR	AYE	NO	ABSTAIN	ABSENT
SANBORN	X			
ROSE	X			
BUI-THOMPSON	X			
FISHMAN	X			
HERBER	X			
KERTH	X			
TAMAYO	X			

# Sacramento Municipal Utility District Country Acres Solar Project

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Final Environmental Impact Report • April 2023

State Clearinghouse #2021110307



**Sacramento Municipal Utility District**

# **Country Acres Solar Project**

**Final Environmental Impact Report**

**State Clearinghouse #2021110307**

**April 2023**

**Lead Agency:**

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

or

P.O. Box 15830  
Sacramento, CA 95852-0830  
Attn: Amy Spitzer  
(916) 732-5384 Amy.Spitzer@smud.org

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**Acronyms and Abbreviations**

AB	Assembly Bill
ACC	Advanced Clean Car Program
ADLS	Asymmetric Digital Subscriber Line
AFB	Air Force Base
ALUC	Airport Land Use Commissions
APE	Area of Potential Effect
APP	Avian Protection Plan
ARB	California Air Resources Board
ASTM	American Society for Testing and Materials
ATV	all-terrain vehicle
BAAQMD	Bay Area Air Quality Management District
BBCS	Bird and Bat Conservation Strategies
BMP	best management practice
BO	biological opinion
Board	Board of Directors
CalEEMod	California Emissions Estimator Model
CARB	California Air Resources Board
Caltrans	California Department of Transportation
CCR	California Code of Regulations
CDFA	California Department of Food and Agriculture
CDFG	California Department of Fish and Game
CDFW	California Department of Fish and Wildlife
CEC5	California Energy Commission
CERS	California Environmental Reporting Systems
CESA	California Endangered Species Act
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CNDDB	California Natural Diversity Database
CRPR	California Rare Plant Rank
CTS	California tiger salamander
CURE	California Unions for Reliable Energy
CV	Central Valley
CWA	Clean Water Act

DHS	Department of Homeland Security
DNH	Determinations of No Hazard
DOD	Department of Defense
DOGGR	California Department of Conservation, Division of Oil, Gas and Geothermal Resources
Draft EIR	draft environmental impact report
EIR	environmental impact report
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
ESAs	environmentally sensitive areas
FAA	Federal Aviation Administration
FDCP	fugitive dust control plan
Final EIR	final environmental impact report
ft	feet
GHG	greenhouse gas
HDD	horizontal directional drilling
HMBP	hazardous materials business plan
HRA	health risk assessment
HSCERP	Hazardous Substance Control and Emergency Response Plan
ITP	incidental take permit
LED	light-emitting diode
LUPC	Land Use Planning Commission
m	meter(s)
MM	Mitigation Measure
MMRP	mitigation monitoring and reporting program
mph	miles per hour
MRT	Mitigation Response Team
MBTA	Migratory Bird Treaty Act
MTCO <sub>2e</sub>	metric tons of carbon dioxide equivalent
MWh	megawatt hours
NAHC	Native American Heritage Commission
NAS	National Airspace System
NOTAM	Notice to Airmen
NOP	notice of preparation
NO <sub>x</sub>	oxides of nitrogen

NPH	Notice of Presumed Hazard
NPDES	National Pollutant Discharge Elimination System
OEHHA	Office of Environmental Health Hazards Assessment
PHEV	plug-in hybrid electric vehicle
OSHA	Occupational Health and Safety Administration
PM	particulate matter
PM <sub>10</sub>	fine particulate matter
PV	photovoltaic
PRC	Public Resources Code
ROG	reactive organic gases
RWQCB	Regional Water Quality Control Board
SAA	State Aeronautics Act
SCADA	supervisory control and data acquisition
SCEMD	Sacramento County Environmental Management Department
SFB	San Francisco Bay
SMAQMD	Sacramento Metropolitan Air Quality Management District
SMUD	Sacramento Municipal Utility District
SOC	Statement of Overriding Considerations
SOW	Scope of Work
SPCC	Spill Prevention, Control, and Countermeasure
SR	State Route
SWAPE	Soil/Water/Air Protection Enterprise
SWPPP	stormwater pollution prevention plan
SWRCB	State Water Resources Control Board
TAC	Technical Advisory Committee
TCR	tribal cultural resource
the Board	SMUD Board of Directors
UAIC	United Auburn Indian Community of the Auburn Rancheria
USACE	U.S. Army Corps of Engineers
USFWS	U.S. Fish and Wildlife Service
VOC	volatile organic compound
WEAP	worker environmental awareness program
WTG	wind turbine generator
YSAQMD	Yolo-Solano Air Quality Management District
ZEV	Zero-Emission Vehicle



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## 1 INTRODUCTION

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On September 13, 2022, the Sacramento Municipal Utility District (SMUD) released for public review the draft environmental impact report (Draft EIR) for the proposed Country Acres Solar Project (project). SMUD proposes to:

- construct a photovoltaic (PV) solar power and battery storage facility;
- construct interconnection facilities including a generation substation, switch station and interconnection lines;
- operate and maintain solar, battery storage, and interconnection facilities

At the end of the project's life (anticipated to be 30 to 35 years), the project and its assets would be decommissioned; however, SMUD may retain the substation, switching station, and battery storage facilities. Details about the decommissioning process are not known at this time, thus potential impacts from decommissioning cannot be analyzed in the Draft EIR. The project will prepare a decommissioning and reclamation plan prior to decommissioning that will detail the timeline for removal of the improvements and specific measures to return the site to agricultural capability. Additionally, prior to decommissioning, additional CEQA analysis would be performed.

### 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 (September 13, 2022, through October 28, 2022). SMUD also held a public meeting on October 13, 2022, to receive comments on the Draft EIR. Written comment letters and oral comments 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). Although some of the comments have resulted in changes to the text of the Draft EIR (see Chapter 3, "Corrections and Revisions to the Draft EIR"), none of the changes 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 has 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/CEQA> 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

Placer County Community  
Development Resource Agency  
3091 County Center Drive  
Auburn, CA 95603

Roseville Public Library  
225 Taylor Street  
Roseville, CA 95678

As required by State CEQA Guidelines Section 15088(b), SMUD has provided an electronic copy (through SMUD's website; see prior discussion) to each public agency, organization, and individual that submitted written comments on the Draft EIR with written responses to those comments at least 10 days prior to certifying the Final EIR.

## 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. In some instances, clarifications of the text of the Draft EIR may be required. In those cases, the text of the Draft EIR is revised and the changes compiled in Chapter 3, "Corrections and Revisions to the Draft EIR." The text deletions are shown in ~~strikeout~~ and additions are shown in underline.

## 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 project. 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 then would 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 important to allow the project to move forward.

The following are important considerations in the Board approval process. SMUD would be required to provide conservation easements or pay in-lieu fees for the conservation of Important Farmland, including Farmland of Statewide Importance and Unique Farmland. However, no new farmland would be made available, and a net loss of Important Farmland in the region would occur. There is no additional feasible mitigation available that would reduce impacts associated with the permanent conversion of agricultural land, including Farmland of Statewide Importance and Unique Farmland, to a less-than-significant level and this impact would remain significant and unavoidable and therefore would require a Statement of Overriding Considerations (SOC). Additionally, implementing air quality mitigation measures would reduce emissions associated with project construction. However, even after implementation of the recommended mitigation measures, the project's construction emissions would exceed applicable thresholds during certain months of construction. Therefore, this short-term construction impact would be significant and unavoidable and would also require inclusion in the SOC from the Board. In the SOC needed for project approval, the SMUD Board states in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. The SOC would be included in the Notice of Determination (California Code of Regulations 15093 (b)) that will be filed with the State Clearinghouse if the project receives approval by the Board. A Mitigation Monitoring and Reporting Program, which is required by CEQA Guidelines Section 15091(d), has been prepared and is included in Chapter 4 of this Final EIR.

## 1.5 Revisions to the Draft EIR

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]).

All revisions to the Draft EIR were minor and would not change any of the impact conclusion presented in the Draft EIR. Therefore, recirculation of the EIR would not be required.

#### *1.5.1 Tribal Consultation*

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 3.18, "Tribal Cultural Resources," of the Draft EIR describes the consultation that has occurred between the tribes and SMUD pursuant to AB 52. Specific language requested by the tribes was incorporated in the Draft EIR prior to circulation, and consultation has been completed.

## 2 COMMENTS AND RESPONSES TO COMMENTS

**Letter 1**


### United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Suite W-2605  
Sacramento, California 95825-1846  
SFWO\_mail@fws.gov



In Reply Refer to:  
2022-0037237-S7-001

October 25, 2022

Amy Spitzer  
SMUD Environmental Services  
P.O. Box 15830 MS H201  
Sacramento, California 95852-0830  
Amy.Spitzer@smud.org

Subject: Service Comments on the Draft Environmental Impact Report for the SMUD  
Country Acres Solar Project, Placer County

Dear Amy Spitzer:

This letter is in response to the Sacramento Municipal Utility District's (SMUD) September 13, 2022, *Notice of Availability of a Draft Environmental Impact Report (EIR) for Public Review* for SMUD's Country Acres Solar Project (proposed project). The U.S. Fish and Wildlife Service (Service) thanks you for the opportunity to provide our comments on the Draft EIR. The Service recognizes that eventually a Section 7 consultation under the Endangered Species Act will be conducted with the U.S. Army Corps of Engineers as appropriate. We hope that providing our comments earlier in the process can better facilitate the necessary conversations related to conservation measures for endangered species.

1-1

The proposed project is within the boundary of the Placer County Conservation Plan (PCCP), however, solar development is not a covered activity under the PCCP. Although the proposed project will therefore have to pursue various permits outside of the PCCP, the Service would like to ensure that the proposed project does not prevent the successful implementation of the PCCP's Conservation Strategy. Therefore, we recommend that the applicant for the proposed project coordinate with the Placer Conservation Authority (PCA) to develop conservation measures that are as close to the PCCP's conservation measures as is feasible. We recognize that this coordination has already begun, including meetings attended by the Service on April 27 and 28, 2022, and October 5, 2022, and we appreciate your efforts to be proactive.

1-2

The section of the Draft EIR titled "Impact 3.4-6" (pages 3.4-86–3.4-87) describes how the proposed project will provide compensatory mitigation for sensitive natural communities, waters of the United States, and the burrowing owl and Swainson's hawk (Mitigation Measures 3.4-8, 3.4-10, and 3.14-16), and that this mitigation will be met by paying into the PCCP's in-lieu fee program under a memorandum of understanding signed by SMUD and the PCA. The memorandum of understanding may also include mitigation for the loss of Farmland of Statewide Importance and Unique Farmland, which includes rice fields that the PCCP modeled as habitat for the giant garter snake. Table BR-2 in Appendix B of the Draft EIR further details

1-3



how SMUD believes the proposed project will be as consistent as possible with PCCP requirements.

The Service would like to reiterate our concern that the proposed project may impact the PCA's ability to successfully achieve the goals of the PCCP's Conservation Strategy. SMUD has included Mitigation Measures 3.4-8 and 3.4-10 that provide mitigation fees for impacts to the burrowing owl and Swainson's hawk, but SMUD is not proposing mitigation fees for other Covered Species in the PCCP that have modeled habitat within the proposed project area, such as the federally threatened giant garter snake. Because the PCCP's fees are structured to incorporate the cost of mitigation for all Covered Species, we recommend that the EIR include a mitigation measure committing to paying mitigation fees for each of the PCCP Covered Species that have modeled habitat within the proposed project area.

We are limiting our comments to the scope of the species included in the EIR's mitigation measures at this time. The Service works closely with the PCA on the implementation of the PCCP and we appreciate the work that SMUD has done so far to coordinate with the PCA on a potential memorandum of understanding regarding payment of mitigation fees. We encourage SMUD to continue to incorporate feedback from the PCA on the proposed project design. We look forward to continuing to work with SMUD, the PCA, and other federal and state resource agencies as this project moves forward.

If you have any questions regarding this letter, please contact Ian Perkins-Taylor, Senior Fish and Wildlife Biologist, by email ([ian\\_perkins-taylor@fws.gov](mailto:ian_perkins-taylor@fws.gov)) or by phone at (916) 414-6585, or myself by email ([megan\\_cook@fws.gov](mailto:megan_cook@fws.gov)), by phone at (916) 414-6492, or at the letterhead address.

Sincerely,

Megan Cook  
Sacramento Valley Division Supervisor

1-3  
(Cont)

1-4

<b>Letter 1 Response</b>	<b>Megan Cook, Sacramento Valley Division Supervisor United States Department of the Interior October 25, 2022</b>
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1-1 Comment noted. No further response is required.

1-2 Commenter acknowledges that the PCCP does not apply to the project. The commenter, however, does request close coordination with the PCA, which has been ongoing since the start of the environmental review, and continues as the project moved into the permitting phase. All measures in the DEIR were developed to be consistent with the PCCP to the greatest extent feasible. Table BR-2 in Appendix BR-1 of the DEIR provides a side-by-side comparison of mitigation measures in this EIR with conservation measures in the PCCP. For additional details, please see Section 3.4.3.2 Consistency with the Placer County Conservation Program on page 3.4-55 of the DEIR.

1-3 As detailed in the DEIR, SMUD conducted a project specific assessment of the project area for giant garter snake, prepared by Eric Hansen, a well-known expert on the species. The assessment determined that it was highly unlikely for the species to occur in the project area, thus the EIR determined that no impact on the species would occur. For the purpose of consistency with the PCCP and at the request of Placer County and the PCA, SMUD included *Mitigation Measure 3.4-5. Conduct Pre-construction surveys for Giant Garter Snake and Implement Avoidance and Minimization Measures* as detailed on page 3.4-62.

As mentioned by the commenter, SMUD is proposing to mitigate for Farmland of Statewide Importance and Unique Farmland. This includes mitigation for all rice fields in the project area that will be impacted by the project. Rice fields are considered “modeled habitat” for the giant garter snake in the PCCP, though SMUD’s modeling of the project area identified no giant garter snake habitat. Nonetheless, it should be noted that mitigation for the loss of these specific types of farmland and the rice fields they support would be in the form of payment of in-lieu fees for land conversion to the PCA. The PCCP specifically allows for mitigation for activities not covered by the plan in Section 8.4.8. This section states that such lands may complement and augment conservation achieved by the plan, if the location and management of the lands is consistent with the HCP/NCCP goals and objectives. Funds paid to the PCA by SMUD in accordance with Section 4.8.4 would thus specifically be available to the PCA to use in advancing the goals of the PCCP. While these fees are not called “mitigation fees for modeled giant garter snake habitat” in the DEIR and such fees not are necessary because no impact to actual giant garter snake habitat will occur, the fees amount to the functional equivalent of compensatory mitigation as they mitigate for the conversion of rice habitat at a one-to-one ratio to the extent that the PCCP makes a blanket determination that all rice fields constitute giant garter snake modeled habitat. As mentioned by the commenter, the payment of land conversion fees provides compensatory mitigation for all covered species. Thus, while the lack of specifically called out compensatory mitigation for giant garter snake modeled habitat might initially appear to be inconsistent with the PCCP, SMUD firmly believes that with



payment of these land conversion fees for the loss of important farmland, the project will not keep the PCCP from achieving its goals.

To clarify the intent of the payment with regards to rice fields, the following has been added to the second paragraph discussing PCCP consistency on page 3.4-86 in the Biological Resources section of the DEIR:

However, in order to mitigate for project impacts, the project will provide compensatory mitigation as detailed above under sensitive natural communities, wetland and other waters of the United States, and burrowing owl and Swainson's hawk. In addition, as detailed in Mitigation Measure 3.2-1 Preserve Important Farmland on page 3.2-12 in the Agriculture and Forestry section of the DEIR, the project will also mitigate at a 1:1 ratio for the loss of Farmland of Statewide Importance and Unique Farmland, which include all rice fields in the project area. These impacts on aquatic resources, and PCCP covered species and their habitat, and farmland/rice fields in the project area, may be compensated through the payment of land conversion fees into the PCCP's in-lieu fee program consistent with Section 4.8.4 of the PCCP under a Memorandum of Understanding (MOU) with the PCA, as detailed under Mitigation Measures 3.4-8., 3.4-10, and 3.4-16 above, and Mitigation Measure 3.2-1 on page 3.2-12 in the Agriculture and Forestry Resources section of the DEIR. This mitigation includes a functional equivalent of payment for modelled habitat for giant garter snake, as it compensates for the loss of rice fields through payment of land conversion fees. Therefore, the proposed project contributes to the achievement of the goals of the PCCP as if it were paying for the conversion of modelled habitat.

This MOU would include terms and conditions ~~as needed to~~ that would ensure compensatory mitigation for the project does not conflict with the HCP/NCCP's conservation and mitigation strategy and is consistent with Section 8.4.8 of the PCCP which details the specifics of mitigation for activities not covered in the plan. The MOU ~~and would be approved~~ require approval by the PCA board and SMUD prior to issuance of improvement plans. Compensatory mitigation for the project would therefore help achieve the conservation goals of the PCCP, even though the project is not a covered activity and is not required to mitigate for impacts to giant garter snake habitat. Alternatively, in the event that SMUD cannot enter into an MOU with the PCA, the project ~~SMUD~~ may acquire credits from existing mitigation banks within the PCCP Plan Area which are approved by and in good standing with the U.S. Army Corps' Interagency Review Team, and implement other mitigation, as outlined in the mitigation measures above. Under this scenario, SMUD would seek alternative ways of mitigating for the conversion of Farmland of Statewide Importance and Unique Farmland with a strong preference for mitigation located within Placer County, that

include rice conservation for the benefit of species with modeled habitat in the project area, including giant garter snake.

Tricolored blackbird is a PCCP covered species with habitat in the project area. The Draft EIR includes a detailed discussion of tricolored blackbird in Western Placer County and in the project area and acknowledges that foraging habitat and very limited breeding habitat are present. Mitigation Measure 3.4-11 *Conduct Focused Pre-Construction Surveys for Nesting Tricolored Blackbird and Avoid Impacts During Construction* addresses the protection of breeding habitat during project construction. Any loss of foraging habitat for the species (which forages in agricultural fields and grasslands) will be offset through implementation of Mitigation Measures 3.4-8., 3.4-10, and 3.4-16 above and Mitigation Measure 3.2-1 on page 3.2-12 in the Agriculture and Forestry Resources section of the DEIR. This mitigation compensates for the loss of rice fields and grassland (which also provides suitable foraging habitat for burrowing owls and Swainson's hawks) through payment of land conversion fees.

SMUD will continue to work closely with the County, PCA, and resource agencies, including CDFW and USFWS, to ensure that any mitigation is applied in a manner that advances and does not conflict with the goals of the PCCP and is consistent with the provisions of Section 8.4.8 (Mitigation for Activities not covered by the Plan).

1-4 SMUD also appreciates the opportunity to work with the PCA and resource agencies in finding mutually beneficial mitigation options and will continue to do so as the project moves into the permitting phase.



**Letter 2**



Development Services Department  
Planning Division  
311 Vernon Street  
Roseville, California 95678-2649

October 25, 2022

Amy Spitzer, Environmental Services Department  
6201 S Street, Mail Shop B209  
P.O. Box 15830  
Sacramento, CA 95952-0830  
[Amy.Spitzer@smud.org](mailto:Amy.Spitzer@smud.org)

Via: Email (Page 1 of 2)

**Subject: SMUD Country Acres Solar Project – DEIR Comments, City of Roseville Comments**

Dear Amy:

The City of Roseville has reviewed the Country Acres Solar Project Draft Environmental Impact Report (DEIR), dated September 2022. We offer the following comments based on the information provided.

- 1) The DEIR shows a plan to locate the solar panel farm within floodplains. New energy facilities, such as the proposed project, should be resilient to natural hazards. The project design should ensure the facility is flood-damage resistant. 2-1
- 2) The City of Roseville requests the following text change to the statement below (from second paragraph of Page 3.10-24), "Adding to this problem is an increase in drainage rates from the upper watershed from the cities of Roseville and Rocklin." The City of Roseville requires all modern development to mitigate its development, at the specific plan level, to pre-project conditions. Although this is achieved differently within each specific plan, no specific plan is approved without confirmation that the plan meets the City's drainage requirements. Unless there are specifics that can be cited, we request removing reference to the City of Roseville from this sentence. 2-2
- 3) The City's preference is that construction and operational vehicle routes be limited to Placer County roadways as shown in the DEIR, which identifies project-related vehicle routes via South Brewer and South Phillip Road. It appears that the site could also be accessed using Blue Oaks Boulevard on the north, and Santucci Boulevard on the south. The City requests that the transportation plan specifically cite that these City roads are not construction or operational routes for the project. 2-3



Country Acres Solar Project EIR  
April 2023

SMUD Country Acres Solar Project – City of Roseville Comments Oct. 26, 2022  
Page 2 of 2

Thank you for your consideration of these comments. If you have any questions regarding these comments please contact me at (916)774-5536 or [tshirhall@roseville.ca.us](mailto:tshirhall@roseville.ca.us).

Sincerely,

A handwritten signature in blue ink that reads "Terri Shirhall".

Terri Shirhall  
Environmental Coordinator

cc: Stefanie Kemen, City of Roseville ([skemen@roseville.ca.us](mailto:skemen@roseville.ca.us))

**Letter  
2  
Response****Terri Shirhall, Environmental Coordinator  
City of Roseville  
October 25, 2022**

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2-1 The project has been designed to ensure that the facility is flood-damage resistant. As discussed on page 3.10-44 in the Hydrology and Water Quality section, there is an existing dirt road crossing over the Curry Creek mainstem in the southern portion of the project site, which is below the 100-year water surface elevation based on FEMA floodplain modeling. This crossing may require minor improvements to reinforce the surface of the road to accommodate construction traffic; the project proponent is actively meeting with the County to determine how to specifically improve the crossing to match the existing FEMA model for the area. Any design solution worked out to meet County requirements will become part of the CUP.

Although on-site dirt and gravel access roads would be constructed, these roads would not require crossing the FEMA Regulatory Floodway. Furthermore, these improvements would not require in-channel work and would not affect floodplain hydraulics or impede flood channel flows, as modeled in the hydraulic analysis, because the access roads would not be raised above the FEMA 100-year surface elevation. During the winter rainy season, the access roads to some of the PV arrays may occasionally be temporarily inundated with water; however, project operation would accommodate the occasional periodic, short-term lack of availability of internal access roads to the PV arrays, which would rarely be used. The access roads to the substation, BESS area, switchyards, and project control buildings (in the southern portion of the project site, near Baseline Road) would not be constructed within any type of floodplain. As noted in Chapter 2, "Project Description," the PV panels would be mounted on driven steel pile foundations, which would provide the necessary anchoring to resist lateral forces generated by the movement of water where the piers would be installed in the floodplain, as required by Section 15.52.170 of the County's Flood Damage Prevention Ordinance. The PV arrays themselves would be raised above the 100-year flood water surface elevation; only the steel piers holding the PV arrays would be in the floodplain. Each steel pier is small and placement of a number of small piers is not expected to adversely impact floodplain capacity or hydrology. Similarly, placement of these poles is not considered "fill" of jurisdictional wetlands regulated under Section 404 of the Federal Clean Water Act (please see Title 33 Code of Federal Regulations § 323.3 Discharges requiring permits (c) pilings at the following link: <https://www.ecfr.gov/current/title-33/chapter-II/part-323/section-323.3>). This approach was recently used for SMUD's Rancho Seco II Solar Project in Sacramento County and the USACE has indicated in a pre-consultation meeting regarding the Country Acres Solar Project that the same approach would be applicable.

2-2 As requested by the City of Roseville, the following paragraph on page 3.10-24 has been edited:

Flood management for the Curry Creek and Pleasant Grove Creek watersheds is provided by Placer County and the PCFCWCD in the Placer County portions of the watershed, and Reclamation District No. 1000 for the Sutter County sections of the watershed (downstream and west of the project site). The lower watersheds flood regularly with water overtopping of the banks annually in some areas. This problem is caused by several factors that have occurred both locally in the Pleasant Grove and Curry Creek watershed and in the greater Sacramento River watershed. Starting in the early 1900s, levees and dikes were installed to protect landowners and assist farmers. This practice has resulted in a highly channelized and confined stream system, especially in the lower watershed, which has effectively eliminated the natural floodplain. The confined channels cause increased stream stage heights which then typically results in flooding of areas just upstream of bridges that have become undersized with respect to the increased stage heights. Adding to this problem is an increase in drainage rates from the upper watershed of Pleasant Grove and Curry Creek ~~from the cities of Roseville and Rocklin~~. Development typically increases the amount of impervious surfaces, such as roads, parking lots, and roofs, within a watershed. All of these impervious surfaces lead to increased runoff volumes and response times to storm events. The greatest single factor in increased flooding is elevated stage heights in the Sacramento River caused by development throughout the drainage basin. The increased stage heights create a pressure head differential which restricts flood waters that are draining from the watershed from entering the Sacramento River. This causes water to back up through the Natomas Cross Canal, up the Pleasant Grove Creek Canal, and into both Pleasant Grove and Curry Creeks (Foothill Associates 2006:2-39 through 2-42).

2-3 Comment noted. As discussed in Chapter 2, "Project Description," most of the construction traffic would likely originate from Baseline Road via Highway 99, but may also access the site from the east via Interstate 80 to Watt Avenue to Baseline Road. The project site may also be accessed from South Brewer Road to the west and Phillip Road to the north. However, specifics of the transportation roads are not known at this time. Mitigation Measure 3.17-2. *Prepare and Implement a Construction Transportation Plan* on page 3.17-13 of the Draft EIR has been amended to specifically allow Placer County to share the transportation plan with other interested parties, like the City of Roseville, to accommodate specific exclusions of certain roads, if warranted. The last sentence of that mitigation measure on page 3.17-14 has been revised as follows:

The construction contractor shall submit the CTP to Placer County for review and approval 30 days prior to commencing construction activities. Placer County may share the plan with other interested parties at its discretion and incorporate specific input from third parties into the plan comments as it deems appropriate.



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**Letter 3**

State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
North Central Region  
1701 Nimbus Road, Suite A  
Rancho Cordova, CA 95670-4599  
916-358-2900  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

GAVIN NEWSOM, Governor  
CHARLTON H. BONHAM, Director



November 1, 2022

Amy Spitzer  
SMUD Environmental Services  
P.O. Box 15830 MS H201  
Sacramento, CA 95852-0830

Dear Ms. Spitzer:

Subject: COUNTRY ACRES SOLAR PROJECT  
DRAFT ENVIRONMENTAL IMPACT REPORT (DEIR)  
SCH# 2021110307

The California Department of Fish and Wildlife (CDFW) received and reviewed the Notice of Availability of a DEIR from the Sacramento Municipal Utility District (SMUD) for the Country Acres Solar Project (Project) pursuant the California Environmental Quality Act (CEQA) statute and guidelines.<sup>1</sup> CDFW previously submitted comments in response to the Notice of Preparation of the DEIR on December 17, 2021.

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish, wildlife, native plants, and their habitat. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may need to exercise its own regulatory authority under the Fish and Game Code.

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (Fish & G. Code, § 1802.) Similarly for purposes of CEQA, CDFW provides, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

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Country Acres Solar Project  
November 1, 2022  
Page 2

example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), SMUD may seek related take authorization as provided by the Fish and Game Code. CDFW also administers the Native Plant Protection Act, Natural Community Conservation Act, and other provisions of the Fish and Game Code that afford protection to California's fish and wildlife resources.

### PROJECT DESCRIPTION SUMMARY

The Project site is located on approximately 1,170 acres of land in unincorporated southwestern Placer County just west of the City of Roseville, north of Baseline Road and east of South Brewer Road. Primary access to the Project site would be provided by an entry road from Baseline Road to the south and Phillip Road to the north. The Project site includes grassland, agricultural rice fields, and almond orchards, with scattered seasonal wetlands, including vernal pools. The site also includes several drainages, including segments of upper Curry Creek.

The Project consists of the construction and operation of a photovoltaic (PV) solar power and battery storage facility and interconnection facilities, including a generation substation, switch station, and interconnection lines, that would provide new power production capacity of up to 344 megawatts delivered at the point of interconnection with the grid managed by SMUD. In addition, the Project also includes limited grading and vegetation removal and other minor site improvements to facilitate construction. Project construction would take approximately 18 to 24 months and is proposed to begin in spring of 2023. At the end of the Project's useful life (anticipated to be 30 to 35 years), the site would be decommissioned; however, SMUD may retain the substation, switching station, and battery storage facilities.

### COMMENTS AND RECOMMENDATIONS

Over the past year, CDFW has participated in multiple coordination meetings with SMUD, the Placer Conservation Authority (PCA), Placer County, and other State and federal regulatory agencies to discuss the Project, including meetings on June 2, 2022, July 19, 2022, and October 5, 2022. Some of the comments below reflect discussions that occurred during those coordination meetings. CDFW offers these comments and recommendations to assist SMUD in adequately identifying and, where appropriate, mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

#### Placer County Conservation Program

The Project is largely located within the Valley Potential Future Growth Area of the Placer County Conservation Program (PCCP), with a 57.79-acre portion of the northern and western Project boundaries falling within the PCCP Reserve Acquisition Area (RAA).

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(Cont.)

3-2



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The PCCP consists of three planning documents published by Placer County: the Western Placer County Habitat Conservation Plan and Natural Community Conservation Plan (HCP/NCCP), the Western Placer County Aquatic Resources Program (CARP), and the Western Placer County In-Lieu Fee Program (ILF). The PCCP was approved and adopted by the Permittees (Placer County, City of Lincoln, South Placer Regional Transportation Authority, Placer County Water Agency, and the PCA) and received corresponding HCP/NCCP permits and incidental take coverage for the fourteen (14) Covered Species from the Wildlife Agencies (CDFW, U.S. Fish and Wildlife Service, and National Marine Fisheries Service). In addition, the Central Valley Regional Water Quality Control Board, U.S. Army Corps of Engineers, and U.S. Environmental Protection Agency are the permitting and oversight agencies for elements of the PCCP subject to the state Porter-Cologne Water Quality Act and the federal Clean Water Act, addressed by the CARP and ILF. Because SMUD is not a Permittee under the PCCP, and municipal power generation is not considered a Covered Activity under the PCCP, SMUD cannot receive coverage under the PCCP's incidental take permits or programmatic wetland permits as a Special Participating Entity.

DEIR Table 3.4-6 identifies the impact acreages to the vegetation communities/land cover types within the Project footprint based on an overlay of 10% design features, and crosswalks those impacts with the corresponding PCCP land cover types. The DEIR proposes Mitigation Measures 3.2-1, 3.4-8, 3.4-10, and 3.4-16 to provide compensatory mitigation for important agricultural lands (Farmland of Local Importance and Unique Farmland), sensitive natural communities, wetlands and other waters of the United States and waters of the State, western burrowing owl (*Athene cunicularia hypugaea*), and Swainson's hawk (*Buteo swainsoni*). These mitigation measures generally state that compensatory mitigation will take place via acquisition of in-kind conservation easements, purchase of mitigation bank credits or other agreements with 3<sup>rd</sup> party entities to fund acquisition and management of land/easements, or payment of fees to the PCA under a Memorandum of Understanding (MOU).

CDFW is concerned with the proposed Project's consistency with the PCCP, including how SMUD will ensure that the Project will not impede the PCCP's ability to meet its biological goals and objectives over the 30–35-year life of the Project. While the DEIR proposes mitigation for some of the impacted PCCP land cover types identified in Table 3.4-6 (impacts include approximately 832 acres of rice fields), the proposed species mitigation measures only address compensatory mitigation for the loss of western burrowing owl nesting and foraging habitat (Mitigation Measure 3.4-8) and Swainson's hawk foraging habitat (Mitigation Measure 3.4-10). CDFW recommends that the final EIR include compensatory mitigation for all PCCP Covered Species modeled habitat that will be permanently impacted by the Project, including giant garter snake (*Thamnophis gigas*). Additionally, CDFW recommends that any compensatory mitigation for impacts to PCCP Covered Species modeled habitat be as consistent as possible with the PCCP conservation strategy. Mitigation lands preserved for this project should also be located within the PCCP RAA.

CDFW encourages SMUD to continue working with the PCA, Placer County, and the State and federal regulatory agencies with permitting authority over the Project to develop a

3-2  
(Cont.)



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Country Acres Solar Project  
November 1, 2022  
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mitigation strategy that is as consistent as possible with the PCCP's conservation strategy, biological goals and objectives, and conditions on covered activities.

3-2  
(Cont.)**CESA Candidate Bumble Bee Species**

Project-related activities have the potential to impact habitat of the Crotch's bumble bee (*Bombus crotchii*) and western bumble bee (*Bombus occidentalis occidentalis*), both listed as candidate species under CESA. As candidate species, they receive the same legal protections afforded to endangered or threatened species (Fish and G. Code §§ 2074.2 and 2085). The DEIR does not analyze potential Project impacts to Crotch's and western bumble bee and associated habitats. Without appropriate avoidance and minimization measures for the bumble bees and their habitat, Project-related activities involving ground and vegetation-disturbance could result in significant impacts, including loss of foraging resources, changes in foraging behavior, burrow collapse, nest abandonment, reduced nest success, reduced health and vigor of eggs, young and/or queens, and direct mortality.

Due to the presence of suitable Crotch's and western bumble bee habitat within the Project site, CDFW recommends that the final EIR includes appropriate avoidance, minimization, and mitigation measures that will be implemented during the Project construction and operation. CDFW recommends that prior to vegetation removal and/or grading, a qualified entomologist familiar with the species' behavior and life history conducts surveys to determine the presence/absence of Crotch's and western bumble bee. Surveys should be conducted during flying season when the species are most likely to be detected above ground, between March 1 to September 1 (Thorp et al. 1983). During surveys, the qualified entomologist should flag inactive small mammal burrows and other potential nest sites to reduce the risk of take. Once Project activities begin, the qualified entomologist should continuously monitor potential nest sites and floral resources for Crotch's and western bumble bee activity for the duration of construction. If either species is detected, the qualified entomologist should notify CDFW immediately as further coordination may be required to avoid or mitigate significant impacts. Survey results including negative findings should be submitted to CDFW prior to initiation of Project activities.

3-3

If "take" to Crotch's or western bumble bee cannot be avoided either during Project construction or over the life of the Project, SMUD should consult with CDFW to determine if a CESA incidental take permit is necessary prior to starting any construction activities.

**ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). The CNDDDB field survey form can be found at the following link: <https://www.wildlife.ca.gov/Data/CNDDDB/Submitting-Data>. The completed form can be submitted online or mailed electronically to CNDDDB at the following email address: [CNDDDB@wildlife.ca.gov](mailto:CNDDDB@wildlife.ca.gov).

3-4

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**FILING FEES**

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

3-5

**CONCLUSION**

Pursuant to Public Resources Code §21092 and §21092.2, CDFW requests written notification of proposed actions and pending decisions regarding the proposed project. Written notifications shall be directed to: California Department of Fish and Wildlife North Central Region, 1701 Nimbus Road, Rancho Cordova, CA 95670 or emailed to R2CEQA@wildlife.ca.gov.

3-6

CDFW appreciates the opportunity to comment on the DEIR to assist in identifying and mitigating Project impacts on biological resources. CDFW personnel are available for consultation regarding biological resources and strategies to minimize and/or mitigate impacts. Questions regarding this letter or further coordination should be directed to Patrick Moeszinger, Senior Environmental Scientist (Specialist) at (916) 767-3935 or patrick.moeszinger@wildlife.ca.gov.

Sincerely,

DocuSigned by:  
  
A2AGASRCS7EC0465  
Kevin Thomas  
Regional Manager

ec: Juan Torres, Senior Environmental Scientist (Supervisor)  
Patrick Moeszinger, Senior Environmental Scientist (Specialist)  
*Department of Fish and Wildlife*

Office of Planning and Research, State Clearinghouse, Sacramento

**REFERENCES**

Thorp, R. W., D. S. Homing, Jr., and L. L. Dunning. 1983. Bumble bees and cuckoo bumble bees of California. *Bulletin of the California Insect Survey* 23: 1-79.

<b>Letter 3 Response</b>	<b>Kevin Thomas, Regional Manager California Department of Fish and Wildlife November 1, 2022</b>
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3-1 Comment noted. No further response is required.

3-2 SMUD appreciates the frequent coordination with the Department over the past year and looks forward to a continued discussion as the project moves towards implementation.

As stated by the commenter, 57.79 acres of the project site overlap with the PCCP's reserve acquisition area (RAA). While this initially appears to be inconsistent with the goals of the PCCP, the project team has analyzed this area in more detail and determined that this section of RAA is fragmented, occurring south of Phillip Road. Habitat in this location consists of rice fields with ruderal vegetation present along the shoulder of Phillip Road. Coordination with the County and PCA determined that it is possible that this fragmented strip of land was included in the RAA due to its designation as a buffer to a conservation easement for the City of Roseville. The project is a solar project with a 30-35 year lifespan. Should this area be determined crucial for achieving the goals of the PCCP through maintaining the buffer of the City of Roseville's conservation easement, the habitat in this buffer area could be restored to open space as necessary at the end of the solar project's lifespan. As the commenter notes, SMUD has been working closely with the PCA, Placer County, and the state and federal regulatory agencies to ensure that the project, including the overlap into the RAA, is not considered to be in conflict with the goals of the PCCP.

With regard to mitigation for all PCCP covered species, including giant garter snake with modelled habitat in the project area, please see response to USFWS comment 1-3 above for additional detail on how the proposed mitigation measures will compensate for impacts to these species through the payment of land conversion fees consistent with Section 4.8.4 (Mitigation for Activities not Covered by the Plan) of the PCCP. Applying these land conversion fees to the acquisition of lands in the RAA and ensuring the greatest benefits to covered species will ultimately be up to the PCA as the recipients of these funds.

SMUD will continue to work closely with the Department, the USFWS and the PCA to avoid conflict with the goals of the PCCP.

3-3 Potential suitable habitat for Crotch's and western bumble bee in the project area is limited to natural vegetation, namely the annual grassland interspersed with vernal pools in the northwestern corner of the project area. Only a small area of this habitat will be used by the project and the impact footprint within this habitat is currently being refined as 30% design drawings are developed and will likely further decrease. The likelihood of either of these species occurring within the project area is very low. Crotch's bumble bee was historically common in the Central Valley of California; however, it now appears to be absent from most of it, especially in the center of its historic range where the project



area falls. Additionally, the project area does not fall within the 2002 to 2012 projected extent of occurrence for western bumble bee (Xerces Society 2018). Further, the decline of these species is largely attributed to the habitat loss resulting from conversion of grasslands and prairies to agricultural lands (Xerces Society 2018). Most of the project area is currently in use for agricultural purposes, with limited natural landscape remaining in small fragments. The natural landscape that could be suitable habitat for these species within the project area is scarce and surrounded by agricultural lands, making the remaining suitable habitat isolated from any potential nearby habitat. The greatly diminished range of this species in combination with the lack of suitable habitat makes occurrence of this species within the project area unlikely.

Please note that any grassland converted by the project would be compensated for, as the grassland serves as suitable foraging habitat for Swainson's hawk. As detailed in Mitigation Measure 3.4-10. *Compensate for the Loss of Swainson's Hawk Foraging Habitat*, SMUD will provide compensatory mitigation for loss of Swainson's hawk foraging habitat. Where this mitigation will occur in the form of annual grassland, it will also benefit native bumble bees and other pollinators. Furthermore, the project proposes grazing and native pollinator habitat in the extensive area to be covered by solar panels (currently mostly covered by rice). The presence of additional grazing and native pollinator habitat will largely increase the suitability of the project site for Crotch's and western bumble bee and other native pollinators compared to current conditions (i.e., rice fields). These changes should provide a net increase to the amount of habitat useable by native bumble bees. SMUD will continue to coordinate closely with the Department to ensure the project does not result in adverse impacts on Crotch's and western bumble bee.

3-4 Any special-status species found during project specific surveys will be reported to the California Natural Diversity Database.

3-5 SMUD will pay all applicable fees at the time of filing of the Notice of Determination for the EIR.

3-6 SMUD will notify CDFW of proposed actions and pending decisions and will continue to work closely with CDFW as the project moves into permitting. SMUD appreciates the Department's support.



# Country Acres Solar Project EIR

April 2023



Plan Review Team  
Land Management

PGEPlan **Letter 4**

September 20, 2022

Amy Spitzer  
SMUD  
6201 S Street, Mail Stop B209  
Sacramento, CA 95817

Ref: Gas and Electric Transmission and Distribution

Dear Amy Spitzer,

Thank you for submitting the SCH#2021110307 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: [https://www.pge.com/en\\_US/business/services/building-and-renovation/overview/overview.page](https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page).
2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.
3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851 filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team  
Land Management

4-1

**Attachment 1 – Gas Facilities**

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: <https://www.usanorth811.org/images/pdfs/CA-LAW-2018.pdf>

1. Standby Inspection: A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.

2. Access: At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

3. Wheel Loads: To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. Grading: PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.

5. Excavating: Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 12 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch

4-2



wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches  $[24/2 + 24 + 36/2 = 54]$  away, or be entirely dug by hand.)

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 12 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible (90° +/- 15°). All utility lines crossing the gas pipeline must have a minimum of 12 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.

4-2  
(Cont.)





11. Cathodic Protection: PG&E pipelines are protected from corrosion with an "Impressed Current" cathodic protection system. Any proposed facilities, such as metal conduit, pipes, service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

4-2  
(Cont.)

**Attachment 2 – Electric Facilities**

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as **"RESTRICTED USE AREA – NO BUILDING."**
2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.
3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&E's facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.
4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 10 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.
5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.
6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.
7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.

4-3



8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (<https://www.dir.ca.gov/Title8/sb5g2.html>), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 ([http://www.cpuc.ca.gov/gos/GO95/go\\_95\\_startup\\_page.html](http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html)) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

4-3  
(Cont.)

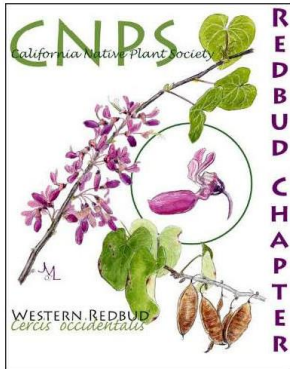
<b>Letter 4 Response</b>	<b>SMUD Plan Review Team—Land Management September 20, 2022</b>
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4-1 Comment noted. SMUD will coordinate with PG&E regarding any PG&E owned property and/or easements to ensure compatible uses and activities near PG&E's facilities.

4-2 Comment noted. SMUD will coordinate with PG&E regarding gas transmission pipelines and/or facilities in the area.

4-3 Comment noted. SMUD will coordinate with PG&E regarding any PG&E owned property and/or easements to ensure compatible uses and activities near PG&E's electric facilities.

**Letter 5****Redbud Chapter**  
**California Native Plant Society**  
Serving Placer and Nevada CountiesP.O. Box 266, Nevada City CA 95959  
<https://chapters.cnps.org/redbud/>

October 26, 2022

Amy Spitzer  
SMUD Environmental Services  
P.O. Box 15830 MSH 201  
Sacramento, CA 95852-0830Submitted via email to: [Amy.spitzer@smud.org](mailto:Amy.spitzer@smud.org)

Re: Response to DEIR for Proposed County Acres Solar Project

Dear Ms. Spitzer,

The California Native Plant Society is a Statewide non-profit organization seeking to preserve our state's unique botanical heritage, conserve special status plant species and sensitive natural communities, and increase understanding and appreciation of California's native plants. Thank you for the opportunity to comment on the Draft Environmental Impacts Report for SMUD's County Acres Solar Project (CASP).

Our comments raise several concerns and questions about gaps in the DEIR that must be addressed.

First, the surveys of plants conducted for the CASP do not meet the standards of the California Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations in several respects, including the absence of a complete list of all plants and natural communities detected in the project area, which makes it impossible to determine if special status plants were not correctly identified. In addition, the plant surveys that were conducted failed to search for several special status plants on the premise that there were no nearby populations of such plants.

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5-3



In fact, there is documentation of three such species within the past year that was not available to the surveyors. Finally, none of the surveys were conducted at times when these special status species (and others) would be both evident and identifiable.

5-3  
(Cont.)

Further, the DEIR does not address the destruction of carbon-sequestering grasslands, or the cumulative impacts of habitat loss resulting from this project.

5-4

As stated in the [California Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations](#), promulgated by the California Natural Resources Agency, Department of Fish and Wildlife, "The conservation of special status native plants and their habitats, as well as sensitive natural communities, is integral to maintaining biological diversity."

To this end, California's Plant Survey Protocols include requirements for surveying and evaluating impacts to plants and plant communities, including standards for botanical field surveys. Under these standards, field surveys must identify every plant taxon occurring in the area to the taxonomic level necessary to determine rarity and listing status. "More than one field visit is usually necessary to adequately capture the floristic diversity of a project area."

The field survey for the SMUD project does not appear to have the required list of "all plants and natural communities detected in the project area" and does not reflect multiple field visits. In fact, field surveys are required to be conducted "at the times of year when plants will be both evident and identifiable" which is usually during flowering or fruiting. As noted below, no surveys were done when certain special status plants were likely to be "evident and identifiable."

5-5

Because no floristic plant list is provided, no review of plants possibly misidentified can be conducted. Several taxa are likely to have been misidentified at the time of survey particularly those with long blooming periods for which localized blooming times may have been outside the time at which surveys were conducted. Navarretia, Juncus, Gratiola, and Brodiaea can be very difficult to identify. With no floristic survey list, we can't be sure that other plants in these genera were indeed found and then possibly misidentified.

The DEIR for the CASP found no evidence of rare or threatened plants within a 10-mile radius of the 1,180 acre project site. The Biological Resources Report, Appendix B to the DEIR, states that the "Amount of habitat present on site is not significant to support an ongoing population of this species [*Hibiscus lasiocarpus* var. *occidentalis*]."

*Hibiscus lasiocarpus* ssp. *occidentalis* is a California Rare Plant ranked 1B.2 (Rare and moderately threatened in California with 20 to 80% of occurrences threatened / moderate degree and immediacy of threat). In September, 2022, two populations of this species were found at 38.862782,-121.294561 and 38.878615,-121.284028, respectively, within approximately 8 miles of the project site.

Amy Spitzer, SMUD Environmental Services

Page 3

A voucher specimen was collected at the first location and documentation on CNDDDB is forthcoming. The habitat where these two occurrences were found is profoundly human-impacted. The habitat is marginal and small. Yet, healthy populations survive.

Further, another listed species has been documented within 10 miles of the project site in the past year but has not yet been collected or added to the CNDDDB. *Chloropyron molle* ssp. *hispidus* is a California Rare Plant ranked 1B.1 (Rare and seriously threatened in California with over 80% of occurrences threatened / high degree and immediacy of threat) .

The reasons given for not surveying for these species in the project area are not well supported and those surveys that were conducted were completed well before these species would be evident and identifiable. The surveys conducted do not meet protocol requirements for accurately determining whether these species do occur at the project site. We recommend the appropriate habitat for these species be resurveyed when they are blooming locally: the *Chloropyron* in July through August and the *Hibiscus* in September.

We look forward to receiving your responses to our comments.

Sincerely,

Shane Hanofee  
President, Redbud Chapter  
[Redbudchapter@gmail.com](mailto:Redbudchapter@gmail.com)

Leslie Warren and Jeanne Wilson  
Co-Chairs, Conservation Advocacy Committee for Redbud Chapter  
[Redbudchapter@gmail.com](mailto:Redbudchapter@gmail.com)

↑  
5-5  
(Cont.)

<b>Letter 5 Response</b>	<b>Shane Hanofee Redbud Chapter October 26, 2022</b>
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5-1 Comment noted. No further response is necessary.

5-2 It is unclear which survey report the commenter is referring to. The rare plant survey report prepared for the Country Acres Solar Project was not included in the DEIR. The biological resources section summarizes the results of the survey, and also includes a discussion by species as to why four of the six species originally identified as potentially occurring in the project area would not be impacted by the project (the project avoids all vernal pool and seasonal wetland habitat plus a 250-foot buffer). The survey conducted in support of the project followed CDFW protocols, and includes maps of the survey area, detailed reasoning of why specific target species were included or excluded, methods and results, a list of all taxa observed, and representative photographs. The survey was conducted by qualified botanists at a time of year (early May 2022) when the two target species (dwarf downingia and Sanford's arrowhead) would have been present and identifiable. As identified in Table 3.4-4 Special Status Plants with Potential to occur in the SMUD Country Acres Solar Project Area, the blooming period of dwarf downingia extends from March to May. Dwarf downingia was included in the target species because in addition to vernal pools (which will not be impacted by the project) it can occur in mesic areas which are present in limited areas of the project site. Sanford's arrowhead blooms from May through October, and would have been identifiable during the survey, both by its flowers, and by its characteristic leaves. In comment 5-4 the commenters mention the biological resources report in the DEIR and the dismissal of *Hibiscus lasiocarpus*. Appendix B of the DEIR includes biological resources related material, including a table of all special-status plant surveys with potential to occur. The table states that Hibiscus had not been documented within 10 miles of the project area. This statement is true for the time of publication of the DEIR. The commenters mention that the species has since been documented within 8 miles of the project area. We encourage the commenter to submit these data to the CNDDB so it will come up in future database searches for the area. Suitable habitat for *Hibiscus lasiocarpus* in the project area would occur in the marshy areas and along drainages in the project area. These areas will either be avoided by the project (marshes), or were surveyed for special-status plants (drainages) as they also provide suitable habitat for Sanford's arrowhead. Although the botanical surveys did not coincide with the blooming period of *Hibiscus lasiocarpus*, the shrub is easily identifiable outside of its blooming period due to visible characteristic features. No hibiscus shrubs were identified on the project site and their occurrence is unlikely. No further surveys are warranted.

5-3 Please also note that SMUD has been coordinating closely with the California Department of Fish and Wildlife on the biological resources analysis conducted in support of the DEIR and project permitting and consistency with the PCCP. The Department has not expressed any concerns about SMUD's approach to special-status plant impact analysis, or any of the species-specific surveys conducted in support of the project.



5-4 The commenter provides no basis for their claim that the project would result in destruction of carbon-sequestering grasslands. The loss of grassland resulting from the proposed project will be mitigated through the mitigation of Swainson's hawk foraging habitat. Furthermore, as stated in the Project Description of the DEIR, all areas under the solar panels will be re-vegetated with native grasses and pollinator habitat, which will allow the land to continue providing carbon sequestration functions.

With regard to the commenter's concern regarding cumulative impacts, please refer to Chapter 4 of the DEIR which discusses cumulative impacts, as mandated by CEQA.

5-5 See response to comment 5-2 above regarding specifics of the special-status plant survey conducted for the Project and the discussion of the potential for *Hibiscus lasiocarpus* to occur in the Project area. The special-status plant survey conducted for the project meets all regulatory requirements. No further revisions to the biological resources section are necessary and no further special-status plant surveys are needed at this time.

**Letter 6**

October 26, 2022

SMUD Environmental Services  
P.O. Box 15830 MSH 201  
Sacramento, CA 95852-0830  
Attn: Amy Spitzer

Subject: County Acres Solar Project

Dear Ms. Spitzer,

The Alliance for Environmental Leadership (AEL) appreciates the opportunity to submit comments on the DEIR for the SMUD Community Acres Solar Project. We are an alliance of 16 environmental and civic organizations, several of which contributed content to this letter.\*

What are the heat island effects of the project? How will these effects be mitigated? To what degree does the heat island effect contribute to warming in the mountains and loss of Sierra snowpack? What is the environmental and economic impact to Placer County's tourism-economy of waste heating in the short and long term? What alternative site development concepts would reduce heat island impacts?

6-1

While the CASP will provide carbon zero electricity to 80,000 homes, how much CO<sub>2</sub> will be generated in the fabrication, installation and servicing of the project? How much CO<sub>2</sub> sequestration value will be lost with the elimination of 1.176 acres of carbon sequestering habitat? Please break this out in a manner to facilitate analysis. For instance - identify cradle to grave carbon sources from making and transport of concrete foundation material to excavation of metals necessary for panel fabrication, to access road construction, VMT during construction and including materials transport from global sites, and materials, construction, etc. We are seeking information to ascertain if, when all inputs necessary for development are counted and grassland ecosystem services are recognized, if, there is, in fact, a net CO<sub>2</sub> benefit and what that is.

6-2

What ecosystem services (carbon sequestration, flood control, drought mitigation, species habitat etc.) does the site currently provide? Please describe what life forms will survive and

6-3

what ecosystem services will be present after project completion. To what extent does the functioning grassland ecosystem function better for carbon sequestration than the solar farm? What is the total annual ecosystem service capacity of the site for carbon sequestration? What is the anticipated loss of carbon sequestration services from the site over the life of CASP and what is the net carbon benefit with the CASP? . Please compare this to solar farm generation predictions and create a net value considering not only flora, but water sequestration, the loss of ecosystem services necessary for all species (avian, mammal, amphibian etc.) that utilize the site permanently or as migrant visitors. Does SMUD have a caretaking obligation for habitat that is critical to the survival of non-human species - flora and fauna?	6-3 1 (Cont.) 6-4
Innovative technology and disruptive technologies can alter a society in a matter of a very few years. An example is how horses and buggies were displaced by automobiles in San Francisco in just 10 years. To what extent are new energy generation technologies anticipated to “disrupt” the need for vast solar farms in the near future?	6-5
Grasslands are among the most vulnerable ecosystems in the world. Over the last decade, millions of acres of grasslands have been lost to development, wildfire, fragmentation and other threats. While forests mostly store carbon in woody biomass and leaves, grasslands sequester most of their carbon in their roots underground. That makes grasslands a more reliable carbon sink than forests, which release their sequestered carbon back into the atmosphere when logged or when affected by wildfire. Globally, grasses sequester 3 gigatonnes of carbon per year - equivalent to reducing atmospheric CO <sub>2</sub> by 50 ppm over 50 years. Soil carbon makes up approximately 81% of total ecosystem carbon found in grasslands. How much soil carbon and below ground biomass sequestered carbon will be lost during each phase of the CASP and over the lifetime of the project? By extension, how does this carbon sequestration value compare to the CO <sub>2</sub> offsets anticipated with the CASP project. What is the “net” benefit of the CASP project if CO <sub>2</sub> generation in all phases of project development and CO <sub>2</sub> offsets are measured?	6-6
What policy guidance does the Governor’s Climate Action Strategy provide for soil-carbon conservation? How much soil sequestered carbon will be emitted into the environment during the construction phase?	6-7
How will the CASP affect achievement of revenue goals necessary to implement PCCP? Will SMUD meet PCCP mitigation ratios?	6-8
A 2007 Jones and Stokes report, prepared for the County of Placer, identified the area of the CASP as the winter home to the densest and most diverse raptor population in North America. The DEIR fails to address how cumulative losses of grassland will affect these bird species	6-9

whose populations are in precipitous decline. Grassland bird populations are declining at the highest rate of all avian species due to habitat loss. What is the current status of grassland bird populations and what members of this community depend upon the project site for survival? Grassland sites are highly productive for wildlife because they act as insect nurseries and provide food necessary for all trophic level residents. What impacts will the project have on the precipitous decline of insect population?

2  
6-9  
(Cont.)

With the approval of the Sunset Area Plan, the County of Placer has approved a massive urban development scheme for West Placer. What is the total acreage of Placer County grassland that has been and will be converted to urban uses since 1970?

6-10

How will conversion of this site to CASP affect the Federally-listed and special status species including:

- Swainson's hawk
- Western burrowing owl
- Tricolored black bird
- California black rail
- Vernal Pool branchiopods
- Valley elderberry longhorn beetle
- Western pond turtle
- Giant garter snake
- Western spadefoot
- Loggerhead shrike
- Bat species
- Dwarf downingia
- Boggs lake hedge-hyssop
- Sanford's arrowhead
- Other listed and non-listed species of special concern and migratory bird species

6-11

The Project area comprises a significant amount of active and inactive rice fields which also support vernal pool grasslands, and other natural and semi-natural lands. The rice fields include irrigated wetlands, the vernal pool grasslands include vernal pools, seasonal wetlands, and other waters. All of which provide habitat to listed and non-listed species. How is this project consistent with the Governor's Agricultural Lands Conservation Policy? Please describe how conversion of irrigated farmland to CASP meets the intention of this Policy.

6-12

What is the extent of wetland loss anticipated in the project? To what extent are these wetlands Vernal Pools? Over 95% of CA's historical vernal pool complexes are

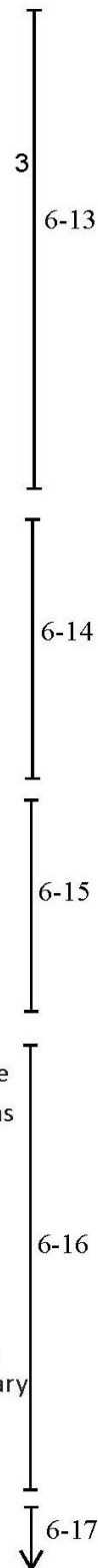
destroyed due to land conversion. As these remaining pools may be strongholds of genetic information, resources for drought adaptation strategies and stress, is SMUD utilizing best management practices in destroying them? Vernal Pools' shallow depressions contain unique soil, microbes and species unique in the world. They are essentially our own Galapagos Islands - only in reverse. What important secrets lie within these age-old biological libraries? Should they not be preserved because of the special status of species that depend upon them for survival? Is the project consistent with State policy for avoidance? What will this project contribute to cumulative Statewide yearly loss of vernal pool wetland?

What water quality and hydrologic impacts will the project have to Curry Creek and surrounding watersheds? What impacts will soil compaction and loss of plant life have on the grasslands natural ability to capture, filter and acclimate rainwater before it enters larger aquatic systems? What are the downstream flood implications? Please analyze all aspects of the change to plant cover, root systems, production and composition and the elimination of organisms living in the soil and the impact - direct and indirect on the downstream watersheds.

The State of CA's Essential Wildlife Connectivity Project identifies blocs of intact habitat that need to be maintained as corridors for wildlife. At least two of these corridors are on or proximate to the SMUD CARP site. How will SMUD accommodate wildlife movement through the CARP site? Will SMUD preserve these wildlife corridors should the CARP project be approved? How will secure wildlife mobility be preserved within the site and beyond?

Please describe the process SMUD utilized to establish that regionally, there are no alternative sites (with previously altered habitat) that are suitable, or more efficient, for redevelopment as a solar generation site. Is the choice to utilize agricultural and grassland actually the best and preferred choice? What methodology was utilized to undertake a regional survey of potential alternative sites? Certainly development is frequently more "difficult" than utilizing virgin ground; however as we experience climate catastrophe in "real-time", might there be net benefit to redevelopment; as compared to desertifying 1,176 acres of productive grassland habitat? What climate, social, benefits would be realized by utilizing an existing underutilized, abandoned, blighted site or sites vs establishing CARP on the proposed site? How was monetary consideration weighted against the existential considerations of climate change and the real value of habitat?

We are pleased to refer you to the Citizen Initiated Smart Growth Plan ([www.enviro](http://www.enviro)



[alliance.org](https://enviroalliance.org)) for a comprehensive analysis of natural systems, economic analyses and regional land use data to support your response to these questions.

↑ 6-17  
(Cont.)

4

Sincerely,

Leslie Warren  
Alliance for Environmental Leadership  
[enviroalliance.org](https://enviroalliance.org)  
[chair@enviroalliance.org](mailto:chair@enviroalliance.org)

<b>Letter 6 Response</b>	<b>Leslie Warren Alliance for Environmental Leadership September 28, 2022</b>
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6-1 The commenter asks a series of questions related to ecosystem services and environmental processes (heat island effects, mountain warming, snowpack loss, economic impacts, alternative concepts), but provides no evidence of impacts or basis for further analysis as a result of the project relative to those issues. Further, the proposed project includes revegetation under the solar panels following construction, which has been shown in limited studies to reduce the potential heat-island effects of the panels. It should be noted that SMUD is undertaking the project to meet its zero carbon goal by 2030. SMUD is taking on a leading role to achieve regional carbon neutrality at the earliest possible date in an effort to contribute to the climate change effects solution.

6-2 The kind of calculations requested by the commenter reach far beyond those required in a CEQA analysis. Furthermore, the commenter does not provide substantial evidence that these kinds of calculations would be necessary to further the analysis. Carbon emissions from construction traffic and project operation of the project are analyzed in Section 3.3 Air Quality and also taken into account in Section 3.8 Greenhouse Gas Emissions of the DEIR. Please note that the total habitat conversion is far below the total acreage of the 1,176 acres cited by the commenter. In fact, the entire acreage below the solar panels (more than 800 acres) will be re-vegetated following construction, and managed as grazing habitat including habitat for native pollinators, restoring the carbon sequestration capacity of these lands once construction is complete.

6-3 The commenter asks a series of questions related to ecosystem services, but provides no evidence of impacts or basis for further analysis as a result of the project relative to those issues. Detailed information on the habitat types currently present at the project site and the species using these habitats is provided in Section 3.4 Biological Resources of the EIR, and numerous protocol level surveys are underway as outlined in the mitigation measures in Section 3.4. Furthermore, SMUD is working closely with the wildlife agencies (USFWS, CDFW), Placer County, and the PCA to ensure the project is not in conflict with the goals of the PCCP.

6-4 The commenter asks a series of questions related to ecosystem services and environmental processes (carbon sequestration of solar farm vs. grassland, annual carbon sequestration capacity, solar farm generation predictions, water sequestration), but provides no evidence of impacts or basis for further analysis as a result of the project relative to those issues. Please also see response to comment 6-1 above regarding SMUD's leadership role in combatting the adverse effects of climate change. Please also see response to comment 6-3 regarding where in the DEIR to find information on ecosystem services such as wildlife habitat, wetlands functions, etc.

6-5 The commenter asks a rhetorical question. No further response is required.



6-6 Please see response to comment 6-1 through 6-4. Please also note that compared to current conditions, the grassland acreage in the project area will be increased following project implementation due to the conversion of rice fields to grasslands, as the area beneath and interspersed among all solar panels will be re-vegetated with native grass species following construction to provide opportunities for sheep grazing and native pollinator habitat.

6-7 The governor's climate action strategy is a broad scale document that covers the entire state and specific policies from statewide strategies and is not typically relied upon when making local scale land use decisions. SMUD is working closely with Placer County, the PCA, and the regulatory agencies to ensure consistencies with all local policies and with all relevant state and federal laws that apply to the project.

6-8 SMUD is working closely with the wildlife agencies and the PCA to ensure that the project is not in conflict with the goals of the PCCP, as detailed in the DEIR. Please also see response to comment 1-2 above.

6-9 Section 3.4 Biological Resources of the DEIR provides detailed information on the habitat types present at the project site and the wildlife values they provide, and a detailed analysis of the potential effect of the project on common and special-status species, including raptors that use the grassland in the project area for foraging habitat. The DEIR includes mitigation measures to offset loss of grassland (Swainson's hawk foraging habitat).

6-10 Quantifying grassland conversion in Placer County since 1970 is beyond the scope of the DEIR. The PCCP includes detailed information on future development zones in the County and the habitat that will be converted, and how regional conservation will be achieved in the PCCP's reserve area. SMUD's EIR was prepared in close coordination with Placer County and the PCA to ensure that the project is consistent with ongoing conservation efforts in Placer County across all habitat types, including grassland, and for covered species.

6-11 Section 3.4 Biological Resources of the DEIR provides detailed information on the habitat types present at the project site and the wildlife values they provide, and a detailed analysis of the potential effect of the project on common and special-status species, including all of those listed by the commenter. The Biological Resources Appendix of the DEIR provides further detail on the database searches conducted, information of all special-status species screened for and considered during EIR preparation, and a cross walk information to the PCCP.

6-12 Section 3.4 Biological Resources of the DEIR provides detailed information on the habitat types present at the project site including wetlands, rice fields etc. and a detailed analysis of the potential effect of the project on common and special-status species. Impacts on agricultural resources are analyzed in detail in Section 3.2 Agriculture and Forestry Resources of the DEIR. This includes a detailed analysis of state and local agricultural conservation policy consistency.



6-13 Section 3.4 Biological Resources of the DEIR provides detailed information on the habitat types present at the project site including wetlands such as vernal pools and seasonal wetlands, and a detailed analysis of the potential effects on these important resources. As detailed in Section 3.4, all vernal pools on the project site along with a 250-foot buffer around these important resources are avoided by the project footprint. This information informed the project design. As such, no impacts on vernal pools and associated species will occur as a result of project implementation.

6-14 Section 3.10 Hydrology and Water Quality provides a detailed analysis of impacts associated with these resources (i.e., Curry Creek and surrounding watersheds), as required by CEQA. Some of the resource topics mentioned by the commenter (changes to root systems, elimination of soil living organisms) are beyond the scope of the EIR, and the commenter does not provide substantial evidence of potential impacts that would necessitate the evaluation of these topics in the EIR. Habitat conversion acreages are detailed in Section 3.4 Biological Resources of the DEIR.

6-15 Please refer to Section 3.4.2.29 Connectivity and Migration Corridors and Section 3.4.2.30 Important Bird Areas and Flyways in the DEIR for a detailed description of these resources in the project vicinity. Please refer to *Impact 3.4-4. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?* in the DEIR for a detailed analysis of the project on these resources which finds that specific impacts on waterfowl and raptors that use migratory corridors in the area and the PCCP connectivity corridors resulting from the project are less than significant.

6-16 SMUD went through an extensive screening process for a suitable site for the project using the following criteria:

- Sufficient space to accommodate a large scale project
- Sufficient capacity in the transmission/distribution network to minimize needed upgrades
- Within SMUD's service area or immediately adjacent to SMUD transmission lines just outside of SMUD's service area
- Area slated for future development (avoid greenfield development)
- Landowner willing to sell or lease the site
- Compatibility of existing land use zoning

SMUD settled on the proposed site after careful consideration of all of these topics. Re-development of a brownfield site for a utility scale solar project is not an option because there is no such site available that meets the above criteria. Financial considerations were not a driving factor in the selection of the site. Please see Chapter 6 Alternatives and specifically section 6.2.3 Alternatives Considered but not Evaluated Further for additional details regarding site selection, including consideration of offsite alternatives.

6-17 Comment noted, thank you for the resource referral.

**Letter 7**

**From:** [Jennifer Byous](#)  
**To:** [Amy E. Spitzer](#); [Amanda Beck](#)  
**Cc:** [Leigh Chavez](#)  
**Subject:** [EXTERNAL] FW: [EXTERNAL] SMUD "Country Acres" Solar Project proposal to undermine the California Natural Communities Conservation Plan Act (NCCP) -- DEIR meeting comment  
**Date:** Sunday, October 30, 2022 7:44:58 AM

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FWD. This should be included in public comment as it is time stamped  
10/28/22 at 4:57. Thanks, Jen

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**From:** Michael Garabedian <michaelgarabedian@earthlink.net>  
**Sent:** Friday, October 28, 2022 4:57 PM  
**To:** brandondrose@hotmail.com; nancy.bui@smud.org; gbfishman@gmail.com;  
Rosanna.Herber@smud.org; rob@kerth.us; davetamayo2@gmail.com; Heidi.Sanborn@smud.org  
**Cc:** Jennifer Byous <JByous@placer.ca.gov>  
**Subject:** [EXTERNAL] SMUD "Country Acres" Solar Project proposal to undermine the California Natural Communities Conservation Plan Act (NCCP) -- DEIR meeting comment

Re: "There are no known areas of controversy at this time as SMUD has been working closely with Placer County and the Placer Conservation Authority regarding issues related to land use; utilities; public services, and conservation, including implementation of the Placer County Conservation Program." SMUD

TO: SMUD President and Directors

I lived south of Dixon for 12 years and participated in the effort that stopped the DOW Chemical proposal to extend its Contra Costa County chemical plant across the apex of river delta by pipeline to the waterfront of the Montezuma Hills. The proposal was stopped because it would have violated California's Williamson Act. SMUD's wind generation project in those hills that followed is a model of energy generation consistent with the rotation grazing and grain growing agriculture in those hills for generations.

Now comes a SMUD project hostile to agriculture, conservation, habitat, wildlife, and the NCCP, the misleadingly named Country Acres Solar Project. The State Fish and Game Code NCCP is not being meaningfully implemented here by state and federal agencies in the PCCP. NCCP requires landscape level ecosystem protection, not destruction by the highly secretive PCCP Placer County Authority.

DEIR October 13, 2022, CEQA Placer County Planning Commission meeting procedural legal

7-1

7-2

issue

The project name in itself seems a public relations gimmick and title for a project fragmenting five square miles of agriculture and precious habitat to provide power for destructive development proposed to follow.

The CEQA legal issue presented on on October 13 is if CEQA requires meaningful disclosure and description of a project's environmental impacts at the mandated CEQA meeting or hearing.

There were no maps, acreage or other meaningful project impact description and presentation in the county staff report and not in the County and SMUD power point presentations.

SMUD had a choice about what to present to the public at the meeting including decisions about where, when and how to have this meeting, along with what entity to have chosen to make the meeting and presentation. In making these decisions SMUD chose irresponsibly, and perhaps in violation of CEQA, to do little to nothing to present at the meeting the environmental impacts in a County overtly hostile to the NCCP, to the environment and to agriculture, a County that has a public public in the dark what Country Acres proposes to be as well as what the PCCP is.

CEQA law is all about procedure as are these hearing decision choices leaving the public in the dark.

SMUD chose Placer County for its hearing and the result of this choice was one person from the public, myself, speaking, and I was cut off by the Placer County Planning Commission chair after three minutes. No one else from the public spoke in person to this agenda item, nor by zoom or by telephone.

SMUD should plan and inform the public about and conduct another CEQA DEIR meeting with full, even honest impact information including photos and maps, not to meting honest presentation of project impacts. There would need to be an extended comment period after that. Referring people to the DEIR is not enough in the face of informational institutional nonchalance.

Placer County hostility to the NCCP is joined in by SMUD

The SMUD country acres project challenges the NCCP law. The PCCP is a 450 square miles with a core development area of wanton destruction of agriculture, habitat, wildlife vernal pool prairie. Ecological relationship between state and federal water uplands are wrecked.

Major precious areas are wiped out through the use in lieu fees.

It is impermissible under the NCCP for the county to completely develop the PCCP core area's protected state waters, all waters uplands and habitat, as this project proposes.

SMUD's proposed country acres project design and execution is unwise, unacceptable and hostile to agriculture and species conservation. SMUD as other projects have, including in Placer County staff reports, depending on which staff is presenting, needs to apply its own standards to its required environmental impact meeting presentation on Country Acres.

SMUD is urged to correct course and hold a public hearing correctly noticed

7-2

7-3

assuring the public is informed.

About the NCCP, look to the South Sacramento County HCP/NCCP as an example for comparison to the PCCP. South County has far more protected species and special areas of concern.

↑  
7-3  
(Cont.)

Michael Garabedian  
Placer County Tomorrow  
Pacific to American Divide  
P.O. Box 1328  
Lincoln CA 95648  
916-719-7296

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**Letter  
7  
Response****Michael Garabedian  
October 30, 2022**

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7-1 The commenter's background and opposition to the project are noted. No further response is required.

7-2 The public meeting held during the DEIR comment period was conducted in close coordination with Placer County as a responsible agency and followed a standard protocol for such meetings in the County. All information requested by the commenter is included in the DEIR in detail. It is not the purpose of a public meeting to present detailed information on a particular topic, but to provide an overview of the project and its impacts and provide the public and agencies with a meaningful way to comment. No further response is required.

7-3 The Placer County Conservation Program (PCCP) is a joint Habitat Conservation Plan and Natural Communities Conservation Plan and has been fully adopted by the County. The PCA is its implementing agency. Throughout the planning and environmental review process, SMUD has been working closely (including weekly meetings) with the County and the PCA to ensure the project (while not a covered activity under the PCCP) is not in conflict with the goals of the PCCP. All measures in the DEIR were developed to be consistent with the PCCP to the greatest extent feasible. Table BR-2 in Appendix BR-1 of the DEIR provides a side-by-side comparison of mitigation measures in this EIR with conservation measures in the PCCP. For additional details, please see Section 3.4.3.2 Consistency with the Placer County Conservation Program on page 3.4-55 of the DEIR. SMUD has also engaged in extensive coordination with the resource agency on how to site, plan, review, and permit the project and to ensure that the project does not adversely affect the PCCP and its conservation goals. Please refer to DEIR Section 3.4 Biological Resources for extensive detail on the analysis and studies that went into preparing the DEIR and continue to go into project permitting.



**Letter 8**

**From:** Lyn Greenhill <lyn.greenhill@yahoo.com>  
**Sent:** Friday, September 16, 2022 11:17 AM  
**To:** Amy E. Spitzer <Amy.Spitzer@smud.org>  
**Cc:** Country Acres Project <CountryAcres@smud.org>  
**Subject:** [EXTERNAL] Country Acres Solar Project

**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.

Amy,

I am strongly objecting to this proposed solar farm. I am flabbergasted that SMUD would want to dump what is an eyesore in a neighboring county. I see no benefit to Placer County and I'm stunned that Roseville would agree to be boxed in on their western boundary. There is plenty of worthless land in Sacramento County that SMUD should be looking at for such a project, rather than do a land grab in Placer County. This is prime farmland that you will be converting and your draft EIR just brushes over this significant change in land use. It ignores the regional university and potential future growth areas of the County's Specific Plan.

8-1  
8-2  
8-3

Lyn Greenhill  
Rocklin

**Letter  
8  
Response****Lyn Greenhill  
September 16, 2022**

---

8-1 The objection of the commenter is noted. The comment does not pertain to the adequacy of the DEIR. No further response is required.

8-2 Conversion of farmland is discussed in detail in Section 3.2 Agricultural and Forestry Resources of the DEIR. Specifically, Impact 3.2-1 on page 3.2-10 of the DEIR discusses conversion of agricultural land. The project area does not include Prime Farmland and thus there would be no impact. As detailed in Table 3.2-2. of the DEIR, the project would result in the conversion of 44.3 acres of Farmland of Statewide Importance and 858 acres of Unique Farmland. Mitigation Measure 3.2-1 on page 3.2-12 discusses the mitigation SMUD proposes to implement to offset this loss.

8-3 The Regional University Specific Plan (and other plans in the project area) were specifically considered during project siting, design and planning. The potential future growth area is discussed in Section 3.11 Land Use and Planning, and in Section 3.4 Biological Resources (with regards to the Placer County Conservation Program). Exhibit 3.11-1 on page 3.11-8 of the DEIR shows the project's relationship to the Regional University Specific Plan and all other specific plans in the area. Exhibit 3.4-1 on page 3.4-8 shows the Project's relationship to the potential future growth area, as described in the PCCP.



**Letter 9**

**From:** [Country Acres Project](#)  
**To:** [Amy E. Spitzer](#)  
**Subject:** FW: [EXTERNAL] Country Acres Solar project  
**Date:** Tuesday, September 27, 2022 12:10:01 PM

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**From:** Tom Tribur <tom.tribur@gmail.com>  
**Sent:** Friday, September 23, 2022 9:40 PM  
**To:** Country Acres Project <CountryAcres@smud.org>  
**Subject:** [EXTERNAL] Country Acres Solar project

**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.

To whom it may concern,

Why is this project in Placer County if it's for SMUD customers in Sacramento County? Just south of that area is a vast amount of land in Sacramento County that is more barren land that would suit a solar farm better than destroying farmland that enables California to be one of farm to fork leaders in the country. Save our farmland, rethink this plan, we can't just keep importing everything from China.

Tom

9-1

**Letter  
9  
Response****Tom Tribur  
September 23, 2022**

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9-1 The objection of the commenter is noted. SMUD went through an extensive screening process when siting the project, including ruling out land located adjacent to SMUD's existing transmission system that is already encumbered by Specific Plans for future development. SMUD has been working closely with Placer County to ensure that the project is compatible with local and regional plans. Please also see response to comment 6-16 above which discusses the screening process and response to comment 8-2 above which includes specifics about the agricultural farmland impacts.

**Commissioner Comments at the October 13, 2022 Draft EIR Scoping Meeting**

**Commissioner DeMattei:** Is agriculture not considered a cultural resource given the importance of agriculture in the region?

**Jody Fessler:** Agriculture is not considered a cultural resource; however, the EIR analyzes the agriculture impact. The project area is part of PCCP potential future growth area and is slated for long-term development.

**Commissioner DeMattei:** What is the life span of solar panels? What is the impact when they have to be replaced?

**Amanda Beck:** About 30 years with full decommissioning planned at end; property is leased; all infrastructure will be removed and land will go back to landowner; sheep grazing can help keep agricultural soils productive in the meantime; the project is also keeping the wells.

**Commissioner DeMattei:** Does the EIR analyze disposal impact of panels? Will we put this burden on another country?

**Amanda Beck:** Disposal of modules is covered in the hazardous materials section – panels are universal waste; there are rules of how to dispose of them; parts that can be recycled will be.

**Commissioner DeMattei:** Are we just trading one environmental impact for another one? As a farmer I want to preserve as much ag land as possible. Need to feed people before considering how lights come on.

**Amanda Beck:** That is why we chose this area in the future growth area.

**Commissioner DeMattei:** Still trying to serve as much ag as possible. Food costs are going up and we are trying to keep as much land in ag as possible to help our local population.

**Commissioner Johnson:** Will work in the University Specific Plan area require modification of USP?

**Jen Byous:** Yes, some panels are proposed on the south side; University Specific Plan requires a master plan; we will modify the specific plan to allow for this exception; project would be considered under its own entitlements.

**Commissioner Johnson:** Will the property owner still own the property?

**Amanda Beck:** Yes, north end of property will be leased from a couple of landowners; one of them is the USP landowner and SMUD is working with them; good source of income to fund their plans; property in question are north of campus.

**Commissioner Johnson:** Is wildfire an issue? When grass under panels dries out it becomes volatile – this can be an issue if not mitigated.

**Amanda Beck:** Wildfire is a key consideration in any design for power projects; SMUD works with local fire department; in touch with County Chief and Assistant Chief regarding design/setbacks; designing with appropriate setback distances; sheep are good grazers and will keep vegetation down; grazing plan will be adapted over time as part of maintenance needs.

**Commissioner Johnson:** Grazing could be presented as part of fire mitigation.

**Commissioner DeMattei:** Could solar panels be mounted on university buildings to not take up ag land?

**Amanda Beck:** SMUDs 2030 plan includes both mounted rooftop and regular solar; don't have density on rooftops to get the generation required.

**Commissioner DeMattei:** If we are taking land away from food, we are taking more out of production. Thank you!

### **3 CORRECTIONS AND REVISIONS TO THE DRAFT EIR**

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This chapter contains changes to the text of the Draft EIR in response to certain comments. These changes are generally referenced in the responses to comments in Chapter 2, or are provided to be consistent with changes referenced in Chapter 2. The changes are presented in the order in which they appear in the Draft EIR and are identified by Draft EIR page number. Text deletions are shown in strikeout (~~strikeout~~) and additions are shown in underline (underline). The changes identified below do not alter the conclusions of the EIR with respect to any of the significant impacts of the project and do not necessitate recirculation of the Draft EIR.

#### **3.1 Revisions to Project Description**

The following minor additions have been made to the Project Description.

##### *Revisions to Project Description to include Agricultural Production*

The following minor addition has been made to the fifth bullet in section 2.3 Project Objectives in the project description in the DEIR to include the study of agricultural crop production in a small portion of the project.

- Integrate compatible agricultural activities such as grazing, agricultural crop production, and/or pollinator habitat into solar operations.

Additionally, a short paragraph has been added to the bottom of section 2.5.2 Other Structures and Improvements, expanding on the objective above.

##### *Agrivoltaics*

The proposed project is planning to incorporate California's first to-scale agrivoltaic farm constructed within an 11-acre footprint within the planned project site. In this planned agrivoltaic area of the project, solar panels will be divided into 0.25-acre plots with different configurations and heights and planted with different food crops to demonstrate utilization of the land for the co-production of food and energy. Additionally, throughout the project site the project will utilize sheep grazing for vegetation management and will integrate pollinator habitat.

##### *Revisions to Project Description for Clarification*

The following minor edits have been made to page 2-5 of the DEIR in section 2.4 Land Use and Zoning:

~~The County and SMUD~~ and County staff have agreed to proposed language for on a General Plan Amendment subject to approval by the County Board of Supervisors to Policy 8.b.1.4, which will state the following:

*New construction shall not be permitted within 100 feet of the centerline of permanent streams and within 50 feet of intermittent streams, or within the 100-*

*year floodplain, whichever distance is greater, except for long-term, nonpermanent solar electric generation projects with a conditional use permit, as long as any impacts to the floodplain, vegetation and wetlands are less than significant, grading and increases to water surface elevations of the base flood are minor, and the stream is not anadromous fish bearing.*

The discussion regarding the memorandum of understanding (MOU) on page 2-21 in section 2.6 Potential Permits and Approvals Required in the DEIR (last two paragraphs), has been moved to section 2.4 Land Use and Zoning.

### 3.2 Revisions Clarifying Compensation for Rice Fields and PCCP Consistency

The following minor revisions have been made to the second paragraph on page 3.4-86 in the Biological Resources section of the DEIR to clarify the intent of the payment with regards to rice fields and PCCP consistency.

However, in order to mitigate for project impacts, the project will provide compensatory mitigation as detailed above under sensitive natural communities, wetland and other waters of the United States, and burrowing owl and Swainson's hawk. In addition, as detailed in Mitigation Measure 3.2-1 Preserve Important Farmland on page 3.2-12 in the Agriculture and Forestry section of the DEIR, the project will also mitigate at a 1:1 ratio for the loss of Farmland of Statewide Importance and Unique Farmland, which include all rice fields in the project area. These impacts on aquatic resources; and PCCP covered species and their habitat, and farmland/rice fields in the project area, may be compensated through the payment of land conversion fees into the PCCP's in-lieu fee program consistent with Section 4.8.4 of the PCCP under a Memorandum of Understanding (MOU) with the PCA, as detailed under Mitigation Measures 3.4-8., 3.4-10, and 3.4-16, above and Mitigation Measure 3.2-1 on page 3.2-12 in the Agriculture and Forestry Resources section of the DEIR. This mitigation includes a functional equivalent of payment for modelled habitat for giant garter snake, as it compensates for the loss of rice fields through payment of land conversion fees. Therefore, the proposed project contributes to the achievement of the goals of the PCCP as if it were paying for the conversion of modelled habitat.

This MOU would include terms and conditions ~~as needed to~~ that would ensure compensatory mitigation for the project does not conflict with the HCP/NCCP's conservation and mitigation strategy and is consistent with Section 8.4.8 of the PCCP which details the specifics of mitigation for activities not covered in the plan. The MOU and would be approved require approval by the PCA board and SMUD prior to issuance of improvement plans. Compensatory mitigation for the project would therefore help achieve the conservation goals of the PCCP, even though the project is not a covered activity and is not required to mitigate for impacts to giant garter snake habitat. Alternatively, in the event that SMUD cannot enter into an MOU with the PCA, the project SMUD may acquire credits from existing

mitigation banks within the PCCP Plan Area which are approved by and in good standing with the U.S. Army Corps' Interagency Review Team, and implement other mitigation, as outlined in the mitigation measures above. Under this scenario, SMUD would seek alternative ways of mitigating for the conversion of Farmland of Statewide Importance and Unique Farmland, with a strong preference for mitigation located within Placer County, that include rice conservation for the benefit of species with modeled habitat in the project area, including giant garter snake.

Tricolored blackbird is a PCCP covered species with habitat in the project area. The Draft EIR includes a detailed discussion of tricolored blackbird in Western Placer County and in the project area and acknowledges that foraging habitat and very limited breeding habitat are present. Mitigation Measure 3.4-11 *Conduct Focused Pre-Construction Surveys for Nesting Tricolored Blackbird and Avoid Impacts During Construction* addresses the protection of breeding habitat during project construction. Any loss of foraging habitat for the species (which forages in agricultural fields and grasslands) will be offset through implementation of Mitigation Measures 3.4-8., 3.4-10, and 3.4-16 above and Mitigation Measure 3.2-1 on page 3.2-12 in the Agriculture and Forestry Resources section of the DEIR. This mitigation compensates for the loss of rice fields and grassland (which also provides suitable foraging habitat for burrowing owls and Swainson's hawks) through payment of land conversion fees.

SMUD will continue to work closely with the County, PCA, and resource agencies, including CDFW and USFWS, to ensure that any mitigation is applied in a manner that advances and does not conflict with the goals of the PCCP and is consistent with the provisions of Section 8.4.8 (Mitigation for Activities not covered by the Plan).

### 3.3 Revisions to Description of Potential Types of Batteries Utilized

The following minor revisions have been made to include potential use of an additional type of battery on page 3.9-7:

The project would use lithium ion batteries; lithium iron phosphate or nickel manganese cobalt technology for energy storage. Lithium iron phosphate batteries are a variation of a lithium ion battery. These rechargeable batteries are commonly used for vehicles and backup power. The cathode is comprised of LiFePO<sub>4</sub> and the anode is comprised of a carbon electrode with a metallic current collector grid. Compared to other lithium ion battery options, lithium iron phosphate is more difficult to ignite, and thus, more resilient in high temperatures (Battery Recyclers of America 2022). Nickel manganese cobalt batteries are a type of lithium ion battery and have a cathode made of a combination of nickel, manganese, and cobalt. They are used to power smartphones, laptops, and electric vehicles, as well as used for solar storage (Solar Reviews 2023). Disposal of these batteries must and will comply with California's Universal Waste Rule.



This additional information regarding battery type will not have any additional CEQA impacts or require additional CEQA analysis.

### 3.4 Revisions to Description of Drainage Rates from Curry Creek and Pleasant Grove Creek Watersheds.

The following minor revision has been made as requested by the City of Roseville to the following paragraph on page 3.10-24:

Flood management for the Curry Creek and Pleasant Grove Creek watersheds is provided by Placer County and the PCFCWCD in the Placer County portions of the watershed, and Reclamation District No. 1000 for the Sutter County sections of the watershed (downstream and west of the project site). The lower watersheds flood regularly with water overtopping of the banks annually in some areas. This problem is caused by several factors that have occurred both locally in the Pleasant Grove and Curry Creek watershed and in the greater Sacramento River watershed. Starting in the early 1900s, levees and dikes were installed to protect landowners and assist farmers. This practice has resulted in a highly channelized and confined stream system, especially in the lower watershed, which has effectively eliminated the natural floodplain. The confined channels cause increased stream stage heights which then typically results in flooding of areas just upstream of bridges that have become undersized with respect to the increased stage heights. Adding to this problem is an increase in drainage rates from the upper watershed of Pleasant Grove and Curry Creek ~~from the cities of Roseville and Rocklin~~. Development typically increases the amount of impervious surfaces, such as roads, parking lots, and roofs, within a watershed. All of these impervious surfaces lead to increased runoff volumes and response times to storm events. The greatest single factor in increased flooding is elevated stage heights in the Sacramento River caused by development throughout the drainage basin. The increased stage heights create a pressure head differential which restricts flood waters that are draining from the watershed from entering the Sacramento River. This causes water to back up through the Natomas Cross Canal, up the Pleasant Grove Creek Canal, and into both Pleasant Grove and Curry Creeks (Foothill Associates 2006:2-39 through 2-42).

### 3.5 Revisions to Construction Transportation Plan (CTP) Requirements.

The following minor revision has been made to the last sentence of **Mitigation Measure 3.17-2** *Prepare and Implement a Construction Transportation Plan* on pages 3.17-13 and 3.17-14 as follows:

The construction contractor shall submit the CTP to Placer County for review and approval 30 days prior to commencing construction activities. Placer County may share the plan with other interested parties at its discretion and incorporate specific input from third parties into the plan comments as it deems appropriate.

## **4 MITIGATION MONITORING AND REPORTING PROGRAM**

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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 Country Acres Solar 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.” A 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.

### **4.1 Mitigation Implementation and Monitoring**

SMUD shall be responsible for monitoring the implementation of mitigation measures designed to minimize impacts associated with the project. Although SMUD shall have ultimate responsibility for ensuring implementation, others may be assigned the responsibility of actually implementing the mitigation. SMUD shall 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 shall 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 shall ensure that the designated personnel have authority to require implementation of mitigation requirements and shall be capable of terminating project construction activities found to be inconsistent with mitigation objectives or project approval conditions.

SMUD and its appointed contractor also shall 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 4-1 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.

## 4.2 Mitigation Enforcement

SMUD shall 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 on by SMUD.

## 4.3 Reporting

SMUD shall, or may require the developer to, prepare a monitoring report on completion of the project describing the compliance of the activity with the required mitigation measures. Information regarding inspections and other requirements will be compiled and explained in the report. The report will be designed to simply and clearly identify whether mitigation measures have been adequately implemented. At a minimum, each report will 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 will be presented to SMUD's Board of Directors.

## 4.4 Mitigation Monitoring and Reporting Program Table

The categories identified in Table 4.1 are described below.

**CEQA Issue Area** – This column identifies which CEQA issue area the mitigation measure is attributed to in the EIR.

**Impacts** – This column provides the potential impacts summary.

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

**Implementation Duration** – This column identifies when the mitigation measure will be implemented (e.g., before construction, during construction, during operations-maintenance, during decommissioning).

**Monitoring Duration** – This column identifies the period within which monitoring will 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 will be implemented (e.g., all project components, project components during construction, project components during operations and maintenance, construction near sensitive habitat, decommissioning).

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
<b>Agriculture and Forestry Resources</b>	<b>Impact 3.2-1.</b> Project induced conversion of Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland) to non-agricultural use.	<p><b>Mitigation Measure 3.2.1. Preserve Important Farmland</b></p> <p>SMUD shall implement one of the following methods to minimize the loss Farmland of Statewide Importance and Unique Farmland at a 1:1 ratio (i.e., 1 acre on which easements are acquired to 1 acre of Farmland of Statewide Importance and Unique Farmland removed from agricultural use):</p> <ul style="list-style-type: none"> <li>Acquire agricultural conservation easement(s) that provide in-kind or similar resource value protection in the region, with a strong preference for locating the agricultural conservation easement(s) in Placer County. This can be achieved by the acquisition of conservation easements, farmland deed restriction, or other appropriate farmland conservation mechanism to ensure the preservation of the land in perpetuity.</li> <li>Pay in-lieu fees to an established, agreed-upon (by County and SMUD) mitigation program with a presence in Placer County (e.g., Placer Land Trust) to fully fund the acquisition and maintenance of agricultural land or easements.</li> <li>Alternatively, this may occur through the payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. (In-lieu fee payments would also address impacts on special-status species through loss of foraging habitat for burrowing owl and Swainson's hawk, and impacts on sensitive natural communities and wetlands and other waters of the US and state/ County, as detailed in Mitigation Measures 3.4-8, 3.4-10 and 3.4-16 in Section 3.4 "Biological Resources" of the DEIR).</li> </ul> <p>Payments of in-lieu fees or acquisition of agricultural conservation easements may be spread out in alignment with construction phasing but must occur no later than the start of each new phase. The impact acreage requiring offset shall be based on the most current FMMP at the time of the County's issuance of the Conditional Use Permit.</p>	Before the start of each new phase of construction and or prior to Improvement Plan approval.	Before construction	SMUD	SMUD	All phases of construction that result in Farmland of Statewide Importance and Unique Farmland conversion
<b>Air Quality</b>	<b>Impact 3.3-1.</b> Conflicts with the applicable air quality plan.	<p><b>Mitigation Measure 3.3-1.</b></p> <p>Implement Mitigation Measures 3.3-2a, 3.3-2b, and 3.3-2c.</p>	See MM 3.3-2a, 3.3-2b, and 3.3-2c	See MM 3.3-2a, 3.3-2b, and 3.3-2c	See MM 3.3-2a, 3.3-2b, and 3.3-2c	See MM 3.3-2a, 3.3-2b, and 3.3-2c	See MM 3.3-2a, 3.3-2b, and 3.3-2c
<b>Air Quality</b>	<b>Impact 3.3-2.</b> Cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment.	<p><b>Mitigation Measure 3.3-2a. Implement Fugitive Dust Control Measures</b></p> <p>In order to minimize fugitive dust generation from earthwork and on-site travel on unpaved roadways, the applicant shall submit a Dust Control Plan to the Placer County Air Pollution Control District (PCAPCD). The Dust Control Plan shall be submitted to the PCAPCD a minimum of 21 days before construction activity is scheduled to commence. The Dust Control Plan can be submitted online via the fill-in form: <a href="http://www.placerair.org/dustcontrolrequirements/dustcontrolform">http://www.placerair.org/dustcontrolrequirements/dustcontrolform</a>.</p> <p>In addition, the applicant shall include as a condition of the construction bidding, incorporation of dust control measures that shall include, at a minimum, the below requirements of Rule PCAPCD Rule 228, Section 400, and any additional measures identified as part of the Dust Control Plan. All dust control measures shall be shown on grading and improvement plans, to be initiated at the start and maintained throughout the duration of construction.</p> <ul style="list-style-type: none"> <li>Dry mechanical sweeping is prohibited. Watering of a construction site shall be carried out to mitigate visible emissions. (Based on PCAPCD Rule 228, Section 301.)</li> <li>The contractor shall apply water or use methods to control dust impacts offsite. Construction vehicles leaving the site shall be cleaned to prevent dust, silt, mud, and dirt from being released or tracked offsite. (Based on PCAPCD Rule 228, Section 304.)</li> <li>During construction activity, traffic speeds on all unpaved surfaces shall be limited to 15 miles per hour or less unless the road surface and surrounding area is sufficiently stabilized to prevent vehicles and</li> </ul>	Dust Control Plan shall be submitted to PCAPCD at least 21 days before construction begins. Dust control measures shall be implemented during construction.	Before and during construction	Contractor	SMUD	All project components during construction

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<p>equipment traveling more than 15 miles per hour from emitting dust or visible emissions from crossing the project boundary line. (Based on PCAPCD Rule 228, Section 401.2.)</p> <ul style="list-style-type: none"> <li>Storage piles and disturbed areas not subject to vehicular traffic must be stabilized by being kept wet, treated with a chemical dust suppressant, or covered when material is not being added to or removed from the pile. (Based on PCAPCD Rule 228, Section 401.3.)</li> <li>The contractor shall suspend all grading operations when fugitive dust exceeds the APCD Rule 228 (Fugitive Dust) limitations. Visible emissions of fugitive dust shall not exceed 40% opacity, nor go beyond the property boundary at any time. Lime or other drying agents utilized to dry out wet grading areas shall not exceed APCD Rule 228 limitations. (Based on PCAPCD Rule 228, Sections 302 &amp; 401.4.)</li> <li>The prime contractor shall be responsible for keeping adjacent public thoroughfares clean by keeping dust, silt, mud, dirt, and debris from being released or tracked offsite. Wet broom or other methods can be deployed as control and as approved by the individual jurisdiction. (Based on PCAPCD Rule 228, Section 401.5.)</li> <li>The contractor shall suspend all grading operations when wind speeds (including instantaneous gusts) are high enough to result in dust emissions crossing the boundary line, despite the application of dust mitigation measures. (Based on PCAPCD Rule 228, Section 401.6.)</li> <li>The contractor shall prohibit trucks from transporting excavated material off-site unless the trucks are maintained such that no spillage can occur from holes or other openings in cargo compartments, and loads are either covered with tarps or wetted and loaded such that the material does not touch the front, back, or sides of the cargo compartment at any point less than six inches from the top and that no point of the load extends above the top of the cargo compartment. (Based on PCAPCD Rule 228, Section 401.7)</li> <li>To minimize wind-driven dust during construction, the prime contractor shall apply methods such as surface stabilization, the establishment of a vegetative cover, paving (or use of another method to control dust as approved by Placer County). (Based on APCD Rule 228 / section 402).</li> </ul>					
<b>Air Quality</b>	<b>Impact 3.3-2.</b> Cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment.	<p><b>Mitigation Measure 3.3-2b. Reduce Exhaust-related Emissions During Construction</b></p> <p>Prior to the approval of grading or improvement plans, whichever would occur first, the construction contractor shall submit a Construction Emissions Control Plan to the Placer County Air Pollution Control District and SMUD, and provide written evidence to SMUD that the plan has been submitted to and approved by PCAPCD. The applicant shall not initiate any on-site construction activity until PCAPCD has approved the Construction Emissions Control Plan.</p> <p>The Construction Emissions Control Plan shall include the following:</p> <ul style="list-style-type: none"> <li>The contractor shall submit to the PCAPCD a comprehensive equipment inventory (e.g., make, model, year, emission rating) of all the heavy-duty off-road equipment (50 horsepower or greater) that will be used in an aggregate of 40 or more hours. If any new equipment is added after submission of the inventory, the contractor shall notify the PCAPCD before the new equipment being utilized. At least three business days before the use of subject heavy-duty off-road equipment, the project representative shall provide the PCAPCD with the anticipated construction timeline including start date, name, and phone number of the property owner, project manager, and on-site foreman.</li> <li>With submittal of the equipment inventory, the contractor shall provide a written calculation to the PCAPCD for approval demonstrating that the heavy-duty (&gt; 50 horsepower) off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project-wide fleet-average of 20 percent Nitrogen Oxides (NO<sub>x</sub>) reduction and 45 percent particulate reduction compared with the statewide fleet averages. Acceptable options for reducing emissions may</li> </ul>	Construction Emissions Control Plan shall be submitted to PCAPCD and SMUD prior to approval of Grading or Improvement Plans.  If any new heavy-duty off-road equipment is added, at least three business days before the use of subject heavy-duty off-road equipment, the project representative shall provide the PCAPCD with the anticipated construction timeline	Before and during construction	Contractor PCAPCD	SMUD and PCAPCD	All project components during construction

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<p>include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and other options as they become available. The emissions reductions shall be calculated using the Sacramento Metropolitan Air Quality Management District's Construction Mitigation Calculator to identify the equipment fleet and measures that achieve the required reductions; this tool is currently available on the Sacramento Metropolitan Air Quality Management District's website at the following link: <a href="http://www.airquality.org/businesses/ceqaland-useplanning/mitigation">http://www.airquality.org/businesses/ceqaland-useplanning/mitigation</a> (click on the current "Construction Mitigation Tool" spreadsheet under Step 1)</p> <ul style="list-style-type: none"><li>• If any new equipment is added after the submission and approval of the inventory, the construction contractor shall update the inventory and provide to the PCAPCD and SMUD prior to the use of such equipment, demonstrating that the 20-percent NO<sub>x</sub> reduction performance standard is still met.</li><li>• The approved equipment inventory and a note regarding update requirements, as detailed above, shall be include as an attached form to the Grading and Improvement Plans.</li><li>• Include the following standard notes on Grading and Improvement Plans: Construction equipment exhaust emissions shall not exceed the APCD Rule 202 Visible Emissions limitations. Operators of vehicles and equipment found to exceed opacity limits are to be immediately notified by the APCD to cease operations, and the equipment must be repaired within 72 hours. The contractor shall not discharge into the atmosphere volatile organic compounds caused by the use or manufacture of Cutback or Emulsified asphalts for paving, road construction or road maintenance unless such manufacture or use complies with the provisions of Rule 217 Cutback and Emulsified Asphalt Paving Materials. During construction, open burning of removed vegetation is only allowed under APCD Rule 304 Land Development Smoke Management. (Based on APCD Rule 304) Any device or process that discharges 2 pounds per day or more of air contaminants into the atmosphere, as defined by Health and Safety Code Section 39013, may require an APCD permit. Developers/contractors should contact the APCD before construction and obtain any necessary permits before the issuance of a Building Permit. (APCD Rule 501) The contractor shall utilize existing power sources (e.g., power poles) or clean fuel (e.g., gasoline, biodiesel, natural gas) generators rather than temporary diesel power generators. The contractor shall minimize idling time to a maximum of 5 minutes for all diesel-powered equipment. (Placer County Code Chapter 10, Article 10.14). Idling of construction-related equipment and construction-related vehicles shall be limited to 2 minutes within 1,000 feet of any sensitive receptor (i.e., house, hospital, or school), allowing for the same exceptions identified in Placer County Code Chapter 12, Article 10.14.</li></ul>	and phone number of the property owner, project manager, and on-site foreman.  Implement Construction Emission Control Plan during construction				
Air Quality	Impact 3.3-2. Cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment.	<p><b>Mitigation Measure 3.3-2c. Off-site Mitigation</b></p> <p>If, based upon the incorporation of all on-site measures described above in Mitigation Measures 3.3.1 and 3.3.2, NO<sub>x</sub> or PM emissions still do not meet the daily PCAPCD thresholds, the project shall participate in the PCAPCD's Offsite Mitigation Program by paying to PCAPCD a mitigation fee for construction activities, to be determined at the time of construction based on the submitted equipment inventory and emissions calculations for the purposes of mitigating NO<sub>x</sub> and PM<sub>10</sub> emissions, such that emissions are reduced to a less-than-significant level. The fee calculation to mitigate daily emissions shall be based on the PCAPCD-determined cost to reduce emissions and the project's contribution of pollutants to be less than the PCAPCD threshold of 82 pounds per day for NO<sub>x</sub>. The fee shall be submitted for approval by PCAPCD as the total required to achieve emissions reductions that would reduce total emissions to a less-than-significant level after all other mitigation measures are implemented. The fee shall be calculated, approved by PCAPCD and paid prior to the issuance of grading or improvement plans.</p>	Prior to Grading or Improvement Plan approval.  During and after construction.	During and after construction	SMUD PCAPCD	SMUD and PCAPCD	All project components involving construction

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status amphibians and reptiles.	<p><b>Mitigation Measure 3.4-1. Worker Environmental Awareness Program (WEAP) and Biological Monitor Inspection</b></p> <p>SMUD will prepare a Worker Environmental Awareness Program that will educate staff regarding the presence or potential presence of all special-status species, sensitive natural communities, and protected wetlands with potential to occur, or that are known to occur, within the project area. The program shall describe their identification, habitat requirements, and penalties for species impacts, as well as immediate steps to take should special-status species be observed by staff on site.</p> <p>This WEAP shall include biological resource avoidance and minimization measures/mitigation measures from the project's CEQA Mitigation Monitoring and Reporting Program, and any resource permits or agreements, as applicable. The WEAP will educate workers regarding sensitive species and their habitats, the need to avoid impacts, state and federal protection, and the legal implications of violating environmental laws and regulations. The WEAP can be provided in the form of a handout and/or video presentation. All staff working onsite shall attend the WEAP training prior to commencing onsite work. Staff that attend the training shall fill out a sign-in sheet indicating that they completed the training.</p> <p>Prior to construction, a qualified biological monitor shall inspect all areas within the project site with the potential to support sensitive biological resources to ensure the proper implementation of all avoidance and minimization and mitigation measures, agency permit requirements, and environmentally sensitive area exclusion flagging and/or fencing have been properly implemented, and to deliver WEAP training as needed.</p> <p>The biological monitor shall remain available on an on-call basis for the duration of project construction to conduct inspections and follow up surveys, as needed, and to ensure compliance with permit conditions. The qualified biological monitor shall have the experience, education and training necessary to conduct special status species surveys and monitoring as described in the mitigation measures below.</p> <p>During operation and maintenance, an annual Environmental Awareness Training shall be provided to onsite personnel, covering any sensitive biological resources that could be present onsite.</p>	SMUD to provide WEAP training to all project personnel before construction and ongoing WEAP trainings to new personnel during construction, operations and maintenance, and decommissioning.	Before, during construction, operations and maintenance, and decommissioning	Qualified Biologist	SMUD	All project components
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status amphibians and reptiles.	<p><b>Mitigation Measure 3.4-2. Establish Non-Disturbance Buffers around Vernal Pools and Seasonal Wetlands to protect Western Spadefoot during construction</b></p> <p>Based on the assumptions that all vernal pools and seasonal wetlands in the project areas could provide suitable habitat for western spadefoot, SMUD, in coordination with a qualified biologist, will establish a 250-foot no-disturbance buffer from the high-water mark of the vernal pool or seasonal wetland habitat prior to commencement of ground-disturbing activities. The perimeter of the no-disturbance buffer will be delineated with a wildlife-friendly fence that allows the movement of wildlife, including western spadefoot (and also wide-ranging wildlife, such as coyotes), through the area. The fence will be maintained for the duration of project construction and operation. Signage will be installed on the fence indicating the buffer is an environmentally sensitive area. The boundaries of vernal pools, seasonal wetlands and associated 250- foot buffers will also be clearly delineated on project plans and specifications boundaries. No construction or ground-disturbing activities shall occur within the 250- foot buffer.</p> <p>The fencing shall be kept in place for the duration of project construction and operations and shall be kept in good condition to prevent any construction, operation and maintenance activities from disturbing the sensitive habitat areas.</p>	Vernal pool and wetland exclusion fencing to be installed in coordination with qualified biologist before start of construction.	Before and during construction, and during operations and maintenance, and decommissioning.	Qualified Biologist and Contractor	SMUD	All project components within 25- feet of vernal pools and seasonal wetlands.



**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status amphibians and reptiles.	<b>Mitigation Measure 3.4-3. Conduct Pre-Construction Surveys for Western Pond Turtle</b> <ul style="list-style-type: none"> <li>Project ground-disturbing activities will be conducted outside of western pond turtle's active breeding and dispersal season (i.e., after May 1 and before September 15), to the extent feasible. If project activities must be implemented during the breeding and dispersal season, they will not start until 30 minutes after sunrise and must be completed 30 minutes prior to sunset.</li> <li>A qualified biologist shall conduct a pre-construction survey for western pond turtle within 48 hours prior to the start of construction activities within 300 feet of suitable habitat (e.g., any adjacent waterway, marsh, or emergent wetland). Concurrently with the pre-construction survey, searches for nesting sites shall be conducted and any identified sites shall be delineated with high-visibility flagging or fencing and avoided during construction activities. If avoidance is not possible, the nest and/or turtle shall be removed by a qualified biologist and relocated to an appropriate location in consultation with CDFW.</li> </ul>	Surveys to be conducted and fencing to be installed within 48 hours of ground-disturbing activities within 300 feet of suitable habitat.  Flagging/fencing and monitoring required for nest sites if identified.	Before construction and during construction (if nests are found).	Qualified Biologist	SMUD	All project components during construction that require work within 300 feet of suitable habitat.
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status amphibians and reptiles.	<b>Mitigation Measure 3.4-4. Avoid Impacts on Western Pond Turtle during Construction</b> <p>If turtles and/or nests are encountered during the preconstruction survey, a qualified biologist shall be present during grubbing and clearing activities in suitable habitat (aquatic) to monitor for western pond turtle. If a turtle is observed in the active construction zone, construction shall cease within a 100-foot buffer. Construction may resume when the biologist has, in consultation with CDFW, either hand-captured and relocated the turtle to nearby suitable habitat outside the construction zone, or, after thorough inspection, determined that the turtle has moved away from the construction zone.</p> <p>On-site personnel will observe a 20-mile-per-hour speed limit at all times.</p> <p>Information about avoidance and minimization measures for western pond turtles shall be included in the WEAP described above in Mitigation Measure 3.4- 1.</p>	Biological monitor shall be present during grubbing and clearing activities in suitable habitat if turtles or nests are found during pre-construction survey.	During construction	Qualified Biologist	SMUD	All project components during construction that require work within 300 feet of suitable habitat.
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status amphibians and reptiles.	<b>Mitigation Measure 3.4-5. Conduct Pre-Construction Surveys for Giant Garter Snake and Implement Avoidance and Minimization Measures</b> <p>Project ground-disturbing activities in aquatic habitat and adjacent upland habitat within 200 feet of aquatic habitat will be conducted during the giant garter snake's active season (i.e., after May 1 and before October 1), to the extent feasible. During this period, the potential for direct mortality is reduced, because snakes are expected to actively move and avoid danger. If project activities in aquatic habitat and adjacent upland habitat within 200 feet of aquatic habitat must be implemented outside of the snake's active season, the following mitigation measures must be implemented:</p> <ul style="list-style-type: none"> <li>Within 24-hours prior to commencement of construction activities within 200 feet of potential giant garter snake habitat, the site shall be inspected by a qualified biologist who is approved by the CDFW and USFWS. If construction activities stop for a period of 2 weeks or more, another preconstruction clearance survey will be conducted within 24 hours before resuming construction activity. If snakes, or evidence of snakes, are encountered during preconstruction surveys, a biological monitor shall be present during construction activities in aquatic habitat and adjacent upland habitat within 200 feet of aquatic habitat.</li> <li>The monitoring biologist shall be present during construction within 200 feet of potential aquatic habitat for giant garter snake (i.e., drainages that contain water) for the duration of the project. If a snake is encountered during construction activities, the monitoring biologist shall have the authority to stop construction activities until appropriate corrective measures have been completed or it is determined that the snake will not be harmed. The monitor will remain in the area for the remainder of the workday to ensure the snake is not harmed or, if it leaves the site, does not return. The qualified biologist will work with the PCA, USFWS, and CDFW to redirect the snake away from the disturbance area within 3 days of reporting the snake's presence at the construction site to USFWS and CDFW.</li> </ul>	If construction is proposed between October 1 and May 1, a pre-construction survey within 24 hours before construction within aquatic and adjacent upland habitat within 200 feet of aquatic habitat shall be conducted.  If construction activities stop for 2 weeks or more, another preconstruction clearance survey will be required.  Biological monitor to be present on-site during construction within 200 feet of	Before and during construction  Species observations to be reported to CDFW and USFWS within 24 hours of detection	Qualified Biologist	SMUD, CDFW, and USFWS	All project components during construction occurring within 200 feet of suitable aquatic habitat

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<ul style="list-style-type: none"> <li>The project biologist shall report any observations of giant garter snake to CDFW and USFWS within 24 hours of detection.</li> <li>Information about avoidance and minimization measures for giant garter snake shall be included in the WEAP described above in Mitigation Measure 3.4-1.</li> </ul>	potential aquatic habitat.				
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status birds.	<p><b>Mitigation Measure 3.4-6. Survey for California Black Rails and Implement Avoidance Measures</b></p> <ul style="list-style-type: none"> <li>Preconstruction Call-Playback Surveys for California Black Rail. A qualified biologist will conduct a preconstruction survey in potentially suitable habitat for this species in the project footprint and a 500-foot buffer to the project footprint. Surveys will be initiated sometime between March 15 and May 31, preferably before May 15. A minimum of four surveys will be conducted. The survey dates will be spaced at least 10 days apart and will cover the time period from the date of the first survey through the end of June to early July. This will allow the surveys to encompass the time period when the highest frequency of calls is likely to occur. Projects must conduct surveys during this time period, regardless of when the project is scheduled to begin, and shall be conducted the year in which ground disturbance activities commence. Surveys will follow a standardized tape call-playback/response protocol similar to that of Evens et al. 1991 and Richmond et al. 2008 or other CDFW-approved method. The surveys will document the presence or absence of black rail. CDFW will be notified within 2 business days of any identified black rail detections.</li> <li>If California black rails are detected during preconstruction surveys, the following additional measures will be implemented in association with occupied California black rail habitats: <ul style="list-style-type: none"> <li>SMUD will establish and maintain a non-disturbance buffer of up to 500 feet around all identified occupied wetland habitat, depending on site-specific conditions and at the discretion of a qualified biologist in consultation with CDFW. Where feasible, all construction-related activities will be excluded from the buffer for the duration of project implementation.</li> <li>Where maintaining the non-disturbance buffer for the duration of the project is not feasible, at minimum, all construction-related activities will be excluded from the buffer for the duration of the breeding season (March through September, or for lesser duration as approved by CDFW).</li> <li>If project activities are necessary within the established non-disturbance buffer or within occupied habitat, including potential alterations to hydrological conditions that support black rail habitat, SMUD will consult with CDFW to identify a strategy that will avoid take of the year-round resident California black rail. This may or may not include work windows outside the breeding season, installation of wildlife exclusion fencing, and/or methods for passive exclusion of individuals out of the temporary and permanent impact area such as through the hand removal of vegetation before other project-related ground disturbances, as determined in consultation with CDFW. A qualified biologist will be present for any construction activities occurring within the non-disturbance buffer; the intensity and frequency of the monitoring will be established in consultation with CDFW.</li> </ul> </li> <li>Information about avoidance and minimization measures for California black rails shall be included in the WEAP described above in Mitigation Measure 3.4-1.</li> </ul>	<p>Four (4) pre-construction surveys to be conducted between March 15 and May 31 during the year which ground disturbing activities are scheduled to begin if construction occurs within 500 feet of potentially suitable habitat.</p> <p>If California black rails are detected during preconstruction surveys, implement additional measures as described in MM.</p>	Before and during construction  CDFW to be notified within 2 days of any California black rail detections	Qualified Biologist	SMUD, USFWS, and CDFW	All project components during construction occurring within 500 feet of suitable California black rail habitat
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status birds.	<p><b>Mitigation Measure 3.4-7 Avoid and Minimize Impacts on Burrowing Owl</b></p> <ul style="list-style-type: none"> <li>SMUD will have preconstruction burrowing owl surveys conducted in all areas that may provide suitable nesting habitat according to CDFW (CDFG 2012) guidelines. A qualified wildlife biologist shall conduct take avoidance surveys, including documentation of burrows and burrowing owls, in all suitable burrowing owl habitat within 250 feet of proposed construction. Two surveys will be conducted within 15 days prior to ground disturbance to establish the presence or absence of burrowing owls. The surveys will be conducted at least 7 days apart (if burrowing owls are detected on the first survey, a second</li> </ul>	Two (2) preconstruction surveys within 15 days prior to ground disturbance conducted 7 days apart.	Before construction	Qualified Biologist	SMUD and CDFW	All project components during construction involving work within 250 feet of suitable

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<p>survey is not needed) for both breeding and non-breeding season surveys. All burrowing owls observed will be counted and mapped.</p> <ul style="list-style-type: none"> <li>During the breeding season (February 1 to August 31), surveys will document whether burrowing owls are nesting in or within 250 feet of the project area.</li> <li>During the non-breeding season (September 1 to January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any area to be disturbed. Survey results will be valid only for the season (breeding or nonbreeding) during which the survey was conducted.</li> <li>The qualified biologist will survey the proposed footprint of disturbance and a 250-foot radius from the perimeter of the proposed footprint to determine the presence or absence of burrowing owls. The site will be surveyed by walking line transects, spaced 20 to 60 feet apart, adjusting for vegetation height and density. At the start of each transect and, at least, every 300 feet, the surveyor, with use of binoculars, shall scan the entire visible project area for burrowing owls. During walking surveys, the surveyor will record all potential burrows used by burrowing owls, as determined by the presence of one or more burrowing owls, pellets, prey remains, whitewash, or decoration. Some burrowing owls may be detected by their calls; therefore, observers will also listen for burrowing owls while conducting the survey.</li> <li>Adjacent parcels under different land ownership will be surveyed only if access is granted. If portions of the survey area are on adjacent sites for which access has not been granted, the qualified biologist will get as close to the non-accessible area as possible and use binoculars to look for burrowing owls.</li> <li>The presence of burrowing owl or their sign anywhere on the site or within the 250-foot accessible radius around the site will be recorded and mapped. Surveys will map all burrows and occurrence of sign of burrowing owl on the project site. Surveys must begin 1 hour before sunrise and continue until 2 hours after sunrise (3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. Additional time may be required for large project sites.</li> </ul> <p>If a burrowing owl or evidence of presence at or near a burrow entrance is found to occur within 250 feet of the project site, the following measures will be implemented:</p> <ul style="list-style-type: none"> <li><b>Burrowing Owl 2.</b> If burrowing owls are found during the breeding season (approximately February 1 to August 31), the project applicant will: <ul style="list-style-type: none"> <li>Avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging).</li> <li>Establish a 250-foot non-disturbance buffer zone around nests. The buffer zone will be flagged or otherwise clearly marked. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer will be increased such that activities are far enough from the nest so that the bird(s) no longer display this agitated behavior. The exclusionary buffer will remain in place until the chicks have fledged or as otherwise determined by a qualified biologist.</li> <li>Construction may only occur within the 250-foot buffer zone during the breeding season only if a qualified raptor biologist monitors the nest and determines that the activities do not disturb nesting behavior, or the birds have not begun egg-laying and incubation, or that the juveniles from the occupied burrows have fledged and moved off site. Measures such as visual screens may be used to further reduce the buffer with Wildlife Agency approval and provided a biological monitor confirms that such measures do not cause agitated behavior.</li> </ul> </li> <li><b>Burrowing Owl 3.</b> If burrowing owls are found during the non-breeding season (approximately September 1 to January 31), the project applicant will establish a 160-foot buffer zone around active</li> </ul>	<p>If burrowing owl or evidence of presence is found, implement additional measures as described in MM (monitor must be present for any activities within 250 feet of identified burrows; establish 160-foot buffer zone around active burrows during the non-breeding season; CDFW approval for any further buffer reductions).</p>				burrowing owl habitat

Table 4-1. Summary of Impacts and Mitigation Measures

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<p>burrows. The buffer zone will be flagged or otherwise clearly marked. Measures such as visual screens may be used to further reduce the buffer with CDFW approval and provided a biological monitor confirms that such measures do not cause agitated behavior.</p> <ul style="list-style-type: none"> <li>• <b>Burrowing Owl 4.</b> During the non-breeding season only, if a project cannot avoid occupied burrows after all alternative avoidance and minimization measures are exhausted, as confirmed by CDFW, a qualified biologist may passively exclude birds from those burrows. A burrowing owl exclusion plan must be developed by a qualified biologist consistent with the most recent guidelines from CDFW (e.g., California Department of Fish and Game 2012) and submitted to and approved by CDFW. Burrow exclusion may be conducted for burrows located in the project footprint and within a 160-foot buffer zone as necessary.</li> <li>• Information about avoidance and minimization measures for western burrowing owl shall be included in the WEAP described above in Mitigation Measure 3.4-1.</li> </ul>					
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status birds.	<p><b>Mitigation Measure 3.4-8. Compensate for the Loss of Burrowing Owl Habitat</b></p> <p>If burrowing owls are documented as breeding in the project area, compensatory mitigation shall be provided for permanent impacts on (removal of) burrowing owl nesting and foraging habitat. Burrowing owl foraging and nesting habitat will still be available after installation of solar panels. However, if the project results in a net loss of nesting or grassland foraging habitat due to conversion of 57.2 acres of grassland habitat to project infrastructure the loss of habitat will be mitigated as described in CDFW guidelines (CDFG 2012) in consultation with CDFW. The performance standard for compensatory mitigation for nesting and foraging habitat will be to achieve no net loss of habitat value to the burrowing owl. Compensatory mitigation for habitat loss shall be consistent with guidance by CDFW (CDFG 2012) and may include development and implementation of a land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls on the project site, acquisition of credits in a burrowing owl mitigation bank, or another form of mitigation acceptable to CDFW, such as payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities, wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 "Agricultural Resources" of this Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase. The compensatory mitigation will be consistent with the PCCP goal of maintaining or increasing the population size of overwintering western burrowing owl and promoting expansion of breeding populations of burrowing owls and will be approved by CDFW. Compensatory mitigation will include the following requirements as described in CDFG 2012:</p> <ul style="list-style-type: none"> <li>• Permanently protect mitigation land through a conservation easement deeded to a non-profit conservation organization or public agency with a conservation mission, for the purpose of conserving burrowing owl habitat and prohibiting activities incompatible with burrowing owl use. This may occur through the payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities, wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 "Agricultural Resources" of the Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase. If the project is located within the service area of a CDFW-approved burrowing owl conservation bank, the project proponent may also purchase available burrowing owl conservation bank credits.</li> <li>• Develop and implement a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls.</li> </ul>	<p>If burrowing owls are documented as breeding in the project area, SMUD will do the following: Compensatory mitigation shall be provided for permanent impacts as described in the MM. If payments into an in-lieu fee program will occur, payments may be spread out in alignment with construction phasing, and must be made before start of each phase prior to Improvement Plan approval.</p> <p>Develop and implement mitigation land management plan.</p>	Before, during, and after construction	SMUD	SMUD, PCA, and CDFW	All project components that would result in permanent impacts to nesting or foraging habitat

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<ul style="list-style-type: none"> <li>Fund the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.</li> </ul>					
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status birds.	<p><b>Mitigation Measure 3.4-9. Conduct Pre-Construction Surveys for Swainson’s Hawk and Implement Protective Buffers.</b></p> <p><b>Preconstruction Surveys.</b> A qualified biologist will conduct preconstruction surveys for Swainson’s hawks during the nesting season (March 1 through August 21) within the project footprint and of all suitable nesting habitat within line of sight of construction activities within a 0.25-mile radius of the project footprint. The surveys will be conducted no more than 15 days prior to ground disturbance and will be conducted using methods consistent with guidelines provided in Recommended Timing and <i>Methodology for Swainson’s Hawk Nesting Surveys in the Central Valley</i> (SHTAC 2000) with the following exceptions:</p> <ul style="list-style-type: none"> <li>Surveys will be required within a 0.25 miles (1,320- foot) radius around the project site. In instances where an adjacent parcel is not accessible to survey because the qualified biologist was not granted permission to enter, the qualified biologist will scan all potential nest tree(s) from the adjacent property, road sides, or other safe, publicly accessible viewpoints, without trespassing, using binoculars and/or a spotting scope to look for Swainson’s hawk nesting activity;</li> <li>Surveys will be required from February 1 to September 15 (or sooner if it is found that birds are nesting earlier in the year); and</li> <li>If a Swainson’s hawk nest is located and presence confirmed, only one follow-up visit is required (to avoid disturbance of the nest due to repeated visits).</li> </ul> <p><b>Nest Buffers.</b> If active Swainson’s hawk nests are found, appropriate buffers shall be established around active nest sites, in coordination with CDFW, to provide adequate protection for nesting raptors and their young. No project activity shall commence during the nesting season within the buffer areas until the qualified biologist has determined that the young have fledged, the nest is no longer active, or reducing the buffer would not result in nest abandonment.</p> <p><b>Nest Monitoring.</b> Monitoring of the nest by a qualified biologist during construction activities may be required if the qualified biologist determines that the activity has potential to adversely affect the nest. If construction activities cause the nesting bird to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, then the no-disturbance buffer shall be increased until the agitated behavior ceases. The exclusionary buffer will remain in place until the qualified biologist has confirmed that the chicks have fledged.</p> <p>Information about avoidance and minimization measures for Swainson’s hawk shall be included in the WEAP described above in Mitigation Measure 3.4-1.</p>	<p>Preconstruction surveys no more than 15 days prior to ground disturbing activities within the nesting season (March 1 to August 21)</p> <p>If nests are found, implement appropriate no-disturbance nest buffers and monitoring during construction if construction could adversely affect any observed nests</p>	Before and during construction	Qualified Biologist	SMUD	All project components during construction with potential to disturb Swainson’s hawk nests
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status birds.	<p><b>Mitigation Measure 3.4-10. Compensate for the Loss of Swainson’s Hawk Foraging Habitat</b></p> <p>To offset net impacts on foraging habitat for breeding Swainson’s hawks SMUD will mitigate the loss of Swainson’s hawk foraging habitat in accordance with CDFW recommendations (CDFG 1994) by providing mitigation lands or securing Swainson’s hawk mitigation bank credits as follows:</p> <ul style="list-style-type: none"> <li>Foraging habitat permanently lost within 5 miles of an active Swainson’s hawk nest tree but more than 1 mile from the nest tree will be replaced with 0.75 acre of mitigation land for each acre of foraging habitat permanently lost because of project construction (0.75:1 ratio). Foraging habitat for nests that are within 1 mile of the project site will be mitigated at a 1:1 ratio. All mitigation lands protected under this requirement shall be protected in a form acceptable to CDFW (e.g., through fee title acquisition or conservation easement) on agricultural lands or other suitable habitats that provide foraging habitat for Swainson’s hawk. This may occur through the payment of fees into the PCCP’s in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities,</li> </ul>	If Swainson’s hawk foraging habitat is impacted as described in the MM, compensatory mitigation shall be provided. If payment of fees into in-lieu fee program will occur, payments may be spread out in alignment with construction phasing	Before and during construction	SMUD	SMUD and PCA	All components that result in loss of Swainson’s hawk foraging habitat or nesting habitat

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 “Agricultural Resources” of this Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase. Management authorization holders/project sponsors will provide for management of the mitigation lands in perpetuity by funding a management endowment.	prior to Improvement Plan approval.				
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status birds.	<p><b>Mitigation Measure 3.4-11. Conduct Focused Pre-Construction Surveys for Nesting Tricolored Blackbird and Avoid Impacts During Construction</b></p> <ul style="list-style-type: none"> <li>• <b>Preconstruction Tricolored Blackbird Surveys.</b> Before any ground-disturbing activities or vegetation clearing that may result in effects on potential habitat for Tricolored Blackbird (TRBL), a qualified biologist will conduct a preconstruction survey in potentially suitable nesting habitat (i.e., blackberry thickets and cattail marsh) for this species in the project footprint and a 500-foot buffer to the project footprint. The biologist will conduct three separate surveys, one each in mid-April, mid-May, and mid-June (Beedy, pers. comm., 2022a), and will use methods consistent with survey protocol used by surveyors for the Western Riverside County MSHCP 2018 <a href="https://www.wrcrca.org/species/survey_protocols/2018%20Tricolored%20Blackbird%20Survey%20Protocol.pdf">https://www.wrcrca.org/species/survey_protocols/2018 Tricolored Blackbird Survey Protocol.pdf</a>. If an active nesting colony is detected during the surveys CDFW will be consulted to provide any guidance on appropriate avoidance and minimization measures in addition to those described below.</li> <li>• <b>Avoidance and Minimization.</b> Project activities will avoid occupied TRBL nesting habitat. If TRBL colonies are identified during the breeding season, an approximate buffer of up to 500 feet will be established around the colony, depending on site specific conditions and at the discretion of a qualified biologist in consultation with CDFW. Any construction-related activities will be excluded from the buffer until the end of the breeding season.</li> <li>• <b>Construction Monitoring.</b> If construction takes place during the breeding season when an active colony is present within 500 feet of construction activities, a qualified biologist will regularly monitor construction to ensure that the buffer zone is enforced and to verify that construction is not disrupting the colony. The intensity and frequency of the monitoring will be established in consultation with CDFW. If monitoring indicates that construction outside of the buffer is affecting a breeding colony, the buffer will be increased, as needed, in consultation with CDFW.</li> <li>• Information about avoidance and minimization measures for tricolored blackbird shall be included in the WEAP described above in Mitigation Measure 3.4-1.</li> </ul>	<p>Prior to ground-disturbing activities that may have impacts on tricolored blackbird habitat (blackberry thickets and cattail marsh), one survey in mid-April, one in mid-May, and one in mid-June shall be conducted.</p> <p>If tricolored blackbird nests are found, a 500-foot no-disturbance zone created prior to construction.</p> <p>Biological monitoring required if an active colony is present within 500 feet of construction activities.</p>	Before and during construction	Qualified Biologist	SMUD and CDFW	All project components during construction that could result in impacts to tricolored blackbird habitat
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status invertebrates.	<p><b>Mitigation Measure 3.4-12. Avoid Impacts on Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp During Construction</b></p> <p>Vernal pools and seasonal wetlands in the project area provide potentially suitable habitat for vernal pool fairy shrimp and tadpole shrimp. A 250-foot no-disturbance buffer area will be established from the high-water mark of the vernal pool or wetland habitat prior to construction and will be delineated by fencing as described in Mitigation Measure 3.4-2 and confirmed by a qualified biologist. The boundaries of vernal pools, seasonal wetlands and associated 250-foot buffers will also be clearly delineated on project plans and specifications boundaries. No construction or ground-disturbing activities shall occur within the 250-foot buffer. All construction activities are prohibited within this buffer area. With complete avoidance of ground-disturbing activities within vernal pools and seasonal wetlands and a 250-foot buffer beyond the boundaries of these aquatic features, no direct or indirect impacts will occur to vernal pool fairy shrimp or tadpole shrimp and no further avoidance or minimization measures are required.</p> <p>Information about avoidance and minimization measures for vernal pool fairy shrimp and vernal pool tadpole shrimp shall be included in the WEAP described above in Mitigation Measure 3.4-1.</p>	<p>Vernal pool and wetland exclusion fencing to be installed in coordination with qualified biologist before start of construction.</p> <p>Fencing to be maintained during construction, operations and maintenance, and decommissioning (see MM 3.4-2).</p>	Before and during construction, during operations and maintenance, and decommissioning.	Qualified Biologist and Contractor	SMUD	All project components within 250 feet of vernal pools or seasonal wetlands

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on special-status mammals.	<p><b>Mitigation Measure 3.4-13. Conduct Focused Pre-Construction Surveys for American Badger and Implement Avoidance Measures during Construction</b></p> <p>A qualified biologist shall conduct focused surveys for American badger dens no more than 14 days prior to ground-disturbing activities in grassland habitat. The survey shall cover the limits of ground disturbance and a 100-foot buffer. Any winter or natal American badger dens located during the survey shall be evaluated (typically with remote cameras) to determine activity status.</p> <p>If American badger dens are detected in the project area, the qualified biologist shall establish a 100-foot no-disturbance buffer (e.g., wildlife-friendly fencing, flagging, or similar) around any active American badger natal dens identified during the survey. The buffer shall be maintained until the qualified biologist determines that the den is no longer active, and the young are no longer dependent upon the den for survival.</p> <p>If construction is scheduled to begin during the nonbreeding period (i.e., typically from June through February) and an active non-natal den is found in or adjacent to the construction footprint, a qualified biologist shall develop a plan in consultation with CDFW to trap or flush the individual and relocate it to suitable habitat away from construction. If no dens are observed, and/or after a trapping or flushing effort is completed, and/or after it is confirmed that a natal den is no longer active, the vacated or unoccupied den can be excavated, and construction can proceed.</p> <p>If American badger is detected during the surveys the qualified biologist will determine if regular monitoring of the badger den is required to ensure there are no impacts to this species and its habitat during construction.</p> <p>Information about avoidance and minimization measures for American badger shall be included in the WEAP described above in Mitigation Measure 3.4-1.</p>	<p>Surveys conducted no more than 14 days prior to ground-disturbing activities</p> <p>If an American badger natal den is detected, a no-disturbance 100-foot buffer fencing or flagging shall be installed.</p> <p>If an American badger non-natal den is detected during the non-breeding season, develop plan in consultation with CDFW to trap or flush individual and relocate; or if den is no longer active, den can be excavated.</p> <p>Monitoring to occur during construction if deemed necessary by qualified biologist.</p>	Before and during construction	Qualified Biologist	SMUD	All project components during construction that involve ground-disturbing activities in grassland habitat
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on nesting birds and raptors.	<p><b>Mitigation Measure 3.4-14. Conduct Pre-Construction Surveys for Nesting Birds and Raptors</b></p> <p>Tree or vegetation removal shall be conducted outside of the nesting season (i.e., the nesting season is defined as February 1 through August 31) to the greatest extent feasible.</p> <p>If construction activities will begin during the nesting season, a qualified biologist shall conduct a survey for nesting birds no more than 3 days prior to vegetation removal or ground-disturbing activities during the nesting season within suitable habitat (i.e., February 1 through August 31). The survey shall cover the limits of construction and accessible suitable nesting habitat within 500 feet. If any active nests are observed during surveys, a qualified biologist should establish a suitable avoidance buffer from the active nest. The buffer distance will typically range from 50 feet (for nesting passerines) to 500 feet (for nesting raptors) and will be determined based on factors such as the species of bird, topographic features, intensity and extent of the disturbance, timing relative to the nesting cycle, and anticipated ground disturbance schedule.</p> <p>If vegetation removal activities are delayed, additional nest surveys shall be conducted such that no more than 7 days are allowed to pass between the survey and vegetation removal activities.</p>	<p>If construction occurs within nesting season (February 1 to August 31), conduct preconstruction nesting survey no more than 3 days prior to vegetation removal or ground-disturbing activities.</p> <p>If vegetation removal activities are delayed, additional nest surveys should be conducted so that no more than 7 days pass between survey and vegetation removal.</p> <p>If any active nests are observed, establish</p>	Before and during construction	Qualified Biologist	SMUD	All project components during construction that involve tree or vegetation removal or ground-disturbing activities.



**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
			suitable avoidance buffer.  If required, biological monitor shall be present on-site to monitor construction activities near nest				
<b>Biological Resources</b>	<b>Impact 3.4-1.</b> Temporary and permanent construction impacts on nesting birds and raptors.	<b>Mitigation Measure 3.4-15. Avoid Impacts on Nesting Birds and Raptors during Construction</b>  Limits of construction to avoid active nests shall be established in the field with flagging, fencing, or other appropriate barriers and shall be maintained until the chicks have fledged and the nests are no longer active, as determined by the qualified biologist.  If an active nest is identified in or adjacent to the construction zone after construction has started, work in the vicinity of the nest shall be halted until the qualified biologist can provide appropriate avoidance and minimization measures to ensure that the nest is not disturbed by construction. Appropriate measures may include a no-disturbance buffer until the nest has fledged and/or full-time monitoring by a qualified biologist during construction activities conducted near the nest.  Information about avoidance measures to protect nesting birds and raptors shall be included in the WEAP described above in Mitigation Measure 3.4-1.	Limits of construction shall be established to avoid active nests.  Active nests to be monitored during construction.	Before and during construction	Qualified Biologist and Contractor	SMUD	All project components during construction occurring near active nests
<b>Biological Resources</b>	<b>Impact 3.4-2.</b> Impacts on any riparian habitat or other sensitive natural community.	<b>Mitigation Measure 3.4-16. Avoid, Minimize and Compensate for Impacts on Sensitive Natural Communities and Comply with Federal, State and Local Permits</b>  Prior to project implementation, SMUD shall refine potential impacts on sensitive natural communities based on advanced designs and obtain the necessary permits for impacts on any sensitive natural communities. These include the following permits: <ul style="list-style-type: none"><li>• Section 1600 Streambed Alteration Agreement from CDFW (for impact on riparian area and other sensitive natural communities not considered Waters of the U.S. (WUS) or State)</li><li>• CWA Section 404 permit from USACE for impacts to WUS</li><li>• CWA Section 401 Clean Water Certification from the Regional Water Quality Control Board for impacts to WUS</li><li>• Waste Discharge Permit from Regional Water Quality Control board for impacts to water of the state</li><li>• Floodplain encroachment permit from the County, if necessary based on advanced designs</li><li>• As part of the permit applications, SMUD shall develop a habitat mitigation plan that will include mitigation for impacted sensitive natural communities on a no-net-loss basis. The plan may include onsite restoration, if feasible, offsite preservation, or purchasing mitigation credits from an agency-approved wetlands mitigation bank, paying an agency-approved in-lieu fee, and/or developing conservation lands to compensate for permanent loss of resources. Mitigation ratios shall be no less than 1:1 and shall be determined during the permitting process. This may also occur through the payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities, wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 "Agricultural Resources" of this Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase.</li></ul>	Necessary permits shall be obtained before project implementation.  Develop a habitat mitigation plan to be submitted with permit applications.  Compensate for impacts to sensitive natural communities as described in MM.  Prior to Improvement Plan approval.	Prior to project implementation and during construction.	SMUD to obtain permits Contractor to abide by conditions set forth in permits  Qualified Biologist to ensure compliance	SMUD, PCA, Regional Water Quality Control Board, and CDFW	All project components during construction that could impact sensitive natural communities

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<ul style="list-style-type: none"> <li>SMUD shall implement all conditions of the permits, including any performance monitoring, if required for onsite restoration and report on the results of the monitoring to the appropriate agencies at the frequency and duration included in the permits.</li> <li>Sensitive natural communities shall be included in the WEAP described above in Mitigation Measure 3.4-1.</li> </ul>					
<b>Biological Resources</b>	<b>Impact 3.4-3.</b> Impacts on state or federally protected wetlands through direct removal, filling, hydrological interruption, or other means.	<p><b>Mitigation Measure 3.4-17. Avoid impacts to jurisdictional features and sensitive natural communities by use of horizontal directional drilling.</b></p> <ul style="list-style-type: none"> <li>The following avoidance and minimization measures shall be implemented to protect listed and other special-status plants and animals, and to avoid impacts to wetlands and riparian zones: <ul style="list-style-type: none"> <li>Boring activities and set-up activities for boring operations shall be situated outside of wetlands and riparian areas. An earthen or sandbag berm shall be installed around all drilling fluid mixing and pumping areas to contain any inadvertently spilled material. Sediment control devices shall be installed between the drilling staging areas and any waterways. This includes any culverts or drainage ditches that lead to a waterway.</li> <li>HDD operations at the creek crossings and/or jurisdictional features shall be limited to daylight hours because of the difficulty in identifying the loss of bentonite or machine pressure without daylight. This shall be defined by the termination of drilling 30 minutes before dusk, and resumption of drilling at dawn. The contractor will make every effort to schedule drilling activities to be completed between dawn and 30 minutes to dusk. Should the drilling activities be within one hour of completion, 30 minutes before dusk, drilling activities may be allowed to continue until completion if the Project environmental monitor and/or the CDFW or its agents determine that completing the drilling activities will result in less risk to the stream.</li> </ul> </li> <li>Visual inspection along the bore alignment for frac-outs shall take place at all times while the drill is in operation. The monitor shall be in radio contact with the boring machine operator at all times. A biologist/monitor's presence shall be required during all boring activities (i.e. boring, back reaming, etc.) within CDFW jurisdiction unless the drainage is dry.</li> <li>The HDD Operator shall design, pre-plan, and direct the HDD operation in such a way as to minimize the risk of spills of all types. The HDD Operator shall prepare and implement a Frac-Out Contingency Plan and submit it to SMUD and CDFW for review and approval 30 days prior to construction, which includes the boring plans and frac-out and clean-up plans, in the event of the accidental release of drilling lubricants through fractures in the streambed or bank ("frac-outs"). In substrates where frac-outs are likely to occur, the HDD Operator shall operate in a manner that will reduce risk, such as using lower pressure and greater boring depths. The Contingency Plan shall be kept on site at all times.</li> <li>A non-toxic fluorescent water-soluble dye shall be added to the drilling muds to allow for frac-outs to be seen in muddy waters. The dye shall be used in a concentration which allows the monitors to easily determine the source of the frac-out, and shall be a type of dye approved for use by the local Regional Water Quality Control Board.</li> <li>All equipment required to contain and clean up a frac-out release shall be available at the work site.</li> <li>Boring plans should include: <ul style="list-style-type: none"> <li>A sketch of the construction site, including equipment staging areas, approximate location of drill entry and exit points and the approximate location of access roads in relation to the surrounding area,</li> <li>Proposed depth of bore and statement of streambed or wetland condition (subsurface strata and percent of gravel and cobble) that support the depth of the bore,</li> <li>Approximate length of bores (50-foot increments),</li> </ul> </li> </ul>	<p>HDD operations at creek crossings and/or jurisdictional features shall be limited to daylight hours.</p> <p>Visual inspection along the bore alignment shall take place at all times while the drill is in operation.</p> <p>HDD Operator shall prepare and implement a Frac-Out Contingency Plan and submit it to SMUD and CDFW for review and approval 30 days prior to construction.</p> <p>If a frac-out occurs in a sensitive resources, the Operator shall immediately notify the SMUD Environmental Monitor.</p> <p>If a frac-out occurs and the SMUD Environmental Monitor decides that containment and clean-up is needed to prevent additional impacts, the Contractor shall begin the containment and clean up measures as described in the MM.</p>	Before and during HDD operations	Contractor and Biological Monitor	SMUD and CDFW	All project components involving HDD operations

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<ul style="list-style-type: none"> <li>Type and size of boring equipment to be used (categorized as mini, mid or maxi),</li> <li>Estimated time to complete bore,</li> <li>List of lubricants and HDD additives to be used including Material Safety Data Sheets (MSDS), and</li> <li>Name of Operator's agents and cell phone numbers.</li> <li>Frac-out prevention and clean-up plans should include: <ul style="list-style-type: none"> <li>Name(s) and phone numbers of biological monitor(s) and crew supervisor(s),</li> <li>Site specific resources of concern (if applicable, include factors such as possible presence of sensitive species),</li> <li>Monitoring protocols (include biological monitoring and frac-out monitoring), and</li> <li>Containment and clean-up plan (include staging location of vacuum trucks and equipment, equipment list, necessary hose lengths, special measures needed for steep topography, etc. at each location).</li> </ul> </li> <li>If a frac-out or spill occurs in a sensitive resource, the Operator shall immediately notify the SMUD Environmental Monitor.</li> <li>If a frac-out occurs, the SMUD Environmental Monitor, shall determine whether clean-up actions are warranted. If containment and clean-up is needed to prevent additional impacts, the Contractor shall begin the following containment and clean up measures immediately. <ul style="list-style-type: none"> <li>Where water flows allow, the Contractor shall immediately construct a sandbag well around the frac-out or place a standing pipe (such as a 55-gallon drum with the top and bottom removed, heavy PVC pipe or CMP or culvert type material) around the frac-out to contain the drilling mud.</li> <li>A trailer-mounted vacuum or vacuum truck shall be deployed to vacuum out spilled drilling fluids that continue to leak. Removed drilling fluids shall not be placed where they are likely to re-enter the stream.</li> <li>All cleanup and containment efforts shall adhere to the Frac-out Contingency Plan approved by the SMUD for spill response.</li> </ul> </li> </ul>					
<b>Cultural Resources</b>	<b>Impact 3.5-1.</b> Impacts on archaeological resources pursuant to § 15064.5.	<p><b>Mitigation Measure 3.5-1: Halt ground-disturbing activity upon discovery of subsurface archaeological features.</b></p> <p>In the event that any prehistoric or historic-era subsurface archaeological features or deposits, including locally darkened soil ("midden"), that could conceal cultural deposits, are discovered during construction, all ground-disturbing activity within 100 feet of the resources shall be halted and a qualified professional archaeologist shall be retained to assess the significance of the find. If the find is determined to be significant by the qualified archaeologist (i.e., because it is determined to constitute either an historical resource, a unique archaeological resource, or a tribal cultural resource), the archaeologist shall develop appropriate procedures to protect the integrity of the resource and ensure that no additional resources are affected. Procedures could include, but would not necessarily be limited to, preservation in place (which shall be the preferred manner of mitigating impacts to archaeological sites), archival research, subsurface testing, or contiguous block unit excavation and data recovery (when it is the only feasible mitigation, and pursuant to a data recovery plan).</p>	If any prehistoric or historic-era subsurface archaeological features or deposits are discovered during construction, all ground-disturbing activity shall cease within 100 feet of the resource(s) discovered until an archaeologist can assess the significance of the find.	During construction	Contractor and Qualified Archaeologist	SMUD	All project components during construction

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
<b>Cultural Resources</b>	<b>Impact 3.5-2.</b> Disturbance of any human remains, including those interred outside of dedicated cemeteries.	<b>Mitigation Measure 3.5-2: Halt ground-disturbing activity upon discovery of human remains.</b>  If human remains are discovered during any construction activities, potentially damaging ground-disturbing activities within 100 feet of the remains shall be halted immediately, and SMUD will notify the Placer County coroner and the NAHC immediately, according to PRC Section 5097.98 and Section 7050.5 of the California Health and Safety Code. If the remains are determined by the NAHC to be Native American, the guidelines of the NAHC shall be followed during the treatment and disposition of the remains. SMUD will also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC.  Following the coroner's and NAHC's findings, the archaeologist and the NAHC-designated Most Likely Descendant shall determine the ultimate treatment and disposition of the remains and take appropriate steps to ensure that additional human interments are not disturbed. PRC Section 5097.94 identifies the responsibilities for acting upon notification of a discovery of Native American human remains.	If human remains are discovered during construction, potentially damaging ground-disturbing activities within 100 feet of the remains will be halted immediately.  SMUD will notify Solano County coroner and the NAHC immediately.	During construction	SMUD, Qualified Archaeologist, and Contractor	SMUD, Placer County, and NAHC	All project components during construction
<b>Geology and Soils</b>	<b>Impact 3.7-5.</b> Impacts on Unique Paleontological Resources.	<b>Mitigation Measure 3.7-5: Avoid Impacts to Unique Paleontological Resources.</b>  To minimize the potential for destruction of or damage to previously unknown unique, scientifically important paleontological resources during earthmoving activities at the project site, SMUD shall do the following: <ul style="list-style-type: none"><li>• Prior to the start of earthmoving activities, retain either a qualified archaeologist or paleontologist to inform all construction personnel involved with earthmoving activities regarding the possibility of encountering fossils, the appearance and types of fossils likely to be seen during construction, and proper notification procedures should fossils be encountered.</li><li>• If paleontological resources are discovered during earthmoving activities, the construction crew shall immediately cease work in the vicinity of the find and notify SMUD and the County. SMUD shall retain a qualified paleontologist to evaluate the resource and prepare a recovery plan. The recovery plan may include, but is not limited to, a field survey, construction monitoring, sampling and data recovery procedures, museum curation for any specimen recovered, and a report of findings. Recommendations in the recovery plan that are determined by SMUD and the County to be necessary and feasible shall be implemented before construction activities can resume at the site where the paleontological resource or resources were discovered.</li></ul>	Before earthmoving activities, a qualified paleontologist or archaeologist will inform construction personnel on what paleontological resources are and what to do if one is found.  Qualified paleontologist to evaluate resources if found and prepare a recovery plan.	Before and during construction activities	SMUD, Qualified paleontologist, and Contractor	SMUD and Placer County	All project components during construction
<b>Hazards and Hazardous Materials</b>	<b>Impact 3.9-2.</b> Hazards to the public or environment due to the accidental release of hazardous materials.	<b>Mitigation Measure 3.9-1: Conduct Phase II Environmental Site Assessment and Implement Remedial Measures</b>  To reduce health hazards associated with potential exposure to hazardous substances, SMUD shall implement the following measures before the start of ground-disturbing activities: <ul style="list-style-type: none"><li>• Retain a certified environmental professional to conduct a Phase II ESA that includes appropriate soil and/or groundwater testing. Recommendations in the Phase II ESA to address any contamination that is found shall be implemented before ground-disturbing activities can resume in the areas where contamination is identified, including at the two REC areas in the Phase I ESA recommended for further investigation.</li><li>• Notify the appropriate federal, State, and local agencies if evidence of previously undiscovered soil or groundwater contamination (e.g., stained or odoriferous soil or groundwater) or if previously undiscovered underground storage tanks are encountered during construction activities. Any contaminated areas shall be remediated in accordance with recommendations made by the Placer County Department of Health and Human Services-Division of Environmental Health Services, Central Valley RWQCB, DTSC, and/or other appropriate Federal, state, or local regulatory agencies.</li></ul>	Conduct Phase II ESA prior to ground disturbing activities.  Before construction, address contamination that is found during the Phase II ESA.  Notify appropriate agencies if previously undiscovered underground storage tanks are encountered during construction activities.	Before and during construction	SMUD, Certified environmental professional, and Contractor	Placer County Department of Health and Human Services-Division of Environmental Health Services, Central Valley RWQCB, DTSC, and/or other appropriate Federal, state, or local regulatory agencies.	All project components

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		<ul style="list-style-type: none"> <li>Remove all surface debris such as the used tires, tractor trailers, recreational vehicles, Polyvinyl chloride (PVC) piping, and soil piles observed within the proposed project boundaries during the site visit conducted in January 2022, and dispose of such materials at an appropriately permitted off-site disposal facility.</li> </ul>	Remove all surface debris found within the project boundaries.				
<b>Hydrology and Water Quality</b>	<b>Impact 3.10-5.</b> Risk of pollutant release due to project inundation in a flood hazard, tsunami, or seiche zones.	<p><b>Mitigation Measure 3.10-1: Locate Construction Equipment and Material Storage Areas Outside of the 100-Year Floodplain During the Winter Rainy Season.</b></p> <p>In order to protect human life, water quality, and designated in-stream beneficial uses of waterbodies, the construction contractor shall implement the following:</p> <ul style="list-style-type: none"> <li>The on-site construction trailer and its associated portable restrooms, fencing, power supply, and parking area, shall not be located within a 100-year floodplain.</li> <li>During the winter rainy season (i.e., November 1 through April 1), construction materials and equipment shall not be stored in a 100-year floodplain.</li> </ul>	Construction materials shall be placed outside 100-year floodplain during winter rainy season (November 1 through April 1)	During construction	Contractor	SMUD	All project components during construction
<b>Noise</b>	<b>Impact 3.13-1.</b> Temporary, short-term exposure of sensitive receptors to construction noise.	<p><b>Mitigation Measure 3.13.1. Implement Noise Reducing Construction Practices, Prepare and Implement a Noise Control Plan, and Monitor and Record Construction Noise near Sensitive Receptors.</b></p> <p>The project applicant(s) and primary contractors for engineering design and construction of all project phases shall employ noise-reducing construction practices and ensure that the following requirements are implemented at each worksite in any year of project construction to avoid and minimize construction noise effects on sensitive receptors. Measures that shall be used to limit noise shall include the measures listed below:</p> <ul style="list-style-type: none"> <li>Noise-generating construction operations shall be limited to the hours between 6 a.m. and 8 p.m. Monday through Friday, and between 8 a.m. and 6 p.m. on Saturdays.</li> <li>Construction equipment and equipment staging areas that could produce noise perceptible at the adjacent property boundary shall be located as far as feasible from nearby noise-sensitive land uses.</li> <li>All construction equipment shall be properly maintained and equipped with noise-reduction intake and exhaust mufflers and engine shrouds, in accordance with manufacturers' recommendations. Equipment engine shrouds shall be closed during equipment operation.</li> <li>All motorized construction equipment shall be shut down when not in use to prevent idling.</li> <li>Individual operations and techniques shall be replaced with available quieter procedures and equipment (e.g., using welding instead of riveting, mixing concrete off-site instead of on-site).</li> <li>Noise-reducing enclosures shall be used around stationary noise-generating equipment (e.g., compressors and generators).</li> <li>Construction-related traffic shall be limited along roadways within residential uses such as South Brewer Road and Phillip Road as discussed in Mitigation Measure 3.17-1 Prepare and Implement Traffic Control Plan and Mitigation Measure 3.17-2 Prepare and Implement a Construction Transportation Plan.</li> <li>Written notification of construction activities shall be provided to all noise-sensitive receptors located within 700 feet of construction activities. The notification shall include anticipated dates and hours during which construction activities are anticipated to occur and contact information, including a daytime telephone number, for the project representative to be contacted in the event that noise levels are deemed excessive. Recommendations to assist noise-sensitive land uses in reducing interior noise levels (e.g., closing windows and doors) shall also be included in the notification.</li> <li>Acoustic barriers (e.g., lead curtains, sound barriers) shall be used, particularly during site grading and excavation activities, and when construction equipment operates along the project site boundaries within 700 feet of existing residential uses, to reduce construction-generated noise levels at affected</li> </ul>	<p>Noise-generating construction operations shall be limited to 6 a.m. to 8 p.m. on weekdays and 8 a.m. to 6 p.m. on weekends.</p> <p>Written notification of construction activities to sensitive noise receptors located within 700 feet of construction activities will be distributed prior to construction.</p> <p>Acoustic barriers shall be used when construction equipment operates along project site boundaries within 700 feet of existing residential uses.</p>	During construction	SMUD and Contractor	SMUD	All project components during construction

Table 4-1. Summary of Impacts and Mitigation Measures

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
		noise-sensitive land uses. The barriers shall be designed to obstruct the line of sight between the noise-sensitive land use and on-site construction equipment.					
Transportation	Impact 3.17-1. Conflict with a program plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.	<p><b>Mitigation Measure 3.17.1. Prepare and Implement a Traffic Control Plan</b></p> <p>Prior to the start of construction, the construction contractor shall prepare and submit a Traffic Control Plan (TCP) to Placer County for review and approval. The TCP shall be implemented to minimize construction-related traffic impacts on affected roadways. The contractor shall coordinate the development and implementation of this plan with agencies with jurisdiction over the affected routes (i.e., Placer County), as appropriate, and consider any other nearby construction happening at the same time. The TCP shall, at a minimum: define traffic controls, such as flag persons, warning signs, lights, barricades, cones, and detours, etc. to provide safe work areas and to warn, control, protect, and expedite vehicular traffic, based on County requirements and any conditions of project approval and shall aim to coordinate with other projects to minimize disruption to local and regional traffic flows during construction;</p> <ul style="list-style-type: none"> <li>show any proposed construction access location and encroachment onto a County roadway. The construction access location shall be reviewed and approved by the County at the time of Improvement Plan submittal. All approved construction access locations shall include an appropriate construction encroachment designed to the satisfaction of the County that may exceed typical construction encroachment designs (i.e. Baseline Road construction encroachment may be required to include larger radii and acceleration and deceleration tapers).</li> <li>require the installation and maintenance of construction area signs in accordance with the current edition of the California Department of Transportation Manual on Uniform Traffic Control Devices (CA MUTCD) and/or California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones, Traffic Control Plans must follow California MUTCD (Chapter 6) guidelines;</li> <li>discuss work hours and haul routes, delineate work areas, and identify traffic control methods and plans for flagging;</li> <li>develop and implement a process for communicating with affected residents and landowners about the project before the start of construction. The public notice shall include posting notices and appropriate signage regarding construction activities. The written notification shall include the construction schedule, the exact location and duration of activities on each roadway (e.g., which roads/lanes and access points/driveways will be blocked on which days and for how long), and contact information for questions and complaints;</li> <li>notify the public regarding alternative routes that may be available to avoid delays;</li> <li>include measures to avoid disruptions or delays in access for emergency service vehicles and to keep emergency service agencies fully informed of road closures, detours, and delays. Police departments, fire departments, ambulance services, and paramedic services shall be notified at least one month in advance by the construction contractor of the proposed locations, nature, timing, and duration of any construction activities and advised of any access restrictions that could impact their effectiveness; and</li> <li>identify all emergency service agencies, include contact information for those agencies, assign responsibility for notifying the service providers, and specify coordination procedures. TCPs shall be provided to all affected police departments, fire departments, ambulance and paramedic services.</li> </ul>	Before construction and/or prior to Improvement Plan approval, develop a Traffic Control Plan and submit to Placer County for review and approval. Implement Traffic Control Plan during construction.	Before and during construction	SMUD and Contractor	SMUD and Placer County	All project components during construction

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
Transportation	Impact 3.17-1. Conflict with a program plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities.	<p><b>Mitigation Measure 3.17-2. Prepare and Implement a Construction Transportation Plan</b></p> <p>Where construction traffic has the potential to significantly affect regional and local roadways (e.g., Baseline Road, South Brewer Road, and Phillip Road) by generating additional vehicle trips, or potentially causing unsafe situations by construction vehicles making left hand turns into the construction site, the construction contractor shall prepare and implement a Construction Transportation Plan (CTP) describing alternate traffic routes, timing of commutes, reduction in crew-related traffic, potential temporary turning lanes/pockets, if required, and other mitigation methods for reducing construction-generated additional traffic on regional and local roadways and to guarantee safe local traffic patterns during construction. The CTP shall also require the following:</p> <ul style="list-style-type: none"><li>• distribute worker trips to multiple roadways and limit construction-related trips along South Brewer Road and Phillip Road to 100 worker trips or less during the peak hours (7 a.m. – 9 a.m. and 4 p.m. – 6 p.m.);</li><li>• if deemed necessary by the County to ensure safe traffic conditions during construction based on advanced designs, include temporary turning lanes/pockets off Baseline Road, South Brewer Road, and Phillip Road in the CTP; these temporary turning lanes/pockets shall be engineered according to County standards, and shall be used temporarily only during construction; following construction, any turning lanes/pockets shall be removed, and the road conditions shall be restored to pre-construction conditions;</li><li>• avoid construction-related trips during the morning and afternoon peak hours; and</li><li>• construction workers park personal vehicles at staging yards and carpool to work sites within the project area. The construction contractor shall submit the CTP to Placer County for review and approval 30 days prior to commencing construction activities. Placer County may share the plan with other interested parties at their discretion and incorporate specific input from third parties into their plan comments as they deem appropriate.</li></ul>	<p>Prior to Improvement Plan approval and/or 30 days before construction begins, contractor will submit a Construction Transportation Plan to SMUD and Placer County.</p> <p>CTP to be implemented during construction.</p>	Before and during construction	Contractor	SMUD and Placer County	All project components during construction
Transportation	Impact 3.17-3. Substantially increase hazards due to a geometric design feature or incompatible uses.	<p>Implement Mitigation Measures 3.17-1 and 3.17-2, and;</p> <p><b>Mitigation Measure 3.17-3. Resurface, Repair and/or Restore Roadways to Pre-Construction Condition.</b></p> <p>Prior to Improvement Plan approval, the applicant shall provide a video/photo survey of the existing surfacing condition of South Brewer and Phillip Roads to the satisfaction of the County. A cash security deposit (i.e. cash, CD, letter of credit – no bonds) shall also be provided to the County in an amount determined by the County and SMUD for the repair and restoration of the roadways to their original condition, including removal of any temporary turning lanes/pockets as discussed under Mitigation Measure 3.17-2 that would be constructed under the CTP, if deemed necessary based on advanced designs. Upon completion of construction of the project improvements (i.e. beginning operation/use of the site; and/or prior to Building Permit Certificate of Occupancy; and/or acceptance of the project construction as complete by the County), the existing South Brewer and Phillip roadway surfaces shall be repaired and/or restored to their original condition by the developer, including removal of any temporary improvement to ensure save access, such as temporary turning lanes/pockets. The improvements required for repair and restoration shall be described by and at the sole discretion of the County and shall be constructed to County standards and to the satisfaction of the County. Improvement Plans and/or Encroachment Permits will need to be obtained by the developer for any required improvements, repair and restoration construction. After completing the repair and restoration to the satisfaction of the County, the cash security deposit will be released.</p>	<p>See MM 3.17-1 and 3.17-2</p> <p>Applicant to provide video/photo survey and cash security deposit to Placer County prior to Improvement Plan approval.</p> <p>After project construction, roads that were modified will be returned to initial conditions.</p> <p>After completing the repair and restoration to the satisfaction of the County, the cash security deposit will be released.</p>	<p>See MM 3.17-1 and 3.17-2</p> <p>Before and after construction</p>	<p>See MM 3.17-1 and 3.17-2</p> <p>Contractor and SMUD</p>	<p>See MM 3.17-1 and 3.17-2</p> <p>Placer County</p>	All project components involved in construction

**Table 4-1. Summary of Impacts and Mitigation Measures**

CEQA Issue Area	Impacts	Mitigation Measures	Implementation Duration	Monitoring Duration	Responsibility		Applicable Project Component
					Implementation	Monitoring	
Transportation	Impact 3.17-4. Inadequate emergency access.	Implement Mitigation Measure 3.17-1.	See MM 3.17-1	See MM 3.17-1	See MM 3.17-1	See MM 3.17-1	See MM 3.17-1
Tribal Cultural Resources	Impact 3.18-1. Impacts to tribal cultural resources as defined in Public Resources Code § 21074.	<p><b>Mitigation Measure 3.18-1</b></p> <p>The following method is intended to minimize impacts to existing or previously undiscovered Tribal Cultural Resources (TCRs), archaeological, or cultural resources during a project's ground disturbing activities at the following locations: substation, switch yard, battery storage area. The project proponent and its construction contractor(s) will implement the following methods to identify TCRs at the earliest possible time during project-related earthmoving activities:</p> <ul style="list-style-type: none"> <li>A compensated (paid) Tribal Monitor from a traditionally and culturally affiliated Native American Tribe shall be retained to monitor specified ground disturbing project related activities in the substation, switch yard, and battery storage area of the project area.</li> <li>The specified ground disturbing activities include grading, trenching, and ground disturbance to a depth of up to approximately 6 feet.</li> <li>Spot monitoring at these locations will be done by the Tribal Monitor in coordination with the construction schedule.</li> <li>Consulting Tribes shall be contacted at least 2 weeks prior to project ground-disturbing activities in order to retain the services of a paid Tribal Monitor. The duration of the monitoring and construction schedule shall be determined at this time.</li> <li>Field-monitoring activities will be documented on a Tribal Monitor log. The total time commitment of the Tribal Monitor will vary depending on the intensity and location of construction and the sensitivity of the area, including the number of finds.</li> <li>The Tribal Monitor/s shall wear the appropriate safety equipment and shall have the necessary background training in construction safety protocols.</li> <li>The Tribal Monitor/s will have all necessary background training to identify and recommend appropriate treatment for any discoveries, including sites and objects of cultural value, that are a potential TCR.</li> <li>Tribal Monitors or Tribal Representatives have the authority to request that work be temporarily stopped, diverted, or slowed within 100 feet of the direct impact area if sites or objects of significance are identified. Only a Tribal Monitor or Representative from a culturally affiliated Tribe can recommend appropriate treatment and final disposition of TCRs.</li> <li>When avoidance is infeasible, preservation in place is the preferred option for mitigation of TCRs under CEQA and Tribal protocols, and every effort shall be made to preserve the resources in place, including through project redesign, if feasible. Culturally appropriate treatment may be, but is not limited to, processing materials for reburial, minimizing handling of cultural objects, leaving objects in place within the landscape, or returning objects to a location within the project area where they will not be subject to future impacts. Permanent curation of TCRs will not take place unless approved in writing by consulting Tribes.</li> <li>The contractor shall implement any measures deemed by the CEQA lead agency to be necessary and feasible to preserve in place, avoid, or minimize impacts to the resource, including, but not limited to, facilitating the appropriate tribal treatment of the find, as necessary. Treatment that preserves or restores the cultural character and integrity of a TCR may include Tribal Monitoring, culturally appropriate recovery of cultural objects, and reburial of cultural objects or cultural soil.</li> <li>Work at the discovery location cannot resume until all necessary investigation and evaluation of the discovery under the requirements of the CEQA, including AB 52, have been satisfied.</li> </ul>	<p>Tribal Monitor will be present during ground-disturbing activities in the substation, switch yard, and battery storage area.</p> <p>Consulting Tribes shall be contacted at least 2 weeks prior to project ground disturbing activities.</p>	Before and during construction	Tribal Monitor, Contractor, and SMUD	SMUD and NAHC	All project components during construction consisting of ground disturbing activities at the substation, switch yard, and battery storage area



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**CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS AND  
STATEMENT OF OVERRIDING CONSIDERATIONS  
IN CONNECTION WITH  
  
COUNTRY ACRES SOLAR PROJECT  
  
SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**I. Introduction**

The Sacramento Municipal Utility District (SMUD) is lead agency under the California Environmental Quality Act (CEQA) for purposes of the Country Acres Solar 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 a significant and unavoidable environmental impact would result from project implementation. If this occurs, the public agency must find that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment, if the agency approves the project. (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 program (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 Country Acres Solar Project (project). The project involves the construction of photovoltaic (PV) solar panels, battery storage facilities, and interconnection facilities, including a high voltage substation, switch station, and interconnection to the existing SMUD transmission system at the project site and operation and maintenance of the solar facility for 30 to 35 years. The SMUD Board of Directors (Board) hereby issues these Findings and concurrently certifies the Country Acres Solar Project EIR.

The EIR has been assigned State Clearinghouse Number 2021110307. The Final EIR consists of amendments to the Draft EIR through responses to comments, and formal responses to comments received on the Draft EIR; minor corrections, clarifications, and revisions; and a MMRP. The Draft EIR assesses the potential environmental effects of implementation of the Country Acres Solar Project, identifies the means to eliminate or reduce potentially significant adverse environmental impacts, and evaluates a reasonable range of alternatives to 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 evaluated under the Country Acres Solar 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 SMUD's 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 Country Acres Solar Project.

## **III. 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 Country Acres Solar Project 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 Country Acres Solar Project EIR, as set forth below.

#### **a. Project Description and Background**

SMUD is proposing the Country Acres Solar Project (project). The project would involve:

- Construction and operation of a PV solar power and battery storage facility and interconnection facilities, including a generation substation, switch station, and interconnection lines, that would provide new power production capacity of up to 344 MW and
- Operation and maintenance of the new solar facility.

#### *Project Objectives*

SMUD's objectives for the project include the following:

- Contribute to a diversified energy portfolio that will aid in the continued improvement of air quality in the Sacramento Valley Air Basin by decreasing reliance on fossil fuel combustion for the generation of electricity and reduce SMUD's exposure to price volatility associated with electricity and natural gas.
- Provide a renewable power resource to support the SMUD Board of Directors' 2030 Zero Carbon Plan, a plan approved in 2021, which establishes a flexible pathway for SMUD to eliminate carbon emissions from its power supply by 2030 by developing and procuring dependable renewable resources.
- Develop a project that will deliver a reliable, long-term supply of economically feasible solar and battery storage for up to 344 megawatts (MW) of electrical capacity at a point of interconnection with the grid managed by SMUD.
- Site the project to avoid wetlands and other sensitive habitats as feasible within the available property.
- Integrate compatible agricultural activities such as grazing, agricultural crop production, and/or pollinator habitat into solar operations.
- Optimize the delivery of solar-produced and stored energy and minimize the geographic extent of impacts by locating the facility near existing electrical infrastructure with available capacity;
- Design a flexible PV solar energy and battery storage facility that is capable of utilizing the best available, efficient, cost-effective, and proven PV solar and storage technology; and





- Construct the facility in a location that is readily accessible from existing roads and that would not require the construction of major new roadway improvements.

### *Project Location*

The project would be located on approximately 1,170 acres of land in southwestern Placer County, west of the City of Roseville, north of Baseline Road and east of South Brewer Road. Primary access to the project site would be provided by entry roads from Baseline Road to the south, South Brewer Road to the west, and Phillip Road to the north. The project area encompasses several parcels and includes a northern portion and a southern portion connected by an easement for electrical collection lines and roads.

The project site is relatively flat and open and includes grassland, agricultural rice fields and almond orchards. A portion of the grassland on the project site is interspersed with scattered seasonal wetlands, vernal pools, and drainages. A section of upper Curry Creek traverses the project site. Agricultural uses and grassland surround the project site with some residential development to the east of the project site in the City of Roseville.

### *Topography and Natural Habitat*

Topography in the project area is generally flat (0-5%). The elevation varies between approximately 58 feet above mean sea level (msl) and 100 above msl.

While much of the project area is currently in agricultural production (rice, orchards), seasonal wetlands, cattail marsh, vernal pools, drainages, riparian vegetation, and creeks also occur within the project area. Curry Creek bisects the project area. Curry Creek and many of the other drainages and creeks in the area are channelized and exhibit perennial or near-perennial hydrology as influenced by adjacent rice field and pasture irrigation practices.

### *Existing Land Uses*

Existing land uses within the project area include predominantly agricultural rice fields and almond orchards, and some annual non-native grassland with seasonal wetlands previously farmed for grain; however, in recent years this non-native grassland has been left fallow. Irrigation wells exist throughout the project site. The wells are powered either via overhead electrical distribution lines, diesel, or propane fuel.

Surrounding land uses include rice fields and almond orchards, urban development, and open space areas with seasonal wetland, riparian, and annual grassland vegetation. Curry Creek has been channelized in the project area. A hydrology and hydraulic study (Black and Veatch 2022) has been completed to determine the existing conditions of the regulatory floodway and floodplain associated with Curry Creek. The majority of the



region is privately owned and developed or in the process of development for agricultural, industrial, residential, and transportation uses.

### *Project Characteristics*

The Country Acres Solar Project includes construction and operation of a PV solar power and battery storage facility and interconnection facilities, including a generation substation, switch station, and interconnection lines, that would provide new power production capacity of up to 344 MW delivered at the point of interconnection with the electrical grid managed by SMUD. The project site would generally comprise PV solar modules, foundation piles, racking, direct current (DC) collection, alternative current (AC) collection, fencing, roads, inverters, medium voltage transformers, an interconnection line between the generation substation and switch station, battery storage equipment, and interconnection lines to the existing SMUD transmission system. During construction, a temporary construction trailer/office complex and staging areas would be established. During operation, the proposed project would likely include an operations facility that would provide space for equipment and an onsite office for the site operator. At the end of the project's life (anticipated to be 30 to 35 years), the project and its assets would be decommissioned; however, SMUD may retain the substation, switching station, and battery storage facilities. Details about the decommissioning process are not known at this time, thus potential impacts from decommissioning cannot be analyzed in the Draft EIR. The project will prepare a decommissioning and reclamation plan prior to decommissioning that will detail the timeline for removal of the improvements and specific measures to return the site to agricultural capability. Additionally, prior to decommissioning, additional CEQA analysis would be performed.

### **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 "new 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 expressed a range of CEQA and non-CEQA issues, 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 Country Acres Solar 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 Country Acres Solar 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 are 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 to accurately 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.

After implementation of the recommended mitigation measures, implementation of the Country Acres Solar Project would result in the following significant and unavoidable impacts:

#### **Agriculture and Forestry Resources**

**Impact 3.2-1: Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.** The project would result in the conversion of up to 44 acres of land designated as Farmland of Statewide Importance and conversion of up to 858 acres of land designated as Unique Farmland.

#### ***Mitigation Measure 3.2-1: Preserve Important Farmland.***

SMUD shall implement one of the following methods to minimize the loss of Farmland of Statewide Importance and Unique Farmland at a 1:1 ratio (i.e., 1 acre on which easements are acquired to 1 acre of Farmland of Statewide Importance and Unique Farmland removed from agricultural use):

- Acquire agricultural conservation easement(s) that provide in-kind or similar resource value protection in the region, with a strong preference for locating the agricultural conservation easement(s) in Placer County. This can be achieved by the acquisition of conservation easements, farmland deed restriction, or other appropriate farmland conservation mechanism to ensure the preservation of the land in perpetuity.
- Pay in-lieu fees to an established, agreed-upon (by County and SMUD) mitigation program with a presence in Placer County (e.g., Placer Land Trust) to fully fund the acquisition and maintenance of agricultural land or easements.

- Alternatively, this may occur through the payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. (In-lieu fee payments would also address impacts on special-status species through loss of foraging habitat for burrowing owl and Swainson's hawk, and impacts on sensitive natural communities and wetlands and other waters of the US and state/County, as detailed in Mitigation Measures 3.4-8., 3.4-10 and 3.4-16 in Section 3.4 "Biological Resources" of this EIR).

Payments of in-lieu fees or acquisition of agricultural conservation easements may be spread out in alignment with construction phasing but must occur no later than the start of each new phase. The impact acreage requiring offset shall be based on the most current FMMP at the time of the County's issuance of the Conditional Use Permit.

**Finding:** The Board finds that changes or alterations have been required in, or incorporated into, the project that substantially lessen this significant impact as identified in the EIR; however, implementation of the Country Acres Solar Project would still require conversion and net loss of Important Farmland, which constitutes a significant and unavoidable impact. Specific economic, legal, social, technological, or other considerations make infeasible additional mitigation measures or project alternatives identified in the EIR.

## **Air Quality**

**Impact 3.3-1: Conflict with or obstruct implementation of the applicable air quality plan.** Project construction activities would result in a temporary increase in criteria pollutant and ozone precursor emissions in the form of both fugitive dust from ground disturbing activities and exhaust emissions from the use of construction equipment and operation of worker vehicles and vendor and haul trucks that could conflict with Placer County Air Pollution Control District (PCAPCD) rules and regulations.

***Mitigation Measure 3.3-1: Implement Mitigation Measures 3.3-2a, 3.3-2b, and 3.3-2c (see mitigation measures below).***

**Finding:** The Board finds that changes or alterations have been required in, or incorporated into, the project that substantially lessen these potentially significant impacts as identified in the EIR; however, implementation of the Country Acres Solar Project would still conflict with PCAPCD Rule 228 for fugitive dust and exceedance of the PCAPCD-established thresholds of significance, which constitutes a significant and unavoidable impact. Specific economic, legal, social, technological, or other



considerations make infeasible additional mitigation measures or project alternatives identified in the EIR.

**Impact 3.3-2: 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.** Project construction activities would emit NO<sub>x</sub> and PM<sub>10</sub> at levels that could exceed PCAPCD daily emissions thresholds for these pollutants.

***Mitigation Measure 3.3-2a. Implement Fugitive Dust Control Measures.***

In order to minimize fugitive dust generation from earthwork and on-site travel on unpaved roadways, the applicant shall submit a Dust Control Plan to the Placer County Air Pollution Control District (PCAPCD). The Dust Control Plan shall be submitted to the PCAPCD a minimum of 21 days before construction activity is scheduled to commence. The Dust Control Plan can be submitted online via the fill-in form: <http://www.placerair.org/dustcontrolrequirements/dustcontrolform>.

In addition, the applicant shall include as a condition of the construction bidding, incorporation of dust control measures that shall include, at a minimum, the below requirements of Rule PCAPCD Rule 228, Section 400, and any additional measures identified as part of the Dust Control Plan. All dust control measures shall be shown on grading and improvement plans, to be initiated at the start and maintained throughout the duration of construction.

- Dry mechanical sweeping is prohibited. Watering of a construction site shall be carried out to mitigate visible emissions. (Based on PCAPCD Rule 228, Section 301.)
- The contractor shall apply water or use methods to control dust impacts offsite. Construction vehicles leaving the site shall be cleaned to prevent dust, silt, mud, and dirt from being released or tracked off-site. (Based on PCAPCD Rule 228, Section 304.)
- During construction activity, traffic speeds on all unpaved surfaces shall be limited to 15 miles per hour or less unless the road surface and surrounding area is sufficiently stabilized to prevent vehicles and equipment traveling more than 15 miles per hour from emitting dust or visible emissions from crossing the project boundary line. (Based on PCAPCD Rule 228, Section 401.2.)
- Storage piles and disturbed areas not subject to vehicular traffic must be stabilized by being kept wet, treated with a chemical dust suppressant, or covered when material is not being added to or removed from the pile. (Based on PCAPCD Rule 228, Section 401.3.)
- The contractor shall suspend all grading operations when fugitive dust exceeds the APCD Rule 228 (Fugitive Dust) limitations. Visible emissions of fugitive dust shall not exceed 40% opacity, nor go beyond the property boundary at any time. Lime or other drying agents utilized to dry out wet grading areas shall not

exceed APCD Rule 228 limitations. (Based on PCAPCD Rule 228, Sections 302 & 401.4.)

- The prime contractor shall be responsible for keeping adjacent public thoroughfares clean by keeping dust, silt, mud, dirt, and debris from being released or tracked offsite. Wet broom or other methods can be deployed as control and as approved by the individual jurisdiction. (Based on PCAPCD Rule 228, Section 401.5.)
- The contractor shall suspend all grading operations when wind speeds (including instantaneous gusts) are high enough to result in dust emissions crossing the boundary line, despite the application of dust mitigation measures. (Based on PCAPCD Rule 228, Section 401.6.)
- The contractor shall prohibit trucks from transporting excavated material off-site unless the trucks are maintained such that no spillage can occur from holes or other openings in cargo compartments, and loads are either covered with tarps or wetted and loaded such that the material does not touch the front, back, or sides of the cargo compartment at any point less than six inches from the top and that no point of the load extends above the top of the cargo compartment. (Based on PCAPCD Rule 228, Section 401.7)
- To minimize wind-driven dust during construction, the prime contractor shall apply methods such as surface stabilization, the establishment of a vegetative cover, paving (or use of another method to control dust as approved by Placer County). (Based on APCD Rule 228 / section 402)

***Mitigation Measure 3.3-2b. Reduce Exhaust-related Emissions During Construction.***

Prior to the approval of grading or improvement plans, whichever would occur first, the construction contractor shall submit a Construction Emissions Control Plan to the Placer County Air Pollution Control District and SMUD, and provide written evidence to SMUD that the plan has been submitted to and approved by PCAPCD. The applicant shall not initiate any on-site construction activity until PCAPCD has approved the Construction Emissions Control Plan.

The Construction Emissions Control Plan shall include the following:

- The contractor shall submit to the PCAPCD a comprehensive equipment inventory (e.g., make, model, year, emission rating) of all the heavy-duty off-road equipment (50 horsepower or greater) that will be used in an aggregate of 40 or more hours. If any new equipment is added after submission of the inventory, the contractor shall notify the PCAPCD before the new equipment being utilized. At least three business days before the use of subject heavy-duty off-road equipment, the project representative shall provide the PCAPCD with the anticipated construction timeline including start date, name, and phone number of the property owner, project manager, and on-site foreman.

- With submittal of the equipment inventory, the contractor shall provide a written calculation to the PCAPCD for approval demonstrating that the heavy-duty (> 50 horsepower) off-road vehicles to be used in the construction project, including owned, leased and subcontractor vehicles, will achieve a project-wide fleet-average of 20 percent Nitrogen Oxides (NO<sub>x</sub>) reduction and 45 percent particulate reduction compared with the statewide fleet averages. Acceptable options for reducing emissions may include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, and other options as they become available. The emissions reductions shall be calculated using the Sacramento Metropolitan Air Quality Management District's Construction Mitigation Calculator to identify the equipment fleet and measures that achieve the required reductions; this tool is currently available on the Sacramento Metropolitan Air Quality Management District's website at the following link: <http://www.airquality.org/businesses/ceqa-land-use-planning/mitigation> (click on the current "Construction Mitigation Tool" spreadsheet under Step 1)
- If any new equipment is added after the submission and approval of the inventory, the construction contractor shall update the inventory and provide to the PCAPCD and SMUD prior to the use of such equipment, demonstrating that the 20-percent NO<sub>x</sub> reduction performance standard is still met.
- The approved equipment inventory and a note regarding update requirements, as detailed above, shall be include as an attached form to the Grading and Improvement Plans.
- Include the following standard notes on Grading and Improvement Plans:
  - Construction equipment exhaust emissions shall not exceed the APCD Rule 202 Visible Emissions limitations. Operators of vehicles and equipment found to exceed opacity limits are to be immediately notified by the APCD to cease operations, and the equipment must be repaired within 72 hours.
  - The contractor shall not discharge into the atmosphere volatile organic compounds caused by the use or manufacture of Cutback or Emulsified asphalts for paving, road construction or road maintenance unless such manufacture or use complies with the provisions of Rule 217 Cutback and Emulsified Asphalt Paving Materials.
  - During construction, open burning of removed vegetation is only allowed under APCD Rule 304 Land Development Smoke Management. (Based on APCD Rule 304)
  - Any device or process that discharges 2 pounds per day or more of air contaminants into the atmosphere, as defined by Health and Safety Code Section 39013, may require an APCD permit. Developers/contractors should contact the APCD before construction and obtain any necessary permits before the issuance of a Building Permit. (APCD Rule 501)
  - The contractor shall utilize existing power sources (e.g., power poles) or clean fuel (e.g., gasoline, biodiesel, natural gas) generators rather than temporary diesel power generators.



- The contractor shall minimize idling time to a maximum of 5 minutes for all diesel-powered equipment. (Placer County Code Chapter 10, Article 10.14).
- Idling of construction-related equipment and construction-related vehicles shall be limited to 2 minutes within 1,000 feet of any sensitive receptor (i.e., house, hospital, or school), allowing for the same exceptions identified in Placer County Code Chapter 12, Article 10.14.

***Mitigation Measure 3.3-2c. Off-site Mitigation.***

If, based upon the incorporation of all on-site measures described above in Mitigation Measures 3.3.1 and 3.3.2, NO<sub>x</sub> or PM emissions still do not meet the daily PCAPCD thresholds, the project shall participate in the PCAPCD's Offsite Mitigation Program by paying to PCAPCD a mitigation fee for construction activities, to be determined at the time of construction based on the submitted equipment inventory and emissions calculations for the purposes of mitigating NO<sub>x</sub> and PM<sub>10</sub> emissions, such that emissions are reduced to a less-than-significant level. The fee calculation to mitigate daily emissions shall be based on the PCAPCD-determined cost to reduce emissions and the project's contribution of pollutants to be less than the PCAPCD threshold of 82 pounds per day for NO<sub>x</sub>. The fee shall be submitted for approval by PCAPCD as the total required to achieve emissions reductions that would reduce total emissions to a less-than-significant level after all other mitigation measures are implemented. The fee shall be calculated and approved by PCAPCD.

**Finding:** The Board finds that changes or alterations have been required in, or incorporated into, the project that substantially lessen these potentially significant impacts as identified in the EIR, however implementation of the Country Acres Solar Project would still create significant and unavoidable construction emissions of criteria air pollutants and ozone precursors. Specific economic, legal, social, technological, or other considerations make infeasible additional mitigation measures or project alternatives identified in the EIR.

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), SMUD finds that changes or alterations have been required or incorporated into the project to avoid or substantially lessen the following potentially significant impacts identified in the Final EIR to a less-than-significant level.

**Biological Resources**

**Impact 3.4-1: Temporary and permanent construction impacts on special-status species.** There are 15 special-status wildlife species that are known to occur in the project



area or have moderate to high potential to occur in the project area and could therefore be impacted by project implementation.

### **Western spadefoot**

#### ***Mitigation Measure 3.4-1. Worker Environmental Awareness Program (WEAP) and Biological Monitor Inspection.***

SMUD will prepare a Worker Environmental Awareness Program that will educate staff regarding the presence or potential presence of all special-status species, sensitive natural communities, and protected wetlands with potential to occur, or that are known to occur, within the project area. The program shall describe their identification, habitat requirements, and penalties for species impacts, as well as immediate steps to take should special-status species be observed by staff on site.

This WEAP shall include biological resource avoidance and minimization measures/mitigation measures from the project's CEQA Mitigation Monitoring and Reporting Program, and any resource permits or agreements, as applicable. The WEAP will educate workers regarding sensitive species and their habitats, the need to avoid impacts, state and federal protection, and the legal implications of violating environmental laws and regulations. The WEAP can be provided in the form of a handout and/or video presentation. All staff working onsite shall attend the WEAP training prior to commencing onsite work. Staff that attend the training shall fill out a sign-in sheet indicating that they completed the training.

Prior to construction, a qualified biological monitor shall inspect all areas within the project site with the potential to support sensitive biological resources to ensure the proper implementation of all avoidance and minimization and mitigation measures, agency permit requirements, and environmentally sensitive area exclusion flagging and/or fencing have been properly implemented, and to deliver WEAP training as needed.

The biological monitor shall remain available on an on-call basis for the duration of project construction to conduct inspections and follow up surveys, as needed, and to ensure compliance with permit conditions. The qualified biological monitor shall have the experience, education and training necessary to conduct special-status species surveys and monitoring as described in the mitigation measures below.

During operation and maintenance, an annual Environmental Awareness Training shall be provided to onsite personnel, covering any sensitive biological resources that could be present onsite.

***Mitigation Measure 3.4-2. Establish Non-Disturbance Buffers around Vernal Pools and Seasonal Wetlands to protect Western Spadefoot during Construction and Operation.***

Based on the assumptions that all vernal pools and seasonal wetlands in the project areas could provide suitable habitat for western spadefoot, SMUD, in coordination with a qualified biologist, will establish a 250-foot no-disturbance buffer from the high-water mark of the vernal pool or seasonal wetland habitat prior to commencement of ground-disturbing activities. The perimeter of the no-disturbance buffer will be delineated with a wildlife-friendly fence that allows the movement of wildlife, including western spadefoot (and also wide-ranging wildlife, such as coyotes), through the area. The fence will be maintained for the duration of project construction and operation. Signage will be installed on the fence indicating the buffer is an environmentally sensitive area. The boundaries of vernal pools, seasonal wetlands and associated 250-foot buffers will also be clearly delineated on project plans and specifications boundaries. No construction or ground-disturbing activities shall occur within the 250-foot buffer.

The fencing shall be kept in place for the duration of project construction and operations and shall be kept in good condition to prevent any construction, operation and maintenance activities from disturbing the sensitive habitat areas.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on western spadefoot. Adoption and incorporation of Mitigation Measures 3.4-1 and 3.4-2 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on western spadefoot to less-than-significant levels.

**Western pond turtle**

***Mitigation Measure 3.4-3. Conduct Pre-Construction Surveys for Western Pond Turtle.***

- Project ground-disturbing activities will be conducted outside of western pond turtle's active breeding and dispersal season (i.e., after May 1 and before September 15), to the extent feasible. If project activities must be implemented during the breeding and dispersal season, they will not start until 30 minutes after sunrise and must be completed 30 minutes prior to sunset.
- A qualified biologist shall conduct a pre-construction survey for western pond turtle within 48 hours prior to the start of construction activities within 300 feet of suitable habitat (e.g., any adjacent waterway, marsh, or emergent wetland).

Concurrently with the pre-construction survey, searches for nesting sites shall be conducted and any identified sites shall be delineated with high-visibility flagging or fencing and avoided during construction activities. If avoidance is not possible, the nest and/or turtle shall be removed by a qualified biologist and relocated to an appropriate location in consultation with CDFW.

***Mitigation Measure 3.4-4. Avoid Impacts on Western Pond Turtle during Construction.***

If turtles and/or nests are encountered during the pre-construction survey, a qualified biologist shall be present during grubbing and clearing activities in suitable habitat (aquatic) to monitor for western pond turtle. If a turtle is observed in the active construction zone, construction shall cease within a 100-foot buffer. Construction may resume when the biologist has, in consultation with CDFW, either hand-captured and relocated the turtle to nearby suitable habitat outside the construction zone, or, after thorough inspection, determined that the turtle has moved away from the construction zone.

On-site personnel will observe a 20-mile-per-hour speed limit at all times.

Information about avoidance and minimization measures for western pond turtles shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on western pond turtle. Adoption and incorporation of Mitigation Measures 3.4-1 through 3.4-4 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on western pond turtle to less-than-significant levels.

**Giant garter snake**

Surveys have shown that giant garter snakes are not present anywhere in Placer County. They are not present in the project area, and they are not present on any roads that will be used by construction vehicles supporting the project development. Therefore, there is no chance that giant garter snakes will be affected by the project. Because the EIR was drafted to be consistent with the PCCP, and the PCCP assumed presence of modeled habitat for giant garter snake, it included mitigation measures based on that modeling work and accordingly included the following mitigation measures:

***Mitigation Measure 3.4-5. Conduct Pre-Construction Surveys for Giant Garter Snake and Implement Avoidance and Minimization Measures.***

- Project ground-disturbing activities in aquatic habitat and adjacent upland habitat within 200 feet of aquatic habitat will be conducted during the giant garter snake's active season (i.e., after May 1 and before October 1), to the extent feasible. During this period, the potential for direct mortality is reduced, because snakes are expected to actively move and avoid danger. If project activities in aquatic habitat and adjacent upland habitat within 200 feet of aquatic habitat must be implemented outside of the snake's active season, the following mitigation measures must be implemented:
  - Within 24-hours prior to commencement of construction activities within 200 feet of potential giant garter snake habitat, the site shall be inspected by a qualified biologist who is approved by the CDFW and USFWS. If construction activities stop for a period of 2 weeks or more, another preconstruction clearance survey will be conducted within 24 hours before resuming construction activity. If snakes, or evidence of snakes, are encountered during preconstruction surveys, a biological monitor shall be present during construction activities in aquatic habitat and adjacent upland habitat within 200 feet of aquatic habitat.
  - The monitoring biologist shall be present during construction within 200 feet of potential aquatic habitat for giant garter snake (i.e., drainages that contain water) for the duration of the project. If a snake is encountered during construction activities, the monitoring biologist shall have the authority to stop construction activities until appropriate corrective measures have been completed or it is determined that the snake will not be harmed. The monitor will remain in the area for the remainder of the workday to ensure the snake is not harmed or, if it leaves the site, does not return. The qualified biologist will work with the PCA, USFWS, and CDFW to redirect the snake away from the disturbance area within 3 days of reporting the snake's presence at the construction site to USFWS and CDFW.
- The project biologist shall report any observations of giant garter snake to CDFW and USFWS within 24 hours of detection.
- Information about avoidance and minimization measures for giant garter snake shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Solar Project will have no construction impacts, temporary or permanent, on giant garter snake, since they are not found anywhere in Placer County or the project area.

## **Black rail**

### ***Mitigation Measure 3.4-6. Survey for California Black Rails and Implement Avoidance Measures.***

- Preconstruction Call-Playback Surveys for California Black Rail. A qualified biologist will conduct a preconstruction survey in potentially suitable habitat for this species in the project footprint and a 500-foot buffer to the project footprint. Surveys will be initiated sometime between March 15 and May 31, preferably before May 15. A minimum of four surveys will be conducted. The survey dates will be spaced at least 10 days apart and will cover the time period from the date of the first survey through the end of June to early July. This will allow the surveys to encompass the time period when the highest frequency of calls is likely to occur. Projects must conduct surveys during this time period, regardless of when the project is scheduled to begin, and shall be conducted the year in which ground disturbance activities commence. Surveys will follow a standardized tape call-playback/response protocol similar to that of Evens et al. 1991 and Richmond et al. 2008 or other CDFW-approved method. The surveys will document the presence or absence of black rail. CDFW will be notified within 2 business days of any identified black rail detections.
- If California black rails are detected during preconstruction surveys, the following additional measures will be implemented in association with occupied California black rail habitats:
- SMUD will establish and maintain a non-disturbance buffer of up to 500 feet around all identified occupied wetland habitat, depending on site-specific conditions and at the discretion of a qualified biologist in consultation with CDFW. Where feasible, all construction-related activities will be excluded from the buffer for the duration of project implementation.
- Where maintaining the non-disturbance buffer for the duration of the project is not feasible, at minimum, all construction-related activities will be excluded from the buffer for the duration of the breeding season (March through September, or for lesser duration as approved by CDFW).
- If project activities are necessary within the established non-disturbance buffer or within occupied habitat, including potential alterations to hydrological conditions that support black rail habitat, SMUD will consult with CDFW to identify a strategy that will avoid take of the year-round resident California black rail. This may or may not include work windows outside the breeding season, installation of wildlife exclusion fencing, and/or methods for passive exclusion

of individuals out of the temporary and permanent impact area such as through the hand removal of vegetation before other project-related ground disturbances, as determined in consultation with CDFW. A qualified biologist will be present for any construction activities occurring within the non-disturbance buffer; the intensity and frequency of the monitoring will be established in consultation with CDFW.

- Information about avoidance and minimization measures for California black rails shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on California black rail. Adoption and incorporation of Mitigation Measures 3.4-1 and 3.4-6 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on California black rail to less-than-significant levels.

## **Western burrowing owl**

### ***Mitigation Measure 3.4-7. Avoid and Minimize Impacts on Burrowing Owl.***

- SMUD will have preconstruction burrowing owl surveys conducted in all areas that may provide suitable nesting habitat according to CDFW (CDFG 2012) guidelines. A qualified wildlife biologist shall conduct take avoidance surveys, including documentation of burrows and burrowing owls, in all suitable burrowing owl habitat within 250 feet of proposed construction. Two surveys will be conducted within 15 days prior to ground disturbance to establish the presence or absence of burrowing owls. The surveys will be conducted at least 7 days apart (if burrowing owls are detected on the first survey, a second survey is not needed) for both breeding and non-breeding season surveys. All burrowing owls observed will be counted and mapped.
- During the breeding season (February 1 to August 31), surveys will document whether burrowing owls are nesting in or within 250 feet of the project area.
- During the non-breeding season (September 1 to January 31), surveys will document whether burrowing owls are using habitat in or directly adjacent to any area to be disturbed. Survey results will be valid only for the season (breeding or non-breeding) during which the survey was conducted.
- The qualified biologist will survey the proposed footprint of disturbance and a 250-foot radius from the perimeter of the proposed footprint to determine the presence or absence of burrowing owls. The site will be surveyed by walking



line transects, spaced 20 to 60 feet apart, adjusting for vegetation height and density. At the start of each transect and, at least, every 300 feet, the surveyor, with use of binoculars, shall scan the entire visible project area for burrowing owls. During walking surveys, the surveyor will record all potential burrows used by burrowing owls, as determined by the presence of one or more burrowing owls, pellets, prey remains, whitewash, or decoration. Some burrowing owls may be detected by their calls; therefore, observers will also listen for burrowing owls while conducting the survey.

- Adjacent parcels under different land ownership will be surveyed only if access is granted. If portions of the survey area are on adjacent sites for which access has not been granted, the qualified biologist will get as close to the non-accessible area as possible and use binoculars to look for burrowing owls.
- The presence of burrowing owl or their sign anywhere on the site or within the 250-foot accessible radius around the site will be recorded and mapped. Surveys will map all burrows and occurrence of sign of burrowing owl on the project site. Surveys must begin 1 hour before sunrise and continue until 2 hours after sunrise (3 hours total) or begin 2 hours before sunset and continue until 1 hour after sunset. Additional time may be required for large project sites.

If a burrowing owl or evidence of presence at or near a burrow entrance is found to occur within 250 feet of the project site, the following measures will be implemented:

- **Burrowing Owl 2.** If burrowing owls are found during the breeding season (approximately February 1 to August 31), the project applicant will:
  - Avoid all nest sites that could be disturbed by project construction during the remainder of the breeding season or while the nest is occupied by adults or young (occupation includes individuals or family groups foraging on or near the site following fledging).
  - Establish a 250-foot non-disturbance buffer zone around nests. The buffer zone will be flagged or otherwise clearly marked. Should construction activities cause the nesting bird to vocalize, make defensive flights at intruders, or otherwise display agitated behavior, then the exclusionary buffer will be increased such that activities are far enough from the nest so that the bird(s) no longer display this agitated behavior. The exclusionary buffer will remain in place until the chicks have fledged or as otherwise determined by a qualified biologist.
  - Construction may only occur within the 250-foot buffer zone during the breeding season only if a qualified raptor biologist monitors the nest and determines that the activities do not disturb nesting behavior, or the birds have not begun egg-laying and incubation, or that the juveniles from the occupied burrows have fledged and moved off site. Measures such as visual screens may be used to further reduce the buffer with Wildlife Agency approval and provided a biological monitor confirms that such measures do not cause agitated behavior.

- **Burrowing Owl 3.** If burrowing owls are found during the non-breeding season (approximately September 1 to January 31), the project applicant will establish a 160-foot buffer zone around active burrows. The buffer zone will be flagged or otherwise clearly marked. Measures such as visual screens may be used to further reduce the buffer with CDFW approval and provided a biological monitor confirms that such measures do not cause agitated behavior.
- **Burrowing Owl 4.** During the non-breeding season only, if a project cannot avoid occupied burrows after all alternative avoidance and minimization measures are exhausted, as confirmed by CDFW, a qualified biologist may passively exclude birds from those burrows. A burrowing owl exclusion plan must be developed by a qualified biologist consistent with the most recent guidelines from CDFW (e.g., California Department of Fish and Game 2012) and submitted to and approved by CDFW. Burrow exclusion may be conducted for burrows located in the project footprint and within a 160-foot buffer zone as necessary.

Information about avoidance and minimization measures for western burrowing owl shall be included in the WEAP described above in Mitigation Measure 3.4-1.

***Mitigation Measure 3.4-8. Compensate for the Loss of Burrowing Owl Habitat.***

If burrowing owls are documented as breeding in the project area, compensatory mitigation shall be provided for permanent impacts on (removal of) burrowing owl nesting and foraging habitat. Burrowing owl foraging and nesting habitat will still be available after installation of solar panels. However, if the project results in a net loss of nesting or grassland foraging habitat due to conversion of 57.2 acres of grassland habitat to project infrastructure the loss of habitat will be mitigated as described in CDFW guidelines (CDFG 2012) in consultation with CDFW. The performance standard for compensatory mitigation for nesting and foraging habitat will be to achieve no net loss of habitat value to the burrowing owl. Compensatory mitigation for habitat loss shall be consistent with guidance by CDFW (CDFG 2012) and may include development and implementation of a land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls on the project site, acquisition of credits in a burrowing owl mitigation bank, or another form of mitigation acceptable to CDFW, such as payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities, wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 "Agricultural Resources" of this Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase. The compensatory mitigation will be consistent with the PCCP goal of maintaining or increasing the population size of overwintering western burrowing owl and promoting expansion of breeding

populations of burrowing owls and will be approved by CDFW. Compensatory mitigation will include the following requirements as described in CDFG 2012:

- Permanently protect mitigation land through a conservation easement deeded to a non-profit conservation organization or public agency with a conservation mission, for the purpose of conserving burrowing owl habitat and prohibiting activities incompatible with burrowing owl use. This may occur through the payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities, wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 "Agricultural Resources" of this Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase. If the project is located within the service area of a CDFW-approved burrowing owl conservation bank, the project proponent may also purchase available burrowing owl conservation bank credits.
- Develop and implement a mitigation land management plan to address long-term ecological sustainability and maintenance of the site for burrowing owls.
- Fund the maintenance and management of mitigation land through the establishment of a long-term funding mechanism such as an endowment.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on western burrowing owl. Adoption and incorporation of Mitigation Measures 3.4-1, 3.4-7, and 3.4-8 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on western burrowing owl to less-than-significant levels.

## **Swainson's hawk**

### ***Mitigation Measure 3.4-9. Conduct Pre-Construction Surveys for Swainson's Hawk and Implement Protective Buffers.***

**Preconstruction Surveys.** A qualified biologist will conduct preconstruction surveys for Swainson's hawks during the nesting season (March 1 through August 21) within the project footprint and of all suitable nesting habitat within line of sight of construction activities within a 0.25-mile radius of the project footprint. The surveys will be conducted no more than 15 days prior to ground disturbance and will be conducted using methods consistent with guidelines provided in

*Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in the Central Valley* (SHTAC 2000) with the following exceptions:

- Surveys will be required within a 0.25 miles (1,320-foot) radius around the project site. In instances where an adjacent parcel is not accessible to survey because the qualified biologist was not granted permission to enter, the qualified biologist will scan all potential nest tree(s) from the adjacent property, road sides, or other safe, publicly accessible viewpoints, without trespassing, using binoculars and/or a spotting scope to look for Swainson's hawk nesting activity;
- Surveys will be required from February 1 to September 15 (or sooner if it is found that birds are nesting earlier in the year); and
- If a Swainson's hawk nest is located and presence confirmed, only one follow-up visit is required (to avoid disturbance of the nest due to repeated visits).

**Nest Buffers.** If active Swainson's hawk nests are found, appropriate buffers shall be established around active nest sites, in coordination with CDFW, to provide adequate protection for nesting raptors and their young. No project activity shall commence during the nesting season within the buffer areas until the qualified biologist has determined that the young have fledged, the nest is no longer active, or reducing the buffer would not result in nest abandonment.

**Nest Monitoring.** Monitoring of the nest by a qualified biologist during construction activities may be required if the qualified biologist determines that the activity has potential to adversely affect the nest. If construction activities cause the nesting bird to vocalize, make defensive flights at intruders, get up from a brooding position, or fly off the nest, then the no-disturbance buffer shall be increased until the agitated behavior ceases. The exclusionary buffer will remain in place until the qualified biologist has confirmed that the chicks have fledged.

Information about avoidance and minimization measures for Swainson's hawk shall be included in the WEAP described above in Mitigation Measure 3.4-1.

***Mitigation Measure 3.4-10. Compensate for the Loss of Swainson's Hawk Foraging Habitat.***

To offset net impacts on foraging habitat for breeding Swainson's hawks SMUD will mitigate the loss of Swainson's hawk foraging habitat in accordance with CDFW recommendations (DFG 1994) by providing mitigation lands or securing Swainson's hawk mitigation bank credits as follows:

- Foraging habitat permanently lost within 5 miles of an active Swainson's hawk nest tree but more than 1 mile from the nest tree will be replaced with 0.75 acre of mitigation land for each acre of foraging habitat permanently lost because of project construction (0.75:1 ratio). Foraging habitat for nests that are within 1 mile of the project site will be mitigated at a 1:1 ratio. All mitigation lands protected under this requirement shall be protected in a form acceptable to CDFW (e.g., through fee title acquisition or conservation easement) on

agricultural lands or other suitable habitats that provide foraging habitat for Swainson's hawk. This may occur through the payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities, wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 "Agricultural Resources" of this Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase. Management authorization holders/project sponsors will provide for management of the mitigation lands in perpetuity by funding a management endowment.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on Swainson's hawk. Adoption and incorporation of Mitigation Measures 3.4-1, 3.4-9, and 3.4-10 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on Swainson's hawk to less-than-significant levels.

### **Tricolored blackbird**

#### ***Mitigation Measure 3.4-11. Conduct Focused Pre-Construction Surveys for Nesting Tricolored Blackbird and Avoid Impacts During Construction.***

- **Preconstruction Tricolored Blackbird Surveys.** Before any ground-disturbing activities or vegetation clearing that may result in effects on potential habitat for Tricolored Blackbird (TRBL), a qualified biologist will conduct a preconstruction survey in potentially suitable nesting habitat (i.e., blackberry thickets and cattail marsh) for this species in the project footprint and a 500-foot buffer to the project footprint. The biologist will conduct three separate surveys, one each in mid-April, mid-May, and mid-June (Beedy, pers. comm., 2022a), and will use methods consistent with survey protocol used by surveyors for the Western Riverside County MSHCP 2018 [https://www.wrc-rca.org/species/survey\\_protocols/2018\\_Tricolored\\_Blackbird\\_Survey\\_Protocol.pdf](https://www.wrc-rca.org/species/survey_protocols/2018_Tricolored_Blackbird_Survey_Protocol.pdf)). If an active nesting colony is detected during the surveys CDFW will be consulted to provide any guidance on appropriate avoidance and minimization measures in addition to those described below.
- **Avoidance and Minimization.** Project activities will avoid occupied TRBL nesting habitat. If TRBL colonies are identified during the breeding season, an

approximate buffer of up to 500 feet will be established around the colony, depending on site-specific conditions and at the discretion of a qualified biologist in consultation with CDFW. Any construction-related activities will be excluded from the buffer until the end of the breeding season.

- **Construction Monitoring.** If construction takes place during the breeding season when an active colony is present within 500 feet of construction activities, a qualified biologist will regularly monitor construction to ensure that the buffer zone is enforced and to verify that construction is not disrupting the colony. The intensity and frequency of the monitoring will be established in consultation with CDFW. If monitoring indicates that construction outside of the buffer is affecting a breeding colony, the buffer will be increased, as needed, in consultation with CDFW.

Information about avoidance and minimization measures for tricolored blackbird shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on tricolored blackbird. Adoption and incorporation of Mitigation Measures 3.4-1 and 3.4-11 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on tricolored blackbird to less-than-significant levels.

## **Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp**

### ***Mitigation Measure 3.4-12. Avoid Impacts on Vernal Pool Fairy Shrimp and Vernal Pool Tadpole Shrimp During Construction.***

Vernal pools and seasonal wetlands in the project area provide potentially suitable habitat for vernal pool fairy shrimp and tadpole shrimp. A 250-foot no-disturbance buffer area will be established from the high-water mark of the vernal pool or wetland habitat prior to construction and will be delineated by fencing as described in Mitigation Measure 3.4-2 and confirmed by a qualified biologist. The boundaries of vernal pools, seasonal wetlands and associated 250-foot buffers will also be clearly delineated on project plans and specifications boundaries. No construction or ground-disturbing activities shall occur within the 250-foot buffer. All construction activities are prohibited within this buffer area. With complete avoidance of ground-disturbing activities within vernal pools and seasonal wetlands and a 250-foot buffer beyond the boundaries of these aquatic features, no direct or indirect impacts will occur to vernal pool fairy shrimp or tadpole shrimp and no further avoidance or minimization measures are required.

Information about avoidance and minimization measures for vernal pool fairy shrimp and vernal pool tadpole shrimp shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on vernal pool fairy shrimp and vernal pool tadpole shrimp. Adoption and incorporation of Mitigation Measures 3.4-1, 3.4-2, and 3.4-12 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on vernal pool fairy shrimp and vernal pool tadpole shrimp to less-than-significant levels.

### **American Badger**

#### ***Mitigation Measure 3.4-13. Conduct Focused Pre-Construction Surveys for American Badger and Implement Avoidance Measures during Construction.***

A qualified biologist shall conduct focused surveys for American badger dens no more than 14 days prior to ground-disturbing activities in grassland habitat. The survey shall cover the limits of ground disturbance and a 100-foot buffer. Any winter or natal American badger dens located during the survey shall be evaluated (typically with remote cameras) to determine activity status.

If American badger dens are detected in the project area, the qualified biologist shall establish a 100-foot no-disturbance buffer (e.g., wildlife-friendly fencing, flagging, or similar) around any active American badger natal dens identified during the survey. The buffer shall be maintained until the qualified biologist determines that the den is no longer active, and the young are no longer dependent upon the den for survival.

If construction is scheduled to begin during the non-breeding period (i.e., typically from June through February) and an active non-natal den is found in or adjacent to the construction footprint, a qualified biologist shall develop a plan in consultation with CDFW to trap or flush the individual and relocate it to suitable habitat away from construction. If no dens are observed, and/or after a trapping or flushing effort is completed, and/or after it is confirmed that a natal den is no longer active, the vacated or unoccupied den can be excavated, and construction can proceed.

If American badger is detected during the surveys the qualified biologist will determine if regular monitoring of the badger den is required to ensure there are no impacts to this species and its habitat during construction.

Information about avoidance and minimization measures for American badger shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary and permanent construction impacts on American badger. Adoption and incorporation of Mitigation Measures 3.4-1 and 3.4-13 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary and permanent construction impacts on American badger to less-than-significant levels.

### **Nesting raptors and migratory birds**

#### ***Mitigation Measure 3.4-14. Conduct Pre-Construction Surveys for Nesting Birds and Raptors.***

Tree or vegetation removal shall be conducted outside of the nesting season (i.e., the nesting season is defined as February 1 through August 31) to the greatest extent feasible.

If construction activities will begin during the nesting season, a qualified biologist shall conduct a survey for nesting birds no more than 3 days prior to vegetation removal or ground-disturbing activities during the nesting season within suitable habitat (i.e., February 1 through August 31). The survey shall cover the limits of construction and accessible suitable nesting habitat within 500 feet. If any active nests are observed during surveys, a qualified biologist should establish a suitable avoidance buffer from the active nest. The buffer distance will typically range from 50 feet (for nesting passerines) to 500 feet (for nesting raptors) and will be determined based on factors such as the species of bird, topographic features, intensity and extent of the disturbance, timing relative to the nesting cycle, and anticipated ground disturbance schedule.

If vegetation removal activities are delayed, additional nest surveys shall be conducted such that no more than 7 days are allowed to pass between the survey and vegetation removal activities.

#### ***Mitigation Measure 3.4-15. Avoid Impacts on Nesting Birds and Raptors during Construction.***

Limits of construction to avoid active nests shall be established in the field with flagging, fencing, or other appropriate barriers and shall be maintained until the chicks have fledged and the nests are no longer active, as determined by the qualified biologist.

If an active nest is identified in or adjacent to the construction zone after construction has started, work in the vicinity of the nest shall be halted until the qualified biologist can provide appropriate avoidance and minimization measures to ensure that the nest is not disturbed by construction. Appropriate measures may include a no-disturbance buffer until the nest has fledged and/or full-time



monitoring by a qualified biologist during construction activities conducted near the nest.

Information about avoidance measures to protect nesting birds and raptors shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Project could result in significant impacts on nesting migratory birds and raptors. Adoption and incorporation of Mitigation Measures 3.4-1, 3.4-14, and 3.4-15 into the project will reduce the impacts to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the significant or potentially significant construction impacts on nesting migratory birds and raptors to a less-than-significant level.

### **Riparian and Other Sensitive Natural Communities**

#### **Impact 3.4-2: Impacts on riparian habitat or other sensitive natural communities.**

Project construction is expected to result in direct impacts through habitat conversion of up to 0.04 acre of cattail marsh, 0.057 acre of Fremont cottonwood riparian, and 0.474 acre of sandbar willow riparian.

#### ***Mitigation Measure 3.4-16. Avoid, Minimize and Compensate for Impacts on Sensitive Natural Communities and Comply with Federal, State and Local Permits.***

Prior to project implementation, SMUD shall refine potential impacts on sensitive natural communities based on advanced designs and obtain the necessary permits for impacts on any sensitive natural communities. These include the following permits:

- Section 1600 Streambed Alteration Agreement from CDFW (for impact on riparian area and other sensitive natural communities not considered Waters of the U.S. (WUS) or State)
- CWA Section 404 permit from USACE for impacts to WUS
- CWA Section 401 Clean Water Certification from the Regional Water Quality Control Board for impacts to WUS
- Waste Discharge Permit from Regional Water Quality Control board for impacts to water of the state
- Floodplain encroachment permit from the County, if necessary based on advanced designs
- As part of the permit applications, SMUD shall develop a habitat mitigation plan that will include mitigation for impacted sensitive natural communities on a no-

net-loss basis. The plan may include onsite restoration, if feasible, offsite preservation, or purchasing mitigation credits from an agency-approved wetlands mitigation bank, paying an agency-approved in-lieu fee, and/or developing conservation lands to compensate for permanent loss of resources. Mitigation ratios shall be no less than 1:1 and shall be determined during the permitting process. This may also occur through the payment of fees into the PCCP's in-lieu fee program under a Memorandum of Understanding (MOU) with the PCA prior to issuance of improvement plans. In-lieu fee payments would address impacts to special-status species, sensitive natural communities, wetlands and other waters of the US and state/County, and impacts to agricultural lands resulting from the conversion of important farmland (see Mitigation Measure 3.2-1 in Section 3.2 "Agricultural Resources" of this Draft EIR). Payments may be spread out in alignment with construction phasing and will occur prior to the start of each new phase.

- SMUD shall implement all conditions of the permits, including any performance monitoring, if required for onsite restoration and report on the results of the monitoring to the appropriate agencies at the frequency and duration included in the permits.
- Sensitive natural communities shall be included in the WEAP described above in Mitigation Measure 3.4-1.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in potentially significant impacts on riparian habitat and other sensitive natural communities. Adoption and incorporation of Mitigation Measures 3.4-1 and 3.4-16 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant impact on riparian habitat and other sensitive natural communities to less-than-significant level.

### **Wetlands and Waters of the United States**

**Impact 3.4-3: Loss and degradation of federally protected waters of the United States.** Project construction may result in the loss and degradation of federally protected wetlands and other waters of the United States. Federally protected waters could also be disturbed indirectly by activities associated with staging areas and laydown of project components.

***Mitigation Measure 3.4-17. Avoid impacts to jurisdictional features and sensitive natural communities by use of horizontal directional drilling.***

The following avoidance and minimization measures shall be implemented to protect listed and other special-status plants and animals, and to avoid impacts to wetlands and riparian zones:

- Boring activities and set-up activities for boring operations shall be situated outside of wetlands and riparian areas. An earthen or sandbag berm shall be installed around all drilling fluid mixing and pumping areas to contain any inadvertently spilled material. Sediment control devices shall be installed between the drilling staging areas and any waterways. This includes any culverts or drainage ditches that lead to a waterway.
- HDD operations at the creek crossings and/or jurisdictional features shall be limited to daylight hours because of the difficulty in identifying the loss of bentonite or machine pressure without daylight. This shall be defined by the termination of drilling 30 minutes before dusk, and resumption of drilling at dawn. The contractor will make every effort to schedule drilling activities to be completed between dawn and 30 minutes to dusk. Should the drilling activities be within one hour of completion, 30 minutes before dusk, drilling activities may be allowed to continue until completion if the Project environmental monitor and/or the CDFW or its agents determine that completing the drilling activities will result in less risk to the stream.
- Visual inspection along the bore alignment for frac-outs shall take place at all times while the drill is in operation. The monitor shall be in radio contact with the boring machine operator at all times. A biologist/monitor's presence shall be required during all boring activities (i.e. boring, back reaming, etc.) within CDFW jurisdiction unless the drainage is dry.
- The HDD Operator shall design, pre-plan, and direct the HDD operation in such a way as to minimize the risk of spills of all types. The HDD Operator shall prepare and implement a Frac-Out Contingency Plan and submit it to SMUD and CDFW for review and approval 30 days prior to construction, which includes the boring plans and frac-out and clean-up plans, in the event of the accidental release of drilling lubricants through fractures in the streambed or bank ("frac-outs"). In substrates where frac-outs are likely to occur, the HDD Operator shall operate in a manner that will reduce risk, such as using lower pressure and greater boring depths. The Contingency Plan shall be kept on site at all times.
- A non-toxic fluorescent water-soluble dye shall be added to the drilling muds to allow for frac-outs to be seen in muddy waters. The dye shall be used in a concentration which allows the monitors to easily determine the source of the

- frac-out, and shall be a type of dye approved for use by the local Regional Water Quality Control Board.
- All equipment required to contain and clean up a frac-out release shall be available at the work site.
  - Boring plans should include:
    - A sketch of the construction site, including equipment staging areas, approximate location of drill entry and exit points and the approximate location of access roads in relation to the surrounding area,
    - Proposed depth of bore and statement of streambed or wetland condition (subsurface strata and percent of gravel and cobble) that support the depth of the bore,
    - Approximate length of bores (50-foot increments),
    - Type and size of boring equipment to be used (categorized as mini, mid or maxi),
    - Estimated time to complete bore,
    - List of lubricants and HDD additives to be used including Material Safety Data Sheets (MSDS), and
    - Name of Operator's agents and cell phone numbers.
  - Frac-out prevention and clean-up plans should include:
    - Name(s) and phone numbers of biological monitor(s) and crew supervisor(s),
    - Site specific resources of concern (if applicable, include factors such as possible presence of sensitive species),
    - Monitoring protocols (include biological monitoring and frac-out monitoring), and
    - Containment and clean-up plan (include staging location of vacuum trucks and equipment, equipment list, necessary hose lengths, special measures needed for steep topography, etc. at each location).
  - If a frac-out or spill occurs in a sensitive resource, the Operator shall immediately notify the SMUD Environmental Monitor.
  - If a frac-out occurs, the SMUD Environmental Monitor, shall determine whether clean-up actions are warranted. If containment and clean-up is needed to prevent additional impacts, the Contractor shall begin the following containment and clean up measures immediately. Where water flows allow, the Contractor shall immediately construct a sandbag well around the frac-out or place a standing pipe (such as a 55-gallon drum with the top and bottom removed, heavy PVC pipe or CMP or culvert type material) around the frac-out to contain the drilling mud. A trailer-mounted vacuum or vacuum truck shall be deployed to vacuum out spilled drilling fluids that continue to leak. Removed drilling fluids shall not be placed where they are likely to re-enter the stream.



All cleanup and containment efforts shall adhere to the Frac-out Contingency Plan approved by the SMUD for spill response.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in significant loss, degradation and indirect disturbance of federally protected wetlands and other waters of the United States. Adoption and incorporation of Mitigation Measures 3.4-1 and 3.4-17 into the project will reduce the impact to a less-than-significant level. Therefore, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), Board finds that changes or alterations have been required or incorporated into the to reduce the significant impacts on federally protected wetlands and other waters of the United States to less-than-significant level.

## **Cultural Resources**

**Impact 3.5-1: Impacts on undiscovered archaeological resources pursuant to § 15064.5.** A records search revealed two historic era cultural sites; the pedestrian survey did not identify cultural resources. However, project-related ground-disturbing activities could result in discovery of or damage to yet undiscovered archaeological resources as defined in State CEQA Guidelines Section 15064.5.

### ***Mitigation Measure 3.5-1: Halt ground-disturbing activity upon discovery of subsurface archaeological features.***

In the event that any prehistoric or historic-era subsurface archaeological features or deposits, including locally darkened soil (“midden”), that could conceal cultural deposits, are discovered during construction, all ground-disturbing activity within 100 feet of the resources shall be halted and a qualified professional archaeologist shall be retained to assess the significance of the find. If the find is determined to be significant by the qualified archaeologist (i.e., because it is determined to constitute either an historical resource, a unique archaeological resource, or a tribal cultural resource), the archaeologist shall develop appropriate procedures to protect the integrity of the resource and ensure that no additional resources are affected. Procedures could include, but would not necessarily be limited to, preservation in place (which shall be the preferred manner of mitigating impacts to archaeological sites), archival research, subsurface testing, or contiguous block unit excavation and data recovery (when it is the only feasible mitigation, and pursuant to a data recovery plan).

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in potentially significant impacts on previously undiscovered archaeological resources as defined in State CEQA Guidelines Section 15064.5. Adoption and incorporation of Mitigation Measure 3.5-1 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines



section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant impact on previously undiscovered archaeological resources to a less-than-significant level.

**Impact 3.5-2: Impacts on previously unidentified human remains.** There has been no indication that the area has been used for human burials in the recent or distant past and human remains are unlikely to be encountered during project earthmoving activities. However, in the unlikely event that human remains are discovered during subsurface activities, they could be inadvertently damaged.

***Mitigation Measure 3.5-2: Halt ground-disturbing activity upon discovery of human remains.***

If human remains are discovered during any construction activities, potentially damaging ground-disturbing activities within 100 feet of the remains shall be halted immediately, and SMUD will notify the Placer County coroner and the NAHC immediately, according to PRC Section 5097.98 and Section 7050.5 of the California Health and Safety Code. If the remains are determined by the NAHC to be Native American, the guidelines of the NAHC shall be followed during the treatment and disposition of the remains. SMUD will also retain a professional archaeologist with Native American burial experience to conduct a field investigation of the specific site and consult with the Most Likely Descendant, if any, identified by the NAHC. Following the coroner's and NAHC's findings, the archaeologist and the NAHC-designated Most Likely Descendant shall determine the ultimate treatment and disposition of the remains and take appropriate steps to ensure that additional human interments are not disturbed. PRC Section 5097.94 identifies the responsibilities for acting upon notification of a discovery of Native American human remains.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in potentially significant impacts on previously unidentified human remains. Adoption and incorporation of Mitigation Measure 3.5-2 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant impact on previously unidentified human remains to less-than-significant level.

## **Geology, Soils, and Paleontological Resources**

**Impact 3.7-5: Degradation or destruction of a unique paleontological resource.** The project site is located in the Riverbank Formation, which is considered to be of high paleontological sensitivity. Various project-related earthmoving activities could encounter undisturbed native soils and potentially result in accidental damage to or destruction of unique paleontological resources.

***Mitigation Measure 3.7-5: Avoid Impacts to Unique Paleontological Resources.***

To minimize the potential for destruction of or damage to previously unknown unique, scientifically important paleontological resources during earthmoving activities at the project site, SMUD shall do the following:

- Prior to the start of earthmoving activities, retain either a qualified archaeologist or paleontologist to inform all construction personnel involved with earthmoving activities regarding the possibility of encountering fossils, the appearance and types of fossils likely to be seen during construction, and proper notification procedures should fossils be encountered.
- If paleontological resources are discovered during earthmoving activities, the construction crew shall immediately cease work in the vicinity of the find and notify SMUD and the County. SMUD shall retain a qualified paleontologist to evaluate the resource and prepare a recovery plan. The recovery plan may include, but is not limited to, a field survey, construction monitoring, sampling and data recovery procedures, museum curation for any specimen recovered, and a report of findings. Recommendations in the recovery plan that are determined by SMUD and the County to be necessary and feasible shall be implemented before construction activities can resume at the site where the paleontological resource or resources were discovered.

**Finding:** The Board finds that implementation of the Country Acres Solar Project, during construction, could encounter unique paleontological resources. Adoption and incorporation of Mitigation Measure 3.7-5 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant impact related to unique paleontological resources to less-than-significant level.

**Hazards and Hazardous Materials**

***Impact 3.9-1: Exposure of people and the environment to hazardous materials.***

Construction, operation, and eventual decommissioning activities would involve the storage, transport, and/or handling of hazardous materials. Transport or use of these materials on-site could expose workers or the environment to hazards.

***Mitigation Measure 3.9-1: Conduct Phase II Environmental Site Assessment and Implement Remedial Measures.***

To reduce health hazards associated with potential exposure to hazardous substances, SMUD shall implement the following measures before the start of ground-disturbing activities:

- Retain a certified environmental professional to conduct a Phase II ESA that includes appropriate soil and/or groundwater testing. Recommendations in the Phase II ESA to address any contamination that is found shall be implemented before ground-disturbing activities can resume in the areas where contamination is identified, including at the two REC areas in the Phase I ESA recommended for further investigation.
- Notify the appropriate federal, State, and local agencies if evidence of previously undiscovered soil or groundwater contamination (e.g., stained or odoriferous soil or groundwater) or if previously undiscovered underground storage tanks are encountered during construction activities. Any contaminated areas shall be remediated in accordance with recommendations made by the Placer County Department of Health and Human Services-Division of Environmental Health Services, Central Valley RWQCB, DTSC, and/or other appropriate Federal, state, or local regulatory agencies.
- Remove all surface debris such as the used tires, tractor trailers, recreational vehicles, Polyvinyl chloride (PVC) piping, and soil piles observed within the proposed project boundaries during the site visit conducted in January 2022, and dispose of such materials at an appropriately permitted off-site disposal facility.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could expose people and the environment to hazardous materials. Adoption and incorporation of Mitigation Measure 3.9-1 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant impact due to potential release of hazardous materials to less-than-significant level.

### **Hydrology and Water Quality**

**Impact 3.10-5: Risk release of pollutants due to project inundation.** The location of the construction trailer and the construction material and equipment storage and staging areas has not yet been determined. Inundation of construction equipment or material storage areas during a flood could result in downstream transport of pollutants, thereby degrading water quality and impairing designated beneficial uses of downstream waterbodies.

***Mitigation Measure 3.10-1: Locate Construction Equipment and Material Storage Areas Outside of the 100-Year Floodplain During the Winter Rainy Season.***

In order to protect human life, water quality, and designated in-stream beneficial uses of waterbodies, the construction contractor shall implement the following:



- The on-site construction trailer and its associated portable restrooms, fencing, power supply, and parking area, shall not be located within a 100-year floodplain.
- During the winter rainy season (i.e., November 1 through April 1), construction materials and equipment shall not be stored in a 100-year floodplain.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in release and transport of pollutants downstream due to project inundation. Adoption and incorporation of Mitigation Measure 3.10-1 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant risk release of pollutants to a less-than-significant level.

## Noise

**Impact 3.13-1: Temporary, short-term exposure of sensitive receptors to construction noise.** The project would generate short-term construction noise that could be perceptible to nearby noise-sensitive receptors.

***Mitigation Measure 3.13-1. Implement Noise-Reducing Construction Practices, Prepare and Implement a Noise Control Plan, and Monitor and Record Construction Noise near Sensitive Receptors.***

The project applicant(s) and primary contractors for engineering design and construction of all project phases shall employ noise-reducing construction practices and ensure that the following requirements are implemented at each worksite in any year of project construction to avoid and minimize construction noise effects on sensitive receptors. Measures that shall be used to limit noise shall include the measures listed below:

- Noise-generating construction operations shall be limited to the hours between 6 a.m. and 8 p.m. Monday through Friday, and between 8 a.m. and 6 p.m. on Saturdays.
- Construction equipment and equipment staging areas that could produce noise perceptible at the adjacent property boundary shall be located as far as feasible from nearby noise-sensitive land uses.
- All construction equipment shall be properly maintained and equipped with noise-reduction intake and exhaust mufflers and engine shrouds, in accordance with manufacturers' recommendations. Equipment engine shrouds shall be closed during equipment operation.
- All motorized construction equipment shall be shut down when not in use to prevent idling.

- Individual operations and techniques shall be replaced with available quieter procedures and equipment (e.g., using welding instead of riveting, mixing concrete off-site instead of on-site).
- Noise-reducing enclosures shall be used around stationary noise-generating equipment (e.g., compressors and generators).
- Construction-related traffic shall be limited along roadways within residential uses such as South Brewer Road and Phillip Road as discussed in Mitigation Measure 3.17-1 Prepare and Implement Traffic Control Plan and Mitigation Measure 3.17-2 Prepare and Implement a Construction Transportation Plan.
- Written notification of construction activities shall be provided to all noise-sensitive receptors located within 700 feet of construction activities. The notification shall include anticipated dates and hours during which construction activities are anticipated to occur and contact information, including a daytime telephone number, for the project representative to be contacted in the event that noise levels are deemed excessive. Recommendations to assist noise-sensitive land uses in reducing interior noise levels (e.g., closing windows and doors) shall also be included in the notification.
- Acoustic barriers (e.g., lead curtains, sound barriers) shall be used, particularly during site grading and excavation activities, when construction equipment operates along the project site boundaries within 700 feet of existing residential uses, to reduce construction-generated noise levels at affected noise-sensitive land uses. The barriers shall be designed to obstruct the line of sight between the noise-sensitive land use and on-site construction equipment.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in temporary, short-term exposure of sensitive receptors to construction noise. Adoption and incorporation of Mitigation Measure 3.13-1 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant temporary, short-term noise impacts to a less-than-significant level.

## **Transportation**

**Impact 3.17-1: Conflict with a program, plan, ordinance, or policy addressing the circulation system in the roadway facilities.** During the construction of the proposed project, there may be necessary access improvements required and there would be a temporary increase in construction-related traffic from delivery trucks and construction workers traveling to and from the project sites.

### ***Mitigation Measure 3.17-1. Prepare and Implement a Traffic Control Plan.***

- Prior to the start of construction, the construction contractor shall prepare and submit a Traffic Control Plan (TCP) to Placer County for review and approval.

The TCP shall be implemented to minimize construction-related traffic impacts on affected roadways. The contractor shall coordinate the development and implementation of this plan with agencies with jurisdiction over the affected routes (i.e., Placer County), as appropriate, and consider any other nearby construction happening at the same time. The TCP shall, at a minimum: define traffic controls, such as flag persons, warning signs, lights, barricades, cones, and detours, etc. to provide safe work areas and to warn, control, protect, and expedite vehicular traffic, based on County requirements and any conditions of project approval and shall aim to coordinate with other projects to minimize disruption to local and regional traffic flows during construction;

- show any proposed construction access location and encroachment onto a County roadway. The construction access location shall be reviewed and approved by the County at the time of Improvement Plan submittal. All approved construction access locations shall include an appropriate construction encroachment designed to the satisfaction of the County that may exceed typical construction encroachment designs (i.e. Baseline Road construction encroachment may be required to include larger radii and acceleration and deceleration tapers).
- require the installation and maintenance of construction area signs in accordance with the current edition of the California Department of Transportation Manual on Uniform Traffic Control Devices (CA MUTCD) and/or California Department of Transportation Manual of Traffic Controls for Construction and Maintenance Work Zones, Traffic Control Plans must follow California MUTCD (Chapter 6) guidelines;
- discuss work hours and haul routes, delineate work areas, and identify traffic control methods and plans for flagging;
- develop and implement a process for communicating with affected residents and landowners about the project before the start of construction. The public notice shall include posting notices and appropriate signage regarding construction activities. The written notification shall include the construction schedule, the exact location and duration of activities on each roadway (e.g., which roads/lanes and access points/driveways will be blocked on which days and for how long), and contact information for questions and complaints;
- notify the public regarding alternative routes that may be available to avoid delays;
- include measures to avoid disruptions or delays in access for emergency service vehicles and to keep emergency service agencies fully informed of road closures, detours, and delays. Police departments, fire departments, ambulance services, and paramedic services shall be notified at least one month in advance by the construction contractor of the proposed locations, nature, timing, and duration of any construction activities and advised of any access restrictions that could impact their effectiveness; and

- identify all emergency service agencies, include contact information for those agencies, assign responsibility for notifying the service providers, and specify coordination procedures. TCPs shall be provided to all affected police departments, fire departments, ambulance and paramedic services.

***Mitigation Measure 3.17-2. Prepare and Implement a Construction Transportation Plan.***

Where construction traffic has the potential to significantly affect regional and local roadways (e.g., Baseline Road, South Brewer Road, and Phillip Road) by generating additional vehicle trips, or potentially causing unsafe situations by construction vehicles making left hand turns into the construction site, the construction contractor shall prepare and implement a Construction Transportation Plan (CTP) describing alternate traffic routes, timing of commutes, reduction in crew-related traffic, potential temporary turning lanes/pockets, if required, and other mitigation methods for reducing construction-generated additional traffic on regional and local roadways and to guarantee safe local traffic patterns during construction. The CTP shall also require the following:

- distribute worker trips to multiple roadways and limit construction-related trips along South Brewer Road and Phillip Road to 100 worker trips or less during the peak hours (7 a.m. – 9 a.m. and 4 p.m. – 6 p.m.);
- if deemed necessary by the County to ensure safe traffic conditions during construction based on advanced designs, include temporary turning lanes/pockets off Baseline Road, South Brewer Road, and Phillip Road in the CTP; these temporary turning lanes/pockets shall be engineered according to County standards, and shall be used temporarily only during construction; following construction, any turning lanes/pockets shall be removed, and the road conditions shall be restored to pre-construction conditions;
- avoid construction-related trips during the morning and afternoon peak hours; and
- construction workers park personal vehicles at staging yards and carpool to work sites within the project area.

The construction contractor shall submit the CTP to Placer County for review and approval 30 days prior to commencing construction activities.

**Finding:** The Board finds that implementation of the Country Acres Solar Project could result in short-term construction transport-related traffic hazards and incompatible uses. Adoption and incorporation of Mitigation Measures 3.17-1 and 3.17-2 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant transportation impact due to construction-related transport to less-than-significant level.

**Impact 3.17-3: Substantially increase hazards due to a geometric design feature or incompatible uses.** The proposed project would result in temporary disruption to traffic flow, and localized increases in traffic disruptions. As a result, drivers would be presented with unexpected driving conditions and obstacles, which could increase the occurrence of automobile or haul truck accidents.

*Implement Mitigation Measures 3.17-1 and 3.17-2, and;*

***Mitigation Measure 3.17-3. Resurface, Repair and/or Restore Roadways to Pre-Construction Condition.***

Prior to Improvement Plan approval, the applicant shall provide a video/photo survey of the existing surfacing condition of South Brewer and Phillip Roads to the satisfaction of the County. A cash security deposit (i.e. cash, CD, letter of credit – no bonds) shall also be provided to the County in an amount determined by the County and SMUD for the repair and restoration of the roadways to their original condition, including removal of any temporary turning lanes/pockets as discussed under Mitigation Measure 3.17-2 that would be constructed under the CTP, if deemed necessary based on advanced designs. Upon completion of construction of the project improvements (i.e. beginning operation/use of the site; and/or prior to Building Permit Certificate of Occupancy; and/or acceptance of the project construction as complete by the County), the existing South Brewer and Phillip roadway surfaces shall be repaired and/or restored to their original condition by the developer, including removal of any temporary improvement to ensure safe access, such as temporary turning lanes/pockets. The improvements required for repair and restoration shall be described by and at the sole discretion of the County and shall be constructed to County standards and to the satisfaction of the County. Improvement Plans and/or Encroachment Permits will need to be obtained by the developer for any required improvements, repair and restoration construction. After completing the repair and restoration to the satisfaction of the County, the cash security deposit will be released.

**Finding:** The Board finds that implementation of the Country Acres Solar Project, during construction, could result in an increase of hazards due to a geometric design feature or incompatible uses. Adoption and incorporation of Mitigation Measure 3.17-3 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant hazards due to a geometric design feature or incompatible uses impact to a less-than-significant level.

**Impact 3.17-4. Inadequate emergency access.** Construction activities for the proposed project could reduce emergency access to roadways in the project area, as slow-moving trucks entering and exiting the project sites along roadways in the vicinity of the project sites could delay the movement of emergency vehicles.

***Mitigation Measure: Implement Mitigation Measure 3.17-1. Prepare and Implement a Traffic Control Plan.*** See text above.

**Finding:** The Board finds that implementation of the Country Acres Solar Project, during construction, could result in reduced emergency access to the project area. Adoption and incorporation of Mitigation Measure 3.17-1 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant impact to emergency access along transportation routes to a less-than-significant level.

### **Tribal Cultural Resources**

**Impact 3.18-1. Impacts to tribal cultural resources as defined in Public Resources Code §21074.** While no tribal cultural resources have been identified on the project site and the NAHC Sacred Lands Database search was negative, these resources could be discovered during ground-disturbing construction activities and could be affected by the project.

#### ***Mitigation Measure 3.18-1.***

The following method is intended to minimize impacts to existing or previously undiscovered Tribal Cultural Resources (TCRs), archaeological, or cultural resources during a project's ground disturbing activities at the following locations: substation, switch yard, battery storage area. The project proponent and its construction contractor(s) will implement the following methods to identify TCRs at the earliest possible time during project-related earthmoving activities:

- A compensated (paid) Tribal Monitor from a traditionally and culturally affiliated Native American Tribe shall be retained to monitor specified ground disturbing project related activities in the substation, switch yard, and battery storage area of the project area.
- The specified ground disturbing activities include grading, trenching, and ground disturbance to a depth of up to approximately 6 feet.
- Spot monitoring at these locations will be done by the Tribal Monitor in coordination with the construction schedule.
- Consulting Tribes shall be contacted at least 2 weeks prior to project ground-disturbing activities in order to retain the services of a paid Tribal Monitor. The duration of the monitoring and construction schedule shall be determined at this time.
- Field-monitoring activities will be documented on a Tribal Monitor log. The total time commitment of the Tribal Monitor will vary depending on the intensity and location of construction and the sensitivity of the area, including the number of finds.
- The Tribal Monitor/s shall wear the appropriate safety equipment and shall have the necessary background training in construction safety protocols.

- The Tribal Monitor/s will have all necessary background training to identify and recommend appropriate treatment for any discoveries, including sites and objects of cultural value, that are a potential TCR.
- Tribal Monitors or Tribal Representatives have the authority to request that work be temporarily stopped, diverted, or slowed within 100 feet of the direct impact area if sites or objects of significance are identified. Only a Tribal Monitor or Representative from a culturally affiliated tribe can recommend appropriate treatment and final disposition of TCRs.
- When avoidance is infeasible, preservation in place is the preferred option for mitigation of TCRs under CEQA and Tribal protocols, and every effort shall be made to preserve the resources in place, including through project redesign, if feasible. Culturally appropriate treatment may be, but is not limited to, processing materials for reburial, minimizing handling of cultural objects, leaving objects in place within the landscape, or returning objects to a location within the project area where they will not be subject to future impacts. Permanent curation of TCRs will not take place unless approved in writing by consulting Tribes.
- The contractor shall implement any measures deemed by the CEQA lead agency to be necessary and feasible to preserve in place, avoid, or minimize impacts to the resource, including, but not limited to, facilitating the appropriate tribal treatment of the find, as necessary. Treatment that preserves or restores the cultural character and integrity of a TCR may include Tribal Monitoring, culturally appropriate recovery of cultural objects, and reburial of cultural objects or cultural soil.
- Work at the discovery location cannot resume until all necessary investigation and evaluation of the discovery under the requirements of the CEQA, including AB 52, have been satisfied.

**Finding:** The Board finds that implementation of the Country Acres Solar Project, during construction, could result in discovery of tribal cultural resources. Adoption and incorporation of Mitigation Measure 3.18-1 into the project will reduce the impact to a less-than-significant level. Thus, pursuant to PRC section 21081(a)(1) and CEQA Guidelines section 15091(a)(1), changes or alterations have been required or incorporated into the project to avoid or substantially lessen the potentially significant impact to potential tribal cultural resources to a less-than-significant level.

3. Issues for which the project would have No Impact or a Less-than-Significant Impact

### **Aesthetics**

**Impact 3.1-1: Substantial degradation of the existing visual character or quality of public views of the site and its surroundings in nonurbanized areas.** Motorists in Westpark and motorists adjacent to the project site would see intermittent construction activities in certain parts of the project site, based on the viewer location, activity location,

and intervening topography. Overall, construction activities would be temporary and short term, no viewers would be able to see the entire project site, and many viewers along adjacent local roadways would have moderately low to low sensitivity. Operational impacts on visual character from roads would be less than significant, as the primary viewers are motorists who have moderately low to low sensitivity. Operational impacts on visual character from the nearby community of Westpark would also be less than significant, as the change in the views from all aspects would be nearly unnoticeable. Therefore, during both project construction and operation, this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.1-4: Creation of a new source of light or glare which would adversely affect views in the area.** During construction, the only source of potential nighttime glare could be produced from construction vehicles or the temporary construction office. If nighttime work is performed, lighting would be directed downward and shielded to focus illumination on the desired work areas only. During operation, PV solar panels may produce a minor amount of glare, but that glare would not be visible for a substantial amount of time to a substantial number of viewers and would not result in substantial glare for motorists traveling on local roadways, aircraft pilots, or nearby residents. No other substantial glare or light pollution would occur from operation of the project. Therefore, overall impacts from light and glare during operation would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Agriculture and Forestry Resources**

***Impact 3.2-2. Involve any changes in the existing environment which, due to their location or nature, could result in conversion, to non-agricultural use.*** The proposed project would not indirectly result in other changes in the physical environment that could result in the conversion of agricultural land, including agricultural land designated as Farmland of Statewide Importance and Unique Farmland, to nonagricultural uses. This impact is considered less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Air Quality**

**Impact 3.3-3. Expose sensitive receptors to substantial pollutant concentrations.** The proposed project would not exceed the PCAPCD screening-level criteria for CO and would not violate air quality standards for CO. Operational emissions of TACs would not be considered a substantial source of TACs. Construction emissions of TACs would be intermittent and temporary in nature and would not expose sensitive receptors to DPM emission levels that would result in a health hazard. Overall impacts on sensitive receptors from substantial pollutant concentrations would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.3-4. Other emissions, including those leading to odors, adversely affecting a substantial number of people.** During construction, odors from construction



would be typical of construction sites and generally confined to the immediate area surrounding the project site. Project operation would not add any new sources of odors. Therefore, overall impacts from other emissions, such as those leading to odors, would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Biological Resources**

**Impact 3.4-1. Impacts to western red bat.** The only proposed tree removal will occur in the orchards. While red bat day roosts have been recorded in orchard trees, such records are from orchard trees near aquatic or riparian habitat and orchard trees in the project area are not likely to provide suitable habitat for western red bat day roosts. The project will not result in significant impacts on western red bat. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.4-4. Interferences with the movement of any native resident or migratory fish or wildlife species, or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.** While the project area falls within the Pacific Flyway, studies described in Section 3.4 of the EIR, show that it is unlikely that the project would result in substantial fatalities of waterfowl or other water dependent birds due to collisions with solar panels. While overhead powerlines are a well-documented collisions and electrocution risk for larger species such as raptors, with implementation of SMUDs avian protection design standards, the risk of raptor collision or electrocution is minimal. Finally, the proposed project, as discussed, would not create a barrier to movement of migratory birds that use the Pacific Flyway. Therefore, project impacts on the migratory corridors or nursery sites would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.4-5. Conflicts with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.** No native trees are expected to be removed or impacted as part of the project. Therefore, project would not conflict with any tree preservation policy or ordinance (or any other policies or ordinances protection biological resources) and the impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.4-6. Conflicts with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.** While the project is not a covered activity, and SMUD is not a participant in the Placer County Conservation Plan, the project will implement Mitigation Measures 3.4-8, 3.4-10, and 3.4-16 to be consistent with the conditions set forth in the plan. Therefore, the proposed project would not conflict with an adopted Habitat Conservation Plan/Natural Community Conservation Plan and the impact would



be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### Energy

**Impact 3.6-1. Significant impacts due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation.** Project construction activities would consume energy. However, because the project, once operational, would serve as a power generation facility and increase SMUD's capacity to generate power, the project would not result in the wasteful, inefficient, and unnecessary consumption of energy. Therefore, this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.6-2. Conflicts or obstructions with a state or local plan for renewable energy or energy efficiency.** As a solar facility generating renewable energy, the proposed project would serve to directly advance SMUD's resource procurement plans to meet and exceed state plans and regulations by providing an increase in renewable energy and would not affect any plans relating to energy efficiency. Furthermore, the proposed project supports the Placer County Sustainability Plan's goal to reduce GHG emissions and supports Strategy E-23, which acknowledges intent to support local renewable energy generation. Therefore, the proposed project would not obstruct a state or local plan for renewable energy or energy efficiency, and this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### Geology, Soils, and Paleontological Resources

**Impact 3.7-1. Adverse effects resulting from strong seismic ground shaking.** Development of the proposed project is required by law to comply with seismic safety standards of the CBC, which focuses on "collapse prevention. In complying with these standards, impacts from strong seismic ground shaking would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.7-2. Result in substantial soil erosion or the loss of topsoil.** Compliance with existing laws, regulations, and ordinances ensures that the short-term, temporary construction impacts from soil erosion would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.7-3. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property.** As required by the CBC, and County Municipal Code Article 15.48 (related to grading and drainage for Improvement Plans), the Preliminary Geotechnical Report includes appropriate recommendations for soil treatment to reduce the expansion potential. Therefore, the impact from construction and operation in expansive soils is considered less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.7-4. Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.** During construction, temporary portable restrooms would be used at the project site, and there would be no impact related to soil suitability related to septic systems during the project's construction phases. For project operation, two permanent restrooms would be constructed and these restrooms would require of two small on-site septic systems. SMUD would be required to follow the Placer County Department of Health and Human Services, Division of Environmental Health Services septic system permitting process. Therefore, appropriate on-site septic systems would be designed and installed to meet County requirements to protect human health and the environment. Thus, the impact related to soil suitability for septic systems as designed and engineered for long-term use during the project's operational phase would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Greenhouse Gas Emissions**

**Impact 3.8-1. Generation of greenhouse gas emissions that may have a significant impact on the environment.** The maximum annual emissions would not exceed PCAPCD's threshold of 10,000 MT CO<sub>2</sub>e per year and the proposed project's construction-related emissions would not be considered to have a cumulatively considerable contribution to the significant impact of global climate change. This impact for construction would be less than cumulatively considerable. Operational GHG emissions would be less than the PCAPCD de minimis screening level and the proposed project's operational emissions would not be considered to have a cumulatively considerable contribution to the significant impact of global climate change. This impact for operations would be less than cumulatively considerable. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.8-2. Conflicts with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.** The project would provide a potential reduction in GHG emissions each year of operation if the electricity generated by the project's solar energy facilities were to be used instead of electricity generated by fossil-fuel sources. Therefore, the proposed project would be consistent with and would not conflict with applicable plans, policies, or regulations adopted for the purpose of reducing the emissions of greenhouse gases. This impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

Moreover, this project will produce 344 megawatts of renewable photovoltaic energy with no CO<sub>2</sub> emissions. This generation will displace an energy mix that is significantly from carbon-emitting sources. The resulting reduction in carbon emissions will produce a significant benefit to greenhouse gas impacts in the region. The additional installation of 172 megawatts of battery energy storage, largely storing energy produced by the photovoltaic generation from the project, will further enhance the ability of the project as a whole to displace the use and generation of fossil fuel-emitting power. The project's



operations would provide a benefit of approximately 115,000 MT CO<sub>2</sub>e avoided per year. Over the life of the 35-year project, the amount of carbon emission reductions will be substantial.

### **Hazards and Hazardous Materials**

**Impact 3.9-1. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.** All materials will be used and stored in compliance with federal, state, and local ordinances, laws, regulations and policies related to hazardous materials, including the County's requirements for handling and transport of hazardous materials. Additionally, the project applicant is required by law to develop and implement a Stormwater Pollution Prevention Plan (SWPPP), which must contain provisions for notification and proper cleanup of spills if they do occur. Finally, project-related decommissioning would involve the disposal of solar panels, which are considered a universal waste. For these reasons, this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.9-3. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.** Project construction, operation, and decommissioning would not impede emergency vehicles or adopted emergency evacuation plans, and this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Hydrology and Water Quality**

**Impact 3.10-1. Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality.** Compliance with the applicable laws, regulations, ordinances, and permit terms would require the project to reduce pollution and runoff generated in the proposed development area through implementation of operation-related source-control measures, along with BMPs, and pretreatment and with preparation of a SWPPP with associated BMPs designed to control construction-related erosion and pollutants. These measures would protect water quality as required by the Basin Plan. Therefore, construction and operation of the proposed new industrial development at the project site would not violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality, and this impact would be less than significant. Compliance with ongoing SWRCB and Central Valley RWQCB requirements to protect water quality from NPS agricultural discharges, project-related operational water quality impacts from agricultural uses (such as sheep grazing) would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.10-2. Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin.** The proposed project would not impede sustainable groundwater management of the basin by substantially interfering

with groundwater recharge, nor would it impede sustainable groundwater management of the basin. Impacts associated with groundwater supplies or recharge would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.10-3. Substantially alter drainage patterns or add impervious surfaces that would result in substantial erosion, exceed storm drainage system capacity, or provide substantial additional sources of polluted runoff.** During project construction, actions required to comply with the County's Grading, Erosion, and Sediment Control Ordinance and implementation of BMPs associated with the required SWPPP, along with operational stormwater quality pre-treatment from the new impervious surfaces that would be detailed in the project's Stormwater Quality Plan, would result in less-than significant impacts from erosion or creation of substantial new sources of operational polluted stormwater runoff. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.10-4. Substantially alter drainage patterns or add impervious surfaces that would result in increased flooding, or impede or redirect flood flows.** The proposed project would not substantially alter drainage patterns or add impervious surfaces such that increased flooding would occur, nor would it impede or redirect flood flows. Thus, this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.10-6. Conflicts with or obstructions to implementation of a water quality control plan or sustainable groundwater management plan.** The proposed project would not conflict with or obstruct implementation of the Water Quality Control Plan for the Sacramento and San Joaquin River Basins or the North American Subbasin Groundwater Sustainability Plan. Therefore, this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Land Use and Planning**

**Impact 3.11-1. Conflict with a plan, policy, or regulation adopted to avoid or mitigate an environmental effect.** With approval of a Conditional Use Permit and an amendment to the Regional University Specific Plan, the proposed project would not conflict with the zoning of the project site. The proposed project would be otherwise consistent with local plans, policies, and regulations. This impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Mineral Resources**

**Impact 3.12-1. Result in the loss of availability of a known mineral resource that would be a value to the region and the residents of the state.** The project site is not in an area known to contain significant mineral resources. Therefore, the project would not result in the loss of availability of a known mineral resource of value to the region or

state. There would no impact. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.12-2. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan.** The project site is not in an area known to contain significant mineral resources. Therefore, the project would not result in the loss of availability of a known mineral resource of value to the region or state. There would no impact. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Noise**

**Impact 3.13-2: Temporary, short-term exposure of sensitive receptors to increased traffic noise levels from project construction.** Construction-generated traffic volume from movement of construction equipment and materials could expose sensitive receptors to noise levels along on- and off-site roadways that would not exceed the applicable noise standards and/or result in a substantial increase in ambient noise levels. Additionally, the project will comply with County's Noise Ordinance and Noise Thresholds. This impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.13-3: Temporary and short-term exposure of sensitive receptors to, or temporary and short-term generation of, excessive groundborne vibration.** Short-term construction of the project would not exceed the threshold for structural damage, and would not expose persons to or generate excessive ground-borne noise or vibration. Long-term project operation would not include any major new sources of groundborne noise or vibration, including the pump station facilities. Maintenance vehicles and water haul trucks would be restricted to existing public roadways, and the limited number of trips generated would not have the potential to substantially increase vibration levels at adjacent land uses. This impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.13-4. Permanent, long-term exposure of sensitive receptors to increased noise level from project operation.** Future development would not expose sensitive receptors to noise levels that exceed local standards. This impact is considered less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Population and Housing**

**Impact 3.14-1. Induce substantial unplanned population growth in an area.** The project is not expected to induce population growth directly or indirectly. There would be no impact. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.14-2. Displace substantial numbers of existing people or housing, necessitating the construction of replacement housing elsewhere.** *There* are no homes or people living within the area that will be displaced by the project, eliminating the need to construct housing elsewhere to replace homes. There would be no impact. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Public Services**

**Impact 3.15-1. Physical impacts associated with the expansion or construction of new public facilities to meet increased service demands induced by the project.** The project's construction, operation, and maintenance of the project would not result in physical or operational changes that would interfere with PCFD response times or performance objectives such that provision of new or physically altered PCFD facilities would be required. Therefore, the impact to fire and emergency services is less than significant. Construction, operation, and maintenance activities could affect the demand for police protection services, but would not increase such that the construction of new or expansion of existing police service facilities or the hiring of additional law enforcement personnel would be required. Therefore, the project's impact on police services would be less than significant. The proposed project will not induce population growth, so there would be no increased demand on schools, parks, or other public facilities. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Recreation**

**Impact 3.16-1. Accelerated deterioration of recreational facilities.** The project would not result in a substantial increase in the existing demand for parks and other recreational facilities and no impact would occur. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.16-2. Construction or expansion of recreational facilities.** The project would not require the construction or expansion of recreational facilities and no impact would occur. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Transportation**

**Impact 3.17-2. Conflicts or inconsistencies with CEQA Guidelines § 15064.3, subdivision (b).** The project fulfills the intent of SB 743, falls under Placer County's adopted screening criteria, and does not represent a long-term source of VMT that could lead to any potentially significant effect, this impact is considered less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Utilities and Service Systems**

**Impact 3.19-1. Require or result in the relocation or construction of new or expanded utility or service systems.** The proposed project involves the construction of electric facilities. Potential environmental impacts associated with these facilities are discussed extensively within the EIR. Impacts associated with the relocation or construction of other utilities and service systems is considered less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.19-2. Sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years.** The Water Supply Assessment concluded that adequate supplies to support the project would be available under normal, single dry, and multiple dry water years and this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.19-3. Adequate capacity to serve the project's projected demand in addition to the waste water treatment provider's existing commitments.** Appropriate onsite septic systems would be designed and operated to meet County requirements to protect human health and the environment. Therefore, this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.19-4. Generate solid waste in excess of state or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals.** Although the project could increase total waste generation in the area, the project would not generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals. Therefore, this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.19-5. Comply with federal, state, and local management and reduction statutes and regulations related to solid waste.** The project would not negatively impact the provision of solid waste services or the attainment of solid waste reduction goals and this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

### **Wildfire**

**Impact 3.20-1. Impairments to an adopted emergency response plan or emergency evacuation plan.** Project construction and operation would not impede emergency vehicles or adopted emergency evacuation plans, and this impact would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

**Impact 3.20-2. Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to pollutant concentrations**



**from a wildfire or the uncontrolled spread of a wildfire.** The proposed project would not be within a SRA or on lands classified as a very high fire hazard severity zone and wildfire risks during construction and operation would be offset by compliance with fire safety and wildfire suppression measures. In addition, SMUD would implement its WMP, which is intended to mitigate the threat of wildfire. All of the project facilities would be installed, operated, and maintained following all applicable design, safety, and fire standards. Furthermore, sheep grazing would modify the amount, height, and continuity of fuel through the project site; moreover, grazed grass produces substantially lower flame lengths and spreads slower. Therefore, impacts related to the potential for the proposed project to exacerbate wildfire risks would be less than significant. Pursuant to the State CEQA Guidelines, Section 15091, no further finding is required.

#### **d. Alternatives**

In compliance with CEQA and the CEQA Guidelines, Chapter 6, “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:

- Contribute to a diversified energy portfolio that will aid in the continued improvement of air quality in the Sacramento Valley Air Basin by decreasing reliance on fossil fuel combustion for the generation of electricity and reduce SMUD’s exposure to price volatility associated with electricity and natural gas.
- Provide a renewable power resource to support the SMUD Board of Directors’ 2030 Zero Carbon Plan, a plan approved in 2021, which establishes a flexible pathway for SMUD to eliminate carbon emissions from its power supply by 2030 by developing and procuring dependable renewable resources.
- Develop a project that will deliver a reliable, long-term supply of economically feasible solar and battery storage for up to 344 megawatts (MW) of electrical capacity at a point of interconnection with the grid managed by SMUD.
- Site the project to avoid wetlands and other sensitive habitats as feasible within the available property.
- Integrate compatible agricultural activities such as grazing and/or pollinator habitat into solar operations.
- Optimize the delivery of solar-produced and stored energy and minimize the geographic extent of impacts by locating the facility near existing electrical infrastructure with available capacity;

- Design a flexible PV solar energy and battery storage facility that is capable of utilizing the best available, efficient, cost-effective, and proven PV solar and storage technology; and
- Construct the facility in a location that is readily accessible from existing roads and that would not require the construction of major new roadway improvements.

Potential alternatives found to be clearly infeasible, including offsite alternatives and alternative technologies, were rejected because they would not achieve most of the basic project objectives.

The No Project Alternative, the Wetlands Impact Reduction Alternative, and the Important Farmland Reduction that might have been feasible and that would attain some of the project objectives, 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 Country Acres Solar Project.

#### 1. No Project Alternative

Under this alternative, the project would not be constructed on the project site, and as a result, none of the associated impacts would occur and none of the permits or approvals that would be required by SMUD and various permitting agencies for the project would be needed. It is unknown for how long the project site would remain in its existing condition, as most of the area is planned for future growth, and it is uncertain exactly what impacts would occur. Therefore, no analysis by impact topic is provided, as this would be speculative. This alternative would not meet any of the objectives identified in Section 6.2.1 of the EIR, "Attainment of Project Objectives."

The No Project Alternative would not meet any of the project objectives because a solar energy facility would not be constructed on the project site. Because this alternative would not attain any project objectives and for the reasons set forth above, the No Project Alternative is rejected by the Board from further consideration.



*Findings:* Based on the entire record, the SMUD Board of Directors finds that while the No Project Alternative will substantially avoid effects to the public and environment (agricultural and air quality) associated with the Country Acres Solar Project, the No Project alternative is infeasible because it will not achieve any of the identified Project Objectives.

## 2. Wetland Impact Reduction Alternative

Under this alternative, SMUD would construct and operate a reduced size solar facility on the project site that would reduce fill of wetlands and non-wetland waters in the northeast corner of the project site and would not convert the surrounding grassland matrix. This alternative would not use the parcel in the northwest portion of the project area that is characterized by annual grassland and wetlands. This would eliminate up to approximately 16 MW of generation capacity (based on solar panels located on this land in the 10% design), but would also result in further reduction of impacts on cattail marsh and annual grassland (up to 0.04 acres of cattail marsh and up to 57.2 acres of annual grassland). Thus, this project would eliminate the majority of wetland impacts, and would also eliminate the potential impacts on special-status species that use these grasslands as foraging habitat (such as burrowing owl, Swainson's hawk and tricolored blackbird).

## Environmental Analysis

### Aesthetics

Under this alternative, the visible elements of the PV solar facility would be similar to those of the proposed project, but there would be no solar panels immediately adjacent to South Brewer Road. As with implementation of the project, impacts to the visual character of the site and nighttime views would be less than significant. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### Agriculture

Under this alternative, a reduced size PV solar facility would be constructed on the project site. However, the reduced impact acreage is mainly on grasslands, thus the impacts to Important Farmland would be the same or similar to the proposed project; these impacts would still be significant and unavoidable. (*Similar*)

### Air Quality

Under this alternative, a reduced size PV solar facility would be constructed on the project site. As such, all construction activities and resulting criteria air pollutants would be similar to, but slightly less than, the project. However, uncontrolled daily emissions during construction activities would exceed Placer County Air Pollution Control District's thresholds for nitrogen dioxides (NO<sub>x</sub>) and respirable and fine particulate matter (PM<sub>10</sub>, and PM<sub>2.5</sub>, respectively). Similar to the project, implementation of Mitigation Measures



3.3-1, 3.3-2a, 3.3-2b, and 3.3-2c would reduce construction-related exhaust and dust emissions; however, because of the scale of the project this impact would be significant and unavoidable. (*Similar, but slightly less*)

### **Biological Resources**

Under this alternative, a reduced size PV solar facility would be constructed on the project site by avoiding the parcel characterized by wetland and annual grassland. This would result in a reduction of impacts on cattail marsh and annual grassland (including 0.04 acre cattail marsh and up to 57.2 acre of annual grassland). Thus, this project would eliminate the majority of wetland impacts associated with the proposed project, and would also eliminate the potential impacts on special-status species that use grasslands for foraging habitat. The grassland habitat is considered Swainson's hawk and tricolored blackbird foraging habitat and could also support borrowing owl. Thus, elimination of the grassland habitat impacts would eliminate impacts on a range of biological resources, along with the need to mitigation for these impacts. (*Lesser*)

### **Cultural Resources and Tribal Cultural Resources**

Under this alternative, a reduced size PV solar facility would be constructed on the project site. In reducing fill of wetlands and non-wetland waters, this alternative may also avoid disturbance to some archaeological sites if they overlap with the locations of the wetlands and non-wetland waters. However, because earthwork and ground-disturbing activities would still occur under this alternative, there would still be a potential for disturbance to unknown archaeological sites, as well as previously unidentified human remains. Implementation of Mitigation Measures 3.5-1 and 3.18-1 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### **Geology and Soils**

Implementation of this alternative would involve grading and other ground-disturbing activities similar to the project, but over a slightly smaller footprint. Therefore, this alternative would have similar impacts associated with geological hazards and soil erosion compared to the project. Implementation of Mitigation Measure 3.7-4 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Overall, this alternative would result in less geology and soils impacts compared to the project. (*Less, but no significant difference*)

### **Greenhouse Gas Emissions and Energy**

Under this alternative, a reduced size PV solar facility would be constructed on the project site. As such, all construction activities and resulting GHG emissions would be similar to, but slightly less than, the project. A reduction in the annual generation capacity of the facility would also result in a reduction in avoided GHG emissions. The decreased size of

the solar facility would reduce the amount of total annual avoided emissions. Thus, while this alternative would result in a slight reduction of construction-related GHG emissions, the reduction would be smaller than the amount of GHG avoided emissions lost through the reduction of solar capacity compared to the proposed project. Potential impacts of climate change on this alternative would be the same as the project because the site would be unchanged in location and the same County policies are in place to respond to the effects of climate change. Thus, GHG impacts under this alternative would be less than significant. (*Greater*)

### **Hazards and Hazardous Materials**

Implementation of this alternative would involve the storage, transport, and handling of hazardous materials; and exposure of or disturbance to contaminated soils or asbestos containing materials, similar to the project. Implementation of Mitigation Measure 3.9-1 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### **Hydrology and Water Quality**

Implementation of this alternative would involve limited grading and movement of soil, which could result in erosion and sedimentation, and discharge of other nonpoint source pollutants in on-site stormwater that could then drain to off-site areas and degrade local water quality. Installation of new facilities would not alter existing onsite drainage patterns and flowpaths sufficiently to alter the way that stormwater flows onto and off the site during major events. Implementation of Mitigation Measure 3.10-1 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Overall, this alternative would result in less hydrology and water quality impacts compared to the project. (*Less, but no significant difference*)

### **Noise**

Implementation of this alternative would result in the construction of a reduced size PV solar facility on the project site. As such, all construction activities would be similar to the proposed project and, therefore, construction noise impacts would be similar. Implementation of Mitigation Measure 3.13-1 would apply to this alternative, and would reduce construction noise impacts to less-than-significant levels. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### **Transportation and Traffic**

Under this alternative, a reduced size PV solar facility would be constructed on the project site. As such, all construction activities would be similar to the proposed project and, therefore, construction-related increases to vehicle traffic on the surrounding roadway network and resulting degradation of pavement conditions would be similar.



Implementation of Mitigation Measures 3.17-1 and 3.17-2 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Overall, this alternative would result in similar transportation and traffic impacts compared to the project. (*Similar*)

*Findings:* Based on the entire record, the SMUD Board of Directors finds that this alternative is infeasible because project objectives related to supporting California's renewable energy and greenhouse gas emission reduction laws and goals and SMUD Board of Directors' 2030 Zero Carbon Plan, would be achieved at a lesser degree under the Wetland Impact Reduction Alternative due to the reduced amount of solar energy that would be generated compared to the project.

### 3. Important Farmland Impact Reduction Alternative

Under this alternative, the project would be scaled back in size to reduce conversion of land currently in rice or almond production but would have to remain of a minimum size to allow the production of a minimum of 250 MW of solar energy to remain feasible. Based on preliminary engineering, a 45-acre reduction of use in agricultural land appears possible.

## Environmental Analysis

### Aesthetics

Under this alternative, the visible elements of the PV solar facility would be the same as with the project because the project site would be developed with solar arrays and supporting infrastructure. As with implementation of the project, impacts to the visual character of the site and nighttime views would be less than significant. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### Agriculture

Under this alternative, a reduced size PV solar facility would be constructed on the project site. Impacts to Important Farmland would be approximately 45 acres less than the proposed project; however, because most of the land in the project area is classified as important farmland, these impacts would still be significant and unavoidable. (*Similar*)

### Air Quality

Under this alternative, a reduced size PV solar facility would be constructed on the project site. As such, all construction activities and resulting criteria air pollutants would be similar to, but slightly less than, the project. However, uncontrolled daily emissions during construction activities would exceed Placer County Air Pollution Control District's thresholds for nitrogen dioxides (NO<sub>x</sub>) and respirable and fine particulate matter (PM<sub>10</sub>, and PM<sub>2.5</sub>, respectively). Similar to the project, implementation of Mitigation Measures 3.3-1, 3.3-2a, 3.3-2b, and 3.3-2c would reduce construction-related exhaust and dust



emissions; however, because of the scale of the project this impact would be significant and unavoidable. (*Similar, but slightly less*)

### **Biological Resources**

Under this alternative, a reduced size PV solar facility would be constructed on the project site. However, the only habitat impacts that would be reduced would be to rice fields or almond orchards, which provide the least habitat value of the habitats available on the project site. Thus, the impacts to biological resources would remain comparable to those of the proposed project. (*Similar*)

### **Cultural Resources and Tribal Cultural Resources**

Under this alternative, a reduced size PV solar facility would be constructed on the project site. However, because earthwork and ground-disturbing activities would still occur under this alternative, there would still be a potential for disturbance to unknown archaeological sites, as well as previously unidentified human remains. Implementation of Mitigation Measures 3.5-1 and 3.18-1 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### **Geology and Soils**

Implementation of this alternative would involve grading and other ground-disturbing activities similar to the project, but over a slightly smaller footprint. Therefore, this alternative would have similar impacts associated with geological hazards and soil erosion compared to the project. Implementation of Mitigation Measure 3.7-4 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Overall, this alternative would result in less geology and soils impacts compared to the project. (*Less, but no significant difference*)

### **Greenhouse Gas Emissions and Energy**

Under this alternative, a reduced size PV solar facility would be constructed on the project site. As such, all construction activities and resulting GHG emissions would be similar to, but slightly less than, the project. A reduction in the annual generation capacity of the facility would also result in a reduction in avoided GHG emissions. The decreased size of the solar facility would reduce the amount of total annual avoided emissions. Thus, while this alternative would result in a slight reduction of construction-related GHG emissions, the reduction would be smaller than the amount of GHG avoided emissions lost through the reduction of solar capacity compared to the proposed project. Potential impacts of climate change on this alternative would be the same as the project because the site would be unchanged in location and the same County policies are in place to respond to the effects of climate change. Thus, GHG impacts under this alternative would be less than significant. (*Greater*)

### **Hazards and Hazardous Materials**

Implementation of this alternative would involve the storage, transport, and handling of hazardous materials; and exposure of or disturbance to contaminated soils or asbestos containing materials, similar to the project. Implementation of Mitigation Measures 3.9-1 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### **Hydrology and Water Quality**

Implementation of this alternative would involve limited grading and movement of soil, which could result in erosion and sedimentation, and discharge of other nonpoint source pollutants in on-site stormwater that could then drain to off-site areas and degrade local water quality. Installation of new facilities would not alter existing onsite drainage patterns and flowpaths sufficiently to alter the way that stormwater flows onto and off the site during major events. Implementation of Mitigation Measures 3.10-1 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Overall, this alternative would result in less hydrology and water quality impacts compared to the project. (*Less, but no significant difference*)

### **Noise**

Implementation of this alternative would result in the construction of a reduced size PV solar facility on the project site. As such, all construction activities would be similar to the proposed project and, therefore, construction noise impacts would be similar. Implementation of Mitigation Measure 3.13-1 would apply to this alternative, and would reduce construction noise impacts to less-than-significant levels. Therefore, overall impacts under this alternative would be similar to those of the project. (*Similar*)

### **Transportation and Traffic**

Under this alternative, a reduced size PV solar facility would be constructed on the project site. As such, all construction activities would be similar to the proposed project and, therefore, construction-related increases to vehicle traffic on the surrounding roadway network and resulting degradation of pavement conditions would be similar. Implementation of Mitigation Measures 3.17-1 and 3.17-2 would apply to this alternative, and would reduce these impacts to less-than-significant levels. Overall, this alternative would result in similar transportation and traffic impacts compared to the project. (*Similar*)

**Findings:** Based on the entire record, the SMUD Board of Directors finds that this alternative is infeasible because project objectives related to supporting California's renewable energy and greenhouse gas emission reduction laws and goals and SMUD Board of Directors' 2030 Zero Carbon Plan, would be achieved at a lesser degree under



the Important Farmland Impact Reduction Alternative due to the reduced amount of solar energy that would be generated compared to the project.

#### 4. Environmentally Superior Alternative

CEQA requires the identification of an environmentally superior alternative. Section 15126.6(e)(2) of the CEQA Guidelines states that if the No Project Alternative is the environmentally superior alternative, then the EIR shall also identify an environmentally superior alternative among the other alternatives. The impact of the respective alternatives is identified in Table 6-1 of the Draft EIR, followed parenthetically by the comparison to the impact of the proposed Project.

As shown in the Executive Summary Chapter of the Draft EIR, there would be significant impacts associated with the project. These impacts are related to agriculture; air quality; biological resources; cultural resources; energy; geology, soils, and paleontological resources; greenhouse gases; hazards and hazardous materials; hydrology and water quality; noise; transportation; and tribal cultural resources. Each of these impacts would be reduced to a less-than-significant level through the adoption and implementation of the mitigation measures adopted in the findings on the project, with the exception of significant and unavoidable impacts to agricultural resources and air quality as noted above. The No Project Alternative would have no impacts. The Wetland Impact Reduction Alternative and the Important Farmland Reduction Alternative would have similar environmental impacts as the proposed project.

When considering objectives, the Country Acres Solar Project would meet all of the project objectives, as stated in Chapter 2, "Project Description." In contrast, because there would be no project under the No Project Alternative, it would fail to meet any of the project objectives. The Wetland Impact Reduction Alternative and the Important Farmland Impact Reduction Alternative both achieve some but not all of the project objectives and does not reduce unavoidable significant impacts to agricultural resources and air quality. Ultimately, while the Wetland Impact Reduction Alternative would reduce some impacts to biological resources and have similar impacts to the project in other resource areas, and the Important Farmland Reduction Alternative would reduce impacts to agricultural resources but not have drastically different impacts in other resource areas, the DEIR concluded that the proposed Project would be the environmentally superior alternative. Such a limited range of alternatives is appropriate where, as here, there are so few variations or significant impacts of the project. (See, e.g., *Marin Municipal Water Dist. v. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1666 [upheld EIR that evaluated two alternatives—a no project alternative and two conservation alternatives].) The SMUD Board of Directors has the authority to adopt a qualified exemption under Government Code Section 53096 based on compliance with notice and hearing proceedings and finding there is no feasible alternative to the proposal.

**e. Additional Findings**

1. These Findings incorporate by reference in their entirety the text of the EIR prepared for the Country Acres Solar 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 Country Acres Solar Project have been adequately addressed in the EIR and have been mitigated or avoided with the exception of agricultural resources and air quality, which remain significant and unavoidable.
3. Section 15093(b) of the State 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 Country Acres Solar Project EIR and certification that the associated EIR addressed all of the potentially significant impacts associated with implementation of the Country Acres Solar Project. The EIR concluded that the agricultural impacts and air quality impacts (project-specific and cumulative) associated with the construction of the project would be significant and unavoidable even with the adoption of identified mitigation measures. As a result, the adoption of a Statement of Overriding Considerations for the Country Acres Solar is required.
4. CEQA Guidelines section 15074 requires the Lead Agency approving a Project to adopt a mitigation monitoring and reporting program 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 mitigation monitoring and reporting program for Country Acres Solar Project and the specific mitigation measures will be monitored in conjunction with SMUD's Final EIR Mitigation Monitoring Program and Reporting process.

**f. Record of Proceedings**

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

- The Notice of Preparation (NOP) distributed on November 19, 2021, 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, 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 Mitigation Monitoring and Reporting Program for the proposed project (MMRP);
- 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 the Headquarters Campus. Copies of those documents are, and at all relevant times, have been and will be available upon request at the Customer Service Center (6301 S Street, Sacramento, CA 95817). The custodian of the Record of Proceedings may be contacted as follows:

Amy Spitzer  
Sacramento Municipal Utility District  
6201 S Street, MS B209  
Sacramento, CA 95817  
(916) 732-5384  
Amy.Spitzer@smud.org

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

#### **IV. Project Benefits**

SMUD needs new renewable and carbon-free resources in its power supply chain to meet California's mandate for renewable procurement (60% by 2030)<sup>1</sup> and to meet its Board directed goals zero carbon emissions in its power supply by 2030. In July 2020, SMUD's Board declared a climate emergency and adopted a resolution calling for SMUD to take significant and consequential actions to eliminate its greenhouse gas emissions by 2030, and directed staff to develop a plan to achieve this goal. SMUD's 2030 Zero Carbon Plan

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<sup>1</sup> Sen. Bill No. 100, approved by Governor, Sept. 10, 2018.



(2030 Plan<sup>2</sup>) was approved by the Board in 2021 and calls for the addition of up to 2,300 MW of new renewables and 1,100 MW of batteries by 2030. The 2030 Plan calls for maximizing new cost-effective utility-scale renewables within SMUD's service territory (including up to 1,500 MW utility solar), but also requires SMUD to add additional resources that it does not have locally, such as wind and geothermal.

Thus, the fundamental purpose of the Country Acres Solar Project is to contribute to a diversified energy portfolio that will aid in the continued improvement of air quality in the Sacramento Valley Air Basin by decreasing reliance on fossil fuel combustion for the generation of electricity, and reduce SMUD's exposure to price volatility associated with electricity and natural gas. The Country Acres Solar Project would assist SMUD in achieving the Board of Directors' directive of using dependable renewable resources to meet SMUD's renewable portfolio standards (RPS) obligations. This goal is consistent with Senate Bill 100, which was enacted in 2018. The Country Acres Solar Project would deliver a reliable, long-term supply of economically feasible solar and battery storage for up to 344 MW of electrical capacity at the point of interconnection with the grid managed by SMUD. While the Project is located just outside of SMUD's service territory, it is on lands immediately adjacent, and with immediate access to a SMUD transmission line and managed grid.

#### **a. Need for Sustainable and Carbon-free Power Supply**

The Project furthers SMUD's objective to provide a sustainable power supply as part of SMUD's 2030 Zero Carbon Plan and Integrated Resource Plan and a diversified energy portfolio that will aid in the continued improvement of air quality in the Sacramento Valley Air Basin by decreasing reliance on fossil fuel combustion for the generation of electricity and reduce SMUD's exposure to price volatility associated with electricity and natural gas.

#### **b. Generation of Electrical Energy**

The Project would generate and store up to 344 MW of power. In 2018, SMUD set one of the most aggressive carbon reduction targets in the country with the goal of achieving net zero emissions by 2040, five years ahead of California's 2045 net zero goal. In July 2020, SMUD Board of Directors declared a climate emergency and adopted a resolution calling for SMUD to take significant and consequential actions to become carbon neutral (net

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<sup>2</sup> <https://www.smud.org/-/media/Documents/Corporate/Environmental-Leadership/ZeroCarbon/2030-Zero-Carbon-Plan-Technical-Report.ashx>



zero carbon) by 2030. The Board also directed SMUD staff to report by March 31, 2021 on clear, actionable and measurable strategies and plans to reach SMUD's climate emergency goals. Rapidly advancing clean energy technology and a collaborative and inclusive approach to carbon reduction have allowed SMUD to set the even more ambitious goal of zero carbon by 2030, with the 2030 Zero Carbon Plan as the strategy to achieve that goal. The power generated from the Country Acres Solar Project is critical to SMUD's goals of achieving a carbon-free energy portfolio by 2030.

### **c. Environmental Benefits**

The project provides significant air quality benefits to the Sacramento region, including Placer County, through the avoidance of emissions which would otherwise occur if electricity generated by the project was instead generated by combustion of fossil fuel, using SMUD's existing thermal power plants or from market purchases through the California Independent Service Operator. The project thus provides a benefit of avoiding the release of approximately 115,000 metric tons of carbon emissions in the first year alone that would otherwise be produced from fossil fuel facilities. This is a substantial achievement in addressing the climate crisis.

As discussed in the EIR, construction activities would emit NO<sub>x</sub> and PM<sub>10</sub> at levels that could exceed Placer County Air Pollution Control District (PCAPCD) daily emissions thresholds for these pollutants. As part of our mitigation commitment, SMUD will prepare and implement a fugitive dust control plan to reduce construction-related dust emissions and follow measures to reduce exhaust emissions and participate in the PCAPCD's Offsite Mitigation Program by paying to PCAPCD a mitigation fee for construction activities, if necessary and as required by Mitigation Measures 3.3-1 and 3.3-2a through 3.3-2c in the Draft EIR. While no further measures are available to reduce Project impacts to a less-than-significant level, these measures will protect resources to the maximum extent feasible. Furthermore, this impact is limited to the construction phase of the Project and long-term air quality benefits will be realized as soon as construction is complete. In addition, it should be noted that overall air quality will be improved as a result of the Project. And the reduction in agricultural activity on the site will eliminate an ongoing



sources of fugitive dust (from disking and other farm equipment activities) that would otherwise occur during the Project construction period.

#### **d. Economic Benefits**

Solar energy projects benefit the local and regional economy through job creation, increases in personal income, and fiscal contributions. Short-term construction jobs account for the majority of direct solar-related job creation, though each project also creates ongoing operations and maintenance jobs, as well as supporting jobs in the professional services such as environmental, finance, and legal services. Country Acres construction spending is expected to contribute approximately \$7.1 million in earnings by construction and other workers, \$21.4 million in output (economic value and project value in the region), and \$11.0 million in value added to the local economy while supporting 92 jobs in the County. The operations of the Country Acres project is expected to result in \$97 thousand in earnings by maintenance staff, \$66 thousand in output (economic value and project value in the region), and \$41 thousand in value added to the local economy. Local annual jobs supporting operations are estimated to be 1. Additional statewide benefits include 259 construction jobs, approximately \$20.0 million in earnings by project employees and \$31.7 million in value added to the state and local economies, and annual operating and maintenance benefits of 2 jobs, \$291 thousand in earnings, \$199 thousand in output, and \$126 thousand in value added.

Finding: The SMUD Board finds the approval of the proposed Country Acres Solar Project will result in continuing and enhanced benefits to SMUD customers, regional, statewide and global citizens in the form of carbon-free renewable solar energy, make significant improvements in local air quality and provide notable benefits to the local and economy.

### **V. Statement of Overriding Considerations**

This section of the findings document addresses the requirement of 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 impacts would occur in the areas of Agriculture and Air Quality.

#### **a. Agriculture**

Under the proposed Country Acres Solar Project, up to 44 acres of the land designated as Farmland of Statewide Importance and up to 858 acres of land designated Unique



Farmland will be converted for the project footprint based on analysis of farmland mapping provided under the Farmland Mapping and Monitoring Program (DOC 2022b). SMUD will implement Mitigation Measure 3.2-1, which requires 1:1 ratio compensation (i.e., 1 acre on which easements are acquired to 1 acre of Farmland of Statewide Importance and Unique Farmland removed from agricultural use) by either acquiring agricultural conservation easement(s) that provide in-kind or similar resource value protection in the region, with a strong preference for locating the agricultural conservation easement(s) in Placer County; or paying in-lieu fees to an established, agreed-upon (by County and SMUD) mitigation program with a presence in Placer County (e.g., Placer Land Trust) to fully fund the acquisition and maintenance of agricultural land or easements. Alternatively, this mitigation could occur through the payment of fees into the Placer County Conservation Plan's in-lieu fee program under a memorandum of Understanding (MOU) with the Placer Conservation Authority (PCA) prior to issuance of improvement plans. However, no new farmland would be made available through the mitigation program, and a net loss of Important Farmland would occur. There is no additional feasible mitigation available that would further reduce impacts associated with the permanent conversion of agricultural land, including Farmland of Statewide Importance and Unique Farmland, to a less-than-significant level. The amount of available farmland in Placer County is limited to what exists today. Thus, this impact would remain significant and unavoidable.

Finding: The SMUD Board finds that the project benefits identified in Section IV outweigh the unavoidable significant adverse environmental effect on Important Farmland. This project could simply not occur without land to build it on. The project benefits described in Section IV are hereby determined to be, independent of other potential project benefits, a basis for overriding all significant and unavoidable environmental impacts identified in the Draft EIR and in these findings.

#### **b. Air Quality**

Under the proposed Country Acres Solar Project, Project construction activities would emit NO<sub>x</sub> and PM<sub>10</sub> at levels that could exceed Placer County Air Pollution Control District (PCAPCD) daily emissions thresholds for these pollutants. SMUD will implement Mitigation Measures 3.3-1 and 3.3-2a through 3.3-2c in the Draft EIR which are designed to minimize impacts on air quality from construction emissions, but acknowledges that potential short term impacts are significant and unavoidable. Implementation of these measures, including preparing and implementing a fugitive dust control plan to reduce construction-related dust emissions and measures to reduce exhaust emissions, and participating in the PCAPCD's Offsite Mitigation Program by paying to PCAPCD a



mitigation fee for construction activities, if necessary and as required by Mitigation Measures 3.3-1 and 3.3-2a through 3.3-2c, seek to reduce the impacts. Nevertheless, the potential remains for implementation of the Country Acres Solar Project to create significant and unavoidable construction emissions of criteria air pollutants and ozone precursors. Because all feasible mitigation has been included and no additional measures are available to SMUD to reduce construction activity emissions of NO<sub>x</sub> and PM<sub>10</sub> at levels that could exceed PCAPCD daily emissions thresholds for these pollutants, impacts on air quality are significant and unavoidable.

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

## **VI. Summary**

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

1. Most significant impacts on the environment due to the Project have been eliminated, or substantially lessened, where feasible.
2. The Project will result in a significant and unavoidable environmental effect on air quality and agricultural resources as discussed above, and adoption of a Statement of Overriding Considerations in connection with the approval of the Project is required.
3. The environmentally superior alternative would provide a scant lessening of the significant and unavoidable impacts of the proposed Project. However, the environmentally superior alternative, as well as the other alternatives evaluated in the Draft EIR, are rejected as infeasible because they fail to achieve some or all of the project objectives.

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

## **VII. References**

- Beedy, Ph.D., Edward. Owner, Beedy Environmental Consulting, Nevada City, CA. 2022a (March 18). — conversation with Susan Sanders, AECOM senior biologist, regarding recommended survey protocol for tricolored blackbird nesting surveys.
- Black & Veatch. 2022. Preliminary Hydrology Report, Country Acres Solar & BESS Project, Placer County, California. B&V Project No. 406242.



California Department of Conservation. 2022b. GIS layer for 2018 FMMP for Placer County (placer2018.shp). Available at:  
<https://gis.conservacion.ca.gov/portal/home/group.html?id=b1494c705cb34d01acf78f4927a75b8f#overview> Accessed on March 8, 2022.

California Department of Fish and Game. 1994. Staff Report Regarding Mitigation for Impacts to Swainson's Hawks (*Buteo swainsoni*) in the Central Valley of California. State of California. Natural Resources Agency. November 8, 1994.

\_\_\_\_\_. 2012. Staff Report on Burrowing Owl Mitigation. State of California. Natural Resources Agency. March 7.

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

President Sanborn then called for statements from the public regarding items not on the agenda, but no public comment was forthcoming.

President Sanborn then turned to Directors' Reports.

Director Rose reported on his attendance at the American Public Power Association's (APPA) Lineworkers Rodeo and the Energy Thought Summit.

Director Bui-Thompson reported on her attendance at the Energy Thought Summit where she, Mr. Lau, and Chief Operating Officer Frankie McDermott were speakers. She also reported on her attendance at the IEEE Grid Edge Conference where Mr. Lau and former CEO & GM John Di Stasio were on panel regarding the future of public utilities.

Director Fishman reported on his attendance at the Solano 4 Groundbreaking that morning and noted the Board had just approved the environmental impact report (EIR) for another major project in furtherance of the 2030 Zero Carbon Plan, expressing that he was proud of the entire organization for the progress. He then reported on the passing of Jane Hagedorn, the former CEO of the American Lung Association and Breathe Sacramento. He stated she was his good friend, as well as a friend to the entire organization and community, as he highlighted her incredible work in improving air quality and being a found Board member and first Board President of the Sacramento Tree Foundation.

Vice President Herber stated Ms. Hagedorn was a wonderful, amazing woman. She then reported on her attendance at the APPA Lineworkers Rodeo, as well as speaking at the Sojourner Truth African Heritage Museum for Earth Day. She reported on her attendance at the Mow Better meeting and her speaking engagement with the Leadership Elk Grove Chamber. She closed by reporting on her graduation from the American Leadership Forum leadership program.

Director Kerth stated that Ms. Hagedorn had been a gift to the community. He then reported on his attendance at the Energy Thought Summit, as well as speaking at the California Climate Policy Summit. He closed by reporting on his attendance at the Solano 4 Groundbreaking as well as noting the

EIR for the next phase of solar installations and battery storage, and he stated he was proud of staff for completing it all at once.

Director Tamayo reported on his speaking engagement at the Heat Pump Form organized and hosted by SMUD as well as his participation in a workgroup at SMUD that focuses on biodiversity and habitat conservation.

President Sanborn reported on her attendance at the APPA Lineworkers Rodeo and the CivicWell Policymakers Conference. She reported on her attendance, along with Director Fishman, at the *Sacramento Business Journal's* Corporate Citizenship Awards and PepsiCo Tesla Semi-truck Celebration. She thanked the Sacramento Metropolitan Air Quality Management District and Lieutenant Governor Eleni Kounalakis for their support of the PepsiCo Tesla event. She reported on her attendance at the Mow Better meeting and the Carmichael Kiwanis Tree Planting event. She reported on her participation in the American River Spring Clean Up event in Rancho Cordova. She reported on presenting an award to Niello BMW for selling the most electric vehicles (EVs) in the last year, which reports they are now at 50% EV sales. She praised John Grindrod, SMUD Senior Product Services Coordinator, and staff for their work on EVs. She closed by reporting on her speaking engagement with the Sacramento Environmental Justice Coalition where she spoke on the 2030 Zero Carbon Plan and connected low income residents with SMUD staff to get help in electrifying their homes.

Paul Lau, Chief Executive Officer and General Manager, thanked the Board for the visionary leadership and support and staff for their work in the advancement of two major projects, the Solano 4 Project and Country Acres Solar Project, which will get SMUD closer to the goal of the 2030 Zero Carbon Plan. He then reported on the following items:

- 1) **Earth Month.** I would like to start tonight's report by recognizing Earth Month in April. Earth Month is a great opportunity to raise awareness and advocate for change around the issues most impacting our planet. We have been out at 27 Earth Month events in the community, providing education,

activities and outreach. Thank you to all the Board members who have been out there this month, talking with our customers and community about what SMUD is doing, what customers can do and how together we can improve our environment this month, and all year long. And what better time to have a groundbreaking ceremony at our Solano Wind Farm, for the latest phase of that project. We were pleased to be out there this morning to mark the start of Solano 4, which is an important project in our Zero Carbon Plan. When it is complete in spring 2024, phase 4 will generate enough clean energy to power 40,000 homes.

2) **Clean Power Savings.** This month we also launched our new Clean Power Savings campaign. Our spring mass media campaign highlights ways our customers can take action to support our clean energy vision while saving money and saving the planet for generations to come. This 12-week campaign is just one piece of a much larger effort to educate and engage all our customers in our zero-carbon plan. This includes the grassroots outreach, community engagement and targeted communications as outlined in our Community Impact Plan. The campaign drives people to our CleanPowerCity.org microsite, which has been revamped to focus on clean energy rebates.

3) **Heat Pump Forum.** We recently partnered with the California Energy Commission and the California Building Industry Association to host a Heat Pump Forum. The forum brought together building industry participants to discuss the new all-electric baseline in the 2022 Building Energy Efficiency Standards. It was a successful event, with 90 attendees, including builders, major manufacturers, and energy design professionals. The goal is to help increase the market share of

heat pumps and, in turn, increase the cost-effectiveness of heat pumps.

**4) Awards.** It has been quite a winning year for SMUD so far.

Just two nights ago, Chief Zero Carbon Officer Lora Anguay accepted a Greater Sacramento Leadership Award from Habitat for Humanity on behalf of SMUD. The award was in recognition of our 30-year partnership, our contribution of almost \$3 million to Habitat's programs, and our support of nearly 100 home preservation and new home builds. That includes providing the solar on all 13 homes at Mandolin Estates and on the homes in progress at Cornerstone. What a huge accomplishment! Team SMUD delivered on the national stage in Kansas at the American Public Power Association's Lineworkers Rodeo. The team brought home five top honors in events that featured some of the most skilled lineworkers across the country. We will have an opportunity to formally recognize our Rodeo team at the June Board meeting. Until then, congratulations again to all who represented SMUD. You are the best of the best! The American Society of Civil Engineers awarded us the Outstanding Energy Project of the Year for our White Rock Tunnel Bolt project. This project updated bolts in the White Rock Tunnel in our Upper American River Project (UARP). Smart Electric Power Alliance, or SEPA, listed SMUD on its 2023 Utility Transformation Leaderboard, one of 12 utilities leading the transition to clean energy. The National Public Utilities Council awarded SMUD with its Clean Energy Community Advocacy Award for our successful outreach to engage our community in our Zero Carbon Plan. Finally, I was honored to be a co-recipient of the Rainbow Chamber of Commerce's Corporate Advocate Award along with Sacramento State President Robert Nelsen. This award recognized SMUD

for our leadership in equity and diversity. It is a wonderful honor, and I am so proud of what we are accomplishing through our Diversity, Equity, Inclusion and Belonging (DEIB) work as we continue to grow, evolve and advance in this area. Special thanks to Vice President Herber who has been a longtime advocate for the LGBTQ+ community and to the entire SMUD Board for your leadership and support in our DEIB work.

- 5) **Board Video**. Due to technical difficulties, the Board video about how SMUD is working with partners to create restorative spaces within our large solar projects was postponed.

President Sanborn requested the Summary of Board Direction, but there were no items.

No further business appearing, President Sanborn adjourned the meeting in memory of Jane Hagedorn at 6:30 p.m.

Approved:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

# Exhibit to Agenda Item #7

Certify the **California Environmental Quality Act (CEQA) Country Acres Solar Project (Project) Final Environmental Impact Report (FEIR)**, including adoption of the **Findings and Statement of Overriding Considerations**; adopt the **Mitigation Monitoring and Reporting Program** for the **Project**; and approve the **Project**.

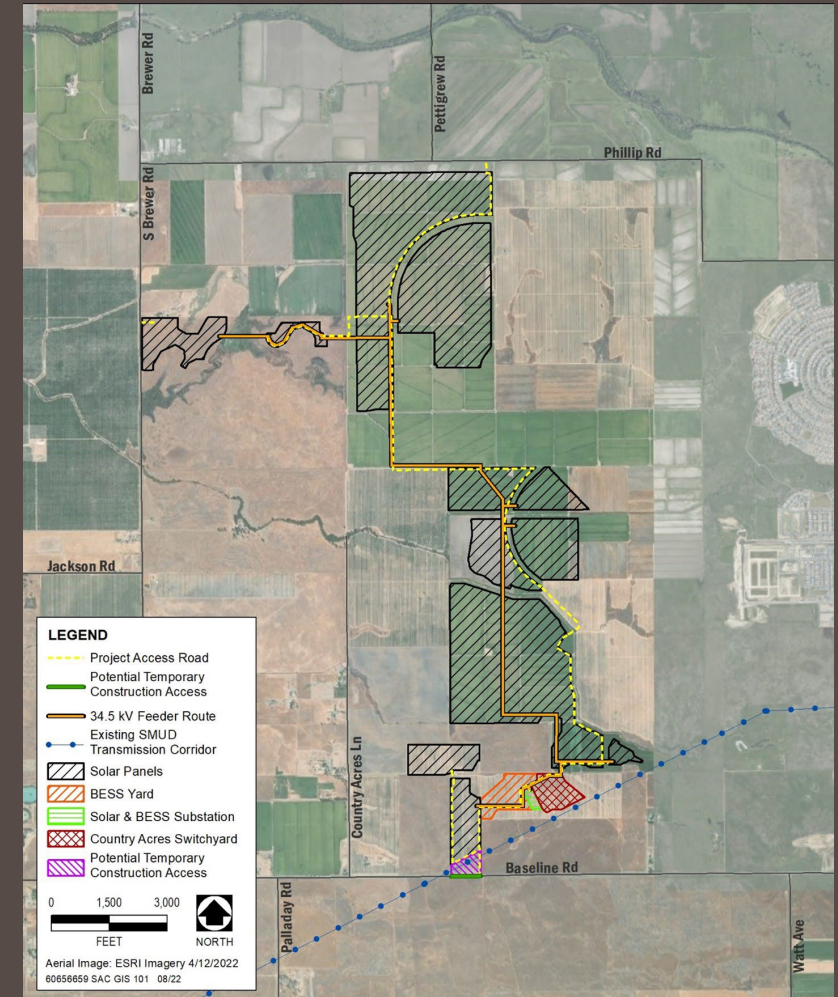
Board of Directors Meeting

Thursday, April 20, 2023, scheduled to begin at 5:30 p.m.

Auditorium, SMUD Headquarters Building

# Project Overview

- Up to 344 MW<sub>ac</sub> Solar Photovoltaic (PV) and Battery Energy Storage System (BESS)
- Interconnect at SMUD transmission line adjacent to site
- ~ 910 acres to be leased (34 years)
- ~ 225 acres to be purchased
- Timing:
  - Environmental Impact Report/Permitting: 2021-2023
  - Engineering: 2022-2023
  - Construction: 2023-2025
  - Operational: 2025





# Public Review Process – Notice of Preparation (NOP) and Draft Environmental Impact Report (EIR)

- NOP 30-day public comment period (November 19 – December 21, 2021)
- Draft EIR 45-day public comment period (September 13 – October 28, 2022)
- Published at SMUD.org, Sacramento Bee, Placer Herald, Roseville Press Tribune & The Loomis News
- Property owners within ½ mile of project boundaries
- State/Federal Agencies and Tribes, School Districts, County Departments
- SMUD (HQ/ECOC), Placer County Community Development Resource Agency, Placer County Clerk, Roseville Public Library
- Public Meetings
  - Scoping Meeting – December 8, 2021
  - Draft EIR Public Meeting - October 13, 2022

# Notice of Preparation Commenters

- Native American Heritage Commission
- United Auburn Indian Community
- California Department of Fish & Wildlife
- Central Valley Regional Water Quality Control Board
- Placer County and Placer Conservation Authority
- Placer County Air Pollution Control District
- PG&E
- SMUD Customers Elia Bassin and Steve Schweigert
- Woodland Hills resident Sharon Webb



# Draft EIR Commenters

- United States Fish & Wildlife Service
- California Department of Fish & Wildlife
- City of Roseville
- PG&E
- California Native Plant Society
- Alliance for Environmental Leadership
- Placer County Residents Michael Garabedian, Lyn Greenhill, and Tom Tribur
- Placer Conservation Authority (submitted April 18, 2023)
- Placer County (submitted April 19, 2023)



# Alternatives Analysis

- Project alternatives analyzed
  - No project alternative
  - Wetlands reduction alternative
  - Farmland reduction alternative
- The preferred alternative is the project as described in this presentation and in the Draft and Final Environmental Impact Report

# Tribal Consultation under CEQA

- Initial outreach on August 25, 2021
- Tribes Contacted:
  - United Auburn Indian Community (UAIC)
  - Wilton Rancheria
  - Lone Band of Miwok Indians
  - Shingle Springs
- UAIC, Wilton Rancheria, and Shingle Springs requested consultation
- Site visit with UAIC on November 8, 2021 and Wilton Rancheria on November 10, 2021
- Regular updates during monthly, bimonthly, or quarterly Tribal consultation meetings
- Input on Tribal Cultural Resources section of EIR

# Mitigation Monitoring and Reporting Program

The Project will implement 33 mitigation measures that will reduce all but two potentially significant impacts to a less-than-significant level.

- Mitigation Measures:
  - Agriculture (Significant and Unavoidable)
  - Air Quality (Significant and Unavoidable)
  - Biological Resources
  - Cultural Resources
  - Geology and Soils
  - Hazards and Hazardous Materials
  - Hydrology and Water Quality
  - Noise
  - Transportation
  - Tribal Cultural Resources
- Construction emissions of PM<sub>10</sub>, NO<sub>x</sub>, and loss of Important Farmland are Significant and Unavoidable





# Statement of Overriding Considerations

- Sustainable power supply
- Diversifies SMUD's energy portfolio
- Reduces exposure to price volatility
- Adds additional 344 MW of power and 172 MW of storage of clean renewable solar energy
- Significant air quality benefits offsetting approximately 115,000 metric tons of carbon emissions annually, otherwise produced from fossil fuel facilities
- Critical to achieving a carbon-free energy portfolio by 2030

# SMUD Board Alternatives

- Certify the EIR for the Country Acres Solar project, adopt the Findings, adopt the Mitigation Monitoring and Reporting Program, and approve the project
- Return to staff for further study
- Reject the proposal and CEQA analysis





# Requested SMUD Board Action

- Certify the California Environmental Quality Act (CEQA) Environmental Impact Report;
- Adopt the Findings and Statement of Overriding Considerations
- Adopt the Mitigation Monitoring and Reporting Program; and
- Approve the Project

**From:** [Placer County Resident](#)  
**To:** [Public Comment](#)  
**Subject:** [EXTERNAL] 7. Certify the California Environmental Quality Act (CEQA) Country Acres Solar Project (Project) Final Environmental Impact Report (FEIR), including adoption of the Findings and Statement of Overriding Considerations; adopt the Mitigation Mo...  
**Date:** Thursday, April 20, 2023 6:30:41 PM

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**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.

Very disappointing that SMUD would consider this type of project in such a location! Taking out agriculture, blocking future growth, significant impacts to our air quality (Placer County residents the losers), Hazardous materials. SMUD should consider either procuring energy from projects in remote locations like most other utilities, not building industrial scale power plants in urban environments. My specific concerns are Baseline Rd safety especially during construction, this road is dangerous enough. Potential pollution to our ground water from your panels or batteries especially in the case of a fire or meltdown.

It is sad to think the area called out in our General plan to accommodate future growth, especially housing and commercial development, will be crimped by this project. An island of passive use in the middle of a vibrant community. Unfortunately there has been little communication to local residents, who will all be shocked as they drive down Baseline Rd and instead of seeing beautiful Almond trees, they will see glaring glass panels. SMUD will forever be a cursed, unwanted occupier who provides no benefit to the citizens of Placer County.



SSS No. PSS 23-003

# BOARD AGENDA ITEM

## STAFFING SUMMARY SHEET

Committee Meeting Date

Policy – 05/10/23

Board Meeting Date

May 18, 2023

TO					TO				
1.	Claire Rogers				6.	Farres Everly			
2.	Jose Bodipo-Memba				7.				
3.	Suresh Kotha				8.				
4.	Jennifer Davidson				9.	Legal			
5.	Brandy Bolden				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.	DATE SENT
Laurie Rodriguez				People Services & Strategies					B251	5628	4/13/23

**NARRATIVE:**

**Requested Action:** Accept the monitoring report for Strategic Direction SD-8, Employee Relations.

**Summary:** This presentation provides the Board with the annual monitoring of SD-8, Employee Relations and confirms that SMUD is developing and maintaining a high quality, inclusive workplace that engages and inspires employees to commit to SMUD's purpose, vision, and values.

**Board Policy:** SD-8, Employee Relations  
*(Number & Title)*

**Benefits:** Provide the Directors and Executive Staff with an overview of the Board Policy and give them an opportunity to ask questions, make corrections, additions or changes, if necessary.

**Cost/Budgeted:** N/A

**Alternatives:** N/A

**Affected Parties:** All SMUD employees

**Coordination:** Executive Office, People Services & Strategies; Diversity, Equity & Inclusion & Audit & Quality Services

**Presenter:** Laurie Rodriguez, Director, People Services & Strategies  
Dr. Markisha Webster, Director, Diversity, Equity & Inclusion

**Additional Links:**

SUBJECT

**SD-8, Employee Relations Board Monitoring Report**

ITEM NO. (FOR LEGAL USE ONLY)

**6**

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

# SACRAMENTO MUNICIPAL UTILITY DISTRICT

## OFFICE MEMORANDUM

**TO:** Board of Directors

**DATE:** April 26, 2023

**FROM:** Claire Rogers *CR 4/26/23*

**SUBJECT: Audit Report No. 28007602  
Board Monitoring Report; SD-8: Employee Relations**

Audit and Quality Services (AQS) received the SD-8 *Employee Relations* 2022 Annual Board Monitoring Report and performed the following:

- Selected a sample of statements and assertions in the report for review.
- Interviewed report contributors and verified the methodology used to prepare the statements in our sample.
- Validated the reasonableness of the statements in our sample based on the data or other support provided to us.

During the review, nothing came to AQS' attention that would suggest the items sampled within the SD Board Monitoring report did not fairly represent the source data available at the time of the review.

**CC:**

Paul Lau

# Board Monitoring Report 2022

## SD-8, Employee Relations



### 1. Background

Strategic Direction 8 (SD-8) states that:

Developing and maintaining a high quality, diverse and inclusive workplace that engages and inspires employees to commit to SMUD's purpose, vision and values is a core value of SMUD.

SMUD is committed to diversity and inclusion and will foster and support a workplace that values employees representing a variety of backgrounds, including but not limited to, race, ethnicity, gender, gender identification and/or expression, sexual orientation and identification, national origin, age, physical abilities, veteran status, socio-economic status, life experiences, talents, and thinking styles.

Therefore:

- a) SMUD shall attract and retain a highly qualified and diverse workforce.
- b) SMUD shall promote inclusion and diversity and engage its workforce in activities that demonstrate and support inclusion and diversity across the organization.
- c) SMUD shall engage its workforce in personal and professional development.
- d) SMUD's percentage of engaged employees as measured through the Engagement Index shall exceed 80%.
- e) SMUD shall use a broad mix of communication and outreach channels to ensure its recruitment activities reflect the diversity of the communities it serves.
- f) SMUD shall maintain and communicate written policies that define procedures and expectations for staff and provide for effective handling of grievances.
- g) Annually, and consistent with State and Federal law, the Board shall receive a report detailing the demographics and trends of the SMUD workforce, the available workforce, and the Sacramento region. The report shall also provide information on veterans as a part of SMUD's workforce.

### 2. Executive Summary

**SMUD is in full compliance with SD-8, Employee Relations.**

A number of enhancements to SMUD's culture and people programs were made possible in 2022 thanks to a strong partnership among the Workforce, Diversity & Inclusion business units. We opened the Bright Path to Learning Child Development Center in partnership with Sac State and UC Davis Health; launched SMUD's Diversity, Equity, Inclusion & Belonging (DEIB) Council; piloted the Powering Careers program for skilled trades; negotiated a successor Memorandum of Understanding with the SMUD Public Safety Officer's Association (PSOA); implemented the new technology we use to manage people systems and processes; and much more, as outlined in the following report.

<b>SD Requirement</b>	<b>SD Support</b> (Program, Policy, Procedure or Initiative)	<b>Purpose</b>	<b>Outcome</b>	<b>Notes</b>
a)	Career Ambassador Program  Powering Careers  Education Outreach	Increase future workforce talent while simultaneously engaging employees through early outreach & connection with future pipeline (K-12, college, and community)	Reached 17,495 students and community members  16 graduates; 6 hires  13,870 students engaged in learning about SMUD's Zero Carbon effort and related energy industry careers.	78 total Career Ambassador outreach events completed (53 in-person, 25 virtual).
b)	Employee Resource Groups	Contribute to an inclusive work culture by creating a sense of community and promoting education and awareness in alignment with SMUD's mission and values and our Inclusion Policy	45 ERG events supported business initiatives; including Safe Zone Advocacy Training, Golf Lessons, Community Blood Drive, and ERG Learning Week Sessions	An increase in collaborations between ERGs and local organizations helped foster meaningful community connections.  DEIB Council convened in June 2022 with representatives from each business area and SMUD's ERGs.
	Corporate Learning & Development Curriculum	Develop skills and leadership competencies that will support SMUD's current and future business strategy	Employees averaged 29 hours of training throughout 2022	Average training hours increased 16% (up from 25 hours in 2021)
c)	Internal & External Leadership Programs	Provide experiential learning opportunities to develop leadership, and support collaboration and philanthropy in the community	21 employees completed or graduated from nine different local and regional leadership development programs. Added Leadership Folsom to program offerings in 2022.	23 employees participated in 2022 leadership programs.

c)	Education Assistance	Support employee continued education to attract & retain a highly qualified workforce.	102 employees used the Education Assistance Tuition Reimbursement program.	Saw 22% decrease in participation from 2021, possibly due to the utilization of LinkedIn Learning nearly doubling in 2022.
d)	Employee Engagement Survey Response	Take action on what leaders learned from the engagement survey to improve engagement and the employee experience	Over 96% of people leaders across SMUD developed engagement action plans with their teams in response to 2021 Engagement Survey data. Actions taken will support engagement and desired culture.	Taking meaningful action based on the 2021 Employee Engagement Survey was an Enterprise Performance Goal in 2022.
e)	Workforce Outreach & Partnerships  Education Outreach  Community Resource Liaison (CRL) Program	Promote job opportunities, grow diversity of talent pipeline and talent pool, raise awareness of SMUD's employer brand	<p>Attending career outreach events focused on:</p> <ul style="list-style-type: none"> <li>• Women (7)</li> <li>• Hispanic population (5)</li> <li>• LGBTQ (2)</li> <li>• Military (2)</li> </ul> <p>Partnered with 54 community organizations to reach 3,346 youth and adults with career education and train 506 adults in new careers.</p> <p>100% of the participants selected for CRL roles were women. 100% were promoted following the program completion.</p>	A combination of continued community partnerships and improved analysis of applicant and hiring data have helped to increase career outreach with all underrepresented groups, including the most underrepresented populations of Women and Hispanic populations. Additionally, one of several purposes of SMUD's Community Impact Plan is to increase outreach in the Latino community.



	Internships	Strengthen talent pipeline by immersing students of varied backgrounds in SMUD's culture and careers	1,659 college intern applicants, 55 college interns hired; 80 high school intern applicants; 17 high school interns hired	Internship program was scaled in response to COVID-19 and SMUD's hiring strategy. We will reevaluate organizational readiness in 2023.
	Powering Futures Scholarships	Support diverse talent pipeline in community and STEM disciplines	21 scholarships were awarded.	The scholarships ranged from \$1,750 for Community College students to \$4,000 for 4-year University students.
e)	Hornet Leadership Program - SMUD cohort	Support talent pipeline and STEM disciplines in community	The sponsorship was allocated as a HLP Conference Sponsor, funded 3 scholars (engineering and computer science students), and 1 Facilitator.	SMUD donated to this program at the \$25,000 sponsorship level, used to fund scholarships and assist with program administration.
f)	Code of Business Ethics and Employee Conduct	Provide an easy-to-read explanation of SMUD's values and expectations for employee behavior	100% compliance	Code supplements SMUD's state law-mandated Conflict of Interest Code.
g)	Workforce Demographics Reporting	Provide informational update on workforce demographics	Identify and report on trends and ongoing efforts for a high quality, diverse and inclusive workforce	See SD-8 appendix for detailed reporting.

### 3. Additional Supporting Information

Please see attached Appendix for additional information related to the SD-8 metrics.

### 4. Challenges

While we noted changes in some areas of SMUD's workforce demographics, low employee turnover inhibits the speed of substantial change. We continue to enrich our workforce by investing in its future via the regional talent pipeline, developing programs and outreach to grow the competencies needed to accomplish SMUD's 2030 goals. The challenge lies in ensuring the region's workforce development and education continue to align with SMUD's competencies so that we may collaboratively support job readiness and equitable access to

future employment.

## **5. Recommendation**

As reflected in this report, SMUD has achieved the goals set forth in SD-8 for ensuring SMUD develops and maintains a high quality, inclusive workplace that engages and inspires employees to commit to SMUD's purpose, vision, and values.

*It is recommended the Board accept the monitoring report for Strategic Direction 8.*

## **Appendix**

### **a) SMUD shall attract and retain a highly qualified workforce.**

#### **Attracting and Retaining our Workforce**

Talent Acquisition (TA) continues to partner with stakeholders – both internal and external to SMUD – to increase pipelines, such as via apprenticeships and internships. TA has fine-tuned its outreach strategy to increase diversity of applicant pools by refreshing community contact lists and strategically communicating job opportunities to underrepresented populations. The TA team partnered with internal hiring management and panel members in a continued commitment to DEIB, including the incorporation of workforce demographic data, and a deeper education of the impacts of unconscious bias by implementing a mandatory training for all hiring panel members. TA partners with our Total Rewards team, including Classification & Compensation, to ensure equity in the starting and continuing pay of our employees and a competitive Total Rewards package. SMUD signed the Equal Pay CA Pledge in 2022, committing to: conducting an annual gender pay analysis; reviewing hiring and promotion processes to reduce unconscious bias; and promoting equal pay best practices.

#### **Career Ambassadors – Talent Pipeline**

SMUD Career Ambassadors shifted their approach from representing SMUD at in-person events such as career fairs, career exploration, and mock interviews, to a hybrid approach attending and hosting virtual career events. Career Ambassadors attended 78 events in total -- 25 virtual and 53 in-person. They invested 200 hours in 2022 and reached 17,495 members of the community. Additionally, an enhanced partnership with our Education Outreach program engaged 13,870 students in learning about SMUD's Zero Carbon effort and related energy industry careers.

#### **Wellness**

For 2022, we continued with our reimagined Wellness/Health Assessment Program (HAP) focused on the 4 pillars of Wellness: Social, Mental, Physical, and Financial. A broader range of activities was provided virtually in support of this holistic approach. Emphasis was placed on mental wellness including two workshops provided by Kaiser and work/life balance. We offered greater flexibility and options to participants to achieve their Wellness/HAP goals by collaborating with our Wellness partners (SMUD ERGs, Kaiser, Sutter Health, United HealthCare, SAFE Credit Union, Wells Fargo Bank, Fidelity Investments, and OptumHealth).

#### **Benefits**

Open enrollment in 2022 consisted of 6 virtual meetings for employees and retirees and 2 onsite meetings for our Field forces. We continue to utilize a well-received Virtual Benefit Fair platform to provide benefit information to our employees and retirees, as well as new and prospective employees through an easy to use and fun web portal, accessible from any device. This platform provided for all their benefit needs including benefit guidebooks, plan summary documents, and the ability to send questions to our benefit providers. Additionally, Benefits staff in Total Rewards worked to address the rising cost of health care and were able to negotiate an overall medical renewal increase of 0.31%, a significant decrease from last year's 5.3% increase.

## **Retention**

SMUD's turnover decreased in 2022, from 7.7% in 2021 to 7.0%. This decrease can be attributed to fewer Retirements in 2022. Retirements decreased from 92 in 2021, to 78 retirements in 2022. SMUD's turnover continues to rank below the industry benchmark of 10.1%. In addition to SMUD's Baby Boomer workforce entering retirement eligibility, this data also aligns with the cyclical pattern we've seen in retirements over time. Historically, we see these numbers rise in small waves that crest every three to four years.

## **b) SMUD shall promote inclusion and diversity and engage its workforce in activities that demonstrate and support inclusion and diversity across the organization.**

### **Employee Resource Groups**

The 8 ERGs at SMUD include:

- Black Employee Resource Group (BERG)
- Asian Pacific Islander (GRAIN ERG)
- Latinos Unity Network for Action (LUNA)
- Military Employee Resource Group (MERG)
- People Reaffirming Inclusion Diversity and Equality (PRIDE)
- Women's Employee Resource Group (WERG)
- Young Professionals Employee Resource Group (YP)
- Parents ERG

Employee Resource Groups (ERGs) helped foster inclusion among our workforce by hosting events that support business initiatives including Safe Zone Advocacy Training, a community blood drive, and three ERG Learning@SMUD sessions. The events help to keep employees connected, and offer professional and personal development opportunities including several collaborative events co-hosted with community organizations in SMUD's service territory.

### **DEI Initiatives**

The Diversity, Equity and Inclusion (DEI) team completed several foundational streams of work to enhance SMUD's culture in 2022.

- In addition to refining the DEI mission and vision, the team also identified three areas upon which to focus its work: (1) Advancing Data; (2) Implementing and Applying DEIB; and (3) Aligning and Connecting DEIB across SMUD.
- They partnered with People Services & Strategies (PS&S) to enhance and roll out SMUD's Diversity, Equity, Inclusion & Belonging (DEIB) Strategy from May through October 2022. This effort included hiring an external consultant to facilitate a working group that provided recommendations to the strategy's inclusive culture pillar. The DEI Team also incorporated the concept of "Belonging" in the strategy, reflecting the importance of creating a workplace and culture that allows all people to: be their authentic selves; feel they truly belong; and experience psychological safety at SMUD.
- The team also engaged public agencies across Sacramento to establish a working group, including Caltrans, City of Sacramento, Sacramento State University, and SETA, to collectively advance the region's DEI efforts.

- Additionally, the DEI team provided internal consultation on DEIB matters to business units across SMUD, including the curation of a learning path of DEIB resources for employees.

## Diversity, Equity, Inclusion and Belonging (DEIB) Council

The primary role of SMUD's DEIB council is to connect DEIB activities and goals to all our operations. The Council, which convened in June 2022, is comprised of a group of twenty employees who represent each business area and SMUD's ERGs. This body of representatives advises, advocates for, informs, assesses and/or monitors the DEI strategic process, as well as provides recommendations to the DEI Department on behalf of SMUD. Over the course of 2022 and early 2023, they have accomplished the following:

### Timeline of Accomplishments - 2022

MAY	JUN	JUL	AUG	SEP	OCT	
<ul style="list-style-type: none"> <li>• Training</li> <li>• DEIB Council Onboarding.</li> <li>• Learned about DEIB, and our DEIB Strategy.</li> </ul>		<ul style="list-style-type: none"> <li>• Community Agreements.</li> </ul>			<ul style="list-style-type: none"> <li>• Reflection Activity – base for how Council Members will function.</li> </ul>	FOUNDATIONAL
			<ul style="list-style-type: none"> <li>• Identified our DEIB Council Chair &amp; Vice Chair.</li> </ul>	<ul style="list-style-type: none"> <li>• Identified our parliamentarian &amp; co-parliamentarian</li> </ul>	<ul style="list-style-type: none"> <li>• Identified &amp; established Lead, Co-Leads, Subcommittee Members</li> </ul>	ROLES
	<ul style="list-style-type: none"> <li>• Adopted Roberts Rules of Order.</li> </ul>	<ul style="list-style-type: none"> <li>• DEIB Council SharePoint site</li> <li>• Established and defined a DEIB Win Spotlight</li> </ul>	<ul style="list-style-type: none"> <li>• Communication process for Meeting Minutes &amp; Liaison Share</li> </ul>	<ul style="list-style-type: none"> <li>• Information Intake Process.</li> <li>• Attendance &amp; Participation Policy &amp; Procedure.</li> </ul>	<ul style="list-style-type: none"> <li>• Collaboration between subcommittees and SMEs of respective projects.</li> <li>• Identified metrics.</li> <li>• Enhanced our subcommittee report out template</li> </ul>	ADMINISTRATIVE



### Timeline of Accomplishments – 2022 to 2023

NOV	DEC	JAN	FEB	MAR	APR, MAY, ...	
<ul style="list-style-type: none"> <li>• Holiday survey input.</li> </ul>	<ul style="list-style-type: none"> <li>• First hybrid DEIB Council Meeting.</li> <li>• Intake process utilized for first time; 2 guest attendees.</li> <li>• Budget discussion.</li> </ul>		<ul style="list-style-type: none"> <li>• Examine, review all DEIB processes for improvements..</li> </ul>			ADMINISTRATIVE
<ul style="list-style-type: none"> <li>• Equity – provide draft recommendation on defining equity.</li> <li>• Inclusive Culture – provided a survey summary regarding inclusive culture</li> </ul>	<ul style="list-style-type: none"> <li>• Diverse Workforce – Outreach Project: provided recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>• Diverse Workforce – Diverse Panel Project: provided recommendations.</li> </ul>	<ul style="list-style-type: none"> <li>• Community Impact – identified gaps in Shine Program outreach internally (educational component)..</li> </ul>			PROJECT/INITIATIVE

Conduct Monthly  
 DEIB Council Meetings –since Jun 2022  
 DEIB Win Spotlight – since Aug 2022  
 Subcommittee Meetings - since Oct 2022



**c) SMUD shall engage its workforce in personal and professional development.**

The learning and development teams at SMUD are responsible for creating and implementing training courses and programs that cater to the professional growth and on-the-job development needs of employees. These learning objectives are closely linked with SMUD's Strategic Directives, and course offerings are reviewed at least quarterly to ensure alignment with the business strategy. The training courses are offered in a blended format, incorporating classroom, online, and self-directed learning to meet the diverse learning styles and preferences of employees. In 2022, we shifted into our Speed of Trust reinforcement and strengthening phase. A Trust sustainment collaborative (cross functional advisory team of leaders) was formed to determine a wholistic approach to cultivating organization trust. Three trust sustainment themes were identified: culture, communications, and learning. Corresponding actions included 8 Trust Foundations training sessions for leaders and staff across SMUD (61 employees), a new comprehensive set of Trust sustainment tools for all leaders, as well as post-class follow up consultations for staff across the business.

With the additional availability of online training courses via the LinkedIn Learning platform, 2022 showed nearly double the employee utilization. This significant growth in utilization is attributed to increased user comfort and adoption spurred by (but not limited to) new LinkedIn Learning development paths mapped to SMUD's competencies as well as DEIB's strategic goals; all while meeting custom learning path needs related to business goals and objectives (i.e., technical skills, project management, health and wellness, coaching and feedback, DE&I, and leading in a remote environment).

There were 2,507 employees who received virtual-classroom and computer-based training in 2022, with an average of 29 training hours per individual. We saw 799 employees leverage the LinkedIn Learning platform and complete courses totaling more than 2059 hours. We had a slight decrease in the average time spent on LinkedIn Learning from 2.77 in 2021 to an average of 2.57 in 2022. However, the total number of employees who took LinkedIn Learning nearly doubled from 472 in 2021 to 799 total employees in 2022. Mandatory training ranges from 6.25 to 36.25 hours depending on the employee's position and included enterprise-wide, cross-functional, and department-specific requirements. Course materials covered a wide range of topics including project management, Microsoft applications, leadership development, diversity and inclusion, and information technology (IT) skills.

**Leadership Development**

To complement the ongoing internal development opportunities afforded SMUD leaders, an external leadership development selection process is conducted annually to match applicants with a program that effectively meets their development needs and SMUD's business objectives. In 2022, we sent 23 employees to several local and regional leadership development programs including Nehemiah Emerging Leaders, WEI Business Acumen for Emerging Leaders, Asian Pacific Chamber Catalyst program, Leadership Rancho Cordova program, Leadership Elk Grove, Leadership Sacramento, Nueva Epoca, Leadership Folsom, and SMUD's (internal) Building Leadership Talent program.

## **Education Assistance**

The education assistance benefit supports employees who are pursuing college degrees and developing their SMUD careers by completing certificates or taking individual classes that support our business. We offer up to \$5,000 per calendar year for qualified, regular full-time employees to partake in eligible programs, and up to \$2,500 for part-time employees. Many employees use the program to pursue an Associate's, Bachelor's or Master's degree in areas as wide-ranging as accounting, law, finance, human resource management, information technology, project management and organizational leadership.

### **d) SMUD's percentage of engaged employees as measured through the Engagement Index shall exceed 80%.**

In 2022, we focused on responding to the results of our fall 2021 Employee Engagement Survey, which were previously shared with the Board. Those results included more data from an expanded number of DEIB questions (increased from five to ten) which allowed us to understand more fully employees' experiences of diversity, equity, inclusion and belonging. We also included in 2021 two new survey items about innovation and well-being.

Our 2022 response strategy had two components. First, we responded at an organizational level through development of our DEIB strategy, which includes a focus on powering a more inclusive culture. Specifically, the strategy sets meaningful goals and metrics for increasing psychological safety, belonging, transparency, and organizational commitment to DEIB. In addition, this fall we convened a cross-department stakeholder group of employees to develop a multi-year implementation plan to achieve the goals and metrics we've set for a more inclusive culture.

The second way we responded to our survey data was at the team level. Every leader who had an engagement report discussed the results with their team to understand what positive steps could be taken to improve. We also held two trainings, reaching 160 leaders, to support leader capability in interpreting their report, leading their team conversation and identifying meaningful actions that would result in higher engagement.

The action plans that resulted from these team-level conversations focused on themes such as improving communication, increasing opportunities for growth and development, giving employees more voice in shaping the work of the team, or improving work/life balance, to name some of the most frequent themes. Senior leaders also addressed themes around accountability, trust, and care for the employee experience that require senior leader attention. Taking meaningful action on engagement results was our Enterprise Performance Goal for Culture in 2022, and we achieved this goal with 96% of leaders developing and acting on that plan. We will conduct a pulse survey in 2023 to assess our progress.

- e) **SMUD shall use a broad mix of communication and outreach channels to ensure its recruitment activities reflect the diversity of the communities it serves.**

### **Talent Acquisition (TA)**

In 2022, Talent Acquisition Partners (TAPs) pivoted to incorporate more online examination options to reach a broader audience of applicants and allow for flexibility in establishing eligibility lists. We continue to conduct employment outreach with educational institutions, including an enhanced partnership with Sacramento State University – leveraging their students as SMUD ambassadors within the community. TAPs maintain categorized contacts within the community to ensure outreach to underrepresented populations for recruitments. Marketing includes a combination of email distributions, job board postings, LinkedIn advertisements, and social media platforms, as well as Daily Updates to our most valuable network - our employees.

### **Employment Outreach and Partnerships**

Improved collaboration among Talent Acquisition, Sustainable Communities, and Community Engagement resulted in the receipt of 15,413 external candidate applications in 2022.

SMUD's Regional Workforce Development program partnered with 54 community organizations to reach 3,346 youth and adults with career education and train 506 adults in new skills. This partnership placed 241 of these trainees into careers spanning several industries with emphasis given to 2030 Zero Carbon aligned skills and careers. The highlight of this partnership was the training and hiring of six SMUD's Powering Careers graduates. In 2023, SMUD is redoubling its zero carbon jobs training with new programs focusing on electric vehicle maintenance, electrician trainees, and construction electrification.

SMUD leveraged its Regional Workforce Development efforts to help diversify the pool of qualified and motivated candidates applying for SMUD positions. For example, SMUD recruited participants for its highly innovative Powering Careers program through our Solar Training program in partnership with Grid Alternatives. Grid Alternatives identified some of the top graduates from its highly diverse program targeting under-resourced communities. Two candidates from Grid's program ultimately applied for, participated in, and successfully graduated from SMUD's Powering Careers program.

### **Internships**

With COVID restrictions easing up, SMUD was able to increase our internship offerings in 2022 from the previous year. We continued utilizing students in a mostly remote capacity with a few opportunities for on-site interaction with their business units and cohort. Whereas we've traditionally hosted in-person showcases for employees and community partners to learn about intern work, we continued to illustrate the student accomplishments and projects in a virtual setting.



Interns tackled a variety of important initiatives for the organization, including but not limited to the following:

- Name Pronunciation Project, designed to assist with the correct pronunciation of employees' names by providing an audio file link to the pronunciation in email signatures
- SEA Website Management
- Help Desk support for the Compaction Checking Algorithm project
- User acceptance testing supporting SMUD's SharePoint upgrade
- IT training documents to enhance the New Employee Orientation experience
- Datch pilot, allowing trades workers to fill out documents faster
- Lone-worker Safety Project, enabling field workers who work alone to alert others and dispatch help if they become incapacitated
- Long Duration Energy Storage Request for Information
- Biomass Gasification Research
- Outstanding data sharing requests for the Data Governance team

### **Powering Futures scholarships**

Twenty-one recipients were awarded up to \$4,000 each and included local students registered in a degree program. Those with a demonstrated financial need pursuing majors related to careers in SMUD received preference. Along with the scholarships, students were also presented with an opportunity to receive a paid internship.

### **Powering Aggies and Powering Hornets Scholarship Programs**

The Powering Aggies and Powering Hornets Scholarship programs were set up in 2018 to provide a scholarship for 1 student each from UC Davis and Sac State. Eligible students who majored in a SMUD-related career field (UC Davis) or Electrical Engineering (Sac State) were selected by their respective universities. In 2022, SMUD awarded the Powering Aggies winner \$1,800 and the Powering Hornets winner \$2,500.

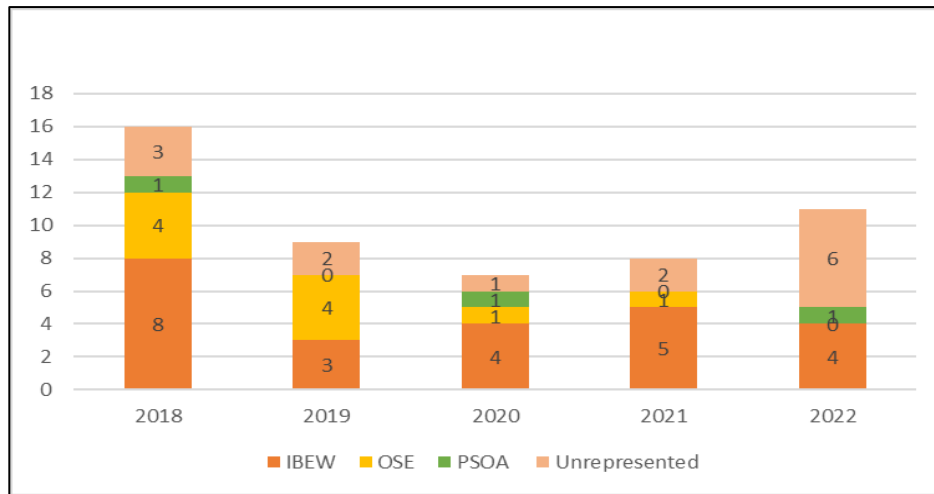
### **Internship Outreach**

The internship program's current outreach strategy involves continuing to develop new relationships with universities after the COVID-19 Pandemic and redesigning our existing workshops and events to better meet the needs of our university partners. We designed a new outreach workshop labeled Through the Eyes of a Recruiter and presented it at UC Davis, Sac State, Chico, Los Rios College District, UOP, and Sierra College. The internship program team attended 24 events in 2022 and presented to more than 1,200 students. The outreach for SMUD's summer internship program saw a 90% increase going into 2023.

### **f) SMUD shall maintain and communicate written policies that define procedures and expectations for staff and provide for effective handling of grievances.**

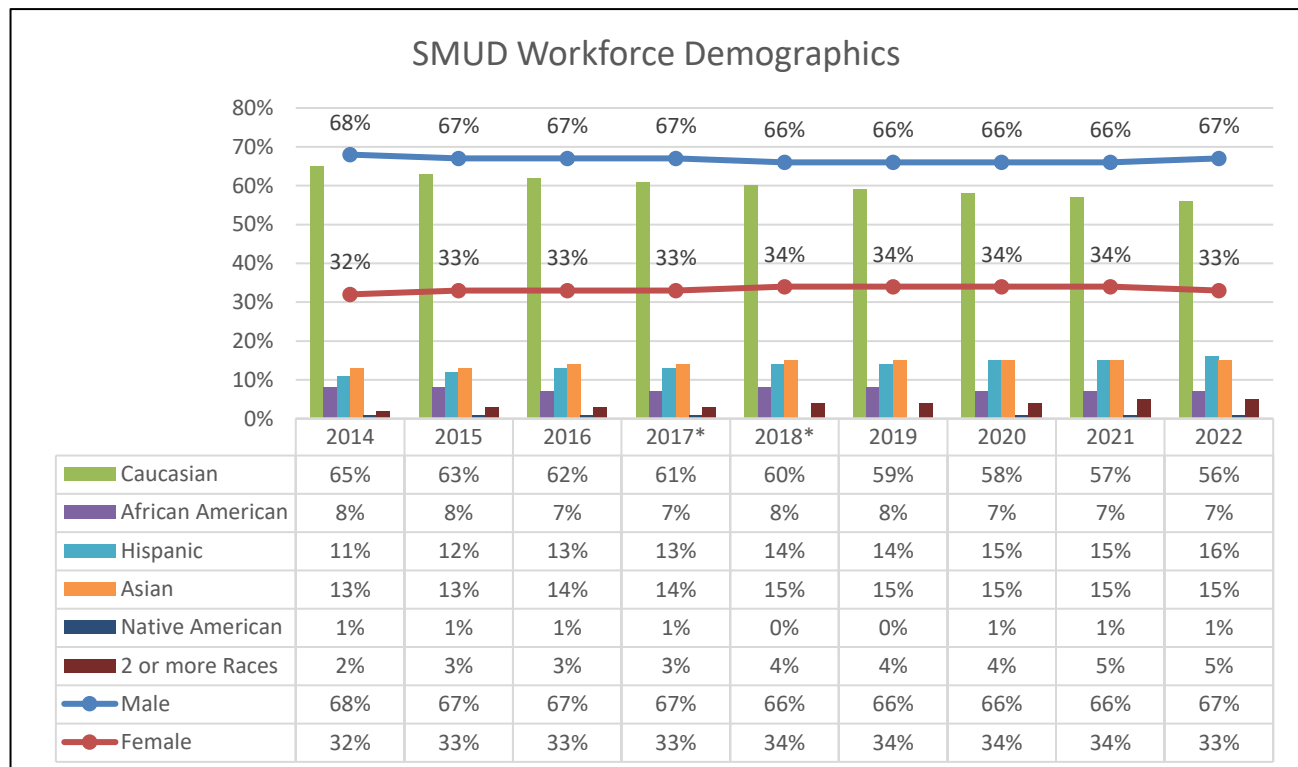
In addition to SMUD's Code of Business Ethics and Employee Conduct, its Employee and Labor Relations teams provided daily advice, guidance and counsel to employees on employee relations issues. Staff worked to ensure all employees (represented and unrepresented) understand SMUD policies and procedures, and that employees know and understand what their responsibilities are with respect to the Code of Ethics.

A total of 11 grievances were resolved in 2022.



- g) Annually, and consistent with State and Federal law, the Board shall receive a report detailing the demographics of the SMUD workforce, the available workforce, and the Sacramento region. The report shall also provide information on veterans as a part of SMUD's workforce.

The following chart provides demographic information about SMUD's workforce (excluding "casual" positions and members of the Board of Directors).



Percentages may not add up to 100% due to rounding.

## Regional Demographics

	Sacramento, El Dorado & Placer Co. (Civilian) *	Sacramento Co. (Civilian) *	Sacramento Co. (Total Population)**
<b>Caucasian</b>	55%	48%	41%
<b>African American</b>	7%	9%	9%
<b>Hispanic</b>	20%	22%	24%
<b>Asian</b>	14%	17%	19%
<b>Native American</b>	0%	0%	0%
<b>2 or more Races</b>	4%	4%	7%
<b>Male</b>	52%	52%	51%
<b>Female</b>	48%	48%	49%

The "Civilian" labor force referenced in this chart represents residents aged 16 and older. These numbers exclude houseworkers, unpaid volunteers, institutionalized individuals, and U.S. Armed Forces Active Duty.

\*2018 American Community Survey, 5-Year Estimates EEO

\*\*2020 United States Census (April 1, 2020)

We saw a shift in SMUD's 2022 workforce demographics with Caucasian employees representing 56% of the workforce, down from 57% in 2021. This shift occurred as the representation of Hispanic employees increased by 0.8% in 2022. Employee turnover, which creates opportunities to hire, and our expanded outreach strategies are the likely drivers for this change as SMUD continues to develop its talent pipeline and build a workforce that reflects the diversity of the communities we serve.

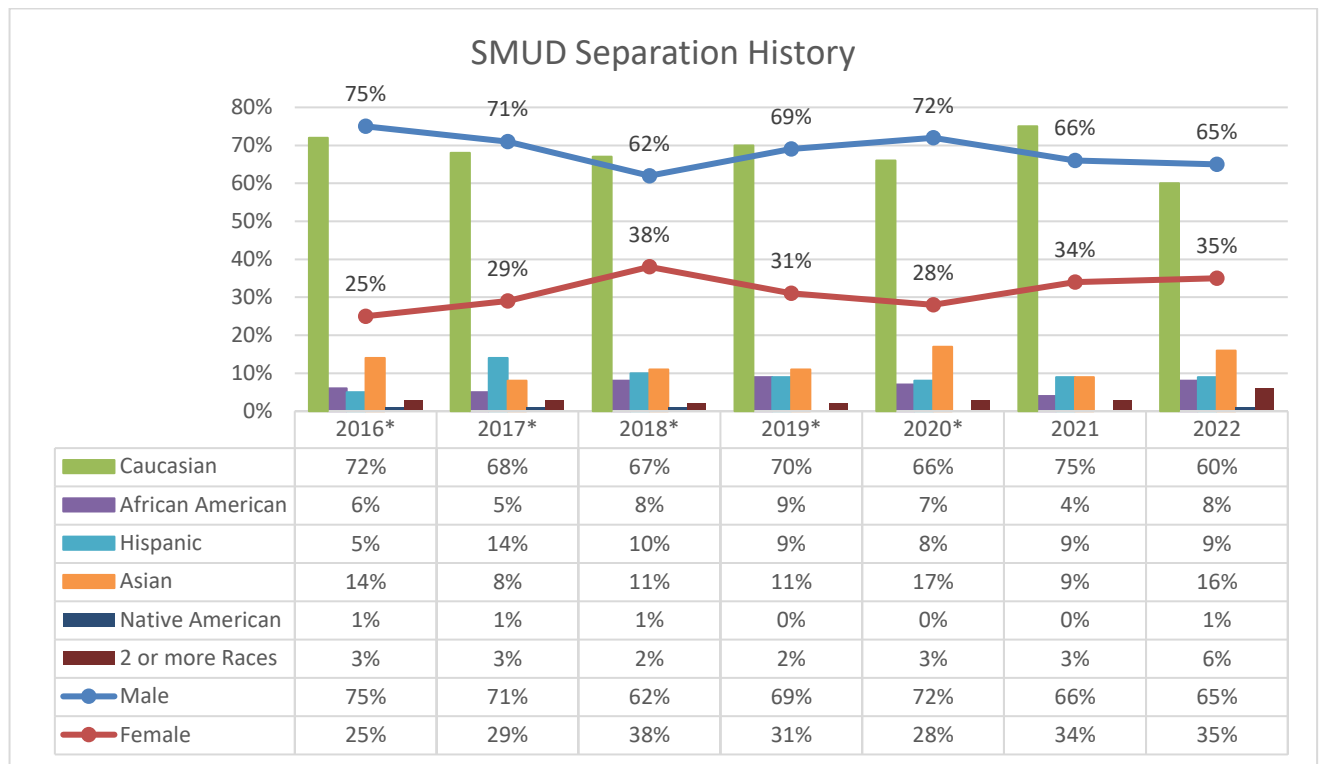
### 2022 SMUD Workforce Demographics by Employee Level

	Male	Female	Caucasian	African American	Hispanic	Asian	Native American	2 or more Races
<b>Executives</b>	60%	40%	50%	10%	0%	30%	0%	10%
<b>Directors*</b>	59%	41%	69%	9%	6%	9%	0%	6%
<b>Managers*</b>	62%	38%	69%	3%	7%	13%	1%	6%
<b>Supervisors</b>	66%	34%	62%	7%	10%	16%	0%	5%
<b>Staff*</b>	67%	33%	54%	7%	17%	15%	1%	5%

\* Percentages may not add up to 100% due to rounding.

### SMUD Separation History (Full-Time Employees Only)

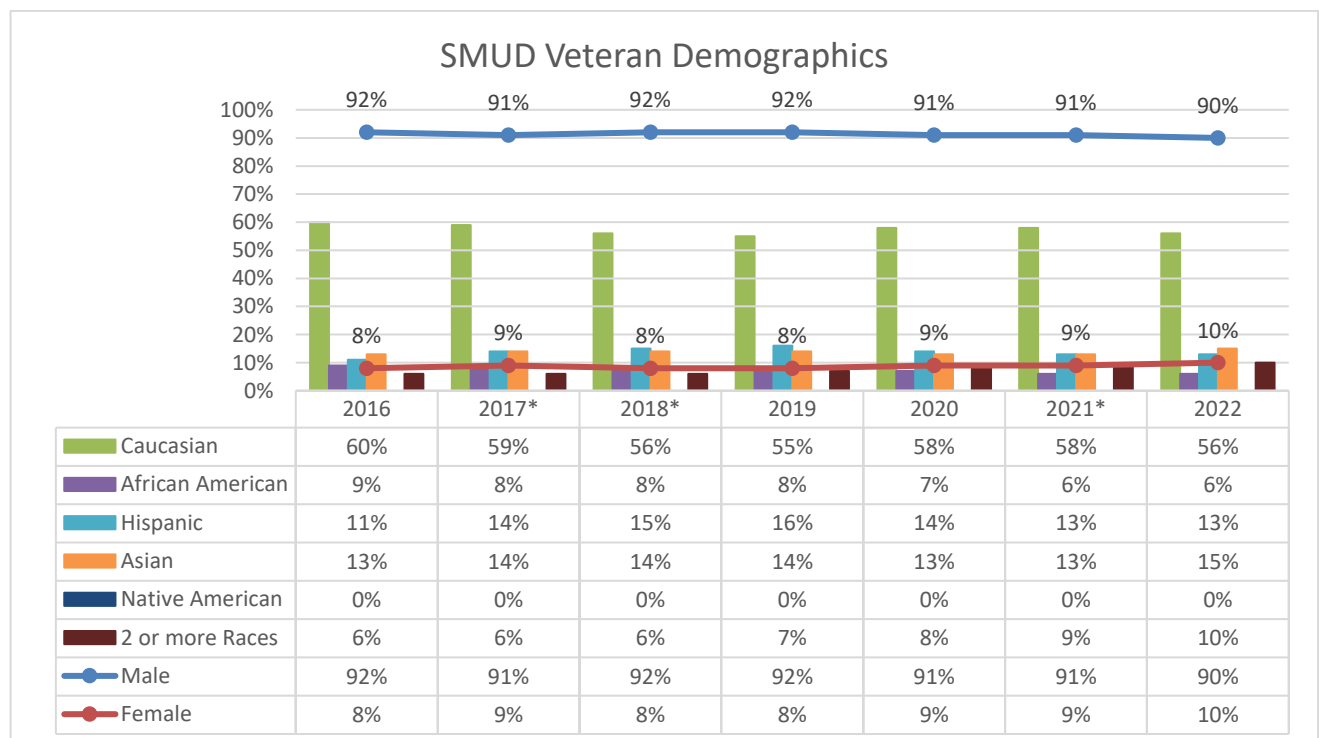
We saw a shift in the demographics of separating employees last year, with Caucasian employees representing 60% of the separations in the workforce in 2022, down from 75% in 2021. This shift was offset by an increase of 4% for African Americans employees, a 7% increase for Asian employees, and a 3% increase for employees with two or more races. People Services & Strategies is scoping enhancements to SMUD's on- and off-boarding processes, including opportunities for trend reporting and further exploration of themes in separation data.



\* Percentages may not add up to 100% due to rounding.

### Military Veterans in SMUD's Workforce

Veterans are a small but important part of SMUD's workforce. According to our records, Veterans comprised 4.5% of SMUD's workforce in 2022, down from 5.1% in 2021. This decrease is the result of 7 veteran retirements in 2022.



\*Percentages may not add up to 100% due to rounding

RESOLUTION NO. \_\_\_\_\_

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

This Board accepts the monitoring report for **Strategic Direction SD-8, Employee Relations**, substantially in the form set forth in **Attachment \_\_\_\_** hereto and made a part hereof.



SSS No. PPS 23-004

# BOARD AGENDA ITEM

## STAFFING SUMMARY SHEET

Committee Meeting Date

Policy – 05/10/23

Board Meeting Date

May 18, 2023

TO					TO				
1.	Claire Rogers				6.	Farres Everly			
2.	Jose Bodipo-Memba				7.				
3.	Suresh Kotha				8.				
4.	Jennifer Davidson				9.	Legal			
5.	Brandy Bolden				10.	CEO & General Manager			

<b>Consent Calendar</b>	<input checked="" type="checkbox"/>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b> <i>If no, schedule a dry run presentation.</i>	<b>Budgeted</b>	<input checked="" type="checkbox"/>	<b>Yes</b>	<input type="checkbox"/>	<b>No</b> <i>(If no, explain in Cost/Budgeted section.)</i>
FROM (IPR) Laurie Rodriguez					DEPARTMENT People Services & Strategies			MAIL STOP B251	EXT. 5628
								DATE SENT 4/13/23	

### NARRATIVE:

<b>Requested Action:</b>	Accept the monitoring report for Strategic Direction SD-12, Ethics.
<b>Summary:</b>	This presentation provides the Board with the annual monitoring of SD-12, Ethics and confirms that SMUD is maintaining the public trust and confidence in the integrity and ethical conduct of the Board and SMUD employees.
<b>Board Policy:</b> <i>(Number &amp; Title)</i>	SD-12, Ethics
<b>Benefits:</b>	Provide the Directors and Executive Staff with an overview of the Board Policy and give them an opportunity to ask questions, make corrections, additions or changes, if necessary.
<b>Cost/Budgeted:</b>	N/A
<b>Alternatives:</b>	N/A
<b>Affected Parties:</b>	All SMUD employees and Contractors
<b>Coordination:</b>	Executive Office, People Services & Strategies, Audit & Quality Services
<b>Presenter:</b>	Laurie Rodriguez, Director, People Services & Strategies

### Additional Links:

SUBJECT	SD-12, Ethics Board Monitoring Report	ITEM NO. (FOR LEGAL USE ONLY)
		7

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

# SACRAMENTO MUNICIPAL UTILITY DISTRICT

## OFFICE MEMORANDUM

**TO:** Board of Directors

**DATE:** April 26, 2023

**FROM:** Claire Rogers *CR 4/26/23*

**SUBJECT: Audit Report No. 28007603  
Board Monitoring Report; SD-12: Ethics**

Audit and Quality Services (AQS) received the SD-12 *Ethics* 2022 Annual Board Monitoring Report and performed the following:

- Selected a sample of statements and assertions in the report for review.
- Interviewed report contributors and verified the methodology used to prepare the statements in our sample.
- Validated the reasonableness of the statements in our sample based on the data or other support provided to us.

During the review, nothing came to AQS' attention that would suggest the items sampled within the SD Board Monitoring report did not fairly represent the source data available at the time of the review.

**CC:**

Paul Lau



# Board Monitoring Report 2022

## SD-12, Ethics



### 1. Background

Strategic Direction 12 states that:

Maintaining the public trust and confidence in the integrity and ethical conduct of the Board and SMUD employees is a core value. Therefore, to ensure the public interest is paramount in all official conduct, the Board shall adopt and update, as necessary: a Conflict of Interest Code as required by State law. SMUD shall also maintain and enforce a code of conduct applicable to all employees.

Among other things the code of conduct shall:

- a) Require high ethical standards in all aspects of official conduct;
- b) Establish clear guidelines for ethical standards and conduct by setting forth those acts that may be incompatible with the best interests of SMUD and the public;
- c) Require disclosure and reporting of potential conflicts of interest; and
- d) Provide a process for (i) reporting suspected violations of the code of conduct and policies through multiple channels, including an anonymous hotline, and (ii) investigating suspected violations.

### 2. Executive Summary

**SMUD is in compliance with the requirements of SD-12.**

Strategic Direction 12 requires SMUD to have a process to report potential conflicts of interest and a process for reporting and investigating suspected violations of the Code of Conduct.

Compliance is foundational for acting in the best interests of our customers and community. Several SMUD policies and procedures support the requirement of high ethical standards in all aspects of official conduct.

SD Requirement	Supporting Process/Procedure
a) Require high ethical standards	SMUD's Ethics policy (AP 05.02.03) sets the requirements and expectations for ethical behavior, including communication, training and other resources.

b) Establish clear guidelines for ethical standards and conduct	SMUD's Code of Business Ethics and Employee Conduct were updated and approved by the CEO & General Manager in 2020. SMUD's Ethics procedure (MP 05.02.03.100) was adopted in 2008 and updated in January 2021. SMUD's Conflict of Interest policy (AP 05.02.02) was adopted in 1998 and approved by the FPPC (Fair Political Practices Commission) in 2023.
c) Require disclosure and reporting potential conflicts of interest statements	Notice of filing requirements were sent to employees in March. 99% of the annual conflict of interest statements were received by the time this report was finalized.
d) Provide a process for reporting and investigating suspected violations of the code of ethics	SMUD's Whistleblower Anti-Retaliation policy (AP 05.01.03) was approved in 2014. SMUD's Complaint Process Policy (AP 05.01.04) was adopted in 2006 and updated in August 2022. SMUD's Ethics and Compliance Hotline has been in place since 2008.

### 3. Additional Supporting

#### Information Ethics Policy

In accordance with Board Policy SD-12 Ethics, SMUD developed the Code of Business Ethics and Employee Conduct, approved by the CEO & General Manager in 2020. This document supplements SMUD's State-law mandated Conflict of Interest Code and provides an easy-to-read explanation of SMUD's values and expectations for employee behavior. It also identifies various staff resources to obtain further guidance, as well as alternative methods to report suspected violations of SMUD's Code of Business Ethics. The Code provides a framework for how employees should act toward customers, vendors and each other. It also emphasizes that as a publicly-owned utility, SMUD and its employees must adhere to the highest ethical standards.

All new employees receive a copy of SMUD's Code of Business Ethics prior to or during new employee orientation and are required to review and submit a signed acknowledgement to People, Services & Strategies within 30 days of orientation. In addition, all contractors with unescorted access receive a copy of the Code when their background check is conducted. PS&S verifies Code acknowledgements on a quarterly basis to ensure signed acknowledgments are received from all new employees and contractors.

## **Ethics Training**

Ethics training is a mandatory requirement for all SMUD employees. They are required to complete the training every 2 years on a fixed rotating schedule. New and returning employees have one year for completion while newly promoted leaders are required to take Ethics training within 90 days of promotion into their role. Course completion is tracked using SMUD's Learning Management System (LMS) and reported as part of SMUD's mandatory training statistics. The 2022 completion rate for employees with 2022 due dates is 99.59%.

For the 2022 course cycle, as of March 13<sup>th</sup>, 2023, a total of 243 employees have been assigned the training since January 1, 2022. In 2022, 242 employees completed the training, 1 employee is in-progress with 2022 due dates. The employees who were assigned the Ethics training are either 2021 new hires or are recently promoted leaders.

## **Disclosure and Reporting of Potential Conflicts of Interest**

The Political Reform Act (Cal. Gov. Code §§ 81000, et seq.) requires certain government officials and employees to publicly disclose certain financial information relevant to the scope of decision-making for their positions with SMUD.

To maintain compliance, all employees in positions designated by the SMUD Board must complete and submit an annual Statement of Economic Interests, FPPC Form 700 (Conflict of Interest Statement). Incumbents of designated positions shall file an Assuming Office Statement within 30 days of starting their employment or beginning the new position. Employees in designated positions who leave SMUD shall file Leaving Office Statements within 30 days of their final dates of employment.

The annual Conflict of Interest Statements are public documents filed with Corporate Records or in the designated record repository. PS&S sent financial disclosure materials electronically to designated employees in March and successfully met the FPPC filing deadline of April 3. At the time of this report, 99% percent of the annual Conflict of Interest Statements from SMUD officials and designated employees were received. PS&S staff follows up to ensure total compliance. In the rare event that full compliance is not achieved, SMUD is obligated to report violations to the FPPC for enforcement. This has occurred only two times in the last decade.

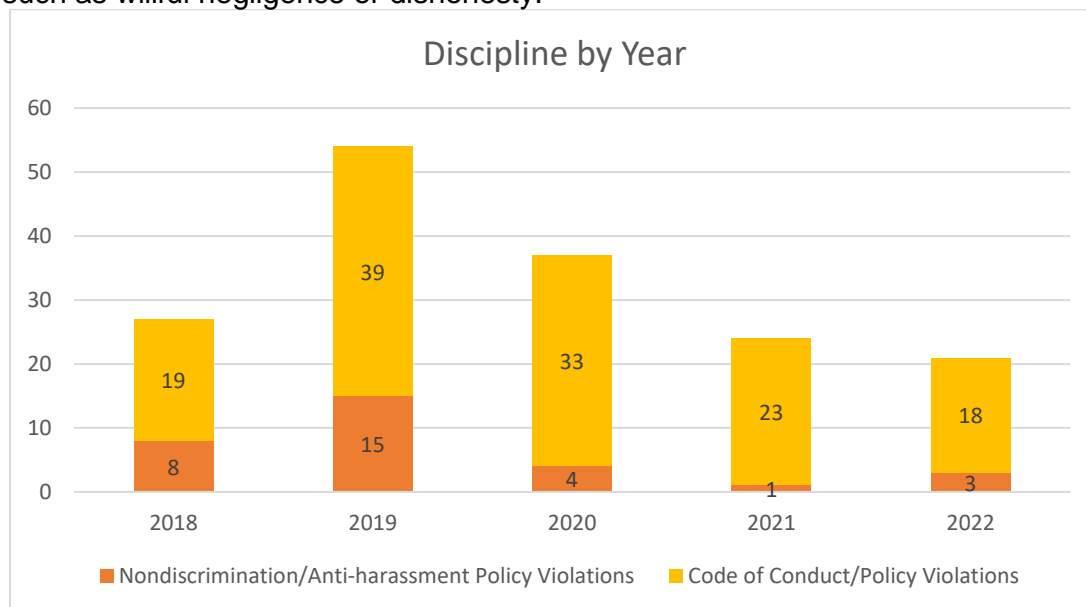
## **Process for Reporting and Investigating Suspected Violations**

SMUD holds its employees to a higher standard than that required by law and is committed to providing a work environment in which all individuals are treated with dignity and respect. SMUD encourages employees to bring concerns about potential legal violations or violations of SMUD policies to the attention of a SMUD leader. All SMUD leaders are required to immediately report all complaints they receive regarding suspected policy violations to the Fair Employment Office. An employee who believes that they are unable to make a complaint through their management reporting line may report complaints directly to the Fair Employment Office, Labor Relations, Internal Auditor's or General Counsel's Office. Additionally, SMUD has contracted with Navex Global Compliance since November 2008 to operate an anonymous Ethics and Compliance Hotline. This hotline can be used by employees to file complaints anonymously should they so

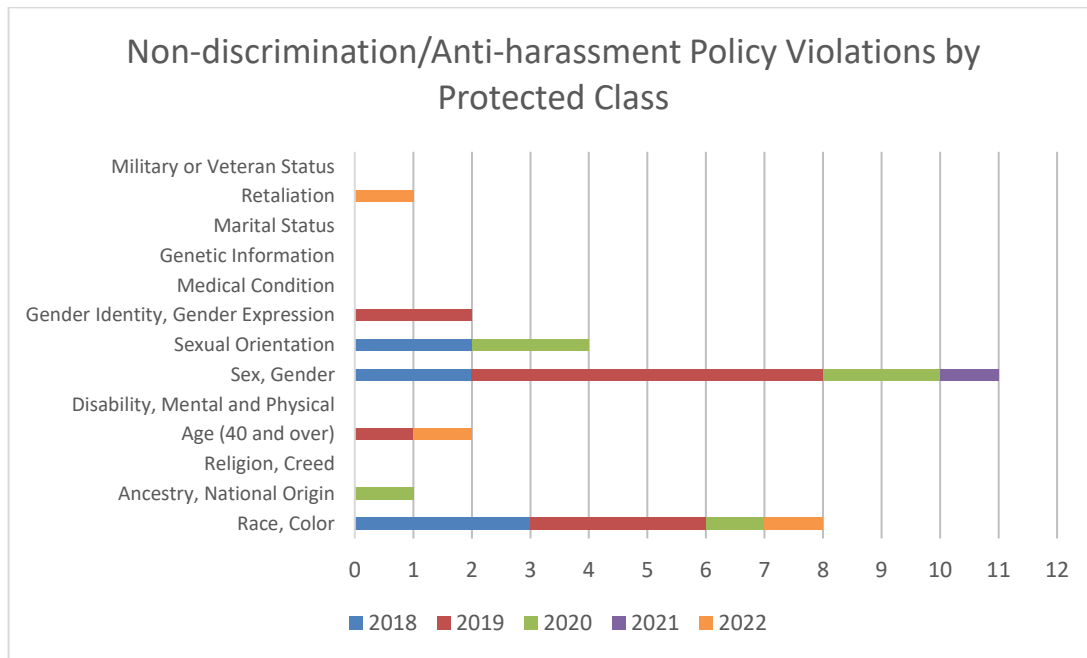
choose, either online or by calling Navex Global Compliance directly. As part of SMUD's Complaint Process and Whistleblower Anti-Retaliation policies, a Whistleblower Committee was established to review and act, when appropriate, on hotline/whistleblower complaints. The committee is comprised of representatives from the General Counsel's office, Audit & Quality Services and PS&S, including members of our Fair Employment Office and Labor Relations team.

In addition to investigating potential violations of SMUD's Nondiscrimination, Anti-Harassment and Non-Retaliation Policy (AP 05.01.01) and Code of Ethics, Labor Relations and Fair Employment analysts also advise, consult with and support leaders on recommended action and coaching to address problematic behaviors and attitudes among the workforce that are not necessarily prohibited by law. This includes working with a leaders' leader or senior leadership when improved leadership skills would benefit relationships. These proactive measures play a critical role in a culture where all employees are respected and valued.

The following chart illustrates discipline issued to employees between 2018-2022. Summarized below are the disciplines issued for violations of SMUD's Nondiscrimination, Anti-Harassment and Non-Retaliation Policy (AP 05.01.01) as well as discipline for misconduct/policy violations under SMUD's Positive Discipline Policy (AP 05.02.09) including dishonesty, bullying, discourteous behavior, unprofessional conduct, driving policy violations, insubordination, conflicts of interest and unethical behavior. The below reporting does *not* include discipline related to safety incidents (e.g. preventable vehicle accidents), attendance (tardiness and/or absences) or work performance unless there was a conduct component covered by SMUD's Code of Business Ethics & Employee Conduct, such as willful negligence or dishonesty.



The chart shown next indicates violations of SMUD's Non-discrimination, Anti-Harassment and Non-Retaliation Policy (AP 05.01.01) as they relate to protected categories for FEO investigations that occurred in the past five years.



#### 4. Challenges

Completing training and obtaining necessary documents can be a challenge for employees on any type of extended leave. Broad or anonymous complaints are sometimes filed without supporting and/or contact information to allow for follow-up and further investigation.

#### 5. Recommendations

As reflected in this report, SMUD has achieved the goals set forth in SD-12 for maintaining the public trust and confidence in the integrity and ethical conduct of the Board and SMUD employees. The policies, guidelines, staff training and monitoring and reporting components have played a part in ensuring high ethical standards in all areas of conduct and in operations.

*It is recommended the Board accept the monitoring report for Strategic Direction 12.*

#### 6. Appendices

N/A

RESOLUTION NO. \_\_\_\_\_

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

This Board accepts the monitoring report for **Strategic Direction SD-12, Ethics**, substantially in the form set forth in **Attachment \_\_\_\_\_** hereto and made a part hereof.



SSS No. SCS 23-089

# BOARD AGENDA ITEM

## STAFFING SUMMARY SHEET

Committee Meeting &amp; Date

Finance &amp; Audit – 05/16/23

Board Meeting Date

May 18, 2023

TO					TO				
1.	Robert Adams				6.	Lora Anguay			
2.	Casey Fallon				7.	Scott Martin			
3.	Ellias Van Ekelenburg				8.	Jose Bodipo-Memba			
4.	Frankie McDermott				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) Andrew McDermott				DEPARTMENT Procurement			MAIL STOP EA404	EXT. 5862	DATE SENT 4/21/23

**NARRATIVE:**

**Requested Action:** Authorize the Chief Executive Officer and General Manager to award contracts to AECOM Technical Services, Inc., Ascent Environmental, Inc., Environmental Science Associates, and GEI Consultants, Inc. to provide Environmental and California Environmental Quality Act (CEQA) support services for a contract term of three years from June 1, 2023, to May 31, 2026, with one optional two-year extension for a total aggregate contract not-to-exceed amount of \$10,000,000.

**Summary:** Request for Proposal (RFP) Doc374368116 was issued in November 2022 to solicit qualified firms to provide Environmental and CEQA support services for SMUD's Environmental Services Department. The RFP's scope of work included environmental review, compliance and environmental permitting to support SMUD's Environmental Services Department including environmental review of SMUD projects in accordance with CEQA, biological field surveys, construction monitoring, cultural and Tribal cultural resource studies, avian protection plan support, avian mortality monitoring at wind projects, and long-range campus and facility planning. Procurement held a pre-proposal conference on December 6, 2022, which was attended by nine attendees and received six proposals. Based on the evaluation, the request is to award a three-year agreement with one optional two-year extension to the top four highest evaluated responsive proposers for a total aggregate contract not-to-exceed amount of \$10,000,000.

Procurement requested best and final offers which resulted in reduced rates of \$40,000 in total. SMUD will capture these savings at the task level when work is issued. SMUD will also realize an operational expense reduction with these new agreements as the rates proposed are 12.75% lower than the previous contract rates plus a Consumer Price Index (CPI) adjustment.

**Board Policy:** Board-Staff Linkage BL-8, Delegation to the Chief Executive Officer and General Manager with Respect to Procurement; Procurement; Strategic Direction SD-7, Environmental Leadership  
(Number & Title)

**Recommendation:** Award to the four (4) Highest Evaluated Responsive Proposers

Award to:

AECOM Technical Services, Inc.  
2020 L St., Ste. 300  
Sacramento, CA 94612

Ascent Environmental, Inc.  
455 Capitol Mall, Suite 300  
Sacramento, CA 95814



Environmental Science Associates
2600 Capitol Ave., Suite 200
Sacramento, CA 95816

GEI Consultants, Inc.
2868 Prospect Park Dr., Ste. 400
Rancho Cordova, CA 95670

Proposers Notified by Procurement: 54

Proposers Downloaded: 13

Pre-Proposal Conference Attendance: 9

Proposals Received: 6

Responsive Proposals Received	P/F	<u>10 Points SEED</u>	<u>60 Points Technical</u>	<u>30 Points Pricing</u>	Total Score	Overall Rank	Proposal Amount	SEED Credit	Evaluated Proposal Amount	Proposed Award Amount
AECOM Technical Services, Inc.	P	10	55.63	28.07	93.69	1	\$2,953,760	\$138,612.50	\$2,815,147.50	NTE \$10,000,000, Aggregate of all Task Authorizations
Ascent Environmental, Inc.	P	10	55.63	26.27	91.90	2	\$3,145,800	\$138,612.50	\$3,007,187.50	
GEI Consultants, Inc.	P	10	51.63	30	91.63	3	\$2,772,250	\$138,612.50	\$2,633,637.50	
Environmental Science Associates	P	10	50	25.18	85.18	4	\$3,276,575	\$138,612.50	\$3,137,962.50	

Non-Responsive Proposals Received	Proposal Amount
Aspen Environmental, Inc.	\$2,587,975
ICF Jones & Stokes	\$3,745,610

**Supplier Diversity Program:** All four (4) of the highest ranked proposers and awardees have committed to Supplier Education & Economic Development (SEED) participation on their agreement at 20% or more.

**Benefits:** To provide Environmental and CEQA support services for SMUD's Environmental Services Department.

**Cost/Budgeted:** \$10,000,000; Budgeted for 2023-2026 by Environmental Services

**Alternatives:** Not award this solicitation and request Board action to increase the existing agreements.

**Affected Parties:** Environmental Services, Procurement, and Contractors.

**Coordination:** Environmental Services and Ammon Rice, and Procurement.

**Presenter:** Ellias van Ekelburg, Director, Environmental, Safety & Real Estate Services

**Additional Links:**

SUBJECT

**Award Environmental and CEQA Services Contracts**

ITEM NO. (FOR LEGAL USE ONLY)

**8**

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS**, in November 2022, SMUD issued Request for Proposal No. Doc374368116 (RFP) to solicit qualified firms to provide environmental and California Environmental Quality Act (CEQA) support services; and

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

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

**Section 1.** As a result of such examination, **AECOM Technical Services, Inc., Ascent Environmental, Inc., Environmental Science Associates**, and **GEI Consultants, Inc.** are hereby determined and declared to be the four highest evaluated responsive proposers for environmental and California Environmental Quality Act (CEQA) support services.

**Section 2.** The Chief Executive Officer and General Manager, or his designee, is authorized, on behalf of SMUD, to award contracts to **AECOM Technical Services, Inc., Ascent Environmental, Inc., Environmental Science Associates**, and **GEI Consultants, Inc.** for environmental and California Environmental Quality Act (CEQA) support services for a contract term of three years from June 1, 2023, to May 31, 2026, with one optional two-year extension for a total aggregate contract not-to-exceed amount of \$10,000,000.

**Section 3.** The Chief Executive Officer and General Manager, or his designee, is authorized to make future changes to the terms and conditions of

the contracts that, in his prudent judgment: (a) further the primary purpose of the contracts; (b) are intended to provide a net benefit to SMUD; and (c) do not exceed the authorized contract amounts and applicable contingencies.



SSS No.

RS 23-002

# BOARD AGENDA ITEM

## STAFFING SUMMARY SHEET

Committee Meeting &amp; Date

ERCS – 05/17/23

Board Meeting Date

May 18, 2023

TO					TO				
1.	Bryan Swann				6.	Brandy Bolden			
2.	Scott Martin				7.				
3.	Frankie McDermott				8.				
4.	Lora Anguay				9.	Legal			
5.	Suresh Kotha				10.	CEO & General Manager			
Consent Calendar	X	Yes	No If no, schedule a dry run presentation.		Budgeted		Yes	No (If no, explain in Cost/Budgeted section.)	
FROM (IPR)				DEPARTMENT			MAIL STOP	EXT.	DATE SENT
Sara Elsevier				Resource Strategy			B205	5056	5/1/2023

**NARRATIVE:**

- Requested Action:**
- Approve SMUD's participation in the submittal of a grant application or applications by **Calpine Corporation (Calpine)** to the U.S. Department of Energy (DOE) or other agencies for the **Sutter Energy Center Carbon Capture and Sequestration Project (CCS Project)** and authorize the Chief Executive Officer and General Manager (CEO/GM), on behalf of SMUD, to execute all grant documents necessary to secure grant funds; and
  - Authorize the CEO/GM to execute a **Memorandum of Agreement (MOA)**, substantially in form attached, with **Calpine** to negotiate commercial terms of a **Power Purchase Agreement (PPA)** for the output of **Calpine's** proposed **CCS Project**.

**Summary:** At the March 15, 2023, SMUD Board meeting, staff provided an overview of an opportunity to enter into a 12-year offtake agreement with Calpine on the CCS Project located in Sutter County and be listed as the off-taker on grant applications that Calpine will submit to DOE to obtain grant funds for the CCS Project.

Over the past several weeks, SMUD and Calpine have conducted robust public outreach and workshops. On May 2, 2023, SMUD hosted a workshop on the CCS Project in Sacramento. Email invitations were sent to individuals and organizations, including environmental justice groups and SMUD's listserv. We also created a dedicated webpage and posted about the event on our social media channels. On May 4, 2023, Calpine hosted a workshop on the CCS Project in Yuba City.

The California Air Resources Board (CARB), Stanford University, and Calpine will present on State support for CCS technology, California geology supporting carbon storage, safety, project technology, local outreach and support, development path, etc.

SMUD staff will provide the benefits of the proposed CCS Project and a summary of public feedback gathered.

**Board Policy:** Strategic Direction SD-9, Resource Planning; Strategic Direction SD-4, Reliability; Strategic Direction (Number & Title) SD-7, Environmental Leadership

**Benefits:** Provide the SMUD Board and Community details of a clean technology resource opportunity that could help SMUD achieve its 2030 Zero Carbon Plan.

**Cost/Budgeted:** N/A

**Alternatives:** Do not inform the SMUD Board of the clean energy resource opportunity and decline Calpine's offer to purchase the output of the proposed CCS Project and be listed as the off-taker on any grant applications associated with the CCS Project.

**Affected Parties:** Resource Strategy, Legislative and Regulatory Affairs Customer Strategy, Enterprise Strategy, Communication, Marketing and Community Relations, Treasury Operations & Risk Management, Legal, Government Affairs & Reliability Compliance, Energy Supply, Sustainable Communities

**Coordination:** Resource Strategy, Energy Trading and Contracts, Power Generation, Transmission Planning and Operations, Marketing and Corporate Communications

**Presenters:** Bryan Swann, Director, Resource Strategy – SMUD  
Rajinder Sahota, Deputy Executive Officer, Climate Change and Research – CARB  
Sarah Saltzer, Managing Director of the Stanford Center for Carbon Storage – Stanford University  
Barbara McBride, Senior Director of Strategic Origination and Development – Calpine

**Additional Links:**

SUBJECT

**Calpine Carbon Capture and Sequestration Partnership Opportunity**

ITEM NO. (FOR LEGAL USE ONLY)

**9**

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“**Memorandum**”), dated as of May \_\_, 2023, is entered into by and between the Sacramento Municipal Utility District, a political subdivision of the State of California, with its principal offices at 6201 S Street, Sacramento, California 95817 (“**SMUD**”), and Calpine Corporation, a Delaware corporation, with its principal offices at 717 Texas Avenue, Suite 1000, Houston, Texas 77002 (“**Calpine**”). SMUD and Calpine are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

A. SMUD and Calpine Energy Services, L.P., a Delaware limited partnership and an affiliate of Calpine (“**CES**”) are parties to that certain Transaction Confirmation dated February 19, 2020 and that certain Transaction Confirmation dated December 21, 2021 (collectively, the “**Existing Transactions**”), pursuant to which Calpine makes available to SMUD and SMUD has the right to dispatch, up to 258 MW of energy and capacity from the Sutter Energy Center (the “**Facility**”), that is owned by Sutter Energy Center, LLC, a Delaware limited liability company and also an affiliate of Calpine (“**SEC**”), through December 31, 2026.

B. SMUD has adopted its 2030 Zero Carbon Plan which sets forth a number of procurement and resource-related goals with the objective of eliminating carbon emissions from its power supply by 2030. In connection with its execution of the objectives set forth in the 2030 Zero Carbon Plan, SMUD believes that retrofitting existing natural gas generation facilities with carbon capture and sequestration (“**CCS**”) technologies may be an expeditious and cost effective means of eliminating carbon emissions from its power supply, while also preserving a high level of reliability. The successful deployment of CCS technologies at the Facility might also facilitate an earlier closure of less efficient thermal resources located in or near disadvantaged communities.

C. Pursuant to AB 1279, the State of California has directed the implementation of a variety of policies and strategies that enable carbon dioxide removal solutions and CCS technologies in California to complement emissions reductions and achieve the State of California’s policy goals.

D. Calpine is actively pursuing the use and deployment of CCS technologies and is currently developing retrofits at a number of its natural gas-fired generation facilities throughout the country, including the Facility. The Facility is particularly well suited to the deployment of CCS technology, given its proximity to suitable geologic formations for effective sequestration, the availability of sufficient real property, and Calpine’s ownership of suitable pipeline rights of way.

E. The use and deployment of CCS at the Facility is critical for meeting California’s ambitious climate goals while ensuring the availability of reliable natural gas-fired electricity. CCUS is one of the only technologies that can enable firm, dispatchable, non-duration-limited low-carbon generation to backstop the reliability of the grid. The California Air Resources Board’s (“**CARB**”) Scoping Plan projects a need to retain all existing gas-fired generation to meet demand through 2045 and includes 16.7 million tons per year of existing fossil generation utilizing CCUS by 2045 to achieve AB 1279’s 85% reduction target.

F. Calpine has applied to the California Energy Commission (“CEC”) to modify the CEC permit for the Facility to enable the use of CCS technology. Calpine has also engaged an engineering, procurement and construction (EPC) contractor to perform the front end engineering design (“FEED”) study for the addition of a carbon capture facility to the Facility, has procured substantially all of the real estate rights necessary to transport the captured carbon dioxide to a carbon sequestration facility being developed by a third party, and [has entered into a memorandum of understanding with such third party] for the sequestration of all carbon dioxide captured from the Facility in compliance with all federal and state requirements.

G. There is substantial federal support for the deployment of CCS technologies, including retrofitting of existing natural gas-fired generation facilities, such as the Facility, with CCS technology. Section 45Q of the Internal Revenue Code provides for a tax credit of up to \$85 per ton of sequestered carbon dioxide for qualified projects that begin construction before January 1, 2033. The party that is developing the carbon sequestration facility has received a grant from the Department of Energy (“DOE”) under the Infrastructure Investment and Jobs Act for CarbonSAFE Phase II funding which, together with other committed funds, will pay a substantial portion of the costs necessary to develop the carbon sequestration facility. Calpine is also applying to DOE for federal funding for the installation of CCS technology at the Facility and believes that the Facility is an excellent candidate for this funding because of, among other things, the proximity of the carbon sequestration facility.

H. Pursuant to a Memorandum of Understanding dated September 10, 2021 (the “MOU”) between the Parties, the Parties have been investigating the technical and economic feasibility of entering into a transaction pursuant to which Calpine (or its affiliates) would retrofit the Facility with CCS technology and arrange for the sequestration of the captured carbon dioxide, so that the Facility is capable of providing capacity and energy meeting the requirements of SMUD’s 2030 Zero Carbon Plan (“**Zero Carbon Capacity and Energy**”), and SMUD would purchase the Zero Carbon Capacity and Energy from the retrofitted Facility. The Parties have concluded that such an arrangement is technically and economically feasible and wish to proceed to the execution of definitive agreements, subject only to the satisfaction of certain conditions precedent set forth in this Memorandum.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the Parties agree as follows:

1. Intent to Enter into PPA. The Parties agree that it is their mutual intent, subject to satisfaction or waiver of the conditions set forth in Section 2 of this Memorandum, and subject to further clarification by the Parties around certain material commercial terms not currently available at the time of the execution of this Memorandum, to enter into a definitive transaction confirmation for the purchase and sale of Zero Carbon Capacity and Energy from the Facility for a minimum of 12 years (Transaction Confirmation). Each Party hereby authorizes its duly authorized representatives to, upon satisfaction of the conditions set forth herein and in Section 2, to enter into negotiations for such Transaction Confirmation in accordance with Section 3 of this Memorandum.



2. Conditions to Entry into PPA. Each Party's obligation to enter into the Transaction Confirmation is subject to the satisfaction or waiver by the Party benefited, in such Party's reasonable discretion, of the following conditions. The Parties will cooperate and work together in good faith to satisfy these conditions as soon as reasonably practical. All conditions shall be deemed to benefit both Parties unless otherwise stated.

a. Calpine or its affiliates have received all federal, state and local governmental authorizations and permits necessary to retrofit the Facility and operate it to produce Zero Carbon Capacity and Energy, including modifications of the CEC permit and air permit for the Facility and compliance with the National Environmental Policy Act ("NEPA") and the California Environmental Quality Action ("CEQA").

b. All federal, state and local governmental authorizations and permits necessary for the construction and operation of a carbon sequestration facility capable of sequestering the carbon dioxide emitted by the Facility have been issued, and Calpine or its affiliates have entered into an agreement with the owner of such facility to accept the carbon dioxide expected to be produced by the Facility under the Transaction Confirmation for at least the full term of the Transaction Confirmation and to sequester such carbon dioxide in accordance with applicable federal and state requirements.

c. The Parties are satisfied that Calpine or an affiliate has entered into or will be able to enter into an EPC contract to modify the Facility by the addition of a carbon capture facility that, when operated in conjunction with the carbon sequestration facility described above, can reasonably be expected to produce Zero Carbon Capacity and Energy as provided in the Transaction Confirmation.

d. SMUD is satisfied that the Transaction Confirmation, as completed and/or modified by the Parties, is consistent with its Integrated Resources Plan and its 2030 Zero Carbon Plan, satisfies SMUD's reliability needs, and the pricing and other terms are competitive with other base-load resources available to SMUD to provide Zero Carbon Capacity and Energy.

3. Definitive Agreement. The Parties will use all commercially reasonable efforts to enter into the definitive Transaction Confirmation within [thirty (30)] days after the conditions set forth in Sections 2(a) through 2(d) have been satisfied or waived. This Memorandum only constitutes a statement of the current mutual intentions of the Parties and does not create any binding legal obligations on the part of either Party, and may not be relied upon by either Party as the basis for any claim, estoppel or purported agreement. No Party shall be obligated to proceed with the transactions contemplated by the Memorandum unless and until a definitive Transaction Confirmation has been (i) approved by the SMUD Board of Directors, and (ii) executed and delivered by the Parties, and then only to the extent provided in such Transaction Confirmation.

4. Term. This Memorandum will terminate on the earliest of: (i) the execution of a definitive Transaction Confirmation by the Parties, or (ii) the agreement of the Parties to terminate this Memorandum.

5. Confidentiality. This Memorandum and all information delivered or disclosed pursuant to this Memorandum or in connection with the activities described herein are subject to

the terms and conditions of that certain Confidentiality and Non-Disclosure Agreement dated August 5, 2021 between the Parties.

6. Public Statements. No Party shall issue any announcements, press releases or public statements regarding the existence of this Memorandum or the shared purpose or activities herein without the approval of the other Party; provided that a Party may make such public disclosures or filings as required by law.

7. Assignment. Neither Party may assign this Memorandum or its rights and obligations hereunder without the prior written consent of the other Party in its sole discretion, provided, however, that Calpine may assign or delegate this Memorandum and/or its rights and obligations hereunder, in whole or in part, to one or more wholly-owned affiliates and SMUD may assign or delegate this Memorandum and/or its rights and obligations hereunder, in whole or in part, to the Balancing Authority of Northern California. Any purported assignment not in accordance with this Section 7 shall be null and void and of no force or effect. Subject to the foregoing, the binding provisions of this MOU shall bind and benefit the Parties and their successors and assigns.

8. Relationship of the Parties. This Memorandum is not intended to create, nor shall it be construed to create, any partnership, agency or joint venture between the Parties or to render either Party liable for any debts or obligations of the other Party, and the Parties represent and warrant to each other that no fact or relationship exists that would expressly or impliedly create any such partnership, agency or joint venture.

9. Fees and Expenses. Each Party will be solely responsible for its own legal and professional fees and expenses costs (including without limitation legal, engineering, accounting and other professional fees) incurred in connection with the negotiation and preparation of the Memorandum and the Transaction Confirmation and the performance of its obligations hereunder.

10. Governing Law. This Memorandum shall be governed by and interpreted in accordance with the laws of the State of California without reference to principles of conflict of laws.

11. Counterparts. This Memorandum may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same document, and will be effective when counterparts have been executed by each of the Parties and delivered. A manual or electronic signature been transmitted electronically will constitute an original for all purposes. The delivery of copies of this Memorandum, including executed signature pages, by electronic transmission will constitute effective delivery of this Memorandum for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the day and year first above written.

SACRAMENTO MUNICIPAL UTILITY DISTRICT    CALPINE CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Draft

**RESOLUTION NO. \_\_\_\_\_**

**WHEREAS**, by Resolution No. 20-07-05, adopted on July 16, 2020, this Board declared a Climate Emergency, which, among other things, directed the Chief Executive Officer and General Manager to report on clear, actionable and measurable strategies and plans to reach SMUD’s climate emergency goals of carbon neutrality by 2030 no later than March 31, 2021; and

**WHEREAS**, by Resolution No. 21-04-05, adopted on April 28, 2021, this Board accepted the SMUD **2030 Zero Carbon Plan** with clarifications, which created a flexible roadmap for SMUD to eliminate all its power supply carbon emissions by 2030; and

**WHEREAS**, SMUD and **Calpine Energy Services, L.P. (CES)**, a Delaware limited partnership and an affiliate of **Calpine Corporation (Calpine)** are parties to a Transaction Confirmation dated February 19, 2020, and a Transaction Confirmation dated December 21, 2021, pursuant to which **Calpine** makes available to SMUD and SMUD has the right to dispatch, up to 258 MW of energy and capacity from the **Sutter Energy Center (Facility)**, that is owned by **Sutter Energy Center, LLC (SEC)**, a Delaware limited liability company and also an affiliate of **Calpine**, through December 31, 2026; and

**WHEREAS**, pursuant to AB 1279, the State of California has directed the implementation of a variety of policies and strategies that enable carbon dioxide removal solutions and carbon capture and storage (CCS) technologies in California to complement emissions reductions and achieve the State of California’s policy goals; and

**WHEREAS**, the **California Air Resources Board's (CARB)** Scoping Plan projects a need to retain all existing gas-fired generation to meet demand through 2045 and includes 16.7 million tons per year of existing fossil generation utilizing CCS by 2045 to achieve AB 1279's 85% reduction target; and

**WHEREAS**, there is substantial federal and state support for the deployment of CCS technologies, including retrofitting of existing natural gas-fired generation facilities with CCS technology; and

**WHEREAS**, on February 23, 2023, the **U.S. Department of Energy (DOE)** issued a **Funding Opportunity Announcement (FOA)** for up to \$1.7 billion for integrated CCS projects and additional federal and state grant opportunities will be made available to support CCS projects in the future; and

**WHEREAS**, under the **FOA**, the **DOE** will provide financial assistance through cooperative agreements at up to 50% federal cost share for up to six transformational commercial-scale, integrated CCS demonstration projects designed to further advance the deployment of technologies to capture, transport, and store CO<sub>2</sub> emissions, including up to two new or existing natural gas electric generation facilities; and

**WHEREAS**, **Calpine** plans to develop the **Sutter Decarbonization Project at SEC (CCS Project)**, which would include conversion of the existing natural gas plant to include CCS to be online on January 1, 2027, providing up to 400 MW and sequestering up to 1.5 million metric tons of greenhouse gas (GHG) per year, with expected capture at 95-98%; and

**WHEREAS**, a study conducted by the **Lawrence Livermore National Laboratory (LLNL)** concluded that the geology of the **SEC** site is excellent with the potential to store approximately 1,655 million tons of CO<sub>2</sub>; and

**WHEREAS**, the **CCS Project** is particularly well-suited to the deployment of CCS technology, given its proximity to suitable geologic formations for effective sequestration, the availability of sufficient real property, and **Calpine's** ownership of suitable pipeline rights of way; and

**WHEREAS**, **Calpine** approached SMUD with an opportunity to partner with them on a grant application under which SMUD would be listed as the off-taker of energy from the **CCS Project**; and

**WHEREAS**, **Calpine** is seeking to work with SMUD on the development of the **CCS Project** and to negotiate commercial terms of a 12-year **Power Purchase Agreement** for the output of the **CCS Project** in furtherance of the **2030 Zero Carbon Plan** and on terms favorable to SMUD; and

**WHEREAS**, at the SMUD Board of Directors meeting on March 15, 2023, SMUD staff provided an overview of the opportunity to partner with **Calpine** on the **CCS Project** including an overview of SMUD's **2030 Zero Carbon Plan**, the **CCS Project**, project fit and benefits towards achieving SMUD's plan including community benefits, and the public outreach process and schedule; and

**WHEREAS**, on May 2, 2023, SMUD held a public workshop on the proposed **CCS Project**, whereby, SMUD sent invitations to environmental, environmental justice groups, and individuals from SMUD's listservs, and posted on

SMUD's social media channels and its dedicated web page; nineteen (19) members from the public attended the workshop; and

**WHEREAS**, the public workshop had presentations from **LLNL**, **Calpine**, technology experts (**ION** and **1PointFive**) and SMUD with a facilitated question-and-answer (Q&A) with more than a dozen questions submitted in advance, and there were five informational stations that fielded over 60 questions; and

**WHEREAS**, SMUD believes that partnering with **Calpine** as the off-taker of energy from the **CCS Project** may be an expeditious and cost-effective means of eliminating carbon emissions from its power supply, while also preserving a high level of reliability and the successful deployment of CCS technologies might also facilitate an earlier closure of less efficient thermal resources located in or near disadvantaged communities; **NOW, THEREFORE**,

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

**Section 1.** This Board approves SMUD's participation in the submittal of a grant application or applications by **Calpine Corporation (Calpine)** to the **U.S. Department of Energy** or other federal and state agencies for the **Sutter Decarbonization Project (CCS Project)** and authorizes the Chief Executive Officer and General Manager, or his designee, in the name of Sacramento Municipal Utility District, to execute all grant documents in support of securing grant funds.

**Section 2.** The Chief Executive Officer and General Manager, or his designee, is further authorized, on behalf of SMUD, to sign a **Memorandum of Agreement**, substantially in the form attached, with **Calpine** to negotiate commercial terms of a **Power Purchase Agreement** for the proposed **CCS Project**.





SSS No.  TR23-002	<h2 style="margin: 0;">BOARD AGENDA ITEM</h2> <h3 style="margin: 0;">STAFFING SUMMARY SHEET</h3>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Committee Meeting &amp; Date</td> </tr> <tr> <td style="padding: 2px;">Finance &amp; Audit Committee</td> </tr> <tr> <td style="padding: 2px;">May 16, 2023</td> </tr> <tr> <td style="padding: 2px;">Board Meeting Date</td> </tr> <tr> <td style="padding: 2px;">May 18, 2023</td> </tr> <tr> <td style="height: 30px; background-color: #cccccc;"></td> </tr> </table>	Committee Meeting & Date	Finance & Audit Committee	May 16, 2023	Board Meeting Date	May 18, 2023	
Committee Meeting & Date								
Finance & Audit Committee								
May 16, 2023								
Board Meeting Date								
May 18, 2023								

TO				TO			
1.	Jennifer Davidson	6.					
2.	Lora Anguay	7.					
3.	Scott Martin	8.					
4.	Jose Bodipo-Memba	9.	<b>Legal</b>				
5.		10.	<b>CEO &amp; General Manager</b>				
<b>Consent Calendar</b>	<input type="checkbox"/> <b>Yes</b>	<input checked="" type="checkbox"/> <b>No</b>	<i>If no, schedule a dry run presentation.</i>				
<b>Budgeted</b>	<input type="checkbox"/> <b>Yes</b>	<b>No</b> <i>(If no, explain in Cost/Budgeted section.)</i>					
FROM (IPR)	DEPARTMENT	MAIL STOP	EXT.	DATE SENT			
Russell Mills	Treasury	B355	6509	4/24/2023			

**NARRATIVE:**

**Requested Action:** Approve the issuance of SMUD 2023 Revenue and/or Revenue Refunding Bonds, the issuance of SMUD 2023 Subordinated Electric Revenue and/or Subordinated Revenue Refunding Bonds, authorize the distribution of the Preliminary Official Statement, and authorize the Chief Executive Officer and General Manager, or his designee, to execute documents necessary to complete the refunding transaction or transactions, including the Bond Purchase Agreement or Agreements and Credit Support Agreements.

**Summary:** SMUD has some financing opportunities for the board to approve. We have the opportunity to refund approximately \$208 million of the 2013 Series A and 2013 Series B bonds and capture net present value savings of approximately \$69.4 million. Previously, in 2020, SMUD entered two forward starting interest rate swaps to lock in the net present value savings in anticipation of this transaction, since the 2013 Series A and 2013 Series B bonds were not eligible to be refunded until the bond's call date of 8/15/2023. Staff anticipates either issuing variable rate debt to coincide with the start date of the swap and/or terminating the swap and issuing fixed rate debt. Either or both options will result in realizing the projected savings through final bond maturity in 2041 and provide headroom for spending on other programs. If the swap is terminated, the proceeds SMUD receives will reduce the amount of debt needed to be issued, thereby reducing the interest expense for the bonds going forward.

SMUD will remarket \$100 million of 2019 Series A Subordinate "put" bonds which were used to refinance a portion of SMUD's prior capital spending. These were originally issued as 4-year fixed rate "put" bonds and current rates have us proposing to reissue as a 5–7-year fixed rate "put" bond again which will require us remarketing them in the future on the mandatory "put" date. The advantage to these bonds is having the costs fixed and utilizing the lower rates that the 5–7-year timeframe currently is offering compared to longer term bonds and diversifies the investor base we are selling our bonds to.

SMUD will also refund approximately \$200 million of outstanding commercial paper notes. This transaction will refund variable rate debt with fixed rate debt, locking in debt service at current rates to reduce interest rate risk, and make the commercial paper capacity available for future capital spending and liquidity purposes.

**Board Policy:** SD-2 Competitive Rates; SD-3 Access to Credit Markets  
*(Number & Title)*

**Benefits:** Locks in low interest rates, reduces interest rate risk, and preserves borrowing capacity for future capital spending and liquidity needs. Provides an estimated average of \$6.19 million per year in potential debt service savings for the first 10 years and \$4.4 million for the subsequent 8 years, for a net present value savings of \$69.4 million.

**Cost/Budgeted:** Transaction expenses are expected to be approximately \$1.5 million, which were included in the 2023 Budget. Debt service on the refunded bonds was included in the 2023 budget, and savings going forward will be included in any future budgets and provide headroom for other spending.

**Alternatives:** Forgo the opportunity to capture savings and, have the issued commercial paper remain outstanding and not have that capacity available for future needs.

**Affected Parties:** Treasury, Accounting, Budgets

**Coordination:** Treasury

**Presenter:** Russell Mills, Director of Risk Management & Treasurer

**Additional Links:**

SUBJECT

**Approve the issuance of SMUD 2023 Revenue and/or Revenue Refunding Bonds,  
the issuance of SMUD 2023 Subordinated Electric Revenue and/or  
Subordinated Revenue Refunding Bonds**

ITEM NO. (FOR LEGAL USE ONLY)

**10**

ITEMS SUBMITTED AFTER DEADLINE WILL BE POSTPONED UNTIL NEXT MEETING.

**SIXTY-SIXTH SUPPLEMENTAL RESOLUTION  
AUTHORIZING THE ISSUANCE OF ONE OR MORE  
SERIES OR SUBSERIES OF  
ELECTRIC REVENUE BONDS**

SACRAMENTO MUNICIPAL UTILITY DISTRICT

RESOLUTION NO. \_\_\_\_\_

SIXTY-SIXTH SUPPLEMENTAL RESOLUTION  
AUTHORIZING THE ISSUANCE OF ONE OR MORE SERIES OR SUBSERIES OF  
ELECTRIC REVENUE BONDS

(Supplemental To Resolution No. 6649  
Adopted January 7, 1971)

Adopted: \_\_\_\_\_

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**RESOLUTION NO. \_\_\_\_\_**

**Sixty-Sixth Supplemental Resolution  
(Supplemental To Resolution No. 6649,  
Adopted January 7, 1971)**

**Authorizing the Issuance of One or More Series or Subseries of  
Electric Revenue Bonds**

WHEREAS, on January 7, 1971, the Board of Directors of the Sacramento Municipal Utility District (the "Board") adopted its Resolution No. 6649 providing for the issuance of the Sacramento Municipal Utility District's Electric Revenue Bonds (as supplemented and amended, herein called the "Master Resolution");

WHEREAS, the Master Resolution provides that the Sacramento Municipal Utility District (the "District") may issue bonds from time to time as the issuance thereof is authorized by the Board by a supplemental resolution;

WHEREAS, revenue bonds may be issued pursuant to the provisions of the Master Resolution and Article 6a of Chapter 6 of the Municipal Utility District Act (California Public Utilities Code Sections 12850 et seq.) and the Revenue Bond Law of 1941 (California Government Code Section 54300 et seq.) for the purpose of financing improvements and additions to the District's Electric System;

WHEREAS, revenue bonds may be issued pursuant to the provisions of the Master Resolution and California Government Code Section 53580 et seq. for the purpose of refunding revenue bonds, including the District's commercial paper notes (the "Notes");

WHEREAS, the District has determined to issue its 2023 Bonds (as defined herein), at one or more times and in one or more series or subseries (as specified in the hereinafter defined Sales Certificates) and in an aggregate principal amount not to exceed the principal amount described herein, to (i) refund certain series and maturities of the District's Electric Revenue Bonds and/or Subordinated Electric Revenue Bonds (to be identified in one or more of the Sales Certificates) (the "Refunded Bonds"), (ii) to the extent specified in one or more of the Sales Certificates, finance and refinance improvements and additions to the District's Electric System, including through the payment of all or a portion of the District's outstanding Notes, (iii) pay costs of issuance (to the extent specified in the Sales Certificates), (iv) fund one or more termination payments for the termination of one or more interest rate swap agreements relating to the issuance of the 2023 Bonds or any portion thereof (to the extent specified in the Sales Certificates), and (v) make deposits to the Reserve Fund or a separate debt service reserve fund (as and if specified in one or more of the Sales Certificates);

WHEREAS, the District anticipates that, if necessary or desirable in the judgment of the Treasurer, it may seek commitments from one or more bond insurers (each, a "Bond Insurer") to issue one or more financial guaranty policies with respect to all or part of the 2023 Bonds, each of which commitments is expected to be conditioned on certain terms and

conditions to be set forth in one or more insurance agreements among the applicable Bond Insurer, the Trustee and the District (each, an “Insurance Agreement”);

WHEREAS, Section 8.03 of the Master Resolution provides that the District may amend the Master Resolution by a supplemental resolution to be effective when there shall have been filed with the District or the Trustee the written consents of the holders and registered owners of 60% of the District’s Electric Revenue Bonds then outstanding; and

WHEREAS, the District has drafted proposed amendments to the Master Resolution which are described in Section 145.01 of this Sixty-Sixth Supplemental Resolution, and the District intends to issue the 2023 Bonds with the provision that each holder of the 2023 Bonds by purchasing the 2023 Bonds is deemed to have consented to the proposed amendments, all as more fully described herein;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Sacramento Municipal Utility District, as follows:

## ARTICLE CXLIII

### 2023 BONDS

#### Section 143.01 Authorization and Terms of 2023 Bonds.

(a) The Board hereby authorizes the issuance of revenue bonds of the District for the purpose of (i) refunding outstanding revenue bonds of the District, and/or (ii) financing and refinancing improvements and additions to the District’s Electric System, including through the payment of all or a portion of the District’s outstanding Notes, in each case in accordance with the Master Resolution and the Sales Certificates. The authorization provided in this paragraph to issue revenue bonds shall include, in addition to the purposes mentioned above, the authorization to issue such bonds for the allocable portion of any original issue discount, underwriting discount, bond insurance premiums, costs of issuance, interest rate swap termination payments, deposits to the Reserve Fund or a separate debt service reserve fund, and other miscellaneous costs necessary or desirable, in the judgment of the Treasurer, to be financed by such bonds.

(b) One or more series of bonds to be issued under the Master Resolution are hereby created. Said bonds shall be known as the “Sacramento Municipal Utility District Electric Revenue Bonds, 2023 Series [ ]”, with such letter or other identifying series or subseries designations as are specified in the Sales Certificates (herein collectively called the “2023 Bonds”). The 2023 Bonds may be sold and issued at one or more times and in one or more series or subseries (as specified in the hereinafter defined Sales Certificates) only in fully registered form. The 2023 Bonds shall be initially registered in the name of “Cede & Co.,” as nominee of The Depository Trust Company (“DTC”) and shall be numbered in consecutive order in such manner as is determined by the Trustee. Registered ownership of the 2023 Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section 143.08.

(c) The 2023 Bonds shall be issued in such aggregate principal amount which, together with the aggregate principal amount, if any, of the District’s Subordinated Electric

Revenue Refunding Bonds, 2023 Series C, Subordinated Electric Revenue Bonds, 2023 Series D, Subordinated Electric Revenue Bonds, 2023 Series E, and Subordinated Electric Revenue Refunding Bonds, 2023 Series F, shall not exceed \$630,000,000, shall be dated, shall bear interest at such rate or rates (payable on such dates), not exceeding the maximum rate permitted by law, shall mature and become payable as to principal on such maturity dates in the amounts and subject to such mandatory sinking fund payments on such mandatory sinking fund payment dates, if any, all as set forth in one or more Sales Certificates to be executed and delivered concurrently with the sale of the applicable series or subseries of 2023 Bonds (collectively, the "Sales Certificates"). If all or any portion of the 2023 Bonds are to bear interest at variable rates of interest, not exceeding the maximum rate permitted by law, the manner of determining such variable rates of interest shall be as set forth in the applicable Sales Certificate. In addition to the provisions required pursuant to the terms of this Resolution to be specified in the Sales Certificates, the Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District, or the Chief Financial Officer of the District or the designee of any of them (each an "Authorized Officer"), on behalf of the District, may set forth in the Sales Certificates such provisions, in a form approved by its bond counsel and the District's counsel, as such Authorized Officer may deem necessary or desirable and consistent with the purpose of this Resolution, including provisions (i) adding additional covenants and agreements to be observed by the District, (ii) curing, correcting, amending or supplementing any ambiguous, defective or ineffective provision contained in the Resolution, or (iii) amending or supplementing any provision contained herein to the extent necessary to obtain one or more bond insurance policies, to obtain a rating on any of the 2023 Bonds, or to provide for the issuance of any of the 2023 Bonds if, in the judgment of any Authorized Officer, after consulting with its municipal advisor, bond counsel and District counsel, such insurance, rating or provision is reasonable. Any Authorized Officer, acting alone, is hereby authorized and instructed to execute and deliver the Sales Certificates and, upon execution and delivery thereof, the Sales Certificates shall be incorporated herein and in the Master Resolution by reference. The execution and delivery of the Sales Certificates shall be conclusive evidence that, where any judgment or determination of reasonableness is required to be made by the person signing said Sales Certificates, such judgment or determination has been made.

(d) Notwithstanding the foregoing, no Sales Certificate shall specify (i) a true interest cost on the applicable 2023 Bonds bearing interest at fixed rates of interest in excess of 4.00%; or (ii) a maturity date for any 2023 Bond later than forty (40) years after the dated date of such 2023 Bond.

(e) Interest on the 2023 Bonds shall be calculated on the basis and be payable on the dates set forth in the Sales Certificates, to the registered owners thereof as of the record dates specified in the Sales Certificates.

(f) Pursuant to Section 5.04 of the Master Resolution, the Sales Certificates shall specify whether the 2023 Bonds or any series or subseries thereof are to be secured by (A) the Reserve Fund, (B) a separate debt service reserve fund, or (C) neither (A) nor (B). If the Sales Certificates provide that the 2023 Bonds or any series or subseries thereof are to be secured by a separate debt service reserve fund, such Sales Certificates may provide for the creation of such funds or accounts in furtherance thereof as may be deemed appropriate in the Treasurer's



discretion, and such funds or accounts shall be held in trust by the District or the Trustee, as specified in the Sales Certificates, solely for the benefit of the Holders of the 2023 Bonds or applicable series or subseries thereof, and is hereby pledged solely to the payment of the 2023 Bonds or applicable series or subseries thereof, subject to the application thereof for the purposes set forth in the Sales Certificates. If a separate debt service reserve fund is so created, the Sales Certificates may further specify such other terms and provision relating thereto, as in the Treasurer's discretion are appropriate, including, without implied limitation, the minimum balance required to be maintained on deposit therein, the purposes for which moneys on deposit therein may or shall be applied, the terms on which any deficiencies therein are to be replenished, additional limitations concerning investment of moneys therein and the valuation thereof, and provisions concerning the deposit of credit instruments in lieu of cash therein.

(g) The Sales Certificates shall designate the series, amounts and maturity or sinking fund payment dates of the Refunded Bonds.

Section 143.02 Redemption of 2023 Bonds. The 2023 Bonds or any series or subseries thereof shall be subject to redemption on the terms set forth below and in the Sales Certificates (which may specify that some or all of the 2023 Bonds will not be subject to redemption).

(a) Notice of Redemption. If any of the 2023 Bonds are subject to redemption, then in addition to the notice of redemption required to be given pursuant to Article IV of the Master Resolution, the Trustee shall mail, by first class mail, postage prepaid, notice of redemption of any 2023 Bond to the Securities Depositories. Failure of the Trustee to give notice of redemption to any Securities Depository, or any defect therein, however, shall not affect the sufficiency of the proceedings of redemption with respect to any 2023 Bond. For purposes of this paragraph, the following term shall have the following meaning:

“Securities Depositories” means DTC, 55 Water Street, 50th Floor, New York, N.Y. 10041-0099 Attn. Call Notification Department, Fax (212) 855-7232; or, in accordance with the current guidelines of the Securities and Exchange Commission, to such other address and/or such other securities depositories as the District may designate to the Trustee in writing.

Notwithstanding any contrary provision of Article IV of the Master Resolution or this Sixty-Sixth Supplemental Resolution, (1) publication of any notice of redemption shall not be required with respect to the 2023 Bonds, so long as such 2023 Bonds are in full book-entry form, (2) any notice of redemption of the 2023 Bonds shall be mailed not less than twenty (20) nor more than sixty (60) days prior to the redemption date, and (3) any notice of optional redemption of 2023 Bonds may be made conditional on the receipt of money or any other condition.

(b) Redemption Otherwise Subject to Article IV. Except as in this Section and in the Sales Certificates otherwise provided, the redemption of 2023 Bonds shall be subject to the provisions of Article IV of the Master Resolution.

Section 143.03     Deposits to Interest Fund and Principal Account.  
Notwithstanding any contrary provision of the Resolution, the Treasurer, out of Net Revenues received by the District, shall set aside in the Interest Fund and the Principal Account, respectively, such amounts as may be required so that an amount equal to the amount of principal and/or interest becoming due and payable on the 2023 Bonds on each interest payment date and principal payment date is on deposit in the Interest Fund and the Principal Account, respectively, at such time on or prior to such interest payment date or principal payment date as shall be specified in the Sales Certificates.

Section 143.04     2023 Sinking Fund.

(a)     An account is hereby established within the Sinking Fund created by Section 5.02 of the Master Resolution to be designated the “2023 Sinking Fund.” On or before each minimum sinking fund payment date for any 2023 Bonds set forth in the Sales Certificates, the Treasurer shall deposit in the 2023 Sinking Fund, out of Net Revenues received by the District, such amounts as may be required to cause the balance therein to be equal to the amount of the minimum sinking fund payment due and payable on the 2023 Bonds on such minimum sinking fund payment date as set forth in the Sales Certificates.

(b)     The District shall apply all such minimum sinking fund payments, as rapidly as practicable, to the purchase of 2023 Bonds at public or private sale, as and when and at such prices (including brokerage and other expenses, but excluding accrued interest, which is payable from the Interest Fund) as the District may in its discretion determine.

(c)     If on the first day of the month preceding the month in which a minimum sinking fund payment date occurs, as set forth in the Sales Certificates, the moneys in the 2023 Sinking Fund equal or exceed \$25,000, such moneys shall be applied by the District to the redemption on such minimum sinking fund payment date of as many 2023 Bonds as such moneys in the 2023 Sinking Fund shall suffice to redeem at a redemption price equal to the principal amount thereof (except that accrued interest on such 2023 Bonds so called for redemption shall be paid from the Interest Fund). All 2023 Bonds purchased or redeemed under the provisions of this Section shall be delivered to, and canceled by, the Trustee and shall not be reissued.

(d)     No application of any moneys to the retirement of 2023 Bonds shall operate to impair or affect the obligation of the District to make minimum sinking fund payments for 2023 Bonds in the amounts and at the times provided in this Section; however, the District shall not be deemed to be in default with respect to any 2023 Bonds minimum sinking fund payment for any minimum sinking fund payment date if at all times prior to such minimum sinking fund payment date the District shall have fixed rates and charges as required by Section 6.08 of the Master Resolution, and if at such minimum sinking fund payment date the aggregate principal amount of all 2023 Bonds theretofore purchased or redeemed through the operation of the 2023 Sinking Fund or otherwise (together with any moneys then in the 2023 Sinking Fund) equals or exceeds the aggregate amount of minimum sinking fund payments for 2023 Bonds then and theretofore required to be made pursuant to this Section.

(e) Any moneys remaining in the 2023 Sinking Fund after all 2023 Bonds have been retired shall be returned to the District for any lawful District use.

Section 143.05 Form of 2023 Bonds. The 2023 Bonds, and the certificate of authentication and registration to be executed thereon, shall be in substantially the form set forth as Appendix A to this Sixty-Sixth Supplemental Resolution. The series or subseries designations, numbers, maturity dates, interest rates, method or methods of determining interest rates, redemption provisions and other terms of the 2023 Bonds shall be inserted therein in conformity with the Sales Certificates.

Section 143.06 Issuance of 2023 Bonds.

(a) At any time after the adoption of this Sixty-Sixth Supplemental Resolution and the execution and delivery of the applicable Sales Certificate, the District may execute and deliver 2023 Bonds in the aggregate principal amount set forth in the applicable Sales Certificate, but not to exceed the aggregate principal amount described in Section 143.01(c).

(b) The Trustee shall authenticate and deliver the 2023 Bonds upon written order of the District.

(c) The proceeds of the sale of the 2023 Bonds shall be set aside and applied by the Treasurer as set forth in the Sales Certificates.

Section 143.07 Refunding of 2023 Bonds. If Refunding Bonds are issued for the purpose of refunding 2023 Bonds, then, in addition to any other provisions of Section 3.05 of the Master Resolution, the District is authorized to apply proceeds of the sale of such Refunding Bonds to the payment of the purchase price of direct non-callable obligations of the United States of America ("Treasury Obligations") to be held by the Trustee to insure the payment or retirement at or before maturity of all or a portion of the outstanding 2023 Bonds. Upon deposit with the Trustee, in trust, of money or Treasury Obligations (including, but not limited to, direct obligations of the United States of America issued in book-entry form on the books of the Department of the Treasury of the United States of America), or any combination thereof, sufficient, together with the interest to accrue on any such Treasury Obligations, to pay or redeem all or a portion of 2023 Bonds then outstanding at or before their maturity date, provided that, in the case of 2023 Bonds which are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV of the Master Resolution or provision satisfactory to the Trustee shall have been made for the giving of such notice, all liability of the District in respect of such 2023 Bonds shall cease, determine and be completely discharged, and the holders thereof shall thereafter be entitled only to payment by the District out of the money and Treasury Obligations deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.03 of the Master Resolution. If the liability of the District shall cease and determine with respect to all or a portion of the 2023 Bonds as above provided, then said 2023 Bonds shall not be considered to be outstanding Bonds for any purpose of the Master Resolution or of this Sixty-Sixth Supplemental Resolution.

Section 143.08 Use of Depository. Notwithstanding any provision of the Master Resolution or this Sixty-Sixth Supplemental Resolution to the contrary:

(a) The 2023 Bonds shall be initially issued as provided in Section 143.01. Registered ownership of the 2023 Bonds, or any portion thereof, may not thereafter be transferred except:

(i) To any successor of DTC or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (a) (“substitute depository”); provided that any successor of DTC or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) To any substitute depository not objected to by the Trustee, upon (1) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or (2) a determination by the District that DTC or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of DTC or its successor (or substitute depository or its successor) from its functions as depository; provided that no substitute depository which is not objected to by the Trustee can be obtained or (2) a determination by the District that it is in the best interests of the District to remove DTC or its successor (or any substitute depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to clause (i) or clause (ii) of Section 140.08(a) hereof, upon receipt of all outstanding 2023 Bonds by the Trustee, together with a Certificate of the District to the Trustee, a single new 2023 Bond shall be executed and delivered for each maturity of each series of 2023 Bonds then outstanding registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Certificate of the District. In the case of any transfer pursuant to clause (iii) of Section 143.08(a) hereof, upon receipt of all outstanding 2023 Bonds by the Trustee together with a Certificate of the District to the Trustee, new 2023 Bonds shall be executed, authenticated and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the District, subject to the limitations of Section 143.08(a) hereof, provided the Trustee shall not be required to deliver such new 2023 Bonds within a period less than 60 days from the date of receipt of such a Certificate of the District. Subsequent to any transfer pursuant to clause (iii) of Section 143.08(a) hereof, the 2023 Bonds shall be transferred as provided in Article II of the Master Resolution.

(c) In the case of partial redemption or refunding of the 2023 Bonds of a series evidencing all or a portion of the principal maturing in a particular year, DTC shall make an appropriate notation on such 2023 Bonds indicating the date and amounts of such reduction in principal. The Trustee shall incur no liability for the failure or any error by DTC in making such notation and the records of the Trustee shall be determinative of the outstanding principal amount of 2023 Bonds.

(d) The District and the Trustee shall be entitled to treat the person in whose name any 2023 Bond is registered as the Bondholder thereof for all purposes of the Master

Resolution and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the District; and the District and the Trustee shall have no responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with, any beneficial owners of the 2023 Bonds. Neither the District nor the Trustee will have any responsibility or obligations, legal or otherwise, to the beneficial owners or to any other party including DTC or its successor (or substitute depository or its successor), except for the holder of any 2023 Bond.

(e) So long as the outstanding 2023 Bonds are registered in the name of Cede & Co. or its registered assigns, the District and the Trustee (to the extent funds are provided to it by the District) shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns, in effecting payment of the principal of and redemption premium, if any, and interest on the 2023 Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

#### Section 143.09 Tax Covenants.

(a) The District shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that interest paid on the 2023 Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the District agrees to comply with the provisions of each Tax Certificate of the District, dated the date of issuance of the applicable 2023 Bonds, as amended from time to time in accordance with its terms (collectively, the “Tax Certificate”). This covenant shall survive payment in full or defeasance of the 2023 Bonds.

(b) Without limiting the generality of the foregoing, the District agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Internal Revenue Code of 1986 (the “Code”) and any temporary, proposed or final United States Treasury Regulations as may be applicable to the 2023 Bonds from time to time (the “Rebate Requirement”). The District specifically covenants to pay or cause to be paid the Rebate Requirement as provided in the Tax Certificate to the United States of America from any Net Revenues lawfully available to the District. This covenant shall survive payment in full or defeasance of the 2023 Bonds. Capitalized terms in this Section not otherwise defined in the Master Resolution or this Sixty-Sixth Supplemental Resolution shall have the meanings ascribed to them in the Tax Certificate.

(c) Notwithstanding any provision of this Section, if the District shall obtain an opinion of counsel of recognized national standing in the field of obligations the interest on which is excluded from gross income for purposes of federal income taxation to the effect that any specified action required under this Section is no longer required, or to the effect that some different action is required, to maintain the exclusion from gross income of the interest on the 2023 Bonds under Section 103 of the Code, the District may rely conclusively on such opinion in complying with the provisions hereof, and the agreements and covenants hereunder shall be deemed to be modified to that extent without the necessity of an amendment of the Master

Resolution or this Sixty-Sixth Supplemental Resolution or the consent at any time of the Bondholders.

(d) This Section 143.09 shall be inapplicable to the 2023 Bonds, if any, issued bearing interest included in gross income for federal income tax purposes, as set forth in the applicable Sales Certificate.

Section 143.10 Terms of 2023 Bonds Subject to the Master Resolution.

(a) Except as in this Sixty-Sixth Supplemental Resolution expressly provided, every term and condition contained in the Master Resolution shall apply to this Sixty-Sixth Supplemental Resolution and to the 2023 Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Sixty-Sixth Supplemental Resolution.

(b) This Sixty-Sixth Supplemental Resolution and all the terms and provisions herein contained shall form part of the Master Resolution as fully and with the same effect as if all such terms and provisions had been set forth in the Master Resolution. The Master Resolution is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

Section 143.11 Continuing Disclosure. The District hereby covenants and agrees that it will comply with and carry out all of the provisions of each Continuing Disclosure Agreement dated the date of issuance of the applicable 2023 Bonds (collectively, the “Continuing Disclosure Agreement”). Notwithstanding any other provision of the Master Resolution or this Sixty-Sixth Supplemental Resolution, failure of the District or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee shall, at the written request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Holders of at least 25% aggregate principal amount of outstanding 2023 Bonds upon receipt of indemnity satisfactory to the Trustee or any Holder of 2023 Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Section. For purposes of this Section, “Beneficial Owner” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023 Bonds (including persons holding 2023 Bonds through nominees, depositories or other intermediaries).

## ARTICLE CXLIV

### INSURANCE PROVISIONS

Section 144.01 Insurance Agreements. Each Insurance Agreement, if any, is hereby incorporated in this Sixty-Sixth Supplemental Resolution by this reference, and the District covenants and agrees to comply with the terms and conditions thereof. The District further declares, covenants and agrees that the terms and conditions of each Insurance Agreement, if any, shall govern, with respect to the applicable 2023 Bonds, the rights and responsibilities of the District, the Trustee, the applicable Bond Insurer and the holders of the

applicable 2023 Bonds, to the extent such terms and conditions may be inconsistent with any other provision of the Master Resolution, as amended and supplemented, including as supplemented by this Sixty-Sixth Supplemental Resolution.

## ARTICLE CXLV

### AMENDMENT OF MASTER RESOLUTION

Section 145.01 Amendment of Master Resolution. The District intends to amend the Master Resolution substantially in the form of Appendix B to this Sixty-Sixth Supplemental Resolution (the “Proposed Amendments”). The purchasers of the 2023 Bonds, by virtue of their purchase of the 2023 Bonds, have consented to the Proposed Amendments. Pursuant to Section 8.03 of the Master Resolution, the Proposed Amendments shall become effective when the written consents of the holders and registered owners of 60% of the Bonds then outstanding have been filed with the District or the Trustee.

**APPENDIX A**  
**FORM OF BOND**

No. R-\_\_\_\_\_

\$\_\_\_\_\_

**SACRAMENTO MUNICIPAL UTILITY DISTRICT  
ELECTRIC REVENUE [REFUNDING] BOND  
2023 SERIES [ ]**

Maturity

Interest Per Annum

Date

CUSIP

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (hereinafter called the "District"), for value received, hereby promises to pay (but only out of the Net Revenues hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above, the principal sum specified above together with interest thereon from the date of initial delivery hereof, until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on February 15 and August 15 of each year, commencing [August] 15, 20[23]. Interest hereon is payable in lawful money of the United States of America by check or draft mailed on each interest payment date to the registered owner as of the first day of the month (whether or not a business day) in which an interest payment date occurs. Interest hereon shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. At the option of the owners of \$1,000,000 or more in aggregate principal amount of Bonds of this series, interest hereon is also payable in lawful money of the United States of America by wire transfer to such address as has been furnished to the Trustee in writing by the registered owner hereof at least 15 days prior to the interest payment date for which such payment by wire transfer is requested. The principal hereof is payable at the designated corporate trust office of U.S. Bank Trust Company, National Association, the Trustee, in lawful money of the United States of America.

This Bond is one of a duly authorized issue of Sacramento Municipal Utility District Electric Revenue Bonds (hereinafter called the "Bonds") of the series and designation indicated on the face hereof. Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in the Resolution hereinafter mentioned, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Resolution provided, all issued and to be issued pursuant to the provisions of the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the California Public Utilities Code and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (hereinafter called the "Act"). This



Bond is issued pursuant to a resolution of the Board of Directors of the District, adopted January 7, 1971, providing for the issuance of the Bonds, as amended and supplemented (the "Resolution"), including as amended and supplemented by a Sixty-Sixth Supplemental Resolution, adopted May 18, 2023, authorizing the issuance of the 2023 Series [ ] Bonds. Reference is hereby made to the Resolution and the Act for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Revenues, as that term is defined in the Resolution, and the rights of the registered owners of the Bonds; and all the terms of the Resolution and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional bonds may be issued on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Resolution.

The Bonds and the interest thereon (to the extent set forth in the Resolution), together with the Parity Bonds (as defined in the Resolution) heretofore or hereafter issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the Net Revenues derived by the District from the Electric System (as those terms are defined in the Resolution). The District hereby covenants and warrants that for the payment of the Bonds and interest thereon, there have been created and will be maintained by the District special funds into which there shall be deposited from Net Revenues available for that purpose sums sufficient to pay the principal of, and interest on, all of the Bonds, as such principal and interest become due, and as an irrevocable charge the District has allocated Net Revenues to such payment, all in accordance with the Resolution.

The Bonds are special obligations of the District, and are payable, both as to principal and interest, out of the Net Revenues pertaining to the Electric System, and not out of any other fund or moneys of the District. No holder of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

[The 2023 Series [ ] Bonds are not subject to redemption.][**Redemption Terms to be Determined at Time of Sale and Conformed to the applicable Official Statement and applicable Sales Certificate**]

This Bond is transferable by the registered owner hereof, in person or by the attorney of such owner duly authorized in writing, at the designated corporate trust office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Resolution, and upon surrender and cancellation of this Bond. Upon such transfer a new fully registered Bond or Bonds without coupons, of authorized denomination or denominations, for the same aggregate principal amount and maturity will be issued to the transferee in exchange herefor. No transfer of this Bond will be made during the 15 days next preceding each interest payment date.

The District, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the District and of the holders and registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Resolution, provided that no such modification or amendment shall (i) extend the fixed maturity of any Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of any premium payable upon the redemption hereof, without the consent of the holder of each Bond so affected, or (ii) reduce the percentage of Bonds required for the affirmative vote or written consent to an amendment or modification, without the consent of the holders of all the Bonds then outstanding, or (iii) without its written consent thereto, modify any of the rights or obligations of the Trustee.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the District pertaining to the Electric System, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Resolution.

This Bond shall not be entitled to any benefit under the Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee.

IN WITNESS WHEREOF, SACRAMENTO MUNICIPAL UTILITY DISTRICT has caused this Bond to be executed in its name and on its behalf by the facsimile signature of the President of its Board of Directors and by the facsimile signature of its Treasurer and countersigned by the facsimile signature of its Secretary, and the seal of the District to be reproduced hereon by facsimile, and this Bond to be dated as of the date first written above.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
President of the Board of Directors

By \_\_\_\_\_  
Treasurer of the District

(SEAL)

Countersigned:

\_\_\_\_\_  
Secretary of the District

#### **CERTIFICATE OF AUTHENTICATION AND REGISTRATION**

This is one of the Bonds described in the within-mentioned Resolution and registered on the date set forth below.

Dated: U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

By \_\_\_\_\_  
Authorized Officer

## ASSIGNMENT

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ whose taxpayer identification number is \_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

NOTE: The signature to this Assignment must correspond with the name on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

Dated: \_\_\_\_\_

Signature Guaranteed by:

NOTE: Signature must be guaranteed by an eligible guarantor institution

**APPENDIX B**

**FORM OF PROPOSED AMENDMENTS TO MASTER RESOLUTION**

SACRAMENTO MUNICIPAL UTILITY DISTRICT

RESOLUTION NO. \_\_-\_\_-\_\_

\_\_\_\_\_ SUPPLEMENTAL RESOLUTION

AMENDING RESOLUTION NO. 6649

(Supplemental to Resolution No. 6649  
Adopted January 7, 1971)

Adopted: \_\_\_\_\_, 20\_\_

**RESOLUTION NO. \_\_-\_\_-\_\_**

**\_\_\_\_\_  
Supplemental Resolution  
(Supplemental to Resolution No. 6649,  
Adopted January 7, 1971)  
Amending Resolution No. 6649**

WHEREAS, the Board of Directors (the “Board”) of the Sacramento Municipal Utility District (the “District”), on January 7, 1971, adopted its Resolution No. 6649 (as previously supplemented and amended, herein called the “Master Resolution”) providing for the issuance of the District’s Electric Revenue Bonds (the “Bonds”);

WHEREAS, Section 8.03 of the Master Resolution provides that the District may amend the Master Resolution by a supplemental resolution to be effective when there shall have been filed with the District or the Trustee the written consents of the holders and registered owners of 60% of the Bonds then outstanding;

WHEREAS, the Board has determined to amend Sections 1.03, 3.02, 3.06, 5.04 and 6.08 of the Master Resolution, which amendments the Board deems necessary and desirable and not inconsistent with the Master Resolution;

WHEREAS, the District has obtained the consents of the holders and registered owners of 60% of the Bonds outstanding;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of Sacramento Municipal Utility District, as follows:

**ARTICLE \_\_\_\_\_**

**AMENDMENT OF MASTER RESOLUTION**

SECTION \_\_\_\_\_. Amendment of Section 1.03 of Master Resolution. A new definition of “Subsidy” shall be added to Section 1.03 of the Master Resolution in correct alphabetical order to read as follows:

**‘Subsidy**

“Subsidy” means any subsidy, reimbursement or other payment from the federal government of the United States of America under the American Recovery and Reinvestment Act of 2009 (or any similar legislation or regulation of the federal government of the United States of America or any other governmental entity or any extension of any of such legislation or regulation).’

SECTION \_\_\_\_\_. Amendment of Section 3.02 of Master Resolution. A new paragraph shall be added to the end of Section 3.02 of the Master Resolution to read as follows:

“For purposes of the calculations specified in this Section 3.02: (1) any calculation of principal of and interest on Parity Bonds for any period of time shall be reduced by the amount of any Subsidy that the District receives or expects to receive during such period of time relating to or in connection with such Parity Bonds; and (2) to the extent the calculation of principal of and interest on Parity Bonds is reduced by the Subsidy as provided in clause (1) of this paragraph, any calculation of Net Revenues for any period of time shall be reduced by the amount of any Subsidy received or expected to be received by the District with respect to or in connection with such Parity Bonds during such period of time.”

SECTION \_\_\_\_\_. Amendment of Section 3.06 of Master Resolution. A new paragraph shall be added to the end of Section 3.06 of the Master Resolution to read as follows:

“For purposes of the calculations specified in this Section 3.06: (1) any calculation of principal of and interest on Parity Bonds for any period of time shall be reduced by the amount of any Subsidy that the District receives or expects to receive during such period of time relating to or in connection with such Parity Bonds; and (2) to the extent the calculation of principal of and interest on Parity Bonds is reduced by the Subsidy as provided in clause (1) of this paragraph, any calculation of Net Revenues for any period of time shall be reduced by the amount of any Subsidy received or expected to be received by the District with respect to or in connection with such Parity Bonds during such period of time.”

SECTION \_\_\_\_\_. Amendment of Section 5.04 of Master Resolution. A new paragraph shall be added to the end of Section 5.04 of the Master Resolution to read as follows:

“For purposes of calculating the “debt service ratio” and, unless otherwise specified in a Supplemental Resolution providing for the issuance of a series of Parity Bonds, the amount required to be maintained in the Reserve Fund pursuant to this Section 5.04: (1) any calculation of principal of and interest on Parity Bonds for any period of time shall be reduced by the amount of any Subsidy that the District receives or expects to receive during such period of time relating to or in connection with such Parity Bonds; and (2) to the extent the calculation of principal of and interest on Parity Bonds is reduced by the Subsidy as provided in clause (1) of this paragraph, any calculation of Net Revenues for any period of time shall be reduced by the amount of any Subsidy received or expected to be received by the District with respect to or in connection with such Parity Bonds during such period of time.”

SECTION \_\_\_\_\_. Amendment of Section 6.08 of Master Resolution. A new paragraph shall be added to the end of Section 6.08 of the Master Resolution to read as follows:

“For purposes of the calculations specified in this Section 6.08: (1) any calculation of principal of and interest on Parity Bonds for any period of time shall be reduced by the amount of any Subsidy that the District receives or expects to receive during such period of time relating to or in connection with such Parity Bonds; and (2) to the extent the calculation of principal of and interest on Parity Bonds is reduced by the Subsidy as provided in clause (1) of this paragraph, any calculation of Revenues for any period of time shall be reduced by the amount of any Subsidy received or expected to be received by the District with respect to or in connection with such Parity Bonds during such period of time.”



**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**FOURTEENTH SUPPLEMENTAL RESOLUTION**  
**AUTHORIZING THE ISSUANCE OF**  
**SUBORDINATED ELECTRIC REVENUE REFUNDING**  
**BONDS,**  
**2023 SERIES C**

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SACRAMENTO MUNICIPAL UTILITY DISTRICT

RESOLUTION NO. \_\_\_\_\_

FOURTEENTH SUPPLEMENTAL RESOLUTION

AUTHORIZING THE ISSUANCE OF

SUBORDINATED ELECTRIC REVENUE REFUNDING BONDS,  
2023 SERIES C

Adopted: \_\_\_\_\_

(Supplemental to Resolution No. 85-11-1 adopted November 7, 1985  
as amended and restated by Resolution No. 01-06-10 adopted June 21, 2001)

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RESOLUTION NO. \_\_\_\_\_

Fourteenth Supplemental Resolution  
(Supplemental to Resolution No. 85-11-1 Adopted November 7, 1985,  
as amended and restated by Resolution No. 01-06-10 Adopted June 21, 2001)

Subordinated Electric Revenue Refunding Bonds,  
2023 Series C

WHEREAS, the Board of Directors (the “Board”) of the Sacramento Municipal Utility District (the “District”), on November 7, 1985, adopted its Resolution No. 85-11-1 which was amended and restated by Resolution No. 01-06-10, adopted on June 21, 2001, providing for the issuance of the District’s Subordinated Electric Revenue Bonds (as supplemented and amended, herein called the “Subordinate Master Resolution”);

WHEREAS, the Subordinate Master Resolution provides that the District may issue bonds from time to time as the issuance thereof is authorized by the Board by a supplemental resolution;

WHEREAS, revenue bonds may be issued pursuant to the provisions of the Subordinate Master Resolution and the Act (as defined in the Subordinate Master Resolution);

WHEREAS, the District previously authorized the issuance of its Subordinated Electric Revenue Refunding Bonds, 2022 Series C pursuant to the Subordinate Master Resolution but such bonds were not issued; and

WHEREAS, the District has determined to issue its Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023C Subordinated Bonds”), in the aggregate principal amount determined as set forth in Section 82.02 to (i) refund certain series of the District’s Electric Revenue Bonds (to be identified in the Sales Certificate) (the “Refunded Bonds”), and (ii) pay costs of issuance (to the extent set forth in the Sales Certificate);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sacramento Municipal Utility District, as follows:

**ARTICLE LXXXI**

**AUTHORITY AND DEFINITIONS**

**Section 81.01. Supplemental Resolution.** This Fourteenth Supplemental Resolution is supplemental to the Subordinate Master Resolution.

**Section 81.02. Definitions; Prevailing Time.**

(1) Except as provided by this Fourteenth Supplemental Resolution, all terms which are defined in Section 1.03 of the Subordinate Master Resolution shall have the same meanings in this Fourteenth Supplemental Resolution as such terms are given in said Section 1.03. Unless otherwise provided herein, all references to a particular time are to New York City

time. In the event of a conflict between the meanings given in said Section 1.03 and the meanings given in this Section, the meanings given in this Section shall prevail.

(2) In this Fourteenth Supplemental Resolution:

**Alternate Credit Enhancement** shall mean a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof as a replacement or substitute for any Credit Enhancement then in effect and providing for or supporting the payment of the principal of and interest on the 2023C Subordinated Bonds.

**Alternate Liquidity Facility** shall mean a letter of credit, line of credit, standby bond purchase agreement or other liquidity instrument issued in accordance with the terms hereof as a replacement or substitute for any Liquidity Facility then in effect and providing for the payment of the Purchase Price of Tendered Bonds.

**Alternate Rate** shall mean, on any Rate Determination Date, for any Interest Rate Mode other than a Direct Purchase Index Mode, an Index Mode or a Term Rate Mode, a rate per annum equal to 110% of (a) the SIFMA Municipal Swap Index of Municipal Market Data most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Municipal Swap Index is no longer published, the S&P Municipal Bond 7 Day High Grade Rate Index, or if neither the SIFMA Municipal Swap Index nor the S&P Municipal Bond 7 Day High Grade Rate Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Municipal Swap Index just prior to when the Securities and Financial Markets Association stopped publishing the SIFMA Municipal Swap Index. The Trustee shall make the determinations required by this definition, upon notification from the District, if there is no Remarketing Agent, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement.

**Amortization End Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Interest Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Period** shall mean, in the event the 2023C Subordinated Bonds are not purchased or remarketed on any Bank Purchase Date and the other conditions set forth in Section 84.02(b) are satisfied, the period commencing on the Bank Purchase Date and ending on the Amortization End Date.

**Amortization Principal Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Applicable Factor** shall mean, upon any conversion to a Direct Purchase Index Rate Period, the percentage of the Direct Purchase Index designated in writing by the District as the Applicable Factor for such Direct Purchase Index Rate Period pursuant to Section 82.09(a); provided, however, that the Applicable Factor shall never be less than 65% unless a Favorable Opinion of Bond Counsel is delivered in connection with the conversion to such Direct Purchase Index Rate Period.

**Applicable Spread** shall mean, with respect to any Direct Purchase Index Rate Period, the number of basis points determined by the Market Agent on or before the first day of such Direct Purchase Index Rate Period and designated by the District in accordance with Section 82.09(a) (which may include a schedule for the Applicable Spread based upon the ratings assigned to any indebtedness of the District) that, when added to the product of the Direct Purchase Index multiplied by the Applicable Factor, would equal the minimum interest rate per annum that would enable the 2023C Subordinated Bonds to be sold on such date at a price equal to the principal amount thereof (without regard to accrued interest, if any, thereon).

**Authorized Denominations** shall mean (i) with respect to 2023C Subordinated Bonds in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) with respect to 2023C Subordinated Bonds in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof; (iii) with respect to 2023C Subordinated Bonds in a Direct Purchase Index Mode or Index Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; and (iv) with respect to 2023C Subordinated Bonds in a Term Rate Mode or a Fixed Rate Mode, \$5,000 and any integral multiple thereof.

**Available Amount** shall mean the amount available under a Credit Enhancement or Liquidity Facility, as applicable, to pay the principal of and interest on the 2023C Subordinated Bonds or the Purchase Price of the 2023C Subordinated Bonds, as applicable.

**Available Moneys** shall mean (a) if a Credit Enhancement is in effect, (i) moneys drawn under the Credit Enhancement which at all times since their receipt by the Trustee were held in a separate segregated account or accounts or subaccount or subaccounts in which no moneys (other than those drawn under the Credit Enhancement) were at any time held, (ii) moneys which have been paid to the Trustee and have been on deposit with the Trustee for at least 124 days (or, if paid to the Trustee by an “affiliate,” as defined in Bankruptcy Code §101(2), of the District, 366 days) during and prior to which no Event of Bankruptcy shall have occurred, (iii) any other moneys, if, in the opinion of nationally recognized counsel experienced in bankruptcy matters (which opinion shall be acceptable to each Rating Agency then rating the 2023C Subordinated Bonds), the application of such moneys will not constitute a voidable preference in the event of the occurrence of an Event of Bankruptcy, and (iv) investment earnings on any of the moneys described in clauses (i), (ii) and (iii) of this definition; and (b) if a Credit Enhancement is not in effect, “Available Moneys” means any moneys deposited with the Trustee.

**Bank** shall mean, while the 2023C Subordinated Bonds are in a Direct Purchase Index Mode, the Holder of the 2023C Subordinated Bonds, provided that there is a single Holder of all of the 2023C Subordinated Bonds and provided further that the 2023C Subordinated Bonds are not then held under the book-entry system of a Securities Depository. If there is more than

one Holder of the 2023C Subordinated Bonds while the 2023C Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Holders owning a majority of the aggregate principal amount of the 2023C Subordinated Bonds then Outstanding. If the 2023C Subordinated Bonds are held under the book-entry system of a Securities Depository during any Direct Purchase Index Mode, “Bank” means the Beneficial Owner of the 2023C Subordinated Bonds, provided that there is a single Beneficial Owner of all of the 2023C Subordinated Bonds. If there is more than one Beneficial Owner of the 2023C Subordinated Bonds while the 2023C Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Beneficial Owners who are the beneficial owners of a majority of the aggregate principal amount of the 2023C Subordinated Bonds then Outstanding.

**Bank Purchase Date** shall mean, during any Direct Purchase Index Rate Period, (i) the date designated by the District pursuant to Section 82.11(a) and (ii) the date which is five Business Days after the date on which the Trustee receives written notice from the Bank under a Continuing Covenant Agreement which (x) advises the Trustee of the occurrence and continuance of an “Event of Default” under and as defined in such Continuing Covenant Agreement and (y) directs the Trustee to cause a mandatory tender for purchase of the 2023C Subordinated Bonds by reason of such “Event of Default.”

**Bank Rate** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Bankruptcy Code** means Title 11 of the United States Code, as amended, and any successor statute.

**Beneficial Owner** shall mean, so long as the 2023C Subordinated Bonds are held in the Book-Entry System, any Person who acquires a beneficial ownership interest in a 2023C Subordinated Bond held by the Securities Depository. If at any time the 2023C Subordinated Bonds are not held in the Book-Entry System, Beneficial Owner shall mean Holder for purposes of the Subordinate Master Resolution.

**Bond Counsel** shall mean any firm of nationally recognized municipal bond attorneys selected by the District and experienced in the issuance of municipal bonds and matters relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

**Book-Entry System** shall mean the system maintained by the Securities Depository.

**Business Day** shall mean any day other than (i) a Saturday or Sunday or (ii) a day on which banks located in (a) the State of California or the State of New York, (b) the city or cities in which the principal office of the Trustee, the Paying Agent, the Remarketing Agent, if any, the Bank, if any, or the Calculation Agent, if any, are located, or (c) the city or cities in which the office of the Credit Provider or Liquidity Provider at which it will pay draws or advances is located, are required or authorized to remain closed, (iii) a day on which The New York Stock Exchange or Federal Reserve Bank is closed or (iv) a day on which the principal offices of the Credit Provider or Liquidity Provider are closed.



**Calculation Agent** shall mean, (i) during any Direct Purchase Index Rate Period, the Bank or any other party appointed by the District with the consent of the Bank so long as the Bank owns a majority in aggregate principal amount of the 2023C Subordinated Bonds and (ii) during any Index Rate Period, the Trustee or any other party appointed by the District to act as calculation agent for the 2023C Subordinated Bonds.

**Call Protection Date** shall mean, with respect to any conversion to a Term Rate Period or Index Rate Period, the date specified by the District in writing as the Call Protection Date for such Term Rate Period or Index Rate Period on or before the first day of such Term Rate Period or Index Rate Period.

**Code** shall mean the Internal Revenue Code of 1986, as amended.

**Continuing Covenant Agreement** shall mean, during any Direct Purchase Index Rate Period, any agreement between the District and the Bank which may be designated as the Continuing Covenant Agreement.

**Conversion Date** shall mean, with respect to the 2023C Subordinated Bonds in a particular Interest Rate Mode, the day on which another Interest Rate Mode for the 2023C Subordinated Bonds begins, with respect to the 2023C Subordinated Bonds in a Term Rate Mode, the day on which a new Term Rate Period begins, with respect to 2023C Subordinated Bonds in a Direct Purchase Index Mode, the day on which a new Direct Purchase Index Rate Period begins, and with respect to 2023C Subordinated Bonds in an Index Mode, the day on which a new Index Rate Period begins.

**Conversion Notice** shall mean the notice from the District to the other Notice Parties pursuant to Section 82.11(a)(i).

**Credit Enhancement** shall mean, with respect to the 2023C Subordinated Bonds, a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof and then in effect and providing for or supporting the payment of the principal of and interest on the 2023C Subordinated Bonds and, upon replacement of any such Credit Enhancement with an Alternate Credit Enhancement, the Alternate Credit Enhancement then in effect.

**Credit Provider** shall mean, with respect to the 2023C Subordinated Bonds, any bank, insurance company, pension fund or other financial institution which provides the Credit Enhancement, if any, then in effect for the 2023C Subordinated Bonds.

**Credit Provider Failure or Liquidity Provider Failure** shall mean a failure of a Credit Provider or Liquidity Provider, as applicable, to pay a properly presented and strictly conforming draw or request for advance under a Credit Enhancement or Liquidity Facility, as applicable, or the filing or commencement of any bankruptcy or insolvency proceedings by or against a Credit Provider or Liquidity Provider, as applicable, or a Credit Provider or Liquidity Provider, as applicable, shall declare a moratorium on the payment of its unsecured debt obligations or shall repudiate a Credit Enhancement or Liquidity Facility, as applicable.

**Current Mode** shall have the meaning specified in Section 82.11(a).

**Daily Mode** shall mean the Interest Rate Mode during which the 2023C Subordinated Bonds bear interest at the Daily Rate.

**Daily Rate** shall mean the per annum interest rate on any 2023C Subordinated Bond in the Daily Mode determined pursuant to Section 82.06(a).

**Daily Rate Period** shall mean the period during which a 2023C Subordinated Bond in the Daily Mode shall bear a Daily Rate, which shall be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

**Default Rate** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Delayed Remarketing Period** shall have the meaning specified in Section 84.10(b) hereof.

**Determination of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Direct Purchase Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Market Agent.

**Direct Purchase Index Mode** shall mean the Interest Rate Mode during which the 2023C Subordinated Bonds bear interest at a Direct Purchase Index Rate.

**Direct Purchase Index Rate** shall mean the per annum interest rate on any 2023C Subordinated Bond in the Direct Purchase Index Mode determined in accordance with Section 82.09, being the Direct Purchase Index Rate, the Taxable Rate, the Default Rate or the Bank Rate, as applicable.

**Direct Purchase Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**Direct Purchase Index Rate Effective Period** shall mean, during any Direct Purchase Index Rate Period, the period from and including the first day of such Direct Purchase Index Rate Period to but excluding the next succeeding Direct Purchase Index Rate Reset Date and, thereafter, means each Direct Purchase Index Rate Reset Date to but excluding the next succeeding Direct Purchase Index Rate Reset Date.

**Direct Purchase Index Rate Period** shall mean the period from (and including) the date on which the 2023C Subordinated Bonds begin to bear interest in the Direct Purchase Index Mode to (but excluding) the earliest to occur of (i) the immediately succeeding Bank Purchase Date, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of the 2023C Subordinated Bonds have been redeemed or defeased in full and (iv) the Maturity Date.

**Direct Purchase Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**District Purchase Account** shall mean the account by that name in the Purchase Fund created in Section 84.09.

**Electronic Means** shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

**Eligible Account** shall mean an account that is either (a) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor's short-term debt rating of at least 'A-2' (or, if no short-term debt rating, a long-term debt rating of 'BBB+'); or (b) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulation Section 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that a fund or account required to be an "Eligible Account" no longer complies with the requirements listed above, the Trustee shall promptly (and, in any case, within not more than 30 calendar days) move such fund or account to another financial institution such that the Eligible Account requirements stated above will again be satisfied.

**Event of Bankruptcy** shall mean any of the following events:

(i) the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023C Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the District (or such other Person) or of all or any substantial part of their respective property, (b) commence a voluntary case under the Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(ii) a proceeding or case shall be commenced, without the application or consent of the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023C Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) in any court of competent jurisdiction, seeking (a) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the District (or any such other Person), (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the District (or any such other Person) or of all or any substantial part of their respective property, or (c) similar relief in respect of the District (or any such other Person) under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

**Event of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Expiration Date** shall mean the stated expiration date of a Credit Enhancement or a Liquidity Facility, as it may be extended from time to time as provided in the Credit Enhancement or the Liquidity Facility, or any earlier date on which a Credit Enhancement or a Liquidity Facility shall terminate at the direction of the District.

**Favorable Opinion of Bond Counsel** shall mean, with respect to any action the occurrence of which requires such an opinion, an Opinion of Counsel, which shall be a Bond Counsel, to the effect that such action is permitted under the Subordinate Master Resolution and will not, in and of itself, cause interest on the 2023C Subordinated Bonds to be included in gross income for purposes of federal income taxation.

**Fitch** shall mean Fitch, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**Fixed Rate** shall mean the per annum interest rate on any 2023C Subordinated Bond in the Fixed Rate Mode determined pursuant to Section 82.07(b).

**Fixed Rate Bond** shall mean a 2023C Subordinated Bond in the Fixed Rate Mode.

**Fixed Rate Mode** shall mean the Interest Rate Mode during which the 2023C Subordinated Bonds bear interest at the Fixed Rate.

**Fixed Rate Period** shall mean the period from the Conversion Date upon which the 2023C Subordinated Bonds were converted to the Fixed Rate Mode to but not including the Maturity Date for the 2023C Subordinated Bonds.

**Flexible Mode** shall mean the Interest Rate Mode during which the 2023C Subordinated Bonds bear interest at Flexible Rates.

**Flexible Rate** shall mean the per annum interest rate on a Flexible Rate Bond determined for such Flexible Rate Bond pursuant to Section 82.05. The Flexible Rate Bonds may bear interest at different Flexible Rates.

**Flexible Rate Bond** shall mean a 2023C Subordinated Bond in the Flexible Mode.

**Flexible Rate Period** shall mean the period of from one to 270 calendar days (which period must end on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date) during which a Flexible Rate Bond shall bear interest at a Flexible Rate, as established by the Remarketing Agent pursuant to Section 82.05. The Flexible Rate Bonds may be in different Flexible Rate Periods.

**Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Remarketing Agent.

**Index Mode** shall mean the Interest Rate Mode during which the 2023C Subordinated Bonds bear interest at an Index Rate.

**Index Rate** shall mean the per annum interest rate on any 2023C Subordinated Bond in the Index Mode determined in accordance with Section 82.10.

**Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Rate Effective Period** shall mean, during any Index Rate Period, the period from and including the first day of such Index Rate Period through and including the day immediately preceding the next succeeding Index Rate Reset Date and, thereafter, means each Index Rate Reset Date through and including the day immediately preceding the next succeeding Index Rate Reset Date.

**Index Rate Period** shall mean the period from (and including) the date on which the 2023C Subordinated Bonds begin to bear interest in the Index Mode to (but excluding) the earliest to occur of (i) the Business Day immediately succeeding the last day thereof, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of the 2023C Subordinated Bonds have been redeemed or defeased in full and (iv) the final Maturity Date.

**Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Percentage** shall mean, upon any conversion to an Index Rate Period, the percentage of the Index determined by the Remarketing Agent in accordance with Section 82.10; provided, however, that the Index Percentage shall never be less than 65% unless a Favorable Opinion of Bond Counsel is delivered on or before the determination of the Index Percentage by the Remarketing Agent.

**Index Spread** shall mean, upon any conversion to an Index Rate Period, the fixed per annum rate determined by the Remarketing Agent in accordance with Section 82.10.

**Initial Liquidity Facility** shall mean the Standby Bond Purchase Agreement entered into with the Initial Liquidity Provider with respect to the initial issuance of the 2023C Subordinated Bonds, as amended, restated, supplemented or otherwise modified pursuant to its terms.

**Initial Liquidity Provider** shall mean TD Bank, N.A., as initial Liquidity Provider.

**Interest Accrual Period** shall mean the period during which a 2023C Subordinated Bond accrues interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period for 2023C Subordinated Bonds shall be the period commencing on (and including) the last Interest Payment Date to which interest has been paid (or, if no interest has been paid in such Interest Rate Mode, commencing on (and including) the date of original authentication and delivery of the 2023C Subordinated Bonds, or the Conversion Date, as the case may be) to (and excluding) the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any 2023C Subordinated Bond, interest is in default or overdue on the 2023C Subordinated Bonds, such 2023C Subordinated Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on Outstanding 2023C Subordinated Bonds.

**Interest Payment Date** shall mean each date on which interest is to be paid and is: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023C Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023C Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility.

**Interest Period** shall mean, for 2023C Subordinated Bonds in a particular Interest Rate Mode, the period of time that such 2023C Subordinated Bonds bear interest at the rate (per annum) which becomes effective at the beginning of such period, and shall include a Flexible Rate Period, a Daily Rate Period, a Weekly Rate Period, a Direct Purchase Index Rate Effective Period, an Index Rate Effective Period, a Term Rate Period and a Fixed Rate Period.

**Interest Rate Mode** shall mean, as the context may require, the Flexible Mode, the Daily Mode, the Weekly Mode, the Direct Purchase Index Mode, the Index Mode, the Term Rate Mode or the Fixed Rate Mode.

**Liquidity Facility** shall mean, with respect to the 2023C Subordinated Bonds, initially, the Initial Liquidity Facility providing for the payment of the Purchase Price of Tendered Bonds and upon replacement of such Initial Liquidity Facility with an Alternate Liquidity Facility, the Alternate Liquidity Facility then in effect.

**Liquidity Facility Purchase Account** shall mean the account by that name in the Purchase Fund created by Section 84.09.

**Liquidity Provider** shall mean, with respect to the 2023C Subordinated Bonds, initially, the Initial Liquidity Provider and, upon replacement of the Initial Liquidity Facility with an Alternate Liquidity Facility, any bank, insurance company, pension fund or other financial institution which provides the Alternate Liquidity Facility, if any, then in effect for the 2023C Subordinated Bonds.

**Liquidity Provider Bonds** shall mean any 2023C Subordinated Bonds purchased by the Liquidity Provider with funds drawn on or advanced under the Liquidity Facility or Credit Enhancement, as applicable.

**Long-Term Mode** shall mean a Term Rate Mode or a Fixed Rate Mode.

**Mandatory Purchase Date** shall mean: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Bond, (ii) with respect to 2023C Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023C Subordinated Bonds, (iii) with respect to any 2023C Subordinated Bonds, any Conversion Date applicable to such 2023C Subordinated Bond (except, unless otherwise specified in the Sales Certificate in connection with the initial issuance of the 2023C Subordinated Bonds or in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 82.11 not failed to occur (except, unless otherwise specified in the Sales Certificate in connection with the initial issuance of the 2023C Subordinated Bonds or in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023C Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023C Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023C Subordinated Bonds, (vi) with respect to any 2023C Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023C Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee's receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023C Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023C Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023C Subordinated Bonds (other than interest on 2023C Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023C Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee's receipt of such notice, (viii) with respect to 2023C Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee's receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023C Subordinated Bonds, (ix) with respect to 2023C Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023C Subordinated Bonds, and (x) with respect to 2023C Subordinated Bonds in the Direct Purchase Index Mode, each

Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

**Market Agent** shall mean the Person appointed by the District to serve as market agent in connection with a conversion to any Direct Purchase Index Rate Period.

**Maturity Date** shall mean the maturity date or maturity dates of the 2023C Subordinated Bonds set forth in the Sales Certificate, or, if established pursuant to Section 82.11(b)(v) upon a change to the Fixed Rate Mode, the Serial Maturity Dates.

**Maximum Rate** shall mean (i) with respect to Liquidity Provider Bonds and 2023C Subordinated Bonds in the Direct Purchase Index Mode, a rate of interest per annum not exceeding the maximum non-usurious lawful rate of interest permitted by applicable laws and (ii) with respect to all other 2023C Subordinated Bonds, a rate of interest of twelve percent (12%) per annum unless a lesser rate of interest is specified as the Maximum Rate in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period.

**Moody's** shall mean Moody's Investors Service and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**New Mode** shall have the meaning specified in Section 82.11(a).

**Notice Parties** shall mean the Trustee, the Remarketing Agent, if any, the Paying Agent, the Credit Provider, if any, the Liquidity Provider, if any, the Bank, if any, the Market Agent, if any, and the Calculation Agent, if any.

**Opinion of Counsel** shall mean a written legal opinion from a firm of attorneys experienced in the matters to be covered in the opinion.

**Outstanding**, when used with reference to 2023C Subordinated Bonds, shall mean, as of any date, 2023C Subordinated Bonds theretofore or thereupon being authenticated and delivered under this Fourteenth Supplemental Resolution except:

(i) 2023C Subordinated Bonds cancelled by the Trustee, or delivered to the Trustee for cancellation, at or prior to such date;

(ii) 2023C Subordinated Bonds paid or deemed paid pursuant to Section 10.01 of the Subordinate Master Resolution; and



(iii) 2023C Subordinated Bonds in lieu of or in substitution for which other 2023C Subordinated Bonds shall have been authenticated and delivered pursuant to this Fourteenth Supplemental Resolution.

**Person** shall mean an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**Principal Payment Date** shall mean any date upon which the principal amount of 2023C Subordinated Bonds is due under the Subordinate Master Resolution, including any Maturity Date, any Serial Maturity Date, any Redemption Date, or the date the maturity of any 2023C Subordinated Bond is accelerated pursuant to the terms of the Subordinate Master Resolution.

**Purchase Date** shall mean (i) for a 2023C Subordinated Bond in the Daily Mode or the Weekly Mode, any Business Day selected by the Beneficial Owner of said 2023C Subordinated Bond pursuant to the provisions of Section 84.01, and (ii) any Mandatory Purchase Date.

**Purchase Fund** shall mean the fund by that name created in Section 84.09.

**Purchase Price** shall mean an amount equal to the principal amount of any 2023C Subordinated Bonds purchased on any Purchase Date, plus accrued interest to but excluding the Purchase Date; provided, however, that (i) if the Purchase Date for any 2023C Subordinated Bond to be purchased is an Interest Payment Date for such 2023C Subordinated Bond, the Purchase Price thereof shall be the principal amount thereof, and interest on such 2023C Subordinated Bond shall be paid to the Holder of such 2023C Subordinated Bond pursuant to the Subordinate Master Resolution and this Fourteenth Supplemental Resolution and (ii) in the case of a purchase on a Conversion Date or proposed Conversion Date which is preceded by a Term Rate Period or an Index Rate Period and which occurs prior to the day originally established as the last day of such preceding Term Rate Period or Index Rate Period, the Purchase Price of any 2023C Subordinated Bond to be purchased on such Conversion Date shall be the Redemption Price which would have been applicable to such 2023C Subordinated Bond if the preceding Term Rate Period or Index Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

**Rate Determination Date** shall mean any date on which the interest rate on 2023C Subordinated Bonds shall be determined, which, (i) in the case of the Flexible Mode, shall be the first day of an Interest Period; (ii) in the case of the Daily Mode, shall be each Business Day commencing with the first day (which must be a Business Day) the 2023C Subordinated Bonds become subject to the Daily Mode; (iii) in the case of the Weekly Mode, shall be (A) each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday, and (B) not later than the Business Day preceding a Conversion Date, a Substitution Date or a Mandatory Purchase Date specified in clause (viii) of the definition of Mandatory Purchase Date; (iv) in the case of the Term Rate Mode, shall be a Business Day no later than the Business Day next preceding the first day of an Interest Period, as determined by the Remarketing Agent; (v) in the case of the Direct Purchase Index Mode, each

Direct Purchase Index Rate Determination Date; (vi) in the case of the Index Mode, each Index Rate Determination Date, and (vii) in the case of the Fixed Rate Mode, shall be a date determined by the Remarketing Agent which shall be at least one Business Day prior to the Conversion Date.

**Rating Agencies** shall mean any of Moody's, S&P or Fitch, which is then providing a rating on the 2023C Subordinated Bonds at the request of the District.

**Record Date** shall mean (i) with respect to 2023C Subordinated Bonds in a Daily Mode, Weekly Mode, Flexible Mode, Direct Purchase Index Mode or Index Mode, the last Business Day before an Interest Payment Date, and (ii) with respect to 2023C Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, the fifteenth (15th) day (whether or not a Business Day) next preceding each Interest Payment Date.

**Redemption Date** shall mean the date fixed for redemption of 2023C Subordinated Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Subordinate Master Resolution.

**Redemption Price** shall mean an amount equal to the principal of and premium, if any, and accrued interest, if any, on the 2023C Subordinated Bonds to be paid on the Redemption Date.

**Reimbursement Agreement** shall mean any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement by and between a Credit Provider or Liquidity Provider, as applicable, and the District.

**Remarketing Agent** shall mean any investment banking firm which may be appointed with respect to the 2023C Subordinated Bonds pursuant to Section 85.01.

**Remarketing Agreement** shall mean any agreement relating to the 2023C Subordinated Bonds by and between the District and a Remarketing Agent, as it may be amended or supplemented from time to time in accordance with its terms.

**Remarketing Proceeds Account** shall mean the account by that name in the Purchase Fund created in Section 84.09.

**Representations Letter** shall mean the Letter of Representations from the District to the Securities Depository in connection with the 2023C Subordinated Bonds in a book-entry system, as supplemented and amended from time to time.

**Sales Certificate** shall mean a written certificate of the District executed by the Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District or the Chief Financial Officer of the District or the designee of any of them prior to the issuance of the 2023C Subordinated Bonds setting forth the principal amount, Maturity Date or Maturity Dates, initial Interest Rate Mode, initial interest rate or rates, and such other matters with respect to the 2023C Subordinated Bonds as such officer may deem appropriate, as provided in Section 82.02.

**S&P** shall mean S&P Global Ratings and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent, if any.

**S&P Municipal Bond 7 Day High Grade Rate Index** shall mean for a Rate Determination Date, the level of the “S&P Municipal Bond 7 Day High Grade Rate Index” (formerly known as the J.J. Kenny Index) maintained by Standard and Poor’s for a one-week maturity as published each day.

**Securities Depository** shall mean The Depository Trust Company, and such other securities depository as the District may designate in a certificate of the District delivered to the Trustee.

**Serial Bonds** shall mean the 2023C Subordinated Bonds maturing on the Serial Maturity Dates, as determined pursuant to Section 82.11(b).

**Serial Maturity Dates** shall mean the dates on which the Serial Bonds mature, as determined pursuant to Section 82.11(b).

**Serial Payments** shall mean the payments to be made in payment of the principal of the Serial Bonds on the Serial Maturity Dates.

**Short-Term Mode** shall mean the Daily Mode, the Weekly Mode or the Flexible Mode.

**SIFMA Index** shall mean, for any applicable Rate Determination Date, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day. If the SIFMA Index is no longer published, then “SIFMA Index” shall mean the S&P Municipal Bond 7 Day High Grade Rate Index. If the S&P Municipal Bond 7 Day High Grade Rate Index is no longer published, then “SIFMA Index” shall mean the prevailing rate determined by the Calculation Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Calculation Agent to be comparable under the circumstances to the criteria used by SIFMA to determine the SIFMA Index immediately prior to the date on which SIFMA ceased publication of the SIFMA Index. Notwithstanding the foregoing, if the SIFMA Index as determined as provided above would be less than 0.0%, then the SIFMA Index will be deemed to be 0.0%.

**Substitution Date** shall mean the date upon which an Alternate Credit Enhancement or Alternate Liquidity Facility is scheduled to be substituted for a Credit Enhancement or Liquidity Facility then in effect.

**Taxable Date** shall mean the date on which interest on the 2023C Subordinated Bonds is first includable in gross income of the Holder (including, without limitation, any

previous Holder) thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

**Taxable Rate** shall mean an interest rate per annum at all times equal to the product of the Direct Purchase Index Rate then in effect multiplied by the Taxable Rate Factor.

**Taxable Rate Factor** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Tendered Bonds** shall mean 2023C Subordinated Bonds tendered for purchase by the Holders or Beneficial Owners thereof pursuant to Section 84.01 or subject to mandatory tender for purchase on a Mandatory Purchase Date pursuant to Section 84.02.

**Tender Notice** shall mean a notice delivered by Electronic Means or in writing with respect to a 2023C Subordinated Bond that states (i) the principal amount of such 2023C Subordinated Bond to be purchased pursuant to Section 84.01, (ii) the Purchase Date on which such 2023C Subordinated Bond is to be purchased, (iii) applicable payment instructions with respect to the 2023C Subordinated Bonds being tendered for purchase and (iv) an irrevocable demand for such purchase.

**Tender Notice Deadline** with respect to a 2023C Subordinated Bond shall mean (i) during a Daily Mode with respect to such 2023C Subordinated Bond, 11:00 a.m. on any Business Day and (ii) during a Weekly Mode with respect to such 2023C Subordinated Bond, 5:00 p.m. on a Business Day not less than seven days prior to the applicable Purchase Date.

**Term Rate** shall mean the per annum interest rate for 2023C Subordinated Bonds in the Term Rate Mode determined pursuant to Section 82.07(a).

**Term Rate Mode** shall mean the Interest Rate Mode during which the 2023C Subordinated Bonds bear interest at the Term Rate.

**Term Rate Period** shall mean the period from (and including) the date on which the 2023C Subordinated Bonds begin to bear interest in a Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period.

**2023 Tax Certificate** shall mean the Tax Certificate executed and delivered by the District in connection with the issuance of the 2023C Subordinated Bonds, as amended or supplemented from time to time in accordance with its terms.

**Weekly Mode** shall mean the Interest Rate Mode during which the 2023C Subordinated Bonds bear interest at the Weekly Rate.

**Weekly Rate** shall mean the per annum interest rate on 2023C Subordinated Bonds in the Weekly Mode determined pursuant to Section 82.06(b).

**Weekly Rate Period** shall mean the period during which a 2023C Subordinated Bond in the Weekly Mode shall bear a Weekly Rate, which shall be the period commencing on Thursday of each week to and including Wednesday of the following week, except (i) the first

Weekly Rate Period, which shall be from the date of issuance of the 2023C Subordinated Bonds if the 2023C Subordinated Bonds are initially issued in the Weekly Mode or the Conversion Date on which the Interest Rate Mode for the 2023C Subordinated Bonds is changed to a Weekly Mode to and including the Wednesday of the following week, and (ii) the last Weekly Rate Period which shall end on the day preceding the earliest to occur of the Conversion Date on which the Interest Rate Mode for the 2023C Subordinated Bonds is changed from the Weekly Mode to a different Interest Rate Mode, the Maturity Date or the Mandatory Purchase Date for such 2023C Subordinated Bond.

## **ARTICLE LXXXII**

### **THE 2023C SUBORDINATED BONDS**

#### **Section 82.01. Authorization and Purpose of 2023C Subordinated Bonds.**

The Board hereby authorizes the issuance of a series of revenue bonds of the District in accordance with the Subordinate Master Resolution, designated as “Subordinated Electric Revenue Refunding Bonds, 2023 Series C” (the “2023C Subordinated Bonds”) for the purpose of (i) refunding the Refunded Bonds and (ii) paying costs of issuance (to the extent set forth in the Sales Certificate).

#### **Section 82.02. Terms, Registration, Denominations, Medium, Method and Place of Payment and Dating of 2023C Subordinated Bonds.**

(a) The 2023C Subordinated Bonds shall be issued in the aggregate principal amount which, together with the aggregate principal amount, if any, of the District’s Electric Revenue Bonds sold and issued pursuant to the District’s Sixty-Sixth Supplemental Resolution adopted on the date hereof, Subordinated Electric Revenue Bonds, 2023 Series D, Subordinated Electric Revenue Bonds, 2023 Series E, and Subordinated Electric Revenue Refunding Bonds, 2023 Series F, shall not exceed \$630,000,000, shall bear interest at such initial rate or rates for such initial Interest Period, shall bear interest in such initial Interest Rate Mode, shall mature and become payable as to principal on such Maturity Date or Maturity Dates (not to exceed forty (40) years from the date of issuance of the 2023C Subordinated Bonds) in the amount and be subject to such mandatory sinking fund account payments on such mandatory sinking fund account payment dates, if any, all as set forth in the Sales Certificate. In addition to the provisions required pursuant to the terms of this Fourteenth Supplemental Resolution to be specified in the Sales Certificate, the Sales Certificate may contain such provisions, in a form approved by the District’s Bond Counsel and the District’s counsel, as the officer executing the Sales Certificate may deem necessary or desirable and consistent with the purpose of this Fourteenth Supplemental Resolution, including provisions (i) adding additional covenants and agreements to be observed by the District, (ii) curing, correcting, amending or supplementing any ambiguous, defective or ineffective provision contained in the Subordinate Master Resolution or this Fourteenth Supplemental Resolution, or (iii) amending or supplementing any provision contained herein to the extent necessary to obtain Credit Enhancement or a Liquidity Facility (including the Initial Liquidity Facility), to obtain a rating on the 2023C Subordinated Bonds, or to provide for the issuance of the 2023C Subordinated Bonds if, in the judgment of such officer such rating or provision is reasonable. The Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District,

the Secretary of the District or the Chief Financial Officer of the District, or the designee of any of them, is hereby authorized and instructed to execute and deliver the Sales Certificate and, upon execution and delivery thereof, the Sales Certificate shall be incorporated herein and in the Subordinate Master Resolution by reference. The execution and delivery of the Sales Certificate by any such officer shall be conclusive evidence that, where any approval, determination of necessity, desirability or consistency with the purpose of this Fourteenth Supplemental Resolution, or judgment or determination of reasonableness is required to be given or made, such approval, judgment or determination has been given or made.

(b) The 2023C Subordinated Bonds shall be issued in the form of fully registered 2023C Subordinated Bonds in Authorized Denominations and no provision of the Subordinate Master Resolution relating to coupon bonds or coupons shall apply to the 2023C Subordinated Bonds. 2023C Subordinated Bonds (other than 2023C Subordinated Bonds in the Direct Purchase Index Mode) shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023C Subordinated Bonds and shall be registered as set forth in Section 86.04 of this Fourteenth Supplemental Resolution. 2023C Subordinated Bonds in the Direct Purchase Index Mode shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023C Subordinated Bonds and shall be registered in the name of the Holder thereof or as otherwise directed by such Holder. Registered ownership of the 2023C Subordinated Bonds, or any portion thereof, may not thereafter be transferred except as set forth in the Continuing Covenant Agreement (during any time that the 2023C Subordinated Bonds are in the Direct Purchase Index Mode), Section 2.05 of the Subordinate Master Resolution and Section 86.04 of this Fourteenth Supplemental Resolution. Each 2023C Subordinated Bond in the Direct Purchase Index Mode shall contain a legend indicating that the transferability of such 2023C Subordinated Bond is subject to the restrictions set forth in this Fourteenth Supplemental Resolution.

(c) The 2023C Subordinated Bonds shall be dated as of the date of their initial issuance and shall be numbered in such manner as is determined by the Trustee.

(d) The principal of and premium, if any, and interest on the 2023C Subordinated Bonds shall be payable in lawful money of the United States of America.

(e) Subject to Section 86.04 of this Fourteenth Supplemental Resolution, interest on the 2023C Subordinated Bonds shall be paid on each Interest Payment Date by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode by check mailed on the date on which due to the Holders of the 2023C Subordinated Bonds at the close of business on the Record Date for the 2023C Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023C Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023C Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023C Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023C Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written with written wire transfer instructions, interest payable on such 2023C Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer

instructions provided by the Holder of such 2023C Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023C Subordinated Bonds registered in the name of the Securities Depository (or its nominee), interest on any such 2023C Subordinated Bond shall be payable only upon surrender of such 2023C Subordinated Bond at the office of the Paying Agent.

(f) Subject to Section 86.04 of this Fourteenth Supplemental Resolution, the principal of and premium, if any, on each 2023C Subordinated Bond shall be payable on the Principal Payment Date of such 2023C Subordinated Bond upon surrender thereof at the office of the Paying Agent; provided that the Paying Agent may agree with the Holder of any 2023C Subordinated Bond (and hereby does so agree with the Bank during any Direct Purchase Index Rate Period) that such Holder may, in lieu of surrendering the same for a new 2023C Subordinated Bond, endorse on such 2023C Subordinated Bond a record of partial payment of the principal of such 2023C Subordinated Bond in the form set forth below (which shall be typed or printed on such 2023C Subordinated Bond):

#### PAYMENTS ON ACCOUNT OF PRINCIPAL

Payment Date	Principal Amount Paid	Balance of Principal Amount Unpaid	Signature of Holder

The Paying Agent shall maintain a record of each such partial payment made in accordance with the foregoing agreement and such record of the Paying Agent shall be conclusive. Such partial payment shall be valid upon payment of the amount thereof to the Holder of such 2023C Subordinated Bond, and the District, the Trustee and the Paying Agent shall be fully released and discharged from all liability to the extent of such payment regardless of whether such endorsement shall or shall not have been made upon such 2023C Subordinated Bond by the Holder thereof and regardless of any error or omission in such endorsement.

(g) Except as may be specifically set forth herein, the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District may treat the Holder of a 2023C Subordinated Bond as the absolute owner thereof for all purposes, whether or not such 2023C Subordinated Bond shall be overdue, and the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District shall not be affected by any knowledge or notice to the contrary. Payment of the principal of and premium, if any, and interest on each 2023C Subordinated Bond shall be made only to such Holder, which payments shall be valid and effectual to satisfy and discharge the liability of such 2023C Subordinated Bond to the extent of the sum or sums so paid. All 2023C Subordinated Bonds paid at maturity or on earlier redemption pursuant to the provisions of this Section shall be cancelled by the Paying Agent.

(h) Each 2023C Subordinated Bond shall bear interest at the applicable rate or rates during each applicable Interest Accrual Period until the entire Principal Amount thereof has been paid.

(i) The Sales Certificate shall designate the series, amounts and maturity or sinking fund payment dates of the Refunded Bonds.

**Section 82.03. Payment of Principal and Interest of 2023C Subordinated Bonds; Acceptance of Terms and Conditions.**

(a) The interest on each 2023C Subordinated Bond shall become due and payable on the Interest Payment Dates with respect to such 2023C Subordinated Bond to and including the Maturity Date of such 2023C Subordinated Bond, and on each Redemption Date and on the date of any acceleration prior thereto. The principal of each 2023C Subordinated Bond shall become due and payable on the Principal Payment Date of such 2023C Subordinated Bond.

(b) By the acceptance of its 2023C Subordinated Bond, the Holder thereof shall be deemed to have agreed to all the terms and provisions of such 2023C Subordinated Bond as specified in such 2023C Subordinated Bond and the Subordinate Master Resolution, including without limitation the applicable Interest Periods, interest rates (including any applicable Alternate Rate), Purchase Dates, Mandatory Purchase Dates, Purchase Prices, mandatory and optional purchase and redemption provisions applicable to such 2023C Subordinated Bond, method and timing of purchase, redemption and payment. Such Holder further agrees that if, on any date upon which its 2023C Subordinated Bond is to be purchased, redeemed or paid at maturity or earlier due date, funds are on deposit with the Paying Agent or the Trustee to pay the full amount due on such 2023C Subordinated Bond, then such Holder shall have no rights under the Subordinate Master Resolution other than to receive such full amount due with respect to such 2023C Subordinated Bond and that interest on such 2023C Subordinated Bond shall cease to accrue as of such date.

(c) Notwithstanding anything herein to the contrary, while any 2023C Subordinated Bonds are Liquidity Provider Bonds, such Liquidity Provider Bonds shall bear interest and be payable at the times, in the manner and in the amounts required under the Liquidity Facility supporting such 2023C Subordinated Bonds or the Reimbursement Agreement related thereto.

**Section 82.04. Calculation and Payment of Interest; Change in Interest Rate Mode; Maximum Rate.**

(a) When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is the SIFMA Index, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is an index other than the SIFMA Index, interest shall be calculated on the basis specified in writing by the District on or before the first day of the applicable Direct Purchase Index Rate Period or Index Rate Period. When a Short-Term Mode is in effect, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Term Rate Mode or a Fixed Rate Mode is in effect, interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Payment of unpaid interest accrued on each 2023C Subordinated Bond during each Interest Accrual Period shall be made on the



applicable Interest Payment Date for such 2023C Subordinated Bond to the Holder of record of such 2023C Subordinated Bond on the applicable Record Date.

(b) The 2023C Subordinated Bonds in any Interest Rate Mode other than a Fixed Rate Mode may be changed to any other Interest Rate Mode at the times and in the manner hereinafter provided. Subsequent to such change in Interest Rate Mode (other than a change to a Fixed Rate Mode), the 2023C Subordinated Bonds may again be changed to a different Interest Rate Mode at the times and in the manner hereinafter provided. A Fixed Rate Mode shall be in effect until the Maturity Date, or acceleration thereof prior to the Maturity Date, and the 2023C Subordinated Bonds in a Fixed Rate Mode may not be changed to any other Interest Rate Mode.

(c) Subject to Section 82.09(b)(iii), no 2023C Subordinated Bonds shall bear interest at an interest rate higher than the Maximum Rate with respect thereto.

(d) In the absence of manifest error, the determination of interest rates (including any determination of rates in connection with a New Mode) and Interest Periods by the Remarketing Agent or the Calculation Agent, as applicable, as provided herein, and the record of interest rates maintained by the Paying Agent shall be conclusive and binding upon the Remarketing Agent, the Paying Agent, the Trustee, the District, the Holders and the Beneficial Owners.

**Section 82.05. Determination of Flexible Rates and Interest Periods During Flexible Mode.** An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and in Section 82.04 hereof, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023C Subordinated Bond the Interest Period which would result in the Remarketing Agent being able to remarket such 2023C Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023C Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023C Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023C Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the

Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

**Section 82.06. Determination of Interest Rates During the Daily Mode and the Weekly Mode.** The interest rate for 2023C Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023C Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period. In making any such determination the Remarketing Agent shall not take into account the per annum rate of interest that would be applicable to Liquidity Provider Bonds pursuant to the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

(a) During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

(b) During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

**Section 82.07. Determination of Term Rates and Fixed Rates.**

(a) Term Rates. The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. Except as set forth in Section 82.11(a)(ii), the Term Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such 2023C Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected, and the Call Protection Date specified, by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.

(b) Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023C Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023C Subordinated Bonds will have Serial Maturity Dates in accordance with Section 82.11(b)(v)). Except as set forth in Section 82.11(b)(v), the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023C Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 82.11(b)(v), the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023C Subordinated Bonds.

**Section 82.08. Alternate Rates.** The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023C Subordinated Bonds (other than 2023C Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023C Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023C Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023C Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023C Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023C Subordinated Bonds.

(a) For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such 2023C Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

(b) For 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023C Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

**Section 82.09. Determination of Direct Purchase Index Rates.**

(a) During each Direct Purchase Index Rate Period, the 2023C Subordinated Bonds shall, subject to subsection (b) of this Section 82.09, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023C Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023C Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023C Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023C Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Master Resolution or this Fourteenth Supplemental Resolution to the contrary, including, without limitation, Section 84.02(b), but subject to Section 82.04(c) and Section 82.09(b)(ii) and (iii), from and after any Taxable Date, the interest rate on 2023C Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Master Resolution or this Fourteenth Supplemental Resolution to the contrary, including, without limitation, Section 84.02(b), but subject to Section 82.04(c) and Section 82.09(b)(iii), from and after the effective date of any “Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023C Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023C

Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Master Resolution or this Fourteenth Supplemental Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023C Subordinated Bonds exceeds the Maximum Rate for such 2023C Subordinated Bonds, then (A) such 2023C Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023C Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023C Subordinated Bonds as calculated pursuant to this Section 82.09 and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023C Subordinated Bonds as calculated pursuant to this Section 82.09 is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023C Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023C Subordinated Bonds are redeemed or tendered for purchase in accordance with this Fourteenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023C Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything herein to the contrary, but subject to Section 82.04(c) and Section 82.09(b)(i), (ii) and (iii) during any Amortization Period, the 2023C Subordinated Bonds shall bear interest at the Bank Rate.

**Section 82.10. Determination of Index Rates.** During each Index Rate Period, the 2023C Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023C Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023C Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023C Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023C Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023C Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023C Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023C Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023C Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a percentage point with five hundred thousandths of a percentage point rounded upward. All

dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023C Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

**Section 82.11. Changes in Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period.** Subject to the provisions of this Section, the District may effect a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period with respect to the 2023C Subordinated Bonds by following the procedures set forth in this Section.

(a) Changes to Interest Rate Modes Other Than Fixed Rate Mode; Changes in Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period. The Interest Rate Mode for the 2023C Subordinated Bonds (other than the 2023C Subordinated Bonds in the Fixed Rate Mode) may be changed from one Interest Rate Mode to another Interest Rate Mode (other than the Fixed Rate Mode) and the Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023C Subordinated Bonds may be changed, as follows:

(i) Notice to Notice Parties; Notice to Holders. No later than a Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023C Subordinated Bonds preceding the proposed Conversion Date, the District shall give written notice to the Notice Parties of its intention to effect a change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period from the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period then prevailing (for purposes of this Section, the “Current Mode”) to another Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period (for purposes of this Section, the “New Mode”) specified in such written notice. Notice of the proposed change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be given by the Trustee by mail to the Holders of the 2023C Subordinated Bonds not less than the 10th day next preceding the proposed Conversion Date, provided that no notice need be given for a Conversion Date occurring on the Business Day following the last day of a Flexible Rate Period, an Index Rate Period or a Term Rate Period or on a Substitution Date. Such notice shall state: (1) the proposed Conversion Date; (2) that the 2023C Subordinated Bonds will be subject to mandatory tender for purchase on the proposed Conversion Date (regardless of whether all of the conditions to the change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period are satisfied); and (3) the Purchase Price of the 2023C Subordinated Bonds and the place of delivery for purchase of the 2023C Subordinated Bonds; provided that, if the proposed change is from one Direct Purchase Index Rate Period to a new Direct Purchase Index Rate Period and any Holder of the 2023C Subordinated Bonds shall continue to be a Holder of 2023C Subordinated Bonds

in the new Direct Purchase Index Rate Period, the Holder may elect to retain its 2023C Subordinated Bonds by filing with the District and the Trustee not less than five days prior to the proposed Conversion Date a written notice identifying such 2023C Subordinated Bonds and the principal amount it wishes to retain.

(ii) Determination of Interest Rates. The New Mode shall commence on the Conversion Date and the interest rate(s) (together, in the case of a change to the Flexible Mode, with the Interest Period(s)) shall be determined in the manner provided in Sections 82.05, 82.06, 82.07, 82.09 and 82.10, as applicable; provided, however, that, in the case of a change to the Term Rate Mode, or from one Term Rate Period to a new Term Rate Period, if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to sell some or all of the 2023C Subordinated Bonds at a premium or a discount to par.

(iii) Conditions Precedent.

(1) The Conversion Date shall be:

(A) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023C Subordinated Bonds end;

(B) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(C) in the case of a change from the Term Rate Mode to another Interest Rate Mode, or from one Term Rate Period to a new Term Rate Period, any day on which the applicable 2023C Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(D) in the case of a change from the Index Mode to another Interest Rate Mode, or from one Index Rate Period to a new Index Rate Period, any day on which the applicable 2023C Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and

(E) in the case of a change from the Direct Purchase Index Mode or from one Direct Purchase Index Rate Period to another Direct Purchase Index Rate Period, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(2) If the 2023C Subordinated Bonds to be converted are Flexible Rate Bonds, no Interest Period with respect to such 2023C Subordinated Bonds set after delivery by the

District to the Remarketing Agent of the notice of the intention to effect a change in Interest Rate Mode shall extend beyond the proposed Conversion Date.

(3) The following items shall have been delivered to the District and the Trustee on or prior to the Conversion Date:

(A) a Favorable Opinion of Bond Counsel dated the Conversion Date; and

(B) if there is to be a Liquidity Facility or an Alternate Liquidity Facility or Credit Enhancement or an Alternate Credit Enhancement delivered in connection with such change, the items required by Section 84.08(d).

(4) If no Liquidity Facility is in effect to provide funds for the purchase of 2023C Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 84.04 shall not be less than the amount required to purchase all of the 2023C Subordinated Bonds on the Conversion Date at the Purchase Price.

(b) Change to Fixed Rate Mode. At the option of the District, the Interest Rate Mode for the 2023C Subordinated Bonds may be changed to the Fixed Rate Mode as provided in this Section 82.11(b). On any Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023C Subordinated Bonds before the proposed Conversion Date pursuant to clause (ii) of this subsection (b), the District shall give written notice to the Notice Parties stating that the Interest Rate Mode will be changed to the Fixed Rate Mode and setting forth the proposed Conversion Date. In addition, such notice shall state whether some or all of the 2023C Subordinated Bonds to be converted shall be converted to Serial Bonds and, if so, the applicable Serial Maturity Dates and Serial Payments, all as determined pursuant to clause (v) of this subsection (b). Any such change in Interest Rate Mode shall be made as follows:

(i) Conversion Date. The Conversion Date shall be:

(1) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023C Subordinated Bonds end;

(2) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(3) in the case of a change from the Term Rate Mode, any day on which the applicable 2023C Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(4) in the case of a change from the Index Mode, any day on which the applicable 2023C Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and



(5) in the case of a change from the Direct Purchase Index Mode, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(ii) Notice to Holders. Not less than the 10th day next preceding the Conversion Date, the Trustee shall mail, in the name of the District, a notice of such proposed change to the Holders of the 2023C Subordinated Bonds stating that the Interest Rate Mode will be changed to the Fixed Rate Mode, the proposed Conversion Date and that such Holder is required to tender such Holder's 2023C Subordinated Bonds for purchase on such proposed Conversion Date.

(iii) General Provisions Applying to Change to Fixed Rate Mode. The change to the Fixed Rate Mode shall not occur unless the following items shall have been delivered to the District and the Trustee and the following conditions shall have been satisfied, in each case on or prior to the Conversion Date:

(1) a Favorable Opinion of Bond Counsel dated the Conversion Date;

(2) if there is to be Credit Enhancement or Alternate Credit Enhancement delivered in connection with such change, the items required by Section 84.08(d) in connection with the delivery of Credit Enhancement or Alternate Credit Enhancement; and

(3) if no Liquidity Facility is in effect to provide funds for the purchase of 2023C Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 84.04 shall not be less than the amount required to purchase all of the 2023C Subordinated Bonds on the Conversion Date at the Purchase Price.

(iv) Determination of Interest Rate. The Fixed Rate (or Fixed Rates in the case of Serial Bonds) for the 2023C Subordinated Bonds to be converted to the Fixed Rate Mode shall be established by the Remarketing Agent on the Rate Determination Date applicable thereto pursuant to the provisions of Section 82.07(b). Such Fixed Rate or Fixed Rates shall remain in effect until the Maturity Date or Serial Maturity Dates, as applicable, of such 2023C Subordinated Bonds. Such determination shall be conclusive and binding upon the District, the Trustee, the Credit Provider, if any, and the Holders of the 2023C Subordinated Bonds to which such rate will be applicable. Not later than 5:00 p.m. on the date of determination of the Fixed Rate, the Remarketing Agent shall notify the District, the Trustee and the Credit Provider, if any, of such rate by telephone.

(v) Serialization and Sinking Fund Account Redemption; Price. Upon conversion of the 2023C Subordinated Bonds to the Fixed Rate Mode, the 2023C Subordinated Bonds shall be remarketed at par, shall mature on the same Maturity Date and be subject to the same mandatory sinking fund account redemption, if any, and optional redemption provisions as set forth in this Fourteenth Supplemental Resolution prior to the conversion; provided, however, that if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to (1) have some of the 2023C Subordinated Bonds be Serial Bonds and some subject to mandatory sinking fund

account redemption even if such 2023C Subordinated Bonds were not Serial Bonds or subject to mandatory sinking fund account redemption prior to such change, (2) change the optional redemption dates and/or premiums set forth in Section 83.03(b), and/or (3) sell some or all of the 2023C Subordinated Bonds at a premium or a discount to par.

(c) Failure to Satisfy Conditions Precedent to an Interest Rate Mode Change.

In the event the conditions described above in subsections (a) or (b), as applicable, of this Section have not been satisfied by the applicable Conversion Date, then the New Mode shall not take effect (although any mandatory tender shall be made on such date if notice has been sent to the Holders stating that such 2023C Subordinated Bonds would be subject to mandatory purchase on such date). If the failed change in Interest Rate Mode was from the Flexible Mode, such 2023C Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the failed Conversion Date in accordance with Section 82.05. If the failed change in Interest Rate Mode was from the Daily Mode, such 2023C Subordinated Bonds shall remain in the Daily Mode, and if the failed change in Interest Rate Mode was from the Weekly Mode, such 2023C Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 82.06 on and as of the failed Conversion Date. If the failed change in Interest Rate Mode was from the Term Rate Mode, then such 2023C Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 82.07. If the failed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023C Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 82.09. If the failed change in Interest Rate Mode was from the Index Mode, then the 2023C Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 82.10.

(d) Rescission of Election. Notwithstanding anything herein to the contrary, the District may rescind any election by it to change an Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period as described above prior to the Conversion Date by giving written notice thereof to the Notice Parties prior to 10:00 a.m. on the Business Day preceding such Conversion Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Holders of the 2023C Subordinated Bonds, then such notice of change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be of no force and effect. If the Trustee receives notice from the District of rescission of a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period after the Trustee has given notice thereof to the Holders of the 2023C Subordinated Bonds, then, if the proposed Conversion Date would have been a Mandatory Purchase Date, such date shall continue to be a Mandatory Purchase Date and the Interest Rate Mode for the 2023C Subordinated Bonds shall be determined as set forth in the remainder of this paragraph. If the proposed change in Interest Rate Mode was from the Flexible Mode, such 2023C Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the proposed Conversion Date in accordance with Section 82.05. If the proposed change in Interest Rate Mode was from the Daily Mode, such 2023C Subordinated Bonds shall remain in the Daily Mode, and if the proposed change in Interest Rate Mode was from the Weekly Mode, such 2023C Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in

accordance with the applicable provisions of Section 82.06 on and as of the proposed Conversion Date. If the proposed change in Interest Rate Mode was from the Term Rate Mode, then such 2023C Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 82.07. If the proposed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023C Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 82.09. If the proposed change in Interest Rate Mode was from the Index Mode, then the 2023C Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 82.10.

## **ARTICLE LXXXIII**

### **REDEMPTION OF 2023C SUBORDINATED BONDS**

**Section 83.01. Optional Redemption of Flexible Rate Bonds.** 2023C Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023C Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

**Section 83.02. Optional Redemption of 2023C Subordinated Bonds in the Daily Mode and the Weekly Mode.** 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023C Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 83.03. Optional Redemption of 2023C Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.**

(a) 2023C Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023C Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023C Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023C Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(b) 2023C Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023C Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(c) The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023C Subordinated Bonds so changed to a Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

(d) Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023C Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

**Section 83.04. Optional and Mandatory Redemption of 2023C Subordinated Bonds in the Direct Purchase Index Mode.**

(a) Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023C Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023C Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

(b) 2023C Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 83.05. Mandatory Sinking Fund Account Redemption of 2023C Subordinated Bonds and Redemption of Liquidity Provider Bonds.**

(a) The 2023C Subordinated Bonds shall be subject to redemption prior to maturity from mandatory sinking fund account payments for the 2023C Subordinated Bonds on the dates, if any, specified in the Sales Certificate, at a Redemption Price equal to the principal amount of the 2023C Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The mandatory sinking fund account payments for the 2023C Subordinated Bonds shall be in the amounts and payable on the dates set forth in the Sales Certificate.

(b) Notwithstanding anything herein to the contrary, Liquidity Provider Bonds are subject to redemption on the dates, in the amounts and otherwise in accordance with the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

**Section 83.06. Funds for Redemption of 2023C Subordinated Bonds.** Unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023C Subordinated Bonds, the Redemption Price of 2023C Subordinated Bonds

(other than Liquidity Provider Bonds) shall be paid solely from (1) moneys obtained from a drawing on the Credit Enhancement supporting the 2023C Subordinated Bonds pursuant to Section 84.08(a) or (2) Available Moneys.

**Section 83.07. Selection of 2023C Subordinated Bonds for Redemption.**

Whenever provision is made for the redemption of less than all of the 2023C Subordinated Bonds of any one maturity, the Trustee shall select the 2023C Subordinated Bonds to be redeemed, from the Outstanding 2023C Subordinated Bonds of such maturity not previously called for redemption, by lot in any manner which the Trustee deems fair; provided, however, that Liquidity Provider Bonds shall be redeemed prior to the redemption of other 2023C Subordinated Bonds; provided further, however, that during a Direct Purchase Index Rate Period, the 2023C Subordinated Bonds shall be redeemed pro rata. The Trustee shall promptly notify the District in writing of the numbers of the 2023C Subordinated Bonds so selected for redemption.

**Section 83.08. Notice of Redemption.** Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023C Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023C Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023C Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023C Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023C Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023C Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023C Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023C Subordinated Bonds to be redeemed.

Notice of optional redemption shall be given by the Trustee for and on behalf of the District, at the written request of the District (which request shall be given to the Trustee (unless waived by the Trustee) at least twenty-five (25) days prior to the date fixed for redemption or such shorter period as is acceptable to the Trustee). Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption.

Notwithstanding the foregoing, notice of redemption shall not be required for 2023C Subordinated Bonds redeemed on a Mandatory Purchase Date.

**Section 83.09. Partial Redemption of 2023C Subordinated Bond.** Upon surrender of any 2023C Subordinated Bond redeemed in part only, the District shall execute and the Trustee shall deliver to the registered owner thereof, at the expense of the District, a new 2023C Subordinated Bond or Bonds, of the same maturity, of Authorized Denominations in

aggregate principal amount equal to the unredeemed portion of the 2023C Subordinated Bond surrendered.

**Section 83.10. Effect of Redemption.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price being held by the Trustee, the 2023C Subordinated Bonds so to be redeemed shall, on the date designated in such notice, become due and payable at the Redemption Price specified in such notice; and from and after the date so designated interest on the 2023C Subordinated Bonds so designated for redemption shall cease to accrue and the Holders and Beneficial Owners of said 2023C Subordinated Bonds shall have no rights in respect thereof, except to receive payment of the Redemption Price thereof.

**Section 83.11. Disposition of Redeemed 2023C Subordinated Bonds.** All 2023C Subordinated Bonds redeemed pursuant to the provisions of this Article LXXXIII shall be delivered to and cancelled by the Trustee and shall thereafter be delivered by the Trustee to, or upon the order of, the District, and no 2023C Subordinated Bonds shall be issued in place thereof.

## ARTICLE LXXXIV

### PURCHASE OF 2023C SUBORDINATED BONDS

**Section 84.01. Optional Tenders of 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode.** Subject to Section 84.06, the Beneficial Owners of 2023C Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023C Subordinated Bonds (or portions of those 2023C Subordinated Bonds, provided that no 2023C Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

**Section 84.02. Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode.**

(a) The 2023C Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023C Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023C Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023C Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023C

Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

(b) Notwithstanding subparagraph (a) above and anything to the contrary in this Fourteenth Supplemental Resolution, in the event the 2023C Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023C Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023C Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing, in which case the 2023C Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023C Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023C Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023C Subordinated Bonds may be subject to optional redemption or purchase at the sole option of the District at any time with notice as and to the extent provided in the Continuing Covenant Agreement.

#### **Section 84.03. Remarketing of 2023C Subordinated Bonds; Notices.**

(a) Remarketing of 2023C Subordinated Bonds. The Remarketing Agent shall use its best efforts pursuant to the terms and conditions of the Remarketing Agreement to offer for sale:

(i) all 2023C Subordinated Bonds or portions thereof as to which a Tender Notice has been delivered pursuant to Section 84.01; and

(ii) all 2023C Subordinated Bonds required to be purchased on a Mandatory Purchase Date described in clauses (i), (ii), (iii), (iv), (viii) or (ix) of the definition thereof; and

(iii) any Liquidity Provider Bonds (A) purchased on a Purchase Date described in clause (i) or (ii) above, (B) with respect to which the Liquidity Provider has provided notice to the Trustee and the Remarketing Agent that it has reinstated the Available Amount, (C) with respect to which an Alternate Liquidity Facility and Alternate Credit Enhancement is in effect (if such funds were secured by a Credit Enhancement prior to becoming Liquidity Provider Bonds, which Credit Enhancement is no longer in effect), and/or (D) which are being marketed as Fixed Rate Bonds.

The Remarketing Agent shall not remarket 2023C Subordinated Bonds to the District or any affiliate thereof. In connection with the remarketing of any 2023C Subordinated Bonds with respect to which notice of redemption or notice of mandatory purchase has been

given, the Remarketing Agent shall notify each person to which such 2023C Subordinated Bonds are remarketed of such notice of redemption or notice of mandatory purchase.

Anything in this Fourteenth Supplemental Resolution to the contrary notwithstanding, if there shall have occurred and be continuing either a Credit Provider Failure or a Liquidity Provider Failure with respect to a Series of 2023C Subordinated Bonds, the Remarketing Agent shall not remarket such 2023C Subordinated Bonds. All other provisions of this Fourteenth Supplemental Resolution, including without limitation, those relating to the setting of interest rates and Interest Periods and mandatory and optional purchases, shall remain in full force and effect during the continuance of such Credit Provider Failure or Liquidity Provider Failure.

(b) Notice of Remarketing; Registration Instructions; New Bonds. On each date on which a 2023C Subordinated Bond is to be purchased pursuant to this Article LXXXIV:

(i) the Remarketing Agent shall notify the Trustee by Electronic Means by 11:30 a.m. if it has been unable to remarket any tendered 2023C Subordinated Bonds, and shall include in such notice the principal amount of 2023C Subordinated Bonds it has been unable to remarket;

(ii) the Remarketing Agent shall notify the Trustee by Electronic Means not later than 1:00 p.m. of the names of the purchasers of the successfully remarketed 2023C Subordinated Bonds and such information as may be necessary to register the 2023C Subordinated Bonds and the registration instructions with respect thereto;

(iii) the Remarketing Agent shall cause the proceeds of the remarketing by such Remarketing Agent of tendered 2023C Subordinated Bonds to be paid to the Trustee in immediately available funds not later than 12:00 noon on the Purchase Date for such 2023C Subordinated Bonds; and

(iv) if the 2023C Subordinated Bonds are not in the Book-Entry System, the Trustee shall authenticate new 2023C Subordinated Bonds for the respective purchasers thereof which shall be available for pick-up by the Remarketing Agent not later than 2:30 p.m.

(c) Draw on Liquidity Facility or Request for Funds. On each date on which a 2023C Subordinated Bond is to be purchased pursuant to this Article LXXXIV, if (i) the Remarketing Agent shall have given notice to the Trustee pursuant to clause (b)(i) above that it has been unable to remarket any of the 2023C Subordinated Bonds or (ii) the Trustee has not received from the Remarketing Agent an amount sufficient to pay the Purchase Price of tendered Bonds, by 12:00 noon on the Purchase Date, then the Trustee shall draw on the applicable Liquidity Facility (or if no Liquidity Facility, request funds from the District) by 12:15 p.m. in an amount equal to the Purchase Price of all such 2023C Subordinated Bonds which have not been successfully remarketed, requesting payment not later than 2:45 p.m. on the Purchase Date. Subject to Section 84.04, if a Liquidity Facility is in effect, the Trustee shall also give the District notice by 2:45 p.m. on the Purchase Date if it does not have funds in the Remarketing Proceeds



Account and the Liquidity Facility Purchase Account sufficient to pay the Purchase Price of 2023C Subordinated Bonds tendered on such Purchase Date. Any draw on a Liquidity Facility to be made on a Substitution Date shall be on the Liquidity Facility being replaced.

**Section 84.04. Source of Funds for Purchase of 2023C Subordinated Bonds.**

By 3:00 p.m. on the date on which a 2023C Subordinated Bond is to be purchased pursuant to this Article LXXXIV, and except as set forth in Section 84.06(b)(ii), the Trustee shall purchase tendered 2023C Subordinated Bonds from the tendering Holders at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and neither the Trustee nor the Remarketing Agent shall be obligated to provide funds from any other source:

(a) immediately available funds on deposit in the Remarketing Proceeds Account established for the 2023C Subordinated Bonds;

(b) immediately available funds on deposit in the Liquidity Facility Purchase Account established for the 2023C Subordinated Bonds; and

(c) moneys of the District on deposit in the District Purchase Account established for the 2023C Subordinated Bonds.

If no Liquidity Facility is in effect with respect to the 2023C Subordinated Bonds, then the District shall be obligated to deposit amounts into the District Purchase Account established for the 2023C Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023C Subordinated Bonds are insufficient therefor. If a Liquidity Facility is in effect with respect to the 2023C Subordinated Bonds, then the District may, but shall not be obligated to, deposit amounts into the District Purchase Account established for the 2023C Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023C Subordinated Bonds and the Liquidity Facility Purchase Account established for the 2023C Subordinated Bonds are insufficient therefor. If so specified in the Sales Certificate with respect to the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period, the failure of the District to deposit amounts into the District Purchase Account when the District is obligated to deposit such amounts under this Section 84.04 shall constitute an “event of default” under Section 9.01 of the Subordinate Master Resolution.

**Section 84.05. Delivery of Subordinated Bonds.** On each date on which a 2023C Subordinated Bond is to be purchased pursuant to this Article LXXXIV, such 2023C Subordinated Bond shall be delivered as follows:

(a) 2023C Subordinated Bonds sold by the Remarketing Agent and described in Section 84.04(a) shall be delivered by the Remarketing Agent to the purchasers of such 2023C Subordinated Bonds by 3:00 p.m.;

(b) 2023C Subordinated Bonds purchased by the Trustee with moneys described in Section 84.04(b) shall be registered immediately in the name of the Liquidity

Provider or its nominee (which may be the Securities Depository) or as otherwise specified in writing by the Liquidity Provider and held as specified in writing by the Liquidity Provider, in either case on or before 3:00 p.m.; and

(c) 2023C Subordinated Bonds purchased by the District with moneys described in Section 84.04(c) shall be registered immediately in the name of the District or its nominee on or before 3:00 p.m. 2023C Subordinated Bonds so owned by the District shall continue to be Outstanding under the terms of the Subordinate Master Resolution and be subject to all of the terms and conditions of the Subordinate Master Resolution and shall be subject to remarketing by the Remarketing Agent.

When any Liquidity Provider Bonds are remarketed, the Trustee shall not release 2023C Subordinated Bonds so remarketed to the Remarketing Agent until the Trustee has received confirmation that the Liquidity Facility has been reinstated.

#### **Section 84.06. Book-Entry Tenders.**

(a) Notwithstanding any other provision of this Article LXXXIV to the contrary, all tenders for purchase during any period in which the 2023C Subordinated Bonds are registered in the name of any Securities Depository or its nominee shall be subject to the terms and conditions set forth in the Representations Letter and to any regulations promulgated by the Securities Depository. During any period that the 2023C Subordinated Bonds are registered in the name of DTC or its nominee, the tender option rights of holders of 2023C Subordinated Bonds may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of 2023C Subordinated Bonds by giving notice of its election to tender 2023C Subordinated Bonds or portions thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender 2023C Subordinated Bonds directly to the Trustee. Procedures under which a Beneficial Owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Director Participant of DTC, to exercise a tender option right in respect of 2023C Subordinated Bonds or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. During any period that the 2023C Subordinated Bonds are registered in the name of DTC or its nominee, delivery of 2023C Subordinated Bonds required to be tendered for purchase shall be effected by the transfer by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Trustee of a beneficial ownership interest in such 2023C Subordinated Bonds.

(b) Notwithstanding anything expressed or implied herein to the contrary, during any period that a Book-Entry System for the 2023C Subordinated Bonds is maintained by the District:

(i) there shall be no requirement of physical delivery to or by the Trustee or the Remarketing Agent of:

(1) any 2023C Subordinated Bonds subject to mandatory or optional purchase as a condition to the payment of the Purchase Price therefor;

(2) any 2023C Subordinated Bonds that have become Liquidity Provider Bonds; or

(3) any remarketing proceeds of such 2023C Subordinated Bonds or Liquidity Provider Bonds; and

(ii) except as provided in (iii) below, neither the Trustee nor the Paying Agent shall have any responsibility for paying the Purchase Price of any tendered 2023C Subordinated Bond or for remitting remarketing proceeds to any Person; and

(iii) the Trustee's sole responsibilities in connection with the purchase and remarketing of a tendered 2023C Subordinated Bond shall be to:

(1) draw upon the Liquidity Facility to pay the Purchase Price of 2023C Subordinated Bond in the manner provided herein and to remit the amount so drawn to or upon the order of the Securities Depository for the benefit of the tendering Beneficial Owners; and

(2) remit any proceeds derived from the remarketing of a Liquidity Provider Bond and any unused proceeds from a drawing on the Liquidity Facility to the Liquidity Provider.

**Section 84.07. No Book-Entry System.** During any period that the 2023C Subordinated Bonds shall not be in a Book-Entry System, the following procedures shall be followed:

(a) 2023C Subordinated Bonds shall be delivered (with all necessary endorsements) at or before 12:00 noon on the Purchase Date at the office of the Paying Agent in New York, New York; provided, however, that payment of the Purchase Price shall be made pursuant to this Section only if the 2023C Subordinated Bond so delivered to the Paying Agent conforms in all respects to the description thereof in the notice described in this Section. Payment of the Purchase Price with respect to purchases under this Section shall be made to the Holders of tendered 2023C Subordinated Bonds by wire transfer in immediately available funds by the Paying Agent by 3:00 p.m. on the Purchase Date.

(b) If a 2023C Subordinated Bond to be purchased pursuant to this Article LXXXIV is not delivered by the Holder to the Paying Agent by 12:00 noon on the date in which such 2023C Subordinated Bond is to be purchased, the Paying Agent shall hold any funds received for the purchase of those 2023C Subordinated Bonds in trust in a separate account and shall pay such funds to the former Holders of the 2023C Subordinated Bonds upon presentation of the 2023C Subordinated Bonds. Such undelivered 2023C Subordinated Bonds shall cease to accrue interest as to the former Holders on such purchase date and moneys representing the Purchase Price shall be available against delivery of those 2023C Subordinated Bonds at the Principal Office of the Paying Agent; provided, however, that any funds which shall be so held by the Paying Agent and which remain unclaimed by the former Holder of a 2023C Subordinated Bond not presented for purchase for a period of two years after delivery of such funds to the Paying Agent, shall, to the extent permitted by law, upon request in writing by the District and the furnishing of security or indemnity to the Paying Agent's satisfaction, be paid to the District free of any trust or lien and thereafter the former Holder of such 2023C Subordinated

Bond shall look only to the District and then only to the extent of the amounts so received by the District without any interest thereon and the Paying Agent shall have no further responsibility with respect to such moneys or payment of the Purchase Price of such 2023C Subordinated Bonds. The Paying Agent shall authenticate a replacement 2023C Subordinated Bond for any undelivered 2023C Subordinated Bond which may then be remarketed by the Remarketing Agent.

(c) The Paying Agent shall hold all 2023C Subordinated Bonds properly tendered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Holders of the 2023C Subordinated Bonds which shall have so tendered such 2023C Subordinated Bonds until moneys representing the Purchase Price of such 2023C Subordinated Bonds shall have been delivered to or for the account of or to the order of such Holders.

**Section 84.08. Credit Enhancement and Liquidity Facility.**

(a) While a Credit Enhancement is in effect with respect to the 2023C Subordinated Bonds, the Trustee shall, on the Business Day preceding each Interest Payment Date and Principal Payment Date draw on the Credit Enhancement in accordance with the terms thereof so as to receive thereunder with respect to the 2023C Subordinated Bonds secured by the Credit Enhancement by 1:00 p.m. on said Interest Payment Date and Principal Payment Date, an amount, in immediately available funds, equal to the amount of interest and principal payable on such 2023C Subordinated Bonds on such Interest Payment Date and Principal Payment Date. The proceeds of such draws shall be deposited in a separate account in the Subordinated Bond Interest and Principal Fund and shall be applied to pay principal of and interest on such 2023C Subordinated Bonds prior to the application of any other funds held by the Trustee therefor. Amounts held in such account shall be held uninvested and separate and apart from all other funds and accounts. Such accounts shall at all times be Eligible Accounts.

(b) If a Liquidity Facility is in effect with respect to the 2023C Subordinated Bonds, on each date on which a 2023C Subordinated Bond is to be purchased, the Trustee, by demand given by Electronic Means by 12:15 p.m., shall draw on the Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:45 p.m. on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2023C Subordinated Bonds on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The Trustee shall deposit said proceeds in the Liquidity Facility Purchase Account established for the 2023C Subordinated Bonds pursuant to Section 84.09(b) hereof.

(c) Notwithstanding the foregoing paragraphs of this Section, if the Credit Provider and the Liquidity Provider are the same entity, the Trustee shall not draw on the Credit Enhancement with respect to any payments due or made in connection with Liquidity Provider Bonds. In no event shall the Trustee draw on the Credit Enhancement or Liquidity Facility with respect to any payments made or made in connection with 2023C Subordinated Bonds not covered by the Credit Enhancement or Liquidity Facility or 2023C Subordinated Bonds owned by the District.

(d) The District may provide an Alternate Credit Enhancement or Alternate Liquidity Facility on any day on which 2023C Subordinated Bonds to be secured by such Alternate Credit Enhancement or Alternate Liquidity Facility are subject to redemption at par and not later than the fifth (5th) Business Day prior to the Expiration Date of the Credit Enhancement or Liquidity Facility then in effect and supporting such 2023C Subordinated Bonds. The District shall give the Notice Parties written notice of the proposed substitution of an Alternate Credit Enhancement or Alternate Liquidity Facility no less than two (2) Business Days prior to the date on which the Trustee is required to provide notice of the proposed substitution to the Holders of the 2023C Subordinated Bonds. The Trustee shall give notice of such Substitution Date in accordance with Section 84.02. On or before the Substitution Date there shall be delivered to the Trustee (i) the Alternate Credit Enhancement or the Alternate Liquidity Facility in substitution for the Credit Enhancement or Liquidity Facility then in effect, (ii) a Favorable Opinion of Bond Counsel, (iii) a written Opinion of Counsel for the provider of the Alternate Credit Enhancement or Alternate Liquidity Facility, as applicable, to the effect that such Alternate Credit Enhancement or Alternate Liquidity Facility is a valid, legal and binding obligation of the provider thereof, and (iv) unless waived by such entity, written evidence satisfactory to the Credit Provider and the Liquidity Provider of the provision for purchase from the Liquidity Provider of all Liquidity Provider Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due to the Credit Provider and the Liquidity Provider under the applicable Reimbursement Agreement or Liquidity Facility on or before the effective date of such Alternate Credit Enhancement or Alternate Liquidity Facility. Upon the satisfaction of the conditions described in the preceding sentence, the Trustee shall accept such Alternate Credit Enhancement or Alternate Liquidity Facility on the close of business on the Substitution Date and shall surrender the Credit Enhancement or Liquidity Facility then in effect to the provider thereof on the Substitution Date; provided, however, that the Trustee shall not surrender the Credit Enhancement or Liquidity Facility then in effect unless and until the Trustee has received all amounts drawn thereunder. If any condition to the substitution is not satisfied, the substitution shall not occur but the 2023C Subordinated Bonds shall remain subject to mandatory purchase on the proposed Substitution Date.

(e) In the event of an extension of the Expiration Date, the District shall give to the Notice Parties, a written notice of the new Expiration Date at least fifteen (15) days prior to the fifth Business Day prior to the Expiration Date in effect prior to such extension.

(f) The references to Credit Enhancement and Liquidity Facility and Credit Provider and Liquidity Provider shall be disregarded during any period during which a Credit Enhancement or Liquidity Facility, as applicable, is not in effect.

(g) The Trustee shall not have any lien on or security interest in any amounts drawn under a Credit Enhancement or a Liquidity Facility or any amounts on deposit in the account described in Section 84.08(a) above in which proceeds of draws on a Credit Enhancement are deposited or a Liquidity Facility Purchase Account.

(h) If at any time during the term of a Credit Enhancement and/or Liquidity Facility any successor Trustee shall be appointed and qualified under the Subordinate Master Resolution, the resigning or removed Trustee shall request that the Credit Provider and/or Liquidity Provider, as applicable, transfer such Credit Enhancement and/or Liquidity Facility to

the successor Trustee and such resignation or removal of the Trustee shall not be effective until the Credit Enhancement and/or Liquidity Facility has been duly transferred (including the payment of any required transfer fee) to such successor Trustee. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment.

(i) The Trustee may accept, hold and draw upon a Credit Enhancement and/or a Liquidity Facility issued by itself or by any of its corporate affiliates to provide security and a source of payment for the 2023C Subordinated Bonds. The Trustee covenants that it shall at all times maintain adequate controls to manage any potential conflict of interest. Notwithstanding any other provision herein to the contrary, while the Credit Provider and/or Liquidity Provider is the Trustee or an affiliate of the Trustee and such Credit Provider and/or Liquidity Provider has not failed to honor a properly presented draw on the Credit Enhancement and/or Liquidity Facility, the Trustee shall have no discretion with respect to the acceleration of the 2023C Subordinated Bonds and shall do so only upon the written direction of such Credit Provider and/or Liquidity Provider and as otherwise permitted by the Subordinate Master Resolution. The Trustee shall immediately tender its resignation and take prompt steps to have a successor trustee appointed satisfying the requirements of the Subordinate Master Resolution if such affiliated Credit Provider and/or Liquidity Provider shall fail at any time to honor a properly presented and conforming draw on the Credit Enhancement and/or Liquidity Facility.

**Section 84.09. Purchase Fund.** There is hereby established and there shall be maintained with the Trustee a separate fund to be known as the “Purchase Fund.” The Trustee shall further establish separate accounts within the Purchase Fund to be known as the “Liquidity Facility Purchase Account”, the “Remarketing Proceeds Account” and the “District Purchase Account”. At any time at which there is a Liquidity Facility in effect with respect to the 2023C Subordinated Bonds, the Purchase Fund shall be required to be an Eligible Account.

(a) Remarketing Proceeds Account. Upon receipt of the proceeds of a remarketing of a 2023C Subordinated Bond on the date such 2023C Subordinated Bond is to be purchased, the Trustee shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of such 2023C Subordinated Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of a remarketing of Liquidity Provider Bonds, the Trustee shall immediately pay such proceeds to the Liquidity Provider to the extent of any amount owing to the Liquidity Provider.

(b) Liquidity Facility Purchase Account. Upon receipt of the immediately available funds pursuant to Section 84.08(b), the Trustee shall deposit such money in the Liquidity Facility Purchase Account for application to the Purchase Price of the 2023C Subordinated Bonds to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to the Purchase Price of any 2023C Subordinated Bonds shall be immediately returned to the Liquidity Provider.

(c) District Purchase Account. Upon receipt of funds from the District pursuant to Section 84.04, the Trustee shall deposit such funds in the District Purchase Account for application to the Purchase Price of the 2023C Subordinated Bonds. Any amounts deposited

in the District Purchase Account and not needed with respect to the Purchase Price for any 2023C Subordinated Bonds shall be immediately returned to the District.

(d) Investment. Amounts held in the Liquidity Facility Purchase Account, the Remarketing Proceeds Account and the District Purchase Account by the Trustee shall be held uninvested and separate and apart from all other funds and accounts.

**Section 84.10. Inadequate Funds for Tenders.**

(a) If moneys sufficient to pay the Purchase Price of all Tendered Bonds to be purchased on any Purchase Date are not available (1) no purchase shall be consummated of Tendered Bonds on such Purchase Date; (2) all Tendered Bonds shall be returned to the Holders thereof; and (3) all remarketing proceeds with respect to the 2023C Subordinated Bonds shall be returned to the Remarketing Agent for return to the Persons providing such moneys. Thereafter, the Trustee shall continue to take all such action available to it to obtain remarketing proceeds with respect to all Tendered Bonds from the Remarketing Agent and sufficient other funds from the Liquidity Provider, if any, or, subject to Section 84.04, the District to effect a subsequent successful remarketing or purchase of any Tendered Bonds.

(b) All Tendered Bonds (other than Liquidity Provider Bonds and 2023C Subordinated Bonds in the Direct Purchase Index Mode) shall bear interest at the Maximum Rate (or such lower interest rate or rates specified in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period) during the period of time from and including the applicable Purchase Date to (but not including) the date that all such Tendered Bonds are successfully remarketed, redeemed, purchased or paid (the “Delayed Remarketing Period”).

(c) The District may direct the conversion of the Tendered Bonds to a different Interest Rate Mode, Index Rate Period or Term Rate Period during the Delayed Remarketing Period in accordance with Section 82.11 hereof; provided that the District shall not be required to comply with the notice requirements described in Section 82.11.

(d) Subject to the terms of the Remarketing Agreement, if any, the Remarketing Agent shall continue to use its best efforts to remarket all of the Tendered Bonds at rates up to and including the Maximum Rate.

(e) During the Delayed Remarketing Period, the Trustee may, upon direction of the District, apply amounts on deposit in the Redemption Fund to the redemption of such Tendered Bonds, as a whole or in part on any Business Day during the Delayed Remarketing Period, at a redemption price equal to the principal amount thereof, together with interest accrued thereon to the date fixed for redemption, without premium. Notwithstanding Section 83.08 to the contrary, the Trustee shall give five Business Days’ notice of such redemption to the Holders of the 2023C Subordinated Bonds to be redeemed.

(f) During the Delayed Remarketing Period, interest on such Tendered Bonds (other than 2023C Subordinated Bonds in the Direct Purchase Index Mode) shall be paid to the Holders thereof (i) on the first Business Day of each calendar month occurring during the Delayed Remarketing Period and (ii) on the last day of the Delayed Remarketing Period.

## ARTICLE LXXXV

### REMARKETING AGENT

#### **Section 85.01. Appointment of Remarketing Agent.**

(a) The Remarketing Agent shall be appointed pursuant to the Remarketing Agreement to remarket 2023C Subordinated Bonds pursuant to this Fourteenth Supplemental Resolution and perform the other duties of the Remarketing Agent described hereunder, and to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the District and the Trustee at all reasonable times. The Remarketing Agent shall act as such under the Remarketing Agreement.

(b) The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Fourteenth Supplemental Resolution as set forth in the Remarketing Agreement. The Remarketing Agent may suspend its remarketing efforts as set forth in the Remarketing Agreement. The Remarketing Agent may be removed at any time, at the direction of the District as set forth in the Remarketing Agreement. Any successor Remarketing Agent shall be selected by the District, and shall be a member of the Financial Industry Regulatory Authority, or its successors, shall have a capitalization of at least fifteen million dollars (\$15,000,000), shall be authorized by law to perform all the duties set forth in this Fourteenth Supplemental Resolution and shall be acceptable to the Credit Provider and Liquidity Provider. The District's delivery to the Trustee of a certificate setting forth the effective date of the appointment of a successor Remarketing Agent and the name of such successor shall be conclusive evidence that (i) if applicable, the predecessor Remarketing Agent has been removed in accordance with the provisions of this Fourteenth Supplemental Resolution and (ii) such successor has been appointed and is qualified to act as Remarketing Agent under the terms of this Fourteenth Supplemental Resolution.

(c) If the Remarketing Agent consolidates with, merges or converts into, or transfers all or substantially all of its assets (or, in the case of a bank, national banking association or trust company, its corporate assets) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Remarketing Agent.

## ARTICLE LXXXVI

### MISCELLANEOUS

#### **Section 86.01. 2023C Subordinated Sinking Fund Account; Payments of Interest, Principal and Redemption Price and Defeasance While Credit Enhancement in Effect.**

(a) An account is hereby established within the Subordinated Bonds Interest and Principal Fund to be designated the "Series 2023C Sinking Fund Account." The Treasurer shall deposit in the Series 2023C Sinking Fund Account the mandatory sinking fund account payments in the amounts, on the mandatory sinking fund account payment dates, set forth in



Section 83.05(a) and shall transfer such amounts to the Trustee on such date for application as provided in Section 86.01(b).

(b) On each mandatory sinking fund account payment date established for the 2023C Subordinated Bonds, the Trustee shall apply the mandatory sinking fund account payment required on that date to the redemption (or payment at maturity, as the case may be) of the 2023C Subordinated Bonds for which the mandatory sinking fund account payment has been made, upon the notice and in the manner provided in Section 83.08; provided that, at any time prior to giving such notice of such redemption, the Trustee shall, upon direction of the District, apply such moneys to the purchase of such 2023C Subordinated Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest) as the District may direct, except that the purchase price (excluding accrued interest) shall not exceed the par amount of such 2023C Subordinated Bonds. If, during the twelve-month period immediately preceding said mandatory sinking fund account payment date, the Trustee has purchased 2023C Subordinated Bonds with moneys in the Series 2023C Sinking Fund Account, or, during said period and prior to giving said notice of redemption, the District has deposited 2023C Subordinated Bonds with the Trustee, such 2023C Subordinated Bonds so purchased or deposited or redeemed shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking fund account payment. All 2023C Subordinated Bonds purchased or deposited pursuant to this subsection shall be cancelled and destroyed by the Trustee. All 2023C Subordinated Bonds purchased from the Series 2023C Sinking Fund Account or deposited by the District with the Trustee shall be allocated first to the next succeeding mandatory sinking fund account payment, then to the remaining mandatory sinking fund account payments as selected by the District.

(c) Any moneys remaining in the Series 2023C Sinking Fund Account after all 2023C Subordinated Bonds have been retired shall be returned to the District for any lawful District use.

(d) Notwithstanding the foregoing provisions of this Section 86.01 or Section 5.02 or any other provision of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023C Subordinated Bonds, the principal and Redemption Price of, and interest on, the 2023C Subordinated Bonds shall be paid solely (1) first, from moneys obtained from a drawing on the Credit Enhancement pursuant to Section 84.08(a) and (2) second, in the event moneys are not available pursuant to clause (1) for such purpose for any reason, from Available Moneys and moneys on deposit in the Series 2023C Sinking Fund Account shall be withdrawn by the Trustee and used solely for the purpose of reimbursing the Credit Provider for drawings under the Credit Enhancement. To the extent the Credit Provider honors a drawing under the Credit Enhancement for the purpose of paying the principal or Redemption Price of, or interest on, the 2023C Subordinated Bonds, the District shall receive a credit against its obligation to make deposits into the Subordinated Bonds Interest and Principal Fund and shall not be required to transfer funds to the Trustee in the amount of such drawing.

(e) Notwithstanding the provisions of Article X of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023C Subordinated Bonds, 2023C Subordinated

Bonds shall not be deemed defeased or otherwise paid or satisfied unless such 2023C Subordinated Bonds are defeased with (1) moneys obtained from a drawing on the Credit Enhancement pursuant to Section 84.08(a), (2) Available Moneys or (3) Defeasance Securities acquired with moneys described in (1) or (2). Any Defeasance Securities used to defease 2023C Subordinated Bonds for which Credit Enhancement is in effect shall be not callable by the issuer thereof prior to maturity and shall mature no later than the earlier of (x) the first day upon which such 2023C Subordinated Bonds may be tendered or (y) the first day upon which such 2023C Subordinated Bonds may be redeemed. For purpose of Article X of the Subordinate Master Resolution, interest on the 2023C Subordinated Bonds shall be calculated based on an assumed interest rate equal to the Maximum Rate for periods for which the actual interest rate on the 2023C Subordinated Bonds cannot be determined.

**Section 86.02. Form and Execution of 2023C Subordinated Bonds.** The 2023C Subordinated Bonds, and the certificate of authentication and registration to be executed thereon, shall be in substantially the form set forth as Exhibit A to this Fourteenth Supplemental Resolution.

The 2023C Subordinated Bonds shall be executed in the name and on behalf of the District with the manual or facsimile signature of the President or Vice President of its Board of Directors. The 2023C Subordinated Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who shall have signed any of the 2023C Subordinated Bonds shall cease to be such officer of the District before the 2023C Subordinated Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the District, such 2023C Subordinated Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the District as though those who signed the same had continued to be such officer of the District, and also any 2023C Subordinated Bond may be signed on behalf of the District by such person as at the actual date of execution of such 2023C Subordinated Bond shall be the proper officer of the District although at the nominal date of such 2023C Subordinated Bond any such person shall not have been such officer of the District.

Only such of the 2023C Subordinated Bonds as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A to this Fourteenth Supplemental Resolution, manually executed by an authorized signatory of the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of the Subordinate Master Resolution, and such certificate of the Trustee shall be conclusive evidence that the 2023C Subordinated Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of the Subordinate Master Resolution.

**Section 86.03. Issuance of 2023C Subordinated Bonds.** At any time after the adoption of this Fourteenth Supplemental Resolution, the District may execute and deliver the 2023C Subordinated Bonds in the aggregate principal amount set forth in the Sales Certificate. The Trustee shall authenticate and deliver the 2023C Subordinated Bonds upon written order of the District. The proceeds of the sale of the 2023C Subordinated Bonds shall be deposited and applied as set forth in the Sales Certificate.

**Section 86.04. Use of Depository.** Notwithstanding any provision of the Subordinate Master Resolution or this Fourteenth Supplemental Resolution to the contrary:

(a) The 2023C Subordinated Bonds shall be initially issued as provided in Section 82.02; provided, that 2023C Subordinated Bonds in the Direct Purchase Index Mode shall be issued in definitive certificated form registered in the name of the Holder thereof or as otherwise directed by the Holder. 2023C Subordinated Bonds in any other Interest Rate Mode shall be registered in the name of Cede & Co. or as otherwise directed by the Securities Depository and registered ownership thereof, or any portion thereof, may not thereafter be transferred except:

(i) To any successor of DTC or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (a) (“substitute depository”); provided that any successor of DTC or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) To any substitute depository not objected to by the Trustee, upon (1) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or (2) a determination by the District that DTC or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of DTC or its successor (or substitute depository or its successor) from its functions as depository; provided that no substitute depository which is not objected to by the Trustee can be obtained or (2) a determination by the District that it is in the best interests of the District to remove DTC or its successor (or any substitute depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 86.04(a) hereof, upon receipt of all outstanding 2023C Subordinated Bonds by the Trustee, together with a Certificate of the District to the Trustee, a single new 2023C Subordinated Bond shall be executed and delivered for each maturity of 2023C Subordinated Bonds then outstanding registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Certificate of the District. In the case of any transfer pursuant to clause (iii) of subsection 86.04(a) hereof, upon receipt of all outstanding 2023C Subordinated Bonds by the Trustee together with a Certificate of the District to the Trustee, new 2023C Subordinated Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the District, subject to the limitations of Section 86.04(a) hereof, provided the Trustee shall not be required to deliver such new 2023C Subordinated Bonds within a period less than 60 days from the date of receipt of such a Certificate of the District. Subsequent to any transfer pursuant to clause (iii) of subsection 86.04(a) hereof, the 2023C Subordinated Bonds shall be transferred as provided in Article II of the Subordinate Master Resolution.

(c) In the case of partial redemption or an advance refunding of the 2023C Subordinated Bonds evidencing all or a portion of the principal maturing in a particular year, DTC shall make an appropriate notation on the 2023C Subordinated Bonds indicating the date and amounts of such reduction in principal. The Trustee shall incur no liability for the failure or any error by DTC in making such notation and the records of the Trustee shall be determinative of the outstanding principal amount of 2023C Subordinated Bonds.

(d) The District and the Trustee shall be entitled to treat the person in whose name any 2023C Subordinated Bond is registered as the Bondholder thereof for all purposes of the Subordinate Master Resolution and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the District; and the District and the Trustee shall have no responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with, any Beneficial Owners of the 2023C Subordinated Bonds. Neither the District nor the Trustee will have any responsibility or obligations, legal or otherwise, to the Beneficial Owners or to any other party including DTC or its successor (or substitute depository or its successor), except for the Holder of any 2023C Subordinated Bond.

(e) During any period that the Outstanding 2023C Subordinated Bonds are registered in the name of Cede & Co. or its registered assigns, the District and the Trustee (to the extent funds are provided to it by the District) shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns, in effecting payment of the principal of and redemption premium, if any, and interest on the 2023C Subordinated Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

#### **Section 86.05. Tax Covenants.**

(a) The District shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that interest paid on the 2023C Subordinated Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the District agrees to comply with the provisions of the 2023 Tax Certificate. This covenant shall survive payment in full or defeasance of the 2023C Subordinated Bonds.

(b) Without limiting the generality of the foregoing, the District agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Internal Revenue Code of 1986 (the "Code") and any temporary, proposed or final United States Treasury Regulations as may be applicable to the 2023C Subordinated Bonds from time to time (the "Rebate Requirement"). The District specifically covenants to pay or cause to be paid the Rebate Requirement as provided in the 2023 Tax Certificate to the United States of America from any Net Subordinate Revenues lawfully available to the District. This covenant shall survive payment in full or defeasance of the 2023C Subordinated Bonds. Capitalized terms in this Section not otherwise defined in the Subordinate Master Resolution or this Fourteenth Supplemental Resolution shall have the meanings ascribed to them in the 2023 Tax Certificate.

(c) The District shall establish, maintain and hold in trust a fund separate from any other fund established and maintained hereunder designated the Rebate Fund. The District shall cause to be deposited in the Rebate Fund the Rebate Requirement as provided in the 2023 Tax Certificate. Subject to the provisions of this Section, moneys held in the Rebate Fund are hereby pledged to secure payments to the United States government, and the District and the Bondholders shall have no rights in or claim to such moneys.

(d) In accordance with the 2023 Tax Certificate, the District shall remit part or all of the balance held in the Rebate Fund to the United States government as so directed.

(e) Notwithstanding any provision of this Section, if the District shall obtain an opinion of counsel of recognized national standing in the field of obligations the interest on which is excluded from gross income for purposes of federal income taxation to the effect that any specified action required under this Section is no longer required, or to the effect that some different action is required, to maintain the exclusion from gross income of the interest on the 2023C Subordinated Bonds under Section 103 of the Code, the District may rely conclusively on such opinion in complying with the provisions hereof, and the agreements and covenants hereunder shall be deemed to be modified to that extent without the necessity of an amendment of the Subordinate Master Resolution or this Fourteenth Supplemental Resolution or the consent at any time of the Bondholders.

#### **Section 86.06. Rights of Credit Provider.**

(a) Unless a Credit Provider Failure has occurred and is continuing, the Credit Provider shall be deemed the sole Holder of the 2023C Subordinated Bonds for the purpose of directing the Trustee with respect to the exercise of remedies and the declaration or waiver of Events of Default pursuant to Article IX of the Subordinate Resolution.

(b) Unless a Credit Provider Failure has occurred and is continuing, the Subordinate Master Resolution and this Fourteenth Supplemental Resolution shall not be amended without the written consent of the Credit Provider.

(c) Unless a Credit Provider Failure has occurred and is continuing, the District shall not appoint a successor Remarketing Agent or Trustee without the written consent of the Credit Provider.

#### **Section 86.07. Limitations on Rights of Trustee.**

(a) Proceeds of drawings on the Credit Enhancement and the Liquidity Facility and moneys on deposit in the Purchase Fund shall be used solely for the purposes set forth herein, and the Trustee shall have no lien on such proceeds or money, nor shall such proceeds or moneys be used for, the payment of the fees and/or expenses of the Trustee.

(b) The Trustee shall draw on the Credit Enhancement and the Liquidity Facility at the times and in the manner provided herein and therein and shall have no right to seek or obtain indemnification from the District, the Holders or any other party as a condition of making any such drawing.

**Section 86.08. Terms of 2023C Subordinated Bonds Subject to the Subordinate Master Resolution.**

(a) Except as in this Fourteenth Supplemental Resolution expressly provided, every term and condition contained in the Subordinate Master Resolution shall apply to this Fourteenth Supplemental Resolution and to the 2023C Subordinated Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Fourteenth Supplemental Resolution.

(b) This Fourteenth Supplemental Resolution and all the terms and provisions herein contained shall form part of the Subordinate Master Resolution as fully and with the same effect as if all such terms and provisions had been set forth in the Subordinate Master Resolution. The Subordinate Master Resolution is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

**Section 86.09. Resolution of Trust to Remain in Effect.** Save and except as supplemented by this Fourteenth Supplemental Resolution, the Subordinate Master Resolution shall remain in full force and effect.

**Section 86.10. Notice to Rating Agencies.** (a) The District shall provide or cause to be provided prompt notice of the following events to the Rating Agencies, if any:

(1) the expiration, termination, extension or substitution of any Credit Enhancement or Liquidity Facility relating to the 2023C Subordinated Bonds;

(2) any optional redemption (as a whole or in part), mandatory purchase or acceleration of the 2023C Subordinated Bonds;

(3) any conversion of the 2023C Subordinated Bonds;

(4) any amendment, modification or supplement of or to the Subordinate Master Resolution or any Credit Enhancement or Liquidity Facility relating to the 2023C Subordinated Bonds (which notice shall be provided or caused to be provided at least ten days prior to the effective date thereof);

(5) any change in the party instructed to draw on any Credit Enhancement or Liquidity Facility relating to the 2023C Subordinated Bonds;

(6) any removal or resignation of the Trustee or the Remarketing Agent; or

(7) any legal defeasance of the 2023C Subordinated Bonds.

(b) The District and the Trustee shall provide or cause to be provided to the Rating Agencies any information reasonably requested by such Rating Agency to maintain its rating, if any, on the 2023C Subordinated Bonds.

**Section 86.11. Continuing Disclosure.** The District hereby covenants and agrees that it will comply with and carry out all of the provisions of any Continuing Disclosure Agreement executed in connection with the 2023C Subordinated Bonds. Notwithstanding any other provision of the Subordinate Master Resolution or this Fourteenth Supplemental Resolution, failure of the District to comply with any such Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee shall, at the written request of any Participating Underwriter (as defined in any such Continuing Disclosure Agreement) or the Holders of at least 25% aggregate principal amount of Outstanding 2023C Subordinated Bonds upon receipt of indemnity satisfactory to the Trustee or any Holder of 2023C Subordinated Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Section. For purposes of this Section, “Beneficial Owner” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023C Subordinated Bonds (including persons holding 2023C Subordinated Bonds through nominees, depositories or other intermediaries).

**Section 86.12. Designation of Credit Provider and Liquidity Provider Reimbursement Obligations as Parity Subordinated Debt; Authorization and Issuance of Revolving Notes.** For the avoidance of doubt, the District hereby designates as Parity Subordinated Debt, secured by the pledge of Net Subordinated Revenues made by the District pursuant to Section 5.01 of the Subordinate Master Resolution on the same basis as the Subordinated Bonds and all other Parity Subordinated Debt as provided in the Subordinate Master Resolution, any and all obligations of the District pursuant to any Credit Enhancement, Liquidity Facility, or Reimbursement Agreement to reimburse each Credit Provider or Liquidity Provider for drawings or other advances on or pursuant to the related Credit Enhancement or Liquidity Facility, including, without limitation, any accrued interest on such drawings or advances, all as set forth in the related Credit Enhancement, Liquidity Facility, or Reimbursement Agreement (collectively, the “Reimbursement Obligations”). In order to more fully evidence the Reimbursement Obligations as Parity Subordinated Debt, the Board hereby authorizes the issuance from time to time of one or more revenue bonds pursuant to the Act in substantially the form of and with the terms stated in the form of the revolving note set forth as Exhibit B to this Fourteenth Supplemental Resolution (each a “Revolving Note”), but the delivery of such Revolving Note shall not be required to secure any such Reimbursement Obligations as Parity Subordinated Debt. At the time of each delivery of a Credit Enhancement or Liquidity Facility pursuant to the terms of this Fourteenth Supplemental Resolution, the District may deliver a Revolving Note to the related Credit Provider or Liquidity Provider with a stated amount equal to the Available Amount under such Credit Enhancement or Liquidity Facility and with all blanks and brackets filled in as appropriate and with such other changes as may be necessary or appropriate to conform to the terms of such Credit Enhancement, Liquidity Facility, or Reimbursement Agreement.





## EXHIBIT A

### FORM OF 2023C SUBORDINATED BOND

[TO BE CONFORMED TO SALES CERTIFICATE]

No. R-\_\_\_\_\_ \$ \_\_\_\_\_

SACRAMENTO MUNICIPAL UTILITY DISTRICT  
SUBORDINATED ELECTRIC REVENUE REFUNDING BOND  
2023 SERIES C

Maturity	Interest Per Annum	Date	CUSIP
August 15, 20__	Variable	_____, 2023	

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Net Subordinated Revenues hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above, the principal sum specified above together with interest thereon from \_\_\_\_\_, 2023, until the principal hereof shall have been paid, at the interest rates per annum determined as set forth below, payable on each Interest Payment Date, as defined below. The principal of and premium, if any, and interest on the 2023C Subordinated Bonds, as defined below, shall be payable in lawful money of the United States of America. Interest on the 2023C Subordinated Bonds shall be paid on each Interest Payment Date, as defined below, by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode, by check mailed on the date on which due to the Holders of the 2023C Subordinated Bonds at the close of business on the Record Date for the 2023C Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023C Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023C Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023C Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023C Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written wire transfer instructions, interest payable on such 2023C Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer instructions provided by the Holder of such 2023C Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023C Subordinated Bonds registered in the name of the Securities Depository

(or its nominee), interest on any such 2023C Subordinated Bond shall be payable only upon surrender of such 2023C Subordinated Bond at the office of the Paying Agent. The principal of and premium, if any, on each 2023C Subordinated Bond shall be payable on the Principal Payment Date of such 2023C Subordinated Bond upon surrender thereof at the office of the Paying Agent, subject to the terms of the Fourteenth Supplemental Resolution, as defined below.

This Bond is one of a duly authorized issue of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds (hereinafter called the “Subordinated Bonds”) designated as Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023C Subordinated Bonds”). The Subordinated Bonds are not limited in aggregate principal amount, except as otherwise provided in the Subordinate Resolution hereinafter mentioned, and consist or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Subordinate Resolution provided, all issued and to be issued pursuant to the provisions of the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6, Division 6, of the California Public Utilities Code and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (hereinafter called the “Act”). This 2023C Subordinated Bond is issued pursuant to Resolution No. 85-11-1 of the District, adopted November 7, 1985, providing for the issuance of the Subordinated Bonds, as amended and restated by Resolution No. 01-06-10 of the District, adopted on June 21, 2001 (as amended and restated, the “Subordinate Master Resolution”), and as supplemented and amended by resolutions to date, including by a Fourteenth Supplemental Resolution, adopted May 18, 2023, authorizing the issuance of the 2023C Subordinated Bonds (said resolution as amended, restated and supplemented and the Fourteenth Supplemental Resolution being hereinafter collectively called the “Subordinate Resolution”). Reference is hereby made to the Subordinate Resolution and the Act for a description of the terms on which the Subordinated Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Revenues, as that term is defined in the Subordinate Resolution, and the rights of the registered owners of the Subordinated Bonds; and all the terms of the Subordinate Resolution and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this 2023C Subordinated Bond, and to all the provisions thereof the registered owner of this 2023C Subordinated Bond, by its acceptance hereof, consents and agrees. Additional bonds may be issued on a parity with the Subordinated Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Subordinate Resolution. Capitalized terms used, but not defined herein shall have the meaning given such terms in the Subordinate Resolution.

The Subordinated Bonds and the interest thereon, together with the Parity Subordinated Debt (as defined in the Subordinate Resolution) heretofore or hereafter issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the Net Subordinated Revenues derived by the District from the Electric System (as those terms are defined in the Subordinate Resolution). The District covenants and warrants that for the payment of the Subordinated Bonds, and interest thereon, there have been created and will be maintained by the District special funds into which there shall be deposited from Net Subordinated Revenues available for that purpose sums sufficient to pay the principal of, and interest on, all of the Subordinated Bonds, as such principal and interest become due, and as an irrevocable charge the District has allocated Net Subordinated Revenues to such payment, all in accordance with the Subordinate Resolution.

The Subordinated Bonds, including the 2023C Subordinated Bonds, are expressly subordinated in right of payment to the prior payment in full of all Parity Bonds, as that term is defined in Resolution No. 6649 of the District, adopted on January 7, 1971 (the “Senior Bond Resolution”), including the District’s Electric Revenue Bonds. The holder of this 2023C Subordinated Bond, by acceptance hereof, authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this paragraph and in the Subordinate Resolution and appoints the Trustee its attorney-in-fact for any and all such purposes.

The Subordinated Bonds are special obligations of the District, and are payable, both as to principal and interest, out of the Net Subordinated Revenues pertaining to the Electric System, and not out of any other fund or moneys of the District. No holder of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The term of the 2023C Subordinated Bonds will be divided into consecutive Interest Periods during each of which the 2023C Subordinated Bonds shall bear interest at a Flexible Rate or Flexible Rates, a Daily Rate, a Weekly Rate, a Direct Purchase Index Rate, a Term Rate, an Index Rate or a Fixed Rate or Fixed Rates. The 2023C Subordinated Bonds shall initially bear interest in the [Daily Mode]. The Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023C Subordinated Bonds thereafter may be changed from time to time as provided in the Subordinate Resolution. As hereinafter described, the 2023C Subordinated Bonds are subject to mandatory purchase on any Conversion Date.

Interest on the 2023C Subordinated Bonds is to be paid on: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023C Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023C Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility (each an “Interest Payment Date”).

The interest rate on the 2023C Subordinated Bonds shall be determined as follows:

Determination of Flexible Rates and Interest Periods During Flexible Mode. An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and in Section 82.04 of the Fourteenth Supplemental Resolution, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023C Subordinated Bond

the Interest Period which would result in the Remarketing Agent being able to remarket such 2023C Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023C Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023C Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023C Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

Determination of Interest Rates During the Daily Mode and the Weekly Mode. The interest rate for 2023C Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023C Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period.

During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

Term Rates. The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. The Term Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such 2023C Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the

Interest Period selected by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.

Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023C Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023C Subordinated Bonds will have Serial Maturity Dates in accordance with Section 82.11(b)(v) of the Fourteenth Supplemental Resolution). Except as set forth in Section 82.11(b)(v) of the Fourteenth Supplemental Resolution, the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023C Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 82.11(b)(v) of the Fourteenth Supplemental Resolution, the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023C Subordinated Bonds.

Alternate Rates. The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023C Subordinated Bonds (other than 2023C Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023C Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023C Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023C Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023C Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023C Subordinated Bonds.

For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest

Period, the interest rate for such 2023C Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

For 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023C Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

Direct Purchase Index Rates.

(a) During each Direct Purchase Index Rate Period, the 2023C Subordinated Bonds shall, subject to subparagraph (b) below, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023C Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023C Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023C Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023C Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 84.02(b) thereof, but subject to Section 82.04(c) and Section 82.09(b)(ii) and (iii) thereof, from and after any Taxable Date, the interest rate on 2023C Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 84.02(b) thereof, but subject to Section 82.04(c) and Section 82.09(b)(iii) thereof, from and after the effective date of any

“Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023C Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023C Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023C Subordinated Bonds exceeds the Maximum Rate for such 2023C Subordinated Bonds, then (A) such 2023C Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023C Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023C Subordinated Bonds as otherwise calculated pursuant to the above provisions and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023C Subordinated Bonds as otherwise calculated pursuant to the above provisions is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023C Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023C Subordinated Bonds are redeemed or tendered for purchase in accordance with the Fourteenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023C Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything in the Subordinate Resolution to the contrary, but subject to Section 82.04(c) and Section 82.09(b)(i), (ii) and (iii) thereof, during any Amortization Period, the 2023C Subordinated Bonds shall bear interest at the Bank Rate.

Index Rates. During each Index Rate Period, the 2023C Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023C Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023C Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023C Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023C Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023C Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023C Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023C Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023C Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such

Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a percentage point with five hundred thousandths of a percentage point rounded upward. All dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023C Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

Optional Tenders of 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode. Subject to Section 84.06, the Beneficial Owners of 2023C Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023C Subordinated Bonds (or portions of those 2023C Subordinated Bonds, provided that no 2023C Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode. The 2023C Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023C Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023C Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023C Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023C Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

The term “Mandatory Purchase Date” means: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Bond, (ii) with respect to 2023C Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023C



Subordinated Bonds, (iii) with respect to any 2023C Subordinated Bonds, any Conversion Date applicable to such 2023C Subordinated Bond (except for any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 82.11 not failed to occur (except for any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023C Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023C Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023C Subordinated Bonds, (vi) with respect to any 2023C Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023C Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee's receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023C Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023C Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023C Subordinated Bonds (other than interest on 2023C Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023C Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee's receipt of such notice, (viii) with respect to 2023C Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee's receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023C Subordinated Bonds, (ix) with respect to 2023C Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023C Subordinated Bonds, and (x) with respect to 2023C Subordinated Bonds in the Direct Purchase Index Mode, each Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

Notwithstanding the above paragraphs and anything to the contrary in the Fourteenth Supplemental Resolution, in the event the 2023C Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023C Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023C Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant

Agreement or the Subordinate Master Resolution has occurred and is continuing), in which case the 2023C Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023C Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023C Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023C Subordinated Bonds may be subject to redemption or purchase at the sole option of the District at any time without notice as and to the extent provided in the Continuing Covenant Agreement.

Optional Redemption of Flexible Rate Bonds. 2023C Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023C Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

Optional Redemption of 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode. 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023C Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Optional Redemption of 2023C Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.

2023C Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023C Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023C Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023C Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

2023C Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023C Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023C Subordinated Bonds so changed to a Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023C Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

Optional and Mandatory Redemption of 2023C Subordinated Bonds in the Direct Purchase Index Mode.

Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023C Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023C Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

2023C Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Mandatory Sinking Fund Account Redemption of 2023C Subordinated Bonds. The 2023C Subordinated Bonds [maturing on August 15, 20[\_\_\_],] shall be subject to redemption prior to maturity from mandatory sinking fund account payments for such 2023C Subordinated Bonds on August 15 of each year on and after August 15, 20\_\_, at a Redemption Price equal to the principal amount of such 2023C Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The following shall be the mandatory sinking fund account payments for the 2023C Subordinated Bonds [maturing on August 15, 20[\_\_\_]]. Such mandatory sinking fund account payments shall be due on August 15 of the years set forth in the following table in the respective amounts set forth opposite such years in said table:

Year	Amount	Year	Amount
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\* Payment at Maturity

Notice of Redemption. Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023C Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023C Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023C Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023C Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023C Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023C Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023C Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023C Subordinated Bonds to be redeemed. Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption. Notwithstanding the foregoing, notice of redemption shall not be required for 2023C Subordinated Bonds redeemed on a Mandatory Purchase Date.

This 2023C Subordinated Bond is transferable by the registered owner hereof, in person or by the attorney of such owner duly authorized in writing, at the principal office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Subordinate Resolution, and upon surrender and cancellation of this 2023C Subordinated Bond. Upon such transfer a new fully registered Bond or Subordinated Bonds without coupons, of authorized denomination or denominations, for the same aggregate principal amount and maturity will be issued to the transferee in exchange herefor.

The District and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District and the Trustee shall not be affected by any notice to the contrary.

To the extent this 2023C Subordinated Bond constitutes a Liquidity Facility Bond, the terms and conditions of the Fourteenth Supplemental Resolution with respect to Liquidity Facility Bonds shall control this 2023C Subordinated Bond.

The rights and obligations of the District and of the holders and registered owners of the Subordinated Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Subordinate Resolution, provided that no such modification or amendment shall (i) extend the fixed maturity of any Subordinated Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of any premium payable upon the redemption thereof, without the consent of the holder of each Subordinated Bond so affected, or (ii) reduce the percentage of Subordinated Bonds required for the affirmative vote or written consent to an amendment or modification, without the consent of the holders of all the Subordinated Bonds then outstanding, or (iii) without its written consent thereto, modify any of the rights or obligations of the Trustee.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this 2023C Subordinated Bond, and in the issuing of this 2023C Subordinated Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this 2023C Subordinated Bond, together with all other indebtedness of the District pertaining to the Electric System, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Subordinated Bonds permitted to be issued under the Subordinate Resolution.

This 2023C Subordinated Bond shall not be entitled to any benefit under the Subordinate Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee. To the extent of any conflict or inconsistency between any provisions contained in this 2023C Subordinated Bond and the Subordinate Resolution, the provisions of the Subordinate Resolution shall control.

IN WITNESS WHEREOF, SACRAMENTO MUNICIPAL UTILITY DISTRICT has caused this 2023C Subordinated Bond to be executed in its name and on its behalf by the facsimile signature of its President of its Board of Directors and by the facsimile signature of its Treasurer and countersigned by the facsimile signature of its Secretary, and the seal of the District to be reproduced hereon, by facsimile and this 2023C Subordinated Bond to be dated as of the date first written above.

SACRAMENTO MUNICIPAL UTILITY  
DISTRICT

By \_\_\_\_\_  
President of the Board of Directors

By \_\_\_\_\_  
Treasurer of the District

(SEAL)

Countersigned:

\_\_\_\_\_  
Secretary of the District

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Subordinated Bonds described in the within-mentioned Subordinate Resolution and registered on the date set forth below.

Dated: \_\_\_\_\_, 2023

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

## ASSIGNMENT

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ whose taxpayer identification number is \_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

Dated:

Signature Guaranteed by:

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NOTE: Signature must be guaranteed by an eligible guarantor institution



## EXHIBIT B

### FORM OF REVOLVING NOTE

#### SACRAMENTO MUNICIPAL UTILITY DISTRICT SUBORDINATED ELECTRIC REVENUE REFUNDING BONDS 2023 SERIES C

[Delivery Date] \$ \_\_\_\_\_

The Sacramento Municipal Utility District (the “District”), for value received, hereby promises to pay to the order of [Bank] (the “Bank”), pursuant to that certain \_\_\_\_\_ dated as of \_\_\_\_\_ (the “Agreement”), between the District and the Bank, at the office of the Bank at \_\_\_\_\_, the aggregate unpaid principal amount of all Reimbursement Obligations (as defined in the Agreement) pursuant to the Agreement on the dates and in the amounts provided for in the Agreement.

The District promises to pay interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. All payments of principal and interest shall be made in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts in immediately available funds. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Revolving Note is a Revolving Note as referred to in Section 86.12 of Resolution No. 01-06-10 of the District adopted June 21, 2001, amending and restating Resolution No. 85-11-1 of the District adopted November 7, 1985, as amended and supplemented, including as supplemented by Resolution No. \_\_\_\_\_ of the District adopted May 18, 2023 (the “Fourteenth Supplemental Resolution”) (collectively, the “Subordinate Master Resolution”). This Revolving Note evidences the Reimbursement Obligations owed to the Bank by the District pursuant to the Agreement which have been designated by the District as, and constitute, Parity Subordinated Debt under and as defined in the Subordinate Master Resolution and, as such Parity Subordinated Debt, is entitled to the benefits afforded Parity Subordinated Debt and the holders thereof pursuant to the Subordinate Master Resolution and is secured by a lien on the Net Subordinated Revenues as more fully set forth in and subject to the terms of the Subordinate Master Resolution. As provided in the Agreement, the Reimbursement Obligations and this Revolving Note are subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

The Bank agrees, by acceptance of this Revolving Note, that it will make a notation on the schedule attached hereto of all Reimbursement Obligations evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid, all as provided in the Agreement; *provided, however*, that the failure to make any such notation or any error in such notation shall not limit or otherwise affect the obligation of the District hereunder with respect to payments of principal of and interest on this Revolving Note.

This Revolving Note is authorized by the District to be issued to provide for the payment of the principal of and interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. This Revolving Note is issued under and pursuant to and in full compliance with the Subordinate Master Resolution and the Fourteenth Supplemental Resolution.

It is hereby certified that all conditions, acts and things essential to the validity of this Revolving Note exist, have happened and have been done and that every requirement of law affecting the issuance hereof has been duly complied with.

IN WITNESS WHEREOF, SMUD, has caused this Revolving Note to be executed by an authorized officer of SMUD and this Revolving Note to be dated as of date set forth above.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE FOR REVOLVING NOTE**  
**DATED \_\_\_\_\_**  
**BY SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**PAYABLE TO [BANK]**

<u>Date</u>	<u>Amount of Drawing or Advance Made</u>	<u>Amount of Principal Paid</u>	<u>Date to Which Interest Paid</u>	<u>Due Date</u>	<u>Notation Made by</u>
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# SACRAMENTO MUNICIPAL UTILITY DISTRICT

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2023 S S D

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SACRAMENTO MUNICIPAL UTILITY DISTRICT

RESOLUTION NO. \_\_\_\_\_

FIFTEENTH SUPPLEMENTAL RESOLUTION

AUTHORIZING THE ISSUANCE OF

SUBORDINATED ELECTRIC REVENUE BONDS,  
2023 SERIES D

Adopted: \_\_\_\_\_

(Supplemental to Resolution No. 85-11-1 adopted November 7, 1985  
as amended and restated by Resolution No. 01-06-10 adopted June 21, 2001)

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RESOLUTION NO. \_\_\_\_\_

Fifteenth Supplemental Resolution  
(Supplemental to Resolution No. 85-11-1 Adopted November 7, 1985,  
as amended and restated by Resolution No. 01-06-10 Adopted June 21, 2001)

Subordinated Electric Revenue Bonds,  
2023 Series D

WHEREAS, the Board of Directors (the “Board”) of the Sacramento Municipal Utility District (the “District”), on November 7, 1985, adopted its Resolution No. 85-11-1 which was amended and restated by Resolution No. 01-06-10, adopted on June 21, 2001, providing for the issuance of the District’s Subordinated Electric Revenue Bonds (as supplemented and amended, herein called the “Subordinate Master Resolution”);

WHEREAS, the Subordinate Master Resolution provides that the District may issue bonds from time to time as the issuance thereof is authorized by the Board by a supplemental resolution;

WHEREAS, revenue bonds may be issued pursuant to the provisions of the Subordinate Master Resolution and the Act (as defined in the Subordinate Master Resolution); and

WHEREAS, the District has determined to issue its Subordinated Electric Revenue Bonds, 2023 Series D (the “2023D Subordinated Bonds”), in the aggregate principal amount determined as set forth in Section 88.02 to (i) finance and refinance improvements and additions to the District’s Electric System, including through the payment of all or a portion of the District’s outstanding commercial paper notes (to the extent set forth in the Sales Certificate), (ii) refund certain series of the District’s Electric Revenue Bonds (to the extent set forth, and to be identified, in the Sales Certificate) (the “Refunded Bonds”), and (iii) pay costs of issuance (to the extent set forth in the Sales Certificate);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sacramento Municipal Utility District, as follows:

**ARTICLE LXXXVII**

**AUTHORITY AND DEFINITIONS**

**Section 87.01. Supplemental Resolution.** This Fifteenth Supplemental Resolution is supplemental to the Subordinate Master Resolution.

**Section 87.02. Definitions; Prevailing Time.**

(1) Except as provided by this Fifteenth Supplemental Resolution, all terms which are defined in Section 1.03 of the Subordinate Master Resolution shall have the same meanings in this Fifteenth Supplemental Resolution as such terms are given in said Section 1.03. Unless otherwise provided herein, all references to a particular time are to New York City time.



In the event of a conflict between the meanings given in said Section 1.03 and the meanings given in this Section, the meanings given in this Section shall prevail.

(2) In this Fifteenth Supplemental Resolution:

**Alternate Credit Enhancement** shall mean a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof as a replacement or substitute for any Credit Enhancement then in effect and providing for or supporting the payment of the principal of and interest on the 2023D Subordinated Bonds.

**Alternate Liquidity Facility** shall mean a letter of credit, line of credit, standby bond purchase agreement or other liquidity instrument issued in accordance with the terms hereof as a replacement or substitute for any Liquidity Facility then in effect and providing for the payment of the Purchase Price of Tendered Bonds.

**Alternate Rate** shall mean, on any Rate Determination Date, for any Interest Rate Mode other than a Direct Purchase Index Mode, an Index Mode or a Term Rate Mode, a rate per annum equal to 110% of (a) the SIFMA Municipal Swap Index of Municipal Market Data most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Municipal Swap Index is no longer published, the S&P Municipal Bond 7 Day High Grade Rate Index, or if neither the SIFMA Municipal Swap Index nor the S&P Municipal Bond 7 Day High Grade Rate Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Municipal Swap Index just prior to when the Securities and Financial Markets Association stopped publishing the SIFMA Municipal Swap Index. The Trustee shall make the determinations required by this definition, upon notification from the District, if there is no Remarketing Agent, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement.

**Amortization End Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Interest Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Period** shall mean, in the event the 2023D Subordinated Bonds are not purchased or remarketed on any Bank Purchase Date and the other conditions set forth in Section 90.02(b) are satisfied, the period commencing on the Bank Purchase Date and ending on the Amortization End Date.

**Amortization Principal Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Applicable Factor** shall mean, upon any Conversion to a Direct Purchase Index Rate Period, the percentage of the Direct Purchase Index designated in writing by the District as the Applicable Factor for such Direct Purchase Index Rate Period pursuant to Section 88.09(a); provided, however, that the Applicable Factor shall never be less than 65% unless a Favorable Opinion of Bond Counsel is delivered in connection with the Conversion to such Direct Purchase Index Rate Period.

**Applicable Spread** shall mean, with respect to any Direct Purchase Index Rate Period, the number of basis points determined by the Market Agent on or before the first day of such Direct Purchase Index Rate Period and designated by the District in accordance with Section 88.09(a) (which may include a schedule for the Applicable Spread based upon the ratings assigned to any indebtedness of the District) that, when added to the product of the Direct Purchase Index multiplied by the Applicable Factor, would equal the minimum interest rate per annum that would enable the 2023D Subordinated Bonds to be sold on such date at a price equal to the principal amount thereof (without regard to accrued interest, if any, thereon).

**Authorized Denominations** shall mean (i) with respect to 2023D Subordinated Bonds in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) with respect to 2023D Subordinated Bonds in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof; (iii) with respect to 2023D Subordinated Bonds in a Direct Purchase Index Mode or Index Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; and (iv) with respect to 2023D Subordinated Bonds in a Term Rate Mode or a Fixed Rate Mode, \$5,000 and any integral multiple thereof.

**Available Amount** shall mean the amount available under a Credit Enhancement or Liquidity Facility, as applicable, to pay the principal of and interest on the 2023D Subordinated Bonds or the Purchase Price of the 2023D Subordinated Bonds, as applicable.

**Available Moneys** shall mean (a) if a Credit Enhancement is in effect, (i) moneys drawn under the Credit Enhancement which at all times since their receipt by the Trustee were held in a separate segregated account or accounts or subaccount or subaccounts in which no moneys (other than those drawn under the Credit Enhancement) were at any time held, (ii) moneys which have been paid to the Trustee and have been on deposit with the Trustee for at least 124 days (or, if paid to the Trustee by an “affiliate,” as defined in Bankruptcy Code §101(2), of the District, 366 days) during and prior to which no Event of Bankruptcy shall have occurred, (iii) any other moneys, if, in the opinion of nationally recognized counsel experienced in bankruptcy matters (which opinion shall be acceptable to each Rating Agency then rating the 2023D Subordinated Bonds), the application of such moneys will not constitute a voidable preference in the event of the occurrence of an Event of Bankruptcy, and (iv) investment earnings on any of the moneys described in clauses (i), (ii) and (iii) of this definition; and (b) if a Credit Enhancement is not in effect, “Available Moneys” means any moneys deposited with the Trustee.

**Bank** shall mean, while the 2023D Subordinated Bonds are in a Direct Purchase Index Mode, the Holder of the 2023D Subordinated Bonds, provided that there is a single Holder of all of the 2023D Subordinated Bonds and provided further that the 2023D Subordinated Bonds are not then held under the book-entry system of a Securities Depository. If there is more

than one Holder of the 2023D Subordinated Bonds while the 2023D Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Holders owning a majority of the aggregate principal amount of the 2023D Subordinated Bonds then Outstanding. If the 2023D Subordinated Bonds are held under the book-entry system of a Securities Depository during any Direct Purchase Index Mode, “Bank” means the Beneficial Owner of the 2023D Subordinated Bonds, provided that there is a single Beneficial Owner of all of the 2023D Subordinated Bonds. If there is more than one Beneficial Owner of the 2023D Subordinated Bonds while the 2023D Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Beneficial Owners who are the beneficial owners of a majority of the aggregate principal amount of the 2023D Subordinated Bonds then Outstanding.

**Bank Purchase Date** shall mean, during any Direct Purchase Index Rate Period, (i) the date designated by the District pursuant to Section 88.11(a) and (ii) the date which is five Business Days after the date on which the Trustee receives written notice from the Bank under a Continuing Covenant Agreement which (x) advises the Trustee of the occurrence and continuance of an “Event of Default” under and as defined in such Continuing Covenant Agreement and (y) directs the Trustee to cause a mandatory tender for purchase of the 2023D Subordinated Bonds by reason of such “Event of Default.”

**Bank Rate** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Bankruptcy Code** means Title 11 of the United States Code, as amended, and any successor statute.

**Beneficial Owner** shall mean, so long as the 2023D Subordinated Bonds are held in the Book-Entry System, any Person who acquires a beneficial ownership interest in a 2023D Subordinated Bond held by the Securities Depository. If at any time the 2023D Subordinated Bonds are not held in the Book-Entry System, Beneficial Owner shall mean Holder for purposes of the Subordinate Master Resolution.

**Bond Counsel** shall mean any firm of nationally recognized municipal bond attorneys selected by the District and experienced in the issuance of municipal bonds and matters relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

**Book-Entry System** shall mean the system maintained by the Securities Depository.

**Business Day** shall mean any day other than (i) a Saturday or Sunday or (ii) a day on which banks located in (a) the State of California or the State of New York, (b) the city or cities in which the principal office of the Trustee, the Paying Agent, the Remarketing Agent, if any, the Bank, if any, or the Calculation Agent, if any, are located, or (c) the city or cities in which the office of the Credit Provider or Liquidity Provider at which it will pay draws or advances is located, are required or authorized to remain closed, (iii) a day on which The New York Stock Exchange or Federal Reserve Bank is closed or (iv) a day on which the principal offices of the Credit Provider or Liquidity Provider are closed.

**Calculation Agent** shall mean, (i) during any Direct Purchase Index Rate Period, the Bank or any other party appointed by the District with the consent of the Bank so long as the Bank owns a majority in aggregate principal amount of the 2023D Subordinated Bonds and (ii) during any Index Rate Period, the Trustee or any other party appointed by the District to act as calculation agent for the 2023D Subordinated Bonds.

**Call Protection Date** shall mean (i) with respect to the initial issuance of the 2023D Subordinated Bonds, if applicable, the date specified in the Sales Certificate as the Call Protection Date and (ii) with respect to any conversion to a Term Rate Period or Index Rate Period, the date specified by the District in writing as the Call Protection Date for such Term Rate Period or Index Rate Period on or before the first day of such Term Rate Period or Index Rate Period.

**Code** shall mean the Internal Revenue Code of 1986, as amended.

**Continuing Covenant Agreement** shall mean, during any Direct Purchase Index Rate Period, any agreement between the District and the Bank which may be designated as the Continuing Covenant Agreement.

**Conversion Date** shall mean, with respect to the 2023D Subordinated Bonds in a particular Interest Rate Mode, the day on which another Interest Rate Mode for the 2023D Subordinated Bonds begins, with respect to the 2023D Subordinated Bonds in a Term Rate Mode, the day on which a new Term Rate Period begins, with respect to 2023D Subordinated Bonds in a Direct Purchase Index Mode, the day on which a new Direct Purchase Index Rate Period begins, and with respect to 2023D Subordinated Bonds in an Index Mode, the day on which a new Index Rate Period begins.

**Conversion Notice** shall mean the notice from the District to the other Notice Parties pursuant to Section 88.11(a)(i).

**Credit Enhancement** shall mean, with respect to the 2023D Subordinated Bonds, a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof and then in effect and providing for or supporting the payment of the principal of and interest on the 2023D Subordinated Bonds and, upon replacement of any such Credit Enhancement with an Alternate Credit Enhancement, the Alternate Credit Enhancement then in effect.

**Credit Provider** shall mean, with respect to the 2023D Subordinated Bonds, any bank, insurance company, pension fund or other financial institution which provides the Credit Enhancement, if any, then in effect for the 2023D Subordinated Bonds.

**Credit Provider Failure or Liquidity Provider Failure** shall mean a failure of a Credit Provider or Liquidity Provider, as applicable, to pay a properly presented and strictly conforming draw or request for advance under a Credit Enhancement or Liquidity Facility, as applicable, or the filing or commencement of any bankruptcy or insolvency proceedings by or against a Credit Provider or Liquidity Provider, as applicable, or a Credit Provider or Liquidity Provider, as applicable, shall declare a moratorium on the payment of its unsecured debt obligations or shall repudiate a Credit Enhancement or Liquidity Facility, as applicable.

**Current Mode** shall have the meaning specified in Section 88.11(a).

**Daily Mode** shall mean the Interest Rate Mode during which the 2023D Subordinated Bonds bear interest at the Daily Rate.

**Daily Rate** shall mean the per annum interest rate on any 2023D Subordinated Bond in the Daily Mode determined pursuant to Section 88.06(a).

**Daily Rate Period** shall mean the period during which a 2023D Subordinated Bond in the Daily Mode shall bear a Daily Rate, which shall be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

**Default Rate** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Delayed Remarketing Period** shall have the meaning specified in Section 90.10(b) hereof.

**Determination of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Direct Purchase Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Market Agent.

**Direct Purchase Index Mode** shall mean the Interest Rate Mode during which the 2023D Subordinated Bonds bear interest at a Direct Purchase Index Rate.

**Direct Purchase Index Rate** shall mean the per annum interest rate on any 2023D Subordinated Bond in the Direct Purchase Index Mode determined in accordance with Section 88.09, being the Direct Purchase Index Rate, the Taxable Rate, the Default Rate or the Bank Rate, as applicable.

**Direct Purchase Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**Direct Purchase Index Rate Effective Period** shall mean, during any Direct Purchase Index Rate Period, the period from and including the first day of such Direct Purchase Index Rate Period to but excluding the next succeeding Direct Purchase Index Rate Reset Date and, thereafter, means each Direct Purchase Index Rate Reset Date to but excluding the next succeeding Direct Purchase Index Rate Reset Date.

**Direct Purchase Index Rate Period** shall mean the period from (and including) the date on which the 2023D Subordinated Bonds begin to bear interest in the Direct Purchase Index Mode to (but excluding) the earliest to occur of (i) the immediately succeeding Bank Purchase Date, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of

the 2023D Subordinated Bonds have been redeemed or defeased in full and (iv) the Maturity Date.

**Direct Purchase Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**District Purchase Account** shall mean the account by that name in the Purchase Fund created in Section 90.09.

**Electronic Means** shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

**Eligible Account** shall mean an account that is either (a) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor's short-term debt rating of at least 'A-2' (or, if no short-term debt rating, a long-term debt rating of 'BBB+'); or (b) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulation Section 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that a fund or account required to be an "Eligible Account" no longer complies with the requirements listed above, the Trustee shall promptly (and, in any case, within not more than 30 calendar days) move such fund or account to another financial institution such that the Eligible Account requirements stated above will again be satisfied.

**Event of Bankruptcy** shall mean any of the following events:

(i) the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023D Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the District (or such other Person) or of all or any substantial part of their respective property, (b) commence a voluntary case under the Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(ii) a proceeding or case shall be commenced, without the application or consent of the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023D Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) in any court of competent jurisdiction, seeking (a) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the District (or any such other Person), (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the District (or any such other Person) or of all or any substantial part of their respective property, or (c) similar relief in respect of the District (or any such other Person) under any law

relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

**Event of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Expiration Date** shall mean the stated expiration date of a Credit Enhancement or a Liquidity Facility, as it may be extended from time to time as provided in the Credit Enhancement or the Liquidity Facility, or any earlier date on which a Credit Enhancement or a Liquidity Facility shall terminate at the direction of the District.

**Favorable Opinion of Bond Counsel** shall mean, with respect to any action the occurrence of which requires such an opinion, an Opinion of Counsel, which shall be a Bond Counsel, to the effect that such action is permitted under the Subordinate Master Resolution and will not, in and of itself, cause interest on the 2023D Subordinated Bonds to be included in gross income for purposes of federal income taxation.

**Fitch** shall mean Fitch, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**Fixed Rate** shall mean the per annum interest rate on any 2023D Subordinated Bond in the Fixed Rate Mode determined pursuant to Section 88.07(b).

**Fixed Rate Bond** shall mean a 2023D Subordinated Bond in the Fixed Rate Mode.

**Fixed Rate Mode** shall mean the Interest Rate Mode during which the 2023D Subordinated Bonds bear interest at the Fixed Rate.

**Fixed Rate Period** shall mean the period from the Conversion Date upon which the 2023D Subordinated Bonds were converted to the Fixed Rate Mode to but not including the Maturity Date for the 2023D Subordinated Bonds.

**Flexible Mode** shall mean the Interest Rate Mode during which the 2023D Subordinated Bonds bear interest at Flexible Rates.

**Flexible Rate** shall mean the per annum interest rate on a Flexible Rate Bond determined for such Flexible Rate Bond pursuant to Section 88.05. The Flexible Rate Bonds may bear interest at different Flexible Rates.

**Flexible Rate Bond** shall mean a 2023D Subordinated Bond in the Flexible Mode.

**Flexible Rate Period** shall mean the period of from one to 270 calendar days (which period must end on either a day which immediately precedes a Business Day or the day

immediately preceding the Maturity Date) during which a Flexible Rate Bond shall bear interest at a Flexible Rate, as established by the Remarketing Agent pursuant to Section 88.05. The Flexible Rate Bonds may be in different Flexible Rate Periods.

**Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Remarketing Agent.

**Index Mode** shall mean the Interest Rate Mode during which the 2023D Subordinated Bonds bear interest at an Index Rate.

**Index Rate** shall mean the per annum interest rate on any 2023D Subordinated Bond in the Index Mode determined in accordance with Section 88.10.

**Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Rate Effective Period** shall mean, during any Index Rate Period, the period from and including the first day of such Index Rate Period through and including the day immediately preceding the next succeeding Index Rate Reset Date and, thereafter, means each Index Rate Reset Date through and including the day immediately preceding the next succeeding Index Rate Reset Date.

**Index Rate Period** shall mean the period from (and including) the date on which the 2023D Subordinated Bonds begin to bear interest in the Index Mode to (but excluding) the earliest to occur of (i) the Business Day immediately succeeding the last day thereof, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of the 2023D Subordinated Bonds have been redeemed or defeased in full and (iv) the final Maturity Date.

**Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Percentage** shall mean, upon any conversion to an Index Rate Period, the percentage of the Index determined by the Remarketing Agent in accordance with Section 88.10; provided, however, that the Index Percentage shall never be less than 65% unless a Favorable Opinion of Bond Counsel is delivered on or before the determination of the Index Percentage by the Remarketing Agent.

**Index Spread** shall mean, upon any conversion to an Index Rate Period, the fixed per annum rate determined by the Remarketing Agent in accordance with Section 88.10.

**Interest Accrual Period** shall mean the period during which a 2023D Subordinated Bond accrues interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period for 2023D Subordinated Bonds shall be the period commencing on (and including) the last Interest Payment Date to which interest has been paid



(or, if no interest has been paid in such Interest Rate Mode, commencing on (and including) the date of original authentication and delivery of the 2023D Subordinated Bonds, or the Conversion Date, as the case may be) to (and excluding) the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any 2023D Subordinated Bond, interest is in default or overdue on the 2023D Subordinated Bonds, such 2023D Subordinated Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on Outstanding 2023D Subordinated Bonds.

**Interest Payment Date** shall mean each date on which interest is to be paid and is: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023D Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023D Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified (a) in the Sales Certificate in connection with the initial issuance of the 2023D Subordinated Bonds or (b) in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility.

**Interest Period** shall mean, for 2023D Subordinated Bonds in a particular Interest Rate Mode, the period of time that such 2023D Subordinated Bonds bear interest at the rate (per annum) which becomes effective at the beginning of such period, and shall include a Flexible Rate Period, a Daily Rate Period, a Weekly Rate Period, a Direct Purchase Index Rate Effective Period, an Index Rate Effective Period, a Term Rate Period and a Fixed Rate Period.

**Interest Rate Mode** shall mean, as the context may require, the Flexible Mode, the Daily Mode, the Weekly Mode, the Direct Purchase Index Mode, the Index Mode, the Term Rate Mode or the Fixed Rate Mode.

**Liquidity Facility** shall mean, with respect to the 2023D Subordinated Bonds, a letter of credit, line of credit, standby bond purchase agreement or other liquidity instrument issued in accordance with the terms hereof and then in effect and providing for the payment of the Purchase Price of Tendered Bonds and upon replacement of such Liquidity Facility with an Alternate Liquidity Facility, the Alternate Liquidity Facility then in effect.

**Liquidity Facility Purchase Account** shall mean the account by that name in the Purchase Fund created by Section 90.09.

**Liquidity Provider** shall mean, with respect to the 2023D Subordinated Bonds, any bank, insurance company, pension fund or other financial institution which provides the Liquidity Facility, if any, then in effect for the 2023D Subordinated Bonds.

**Liquidity Provider Bonds** shall mean any 2023D Subordinated Bonds purchased by the Liquidity Provider with funds drawn on or advanced under the Liquidity Facility or Credit Enhancement, as applicable.

**Long-Term Mode** shall mean a Term Rate Mode or a Fixed Rate Mode.

**Mandatory Purchase Date** shall mean: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Bond, (ii) with respect to 2023D Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023D Subordinated Bonds, (iii) with respect to any 2023D Subordinated Bonds, any Conversion Date applicable to such 2023D Subordinated Bond (except, unless otherwise specified in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 88.11 not failed to occur (except, unless otherwise specified in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023D Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023D Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023D Subordinated Bonds, (vi) with respect to any 2023D Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023D Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee's receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023D Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023D Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023D Subordinated Bonds (other than interest on 2023D Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023D Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee's receipt of such notice, (viii) with respect to 2023D Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee's receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023D Subordinated Bonds, (ix) with respect to 2023D Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023D Subordinated Bonds, and (x) with respect to 2023D Subordinated Bonds in the Direct Purchase Index Mode, each Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

**Market Agent** shall mean the Person appointed by the District to serve as market agent in connection with a conversion to any Direct Purchase Index Rate Period.

**Maturity Date** shall mean the maturity date or maturity dates of the 2023D Subordinated Bonds set forth in the Sales Certificate, or, if established pursuant to Section 88.11(b)(v) upon a change to the Fixed Rate Mode, the Serial Maturity Dates.

**Maximum Rate** shall mean (i) with respect to Liquidity Provider Bonds and 2023D Subordinated Bonds in the Direct Purchase Index Mode, a rate of interest per annum not exceeding the maximum non-usurious lawful rate of interest permitted by applicable laws and (ii) with respect to all other 2023D Subordinated Bonds, a rate of interest of twelve percent (12%) per annum unless a lesser rate of interest is specified as the Maximum Rate in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period.

**Moody's** shall mean Moody's Investors Service and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**New Mode** shall have the meaning specified in Section 88.11(a).

**Notice Parties** shall mean the Trustee, the Remarketing Agent, if any, the Paying Agent, the Credit Provider, if any, the Liquidity Provider, if any, the Bank, if any, the Market Agent, if any, and the Calculation Agent, if any.

**Opinion of Counsel** shall mean a written legal opinion from a firm of attorneys experienced in the matters to be covered in the opinion.

**Outstanding**, when used with reference to 2023D Subordinated Bonds, shall mean, as of any date, 2023D Subordinated Bonds theretofore or thereupon being authenticated and delivered under this Fifteenth Supplemental Resolution except:

(i) 2023D Subordinated Bonds cancelled by the Trustee, or delivered to the Trustee for cancellation, at or prior to such date;

(ii) 2023D Subordinated Bonds paid or deemed paid pursuant to Section 10.01 of the Subordinate Master Resolution; and

(iii) 2023D Subordinated Bonds in lieu of or in substitution for which other 2023D Subordinated Bonds shall have been authenticated and delivered pursuant to this Fifteenth Supplemental Resolution.

**Person** shall mean an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**Principal Payment Date** shall mean any date upon which the principal amount of 2023D Subordinated Bonds is due under the Subordinate Master Resolution, including any Maturity Date, any Serial Maturity Date, any Redemption Date, or the date the maturity of any 2023D Subordinated Bond is accelerated pursuant to the terms of the Subordinate Master Resolution.

**Purchase Date** shall mean (i) for a 2023D Subordinated Bond in the Daily Mode or the Weekly Mode, any Business Day selected by the Beneficial Owner of said 2023D Subordinated Bond pursuant to the provisions of Section 90.01, and (ii) any Mandatory Purchase Date.

**Purchase Fund** shall mean the fund by that name created in Section 90.09.

**Purchase Price** shall mean an amount equal to the principal amount of any 2023D Subordinated Bonds purchased on any Purchase Date, plus accrued interest to but excluding the Purchase Date; provided, however, that (i) if the Purchase Date for any 2023D Subordinated Bond to be purchased is an Interest Payment Date for such 2023D Subordinated Bond, the Purchase Price thereof shall be the principal amount thereof, and interest on such 2023D Subordinated Bond shall be paid to the Holder of such 2023D Subordinated Bond pursuant to the Subordinate Master Resolution and this Fifteenth Supplemental Resolution and (ii) in the case of a purchase on a Conversion Date or proposed Conversion Date which is preceded by a Term Rate Period or an Index Rate Period and which occurs prior to the day originally established as the last day of such preceding Term Rate Period or Index Rate Period, the Purchase Price of any 2023D Subordinated Bond to be purchased on such Conversion Date shall be the Redemption Price which would have been applicable to such 2023D Subordinated Bond if the preceding Term Rate Period or Index Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

**Rate Determination Date** shall mean any date on which the interest rate on 2023D Subordinated Bonds shall be determined, which, (i) in the case of the Flexible Mode, shall be the first day of an Interest Period; (ii) in the case of the Daily Mode, shall be each Business Day commencing with the first day (which must be a Business Day) the 2023D Subordinated Bonds become subject to the Daily Mode; (iii) in the case of the Weekly Mode, shall be (A) each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday, and (B) not later than the Business Day preceding a Conversion Date, a Substitution Date or a Mandatory Purchase Date specified in clause (viii) of the definition of Mandatory Purchase Date; (iv) in the case of the Term Rate Mode, shall be a Business Day no later than the Business Day next preceding the first day of an Interest Period, as determined by the Remarketing Agent; (v) in the case of the Direct Purchase Index Mode, each Direct Purchase Index Rate Determination Date; (vi) in the case of the Index Mode, each Index Rate Determination Date, and (vii) in the case of the Fixed Rate Mode, shall be a date determined by the Remarketing Agent which shall be at least one Business Day prior to the Conversion Date.

**Rating Agencies** shall mean any of Moody's, S&P or Fitch, which is then providing a rating on the 2023D Subordinated Bonds at the request of the District.

**Record Date** shall mean (i) with respect to 2023D Subordinated Bonds in a Daily Mode, Weekly Mode, Flexible Mode, Direct Purchase Index Mode or Index Mode, the last Business Day before an Interest Payment Date, and (ii) with respect to 2023D Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, the fifteenth (15th) day (whether or not a Business Day) next preceding each Interest Payment Date.

**Redemption Date** shall mean the date fixed for redemption of 2023D Subordinated Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Subordinate Master Resolution.

**Redemption Price** shall mean an amount equal to the principal of and premium, if any, and accrued interest, if any, on the 2023D Subordinated Bonds to be paid on the Redemption Date.

**Reimbursement Agreement** shall mean any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement by and between a Credit Provider or Liquidity Provider, as applicable, and the District.

**Remarketing Agent** shall mean any investment banking firm which may be appointed with respect to the 2023D Subordinated Bonds pursuant to Section 91.01.

**Remarketing Agreement** shall mean any agreement relating to the 2023D Subordinated Bonds by and between the District and a Remarketing Agent, as it may be amended or supplemented from time to time in accordance with its terms.

**Remarketing Proceeds Account** shall mean the account by that name in the Purchase Fund created in Section 90.09.

**Representations Letter** shall mean the Letter of Representations from the District to the Securities Depository in connection with the 2023D Subordinated Bonds in a book-entry system, as supplemented and amended from time to time.

**Sales Certificate** shall mean a written certificate of the District executed by the Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District or the Chief Financial Officer of the District or the designee of any of them prior to the issuance of the 2023D Subordinated Bonds setting forth the principal amount, Maturity Date or Maturity Dates, initial Interest Rate Mode, initial interest rate or rates, and such other matters with respect to the 2023D Subordinated Bonds as such officer may deem appropriate, as provided in Section 88.02.

**S&P** shall mean S&P Global Ratings and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent, if any.

**S&P Municipal Bond 7 Day High Grade Rate Index** shall mean for a Rate Determination Date, the level of the “S&P Municipal Bond 7 Day High Grade Rate Index”

(formerly known as the J.J. Kenny Index) maintained by Standard and Poor's for a one-week maturity as published each day.

**Securities Depository** shall mean The Depository Trust Company, and such other securities depository as the District may designate in a certificate of the District delivered to the Trustee.

**Serial Bonds** shall mean the 2023D Subordinated Bonds maturing on the Serial Maturity Dates, as determined pursuant to Section 88.11(b).

**Serial Maturity Dates** shall mean the dates on which the Serial Bonds mature, as determined pursuant to Section 88.11(b).

**Serial Payments** shall mean the payments to be made in payment of the principal of the Serial Bonds on the Serial Maturity Dates.

**Short-Term Mode** shall mean the Daily Mode, the Weekly Mode or the Flexible Mode.

**SIFMA Index** shall mean, for any applicable Rate Determination Date, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day. If the SIFMA Index is no longer published, then "SIFMA Index" shall mean the S&P Municipal Bond 7 Day High Grade Rate Index. If the S&P Municipal Bond 7 Day High Grade Rate Index is no longer published, then "SIFMA Index" shall mean the prevailing rate determined by the Calculation Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Calculation Agent to be comparable under the circumstances to the criteria used by SIFMA to determine the SIFMA Index immediately prior to the date on which SIFMA ceased publication of the SIFMA Index. Notwithstanding the foregoing, if the SIFMA Index as determined as provided above would be less than 0.0%, then the SIFMA Index will be deemed to be 0.0%.

**Substitution Date** shall mean the date upon which an Alternate Credit Enhancement or Alternate Liquidity Facility is scheduled to be substituted for a Credit Enhancement or Liquidity Facility then in effect.

**Taxable Date** shall mean the date on which interest on the 2023D Subordinated Bonds is first includable in gross income of the Holder (including, without limitation, any previous Holder) thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

**Taxable Rate** shall mean an interest rate per annum at all times equal to the product of the Direct Purchase Index Rate then in effect multiplied by the Taxable Rate Factor.

**Taxable Rate Factor** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Tendered Bonds** shall mean 2023D Subordinated Bonds tendered for purchase by the Holders or Beneficial Owners thereof pursuant to Section 90.01 or subject to mandatory tender for purchase on a Mandatory Purchase Date pursuant to Section 90.02.

**Tender Notice** shall mean a notice delivered by Electronic Means or in writing with respect to a 2023D Subordinated Bond that states (i) the principal amount of such 2023D Subordinated Bond to be purchased pursuant to Section 90.01, (ii) the Purchase Date on which such 2023D Subordinated Bond is to be purchased, (iii) applicable payment instructions with respect to the 2023D Subordinated Bonds being tendered for purchase and (iv) an irrevocable demand for such purchase.

**Tender Notice Deadline** with respect to a 2023D Subordinated Bond shall mean (i) during a Daily Mode with respect to such 2023D Subordinated Bond, 11:00 a.m. on any Business Day and (ii) during a Weekly Mode with respect to such 2023D Subordinated Bond, 5:00 p.m. on a Business Day not less than seven days prior to the applicable Purchase Date.

**Term Rate** shall mean the per annum interest rate for 2023D Subordinated Bonds in the Term Rate Mode determined pursuant to Section 88.07(a).

**Term Rate Mode** shall mean the Interest Rate Mode during which the 2023D Subordinated Bonds bear interest at the Term Rate.

**Term Rate Period** shall mean the period from (and including) the date on which the 2023D Subordinated Bonds begin to bear interest in a Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period.

**2023 Tax Certificate** shall mean the Tax Certificate executed and delivered by the District in connection with the issuance of the 2023D Subordinated Bonds, as amended or supplemented from time to time in accordance with its terms.

**Weekly Mode** shall mean the Interest Rate Mode during which the 2023D Subordinated Bonds bear interest at the Weekly Rate.

**Weekly Rate** shall mean the per annum interest rate on 2023D Subordinated Bonds in the Weekly Mode determined pursuant to Section 88.06(b).

**Weekly Rate Period** shall mean the period during which a 2023D Subordinated Bond in the Weekly Mode shall bear a Weekly Rate, which shall be the period commencing on Thursday of each week to and including Wednesday of the following week, except (i) the first Weekly Rate Period, which shall be from the Conversion Date on which the Interest Rate Mode for the 2023D Subordinated Bonds is changed to a Weekly Mode to and including the Wednesday of the following week, and (ii) the last Weekly Rate Period which shall end on the day preceding the earliest to occur of the Conversion Date on which the Interest Rate Mode for the 2023D Subordinated Bonds is changed from the Weekly Mode to a different Interest Rate Mode, the Maturity Date or the Mandatory Purchase Date for such 2023D Subordinated Bond.

## ARTICLE LXXXVIII

### THE 2023D SUBORDINATED BONDS

#### **Section 88.01. Authorization and Purpose of 2023D Subordinated Bonds.**

The Board hereby authorizes the issuance of a series of revenue bonds of the District in accordance with the Subordinate Master Resolution, designated as “Subordinated Electric Revenue Bonds, 2023 Series D” (the “2023D Subordinated Bonds”) for the purpose of (i) financing and refinancing improvements and additions to the District’s Electric System, including through the payment of all or a portion of the District’s outstanding commercial paper notes (to the extent set forth in the Sales Certificate), (ii) refunding the Refunded Bonds (to the extent set forth in the Sales Certificate), and (iii) paying costs of issuance (to the extent set forth in the Sales Certificate).

#### **Section 88.02. Terms, Registration, Denominations, Medium, Method and Place of Payment and Dating of 2023D Subordinated Bonds.**

(a) The 2023D Subordinated Bonds shall be issued in the aggregate principal amount which, together with the aggregate principal amount, if any, of the District’s Electric Revenue Bonds sold and issued pursuant to the District’s Sixty-Sixth Supplemental Resolution adopted on the date hereof, Subordinated Electric Revenue Refunding Bonds, 2023 Series C, Subordinated Electric Revenue Bonds, 2023 Series E, and Subordinated Electric Revenue Refunding Bonds, 2023 Series F, shall not exceed \$630,000,000, shall bear interest at such initial rate or rates for such initial Interest Period, shall bear interest in such initial Interest Rate Mode, shall mature and become payable as to principal on such Maturity Date or Maturity Dates (not to exceed forty (40) years from the date of issuance of the 2023D Subordinated Bonds) in the amount and be subject to such mandatory sinking fund account payments on such mandatory sinking fund account payment dates, if any, all as set forth in the Sales Certificate. In addition to the provisions required pursuant to the terms of this Fifteenth Supplemental Resolution to be specified in the Sales Certificate, the Sales Certificate may contain such provisions, in a form approved by the District’s Bond Counsel and the District’s counsel, as the officer executing the Sales Certificate may deem necessary or desirable and consistent with the purpose of this Fifteenth Supplemental Resolution, including provisions (i) adding additional covenants and agreements to be observed by the District, (ii) curing, correcting, amending or supplementing any ambiguous, defective or ineffective provision contained in the Subordinate Master Resolution or this Fifteenth Supplemental Resolution, or (iii) amending or supplementing any provision contained herein to the extent necessary to obtain Credit Enhancement or a Liquidity Facility, to obtain a rating on the 2023D Subordinated Bonds, or to provide for the issuance of the 2023D Subordinated Bonds if, in the judgment of such officer such rating or provision is reasonable. The Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District or the Chief Financial Officer of the District, or the designee of any of them, is hereby authorized and instructed to execute and deliver the Sales Certificate and, upon execution and delivery thereof, the Sales Certificate shall be incorporated herein and in the Subordinate Master Resolution by reference. The execution and delivery of the Sales Certificate by any such officer shall be conclusive evidence that, where any approval, determination of necessity, desirability or consistency with the purpose of this Fifteenth Supplemental Resolution, or judgment or



determination of reasonableness is required to be given or made, such approval, judgment or determination has been given or made.

(b) The 2023D Subordinated Bonds shall be issued in the form of fully registered 2023D Subordinated Bonds in Authorized Denominations and no provision of the Subordinate Master Resolution relating to coupon bonds or coupons shall apply to the 2023D Subordinated Bonds. 2023D Subordinated Bonds (other than 2023D Subordinated Bonds in the Direct Purchase Index Mode) shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023D Subordinated Bonds and shall be registered as set forth in Section 92.04 of this Fifteenth Supplemental Resolution. 2023D Subordinated Bonds in the Direct Purchase Index Mode shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023D Subordinated Bonds and shall be registered in the name of the Holder thereof or as otherwise directed by such Holder. Registered ownership of the 2023D Subordinated Bonds, or any portion thereof, may not thereafter be transferred except as set forth in the Continuing Covenant Agreement (during any time that the 2023D Subordinated Bonds are in the Direct Purchase Index Mode), Section 2.05 of the Subordinate Master Resolution and Section 92.04 of this Fifteenth Supplemental Resolution. Each 2023D Subordinated Bond in the Direct Purchase Index Mode shall contain a legend indicating that the transferability of such 2023D Subordinated Bond is subject to the restrictions set forth in this Fifteenth Supplemental Resolution.

(c) The 2023D Subordinated Bonds shall be dated as of the date of their initial issuance and shall be numbered in such manner as is determined by the Trustee.

(d) The principal of and premium, if any, and interest on the 2023D Subordinated Bonds shall be payable in lawful money of the United States of America.

(e) Subject to Section 92.04 of this Fifteenth Supplemental Resolution, interest on the 2023D Subordinated Bonds shall be paid on each Interest Payment Date by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode by check mailed on the date on which due to the Holders of the 2023D Subordinated Bonds at the close of business on the Record Date for the 2023D Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023D Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023D Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023D Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023D Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written wire transfer instructions, interest payable on such 2023D Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer instructions provided by the Holder of such 2023D Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023D Subordinated Bonds registered in the name of the Securities Depository (or its nominee), interest on any such 2023D Subordinated Bond shall be payable only upon surrender of such 2023D Subordinated Bond at the office of the Paying Agent.

(f) Subject to Section 92.04 of this Fifteenth Supplemental Resolution, the principal of and premium, if any, on each 2023D Subordinated Bond shall be payable on the Principal Payment Date of such 2023D Subordinated Bond upon surrender thereof at the office of the Paying Agent; provided that the Paying Agent may agree with the Holder of any 2023D Subordinated Bond (and hereby does so agree with the Bank during any Direct Purchase Index Rate Period) that such Holder may, in lieu of surrendering the same for a new 2023D Subordinated Bond, endorse on such 2023D Subordinated Bond a record of partial payment of the principal of such 2023D Subordinated Bond in the form set forth below (which shall be typed or printed on such 2023D Subordinated Bond):

PAYMENTS ON ACCOUNT OF PRINCIPAL

Payment Date	Principal Amount Paid	Balance of Principal Amount Unpaid	Signature of Holder
<hr/>	<hr/>	<hr/>	<hr/>

The Paying Agent shall maintain a record of each such partial payment made in accordance with the foregoing agreement and such record of the Paying Agent shall be conclusive. Such partial payment shall be valid upon payment of the amount thereof to the Holder of such 2023D Subordinated Bond, and the District, the Trustee and the Paying Agent shall be fully released and discharged from all liability to the extent of such payment regardless of whether such endorsement shall or shall not have been made upon such 2023D Subordinated Bond by the Holder thereof and regardless of any error or omission in such endorsement.

(g) Except as may be specifically set forth herein, the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District may treat the Holder of a 2023D Subordinated Bond as the absolute owner thereof for all purposes, whether or not such 2023D Subordinated Bond shall be overdue, and the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District shall not be affected by any knowledge or notice to the contrary. Payment of the principal of and premium, if any, and interest on each 2023D Subordinated Bond shall be made only to such Holder, which payments shall be valid and effectual to satisfy and discharge the liability of such 2023D Subordinated Bond to the extent of the sum or sums so paid. All 2023D Subordinated Bonds paid at maturity or on earlier redemption pursuant to the provisions of this Section shall be cancelled by the Paying Agent.

(h) Each 2023D Subordinated Bond shall bear interest at the applicable rate or rates during each applicable Interest Accrual Period until the entire Principal Amount thereof has been paid.

(i) The Sales Certificate shall designate the series, amounts and maturity or sinking fund payment dates of the Refunded Bonds, if any.

**Section 88.03. Payment of Principal and Interest of 2023D Subordinated Bonds; Acceptance of Terms and Conditions.**

(a) The interest on each 2023D Subordinated Bond shall become due and payable on the Interest Payment Dates with respect to such 2023D Subordinated Bond to and including the Maturity Date of such 2023D Subordinated Bond, and on each Redemption Date and on the date of any acceleration prior thereto. The principal of each 2023D Subordinated Bond shall become due and payable on the Principal Payment Date of such 2023D Subordinated Bond.

(b) By the acceptance of its 2023D Subordinated Bond, the Holder thereof shall be deemed to have agreed to all the terms and provisions of such 2023D Subordinated Bond as specified in such 2023D Subordinated Bond and the Subordinate Master Resolution, including without limitation the applicable Interest Periods, interest rates (including any applicable Alternate Rate), Purchase Dates, Mandatory Purchase Dates, Purchase Prices, mandatory and optional purchase and redemption provisions applicable to such 2023D Subordinated Bond, method and timing of purchase, redemption and payment. Such Holder further agrees that if, on any date upon which its 2023D Subordinated Bond is to be purchased, redeemed or paid at maturity or earlier due date, funds are on deposit with the Paying Agent or the Trustee to pay the full amount due on such 2023D Subordinated Bond, then such Holder shall have no rights under the Subordinate Master Resolution other than to receive such full amount due with respect to such 2023D Subordinated Bond and that interest on such 2023D Subordinated Bond shall cease to accrue as of such date.

(c) Notwithstanding anything herein to the contrary, while any 2023D Subordinated Bonds are Liquidity Provider Bonds, such Liquidity Provider Bonds shall bear interest and be payable at the times, in the manner and in the amounts required under the Liquidity Facility supporting such 2023D Subordinated Bonds or the Reimbursement Agreement related thereto.

**Section 88.04. Calculation and Payment of Interest; Change in Interest Rate Mode; Maximum Rate.**

(a) When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is the SIFMA Index, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is an index other than the SIFMA Index, interest shall be calculated on the basis specified in writing by the District on or before the first day of the applicable Direct Purchase Index Rate Period or Index Rate Period. When a Short-Term Mode is in effect, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Term Rate Mode or a Fixed Rate Mode is in effect, interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Payment of unpaid interest accrued on each 2023D Subordinated Bond during each Interest Accrual Period shall be made on the applicable Interest Payment Date for such 2023D Subordinated Bond to the Holder of record of such 2023D Subordinated Bond on the applicable Record Date.

(b) The 2023D Subordinated Bonds in any Interest Rate Mode other than a Fixed Rate Mode may be changed to any other Interest Rate Mode at the times and in the manner hereinafter provided. Subsequent to such change in Interest Rate Mode (other than a change to a Fixed Rate Mode), the 2023D Subordinated Bonds may again be changed to a different Interest Rate Mode at the times and in the manner hereinafter provided. A Fixed Rate Mode shall be in effect until the Maturity Date, or acceleration thereof prior to the Maturity Date, and the 2023D Subordinated Bonds in a Fixed Rate Mode may not be changed to any other Interest Rate Mode.

(c) Subject to Section 88.09(b)(iii), no 2023D Subordinated Bonds shall bear interest at an interest rate higher than the Maximum Rate with respect thereto.

(d) In the absence of manifest error, the determination of interest rates (including any determination of rates in connection with a New Mode) and Interest Periods by the Remarketing Agent or the Calculation Agent, as applicable, as provided herein, and the record of interest rates maintained by the Paying Agent shall be conclusive and binding upon the Remarketing Agent, the Paying Agent, the Trustee, the District, the Holders and the Beneficial Owners.

**Section 88.05. Determination of Flexible Rates and Interest Periods During Flexible Mode.** An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and in Section 88.04 hereof, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023D Subordinated Bond the Interest Period which would result in the Remarketing Agent being able to remarket such 2023D Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023D Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023D Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023D Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or

Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

**Section 88.06. Determination of Interest Rates During the Daily Mode and the Weekly Mode.** The interest rate for 2023D Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023D Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period. In making any such determination the Remarketing Agent shall not take into account the per annum rate of interest that would be applicable to Liquidity Provider Bonds pursuant to the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

(a) During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

(b) During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

**Section 88.07. Determination of Term Rates and Fixed Rates.**

(a) Term Rates. The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. Except as set forth in Section 88.11(a)(ii), the Term Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such 2023D Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected, and the Call Protection Date specified, by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.

(b) Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023D Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023D Subordinated Bonds will have Serial Maturity Dates in accordance with Section 88.11(b)(v)). Except as set forth in Section 88.11(b)(v), the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023D Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 88.11(b)(v), the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023D Subordinated Bonds.

**Section 88.08. Alternate Rates.** The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023D Subordinated Bonds (other than 2023D Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023D Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023D Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023D Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023D Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023D Subordinated Bonds.

(a) For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such 2023D Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

(b) For 2023D Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023D Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

**Section 88.09. Determination of Direct Purchase Index Rates.**

(a) During each Direct Purchase Index Rate Period, the 2023D Subordinated Bonds shall, subject to subsection (b) of this Section 88.09, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023D Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023D Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023D Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023D Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Master Resolution or this Fifteenth Supplemental Resolution to the contrary, including, without limitation, Section 90.02(b), but subject to Section 88.04(c) and Section 88.09(b)(ii) and (iii), from and after any Taxable Date, the interest rate on 2023D Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Master Resolution or this Fifteenth Supplemental Resolution to the contrary, including, without limitation, Section 90.02(b), but subject to Section 88.04(c) and Section 88.09(b)(iii), from and after the effective date of any “Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023D Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023D

Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Master Resolution or this Fifteenth Supplemental Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023D Subordinated Bonds exceeds the Maximum Rate for such 2023D Subordinated Bonds, then (A) such 2023D Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023D Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023D Subordinated Bonds as calculated pursuant to this Section 88.09 and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023D Subordinated Bonds as calculated pursuant to this Section 88.09 is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023D Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023D Subordinated Bonds are redeemed or tendered for purchase in accordance with this Fifteenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023D Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything herein to the contrary, but subject to Section 88.04(c) and Section 88.09(b)(i), (ii) and (iii) during any Amortization Period, the 2023D Subordinated Bonds shall bear interest at the Bank Rate.

**Section 88.10. Determination of Index Rates.** During each Index Rate Period, the 2023D Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023D Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023D Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023D Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023D Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023D Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023D Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023D Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023D Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a percentage point with five hundred thousandths of a percentage point rounded upward. All



dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023D Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

**Section 88.11. Changes in Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period.** Subject to the provisions of this Section, the District may effect a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period with respect to the 2023D Subordinated Bonds by following the procedures set forth in this Section.

(a) Changes to Interest Rate Modes Other Than Fixed Rate Mode; Changes in Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period. The Interest Rate Mode for the 2023D Subordinated Bonds (other than the 2023D Subordinated Bonds in the Fixed Rate Mode) may be changed from one Interest Rate Mode to another Interest Rate Mode (other than the Fixed Rate Mode) and the Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023D Subordinated Bonds may be changed, as follows:

(i) Notice to Notice Parties; Notice to Holders. No later than a Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023D Subordinated Bonds preceding the proposed Conversion Date, the District shall give written notice to the Notice Parties of its intention to effect a change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period from the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period then prevailing (for purposes of this Section, the "Current Mode") to another Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period (for purposes of this Section, the "New Mode") specified in such written notice. Notice of the proposed change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be given by the Trustee by mail to the Holders of the 2023D Subordinated Bonds not less than the 10th day next preceding the proposed Conversion Date, provided that no notice need be given for a Conversion Date occurring on the Business Day following the last day of a Flexible Rate Period, an Index Rate Period or a Term Rate Period or on a Substitution Date. Such notice shall state: (1) the proposed Conversion Date; (2) that the 2023D Subordinated Bonds will be subject to mandatory tender for purchase on the proposed Conversion Date (regardless of whether all of the conditions to the change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period are satisfied); and (3) the Purchase Price of the 2023D Subordinated Bonds and the place of delivery for purchase of the 2023D Subordinated Bonds; provided that, if the proposed change is from one Direct Purchase Index Rate Period to a new Direct Purchase Index Rate Period and any Holder of the 2023D Subordinated Bonds shall continue to be a Holder of 2023D Subordinated Bonds

in the new Direct Purchase Index Rate Period, the Holder may elect to retain its 2023D Subordinated Bonds by filing with the District and the Trustee not less than five days prior to the proposed Conversion Date a written notice identifying such 2023D Subordinated Bonds and the principal amount it wishes to retain.

(ii) Determination of Interest Rates. The New Mode shall commence on the Conversion Date and the interest rate(s) (together, in the case of a change to the Flexible Mode, with the Interest Period(s)) shall be determined in the manner provided in Sections 88.05, 88.06, 88.07, 88.09 and 88.10, as applicable; provided, however, that, in the case of a change to the Term Rate Mode, or from one Term Rate Period to a new Term Rate Period, if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to sell some or all of the 2023D Subordinated Bonds at a premium or a discount to par.

(iii) Conditions Precedent.

(1) The Conversion Date shall be:

(A) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023D Subordinated Bonds end;

(B) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(C) in the case of a change from the Term Rate Mode to another Interest Rate Mode, or from one Term Rate Period to a new Term Rate Period, any day on which the applicable 2023D Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(D) in the case of a change from the Index Mode to another Interest Rate Mode, or from one Index Rate Period to a new Index Rate Period, any day on which the applicable 2023D Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and

(E) in the case of a change from the Direct Purchase Index Mode or from one Direct Purchase Index Rate Period to another Direct Purchase Index Rate Period, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(2) If the 2023D Subordinated Bonds to be converted are Flexible Rate Bonds, no Interest Period with respect to such 2023D Subordinated Bonds set after delivery by

the District to the Remarketing Agent of the notice of the intention to effect a change in Interest Rate Mode shall extend beyond the proposed Conversion Date.

(3) The following items shall have been delivered to the District and the Trustee, on or prior to the Conversion Date:

(A) a Favorable Opinion of Bond Counsel dated the Conversion Date; and

(B) if there is to be a Liquidity Facility or an Alternate Liquidity Facility or Credit Enhancement or an Alternate Credit Enhancement delivered in connection with such change, the items required by Section 90.08(d).

(4) If no Liquidity Facility is in effect to provide funds for the purchase of 2023D Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 90.04 shall not be less than the amount required to purchase all of the 2023D Subordinated Bonds on the Conversion Date at the Purchase Price.

(b) Change to Fixed Rate Mode. At the option of the District, the Interest Rate Mode for the 2023D Subordinated Bonds may be changed to the Fixed Rate Mode as provided in this Section 88.11(b). On any Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023D Subordinated Bonds before the proposed Conversion Date pursuant to clause (ii) of this subsection (b), the District shall give written notice to the Notice Parties stating that the Interest Rate Mode will be changed to the Fixed Rate Mode and setting forth the proposed Conversion Date. In addition, such notice shall state whether some or all of the 2023D Subordinated Bonds to be converted shall be converted to Serial Bonds and, if so, the applicable Serial Maturity Dates and Serial Payments, all as determined pursuant to clause (v) of this subsection (b). Any such change in Interest Rate Mode shall be made as follows:

(i) Conversion Date. The Conversion Date shall be:

(1) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023D Subordinated Bonds end;

(2) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(3) in the case of a change from the Term Rate Mode, any day on which the applicable 2023D Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(4) in the case of a change from the Index Mode, any day on which the applicable 2023D Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and

(5) in the case of a change from the Direct Purchase Index Mode, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(ii) Notice to Holders. Not less than the 10th day next preceding the Conversion Date, the Trustee shall mail, in the name of the District, a notice of such proposed change to the Holders of the 2023D Subordinated Bonds stating that the Interest Rate Mode will be changed to the Fixed Rate Mode, the proposed Conversion Date and that such Holder is required to tender such Holder's 2023D Subordinated Bonds for purchase on such proposed Conversion Date.

(iii) General Provisions Applying to Change to Fixed Rate Mode. The change to the Fixed Rate Mode shall not occur unless the following items shall have been delivered to the District and the Trustee and the following conditions shall have been satisfied, in each case on or prior to the Conversion Date:

(1) a Favorable Opinion of Bond Counsel dated the Conversion Date;

(2) if there is to be Credit Enhancement or Alternate Credit Enhancement delivered in connection with such change, the items required by Section 90.08(d) in connection with the delivery of Credit Enhancement or Alternate Credit Enhancement; and

(3) if no Liquidity Facility is in effect to provide funds for the purchase of 2023D Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 90.04 shall not be less than the amount required to purchase all of the 2023D Subordinated Bonds on the Conversion Date at the Purchase Price.

(iv) Determination of Interest Rate. The Fixed Rate (or Fixed Rates in the case of Serial Bonds) for the 2023D Subordinated Bonds to be converted to the Fixed Rate Mode shall be established by the Remarketing Agent on the Rate Determination Date applicable thereto pursuant to the provisions of Section 88.07(b). Such Fixed Rate or Fixed Rates shall remain in effect until the Maturity Date or Serial Maturity Dates, as applicable, of such 2023D Subordinated Bonds. Such determination shall be conclusive and binding upon the District, the Trustee, the Credit Provider, if any, and the Holders of the 2023D Subordinated Bonds to which such rate will be applicable. Not later than 5:00 p.m. on the date of determination of the Fixed Rate, the Remarketing Agent shall notify the District, the Trustee and the Credit Provider, if any, of such rate by telephone.

(v) Serialization and Sinking Fund Account Redemption; Price. Upon conversion of the 2023D Subordinated Bonds to the Fixed Rate Mode, the 2023D Subordinated Bonds shall be remarketed at par, shall mature on the same Maturity Date and be subject to the same mandatory sinking fund account redemption, if any, and optional redemption provisions as set forth in this Fifteenth Supplemental Resolution prior to the Conversion; provided, however, that if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to (1) have some of the 2023D Subordinated Bonds be Serial Bonds and some subject to mandatory sinking fund

account redemption even if such 2023D Subordinated Bonds were not Serial Bonds or subject to mandatory sinking fund account redemption prior to such change, (2) change the optional redemption dates and/or premiums set forth in Section 89.03(b), and/or (3) sell some or all of the 2023D Subordinated Bonds at a premium or a discount to par.

(c) Failure to Satisfy Conditions Precedent to an Interest Rate Mode Change.

In the event the conditions described above in subsections (a) or (b), as applicable, of this Section have not been satisfied by the applicable Conversion Date, then the New Mode shall not take effect (although any mandatory tender shall be made on such date if notice has been sent to the Holders stating that such 2023D Subordinated Bonds would be subject to mandatory purchase on such date). If the failed change in Interest Rate Mode was from the Flexible Mode, such 2023D Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the failed Conversion Date in accordance with Section 88.05. If the failed change in Interest Rate Mode was from the Daily Mode, such 2023D Subordinated Bonds shall remain in the Daily Mode, and if the failed change in Interest Rate Mode was from the Weekly Mode, such 2023D Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 88.06 on and as of the failed Conversion Date. If the failed change in Interest Rate Mode was from the Term Rate Mode, then such 2023D Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 88.07. If the failed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023D Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 88.09. If the failed change in Interest Rate Mode was from the Index Mode, then the 2023D Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 88.10.

(d) Rescission of Election. Notwithstanding anything herein to the contrary, the District may rescind any election by it to change an Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period as described above prior to the Conversion Date by giving written notice thereof to the Notice Parties prior to 10:00 a.m. on the Business Day preceding such Conversion Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Holders of the 2023D Subordinated Bonds, then such notice of change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be of no force and effect. If the Trustee receives notice from the District of rescission of a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period after the Trustee has given notice thereof to the Holders of the 2023D Subordinated Bonds, then, if the proposed Conversion Date would have been a Mandatory Purchase Date, such date shall continue to be a Mandatory Purchase Date and the Interest Rate Mode for the 2023D Subordinated Bonds shall be determined as set forth in the remainder of this paragraph. If the proposed change in Interest Rate Mode was from the Flexible Mode, such 2023D Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the proposed Conversion Date in accordance with Section 88.05. If the proposed change in Interest Rate Mode was from the Daily Mode, such 2023D Subordinated Bonds shall remain in the Daily Mode, and if the proposed change in Interest Rate Mode was from the Weekly Mode, such 2023D Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in

accordance with the applicable provisions of Section 88.06 on and as of the proposed Conversion Date. If the proposed change in Interest Rate Mode was from the Term Rate Mode, then such 2023D Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 88.07. If the proposed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023D Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 88.09. If the proposed change in Interest Rate Mode was from the Index Mode, then the 2023D Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 88.10.

## **ARTICLE LXXXIX**

### **REDEMPTION OF 2023D SUBORDINATED BONDS**

**Section 89.01. Optional Redemption of Flexible Rate Bonds.** 2023D Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023D Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

**Section 89.02. Optional Redemption of 2023D Subordinated Bonds in the Daily Mode and the Weekly Mode.** 2023D Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023D Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 89.03. Optional Redemption of 2023D Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.**

(a) 2023D Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023D Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023D Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023D Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(b) 2023D Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023D Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(c) The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023D Subordinated Bonds so changed to a Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

(d) Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023D Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

**Section 89.04. Optional and Mandatory Redemption of 2023D Subordinated Bonds in the Direct Purchase Index Mode.**

(a) Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023D Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023D Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

(b) 2023D Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 89.05. Mandatory Sinking Fund Account Redemption of 2023D Subordinated Bonds and Redemption of Liquidity Provider Bonds.**

(a) The 2023D Subordinated Bonds shall be subject to redemption prior to maturity from mandatory sinking fund account payments for the 2023D Subordinated Bonds on the dates, if any, specified in the Sales Certificate, at a Redemption Price equal to the principal amount of the 2023D Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The mandatory sinking fund account payments for the 2023D Subordinated Bonds shall be in the amounts and payable on the dates set forth in the Sales Certificate.

(b) Notwithstanding anything herein to the contrary, Liquidity Provider Bonds are subject to redemption on the dates, in the amounts and otherwise in accordance with the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

**Section 89.06. Funds for Redemption of 2023D Subordinated Bonds.** Unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023D Subordinated Bonds, the Redemption Price of 2023D Subordinated Bonds

(other than Liquidity Provider Bonds) shall be paid solely from (1) moneys obtained from a drawing on the Credit Enhancement supporting the 2023D Subordinated Bonds pursuant to Section 90.08(a) or (2) Available Moneys.

**Section 89.07. Selection of 2023D Subordinated Bonds for Redemption.**

Whenever provision is made for the redemption of less than all of the 2023D Subordinated Bonds of any one maturity, the Trustee shall select the 2023D Subordinated Bonds to be redeemed, from the Outstanding 2023D Subordinated Bonds of such maturity not previously called for redemption, by lot in any manner which the Trustee deems fair; provided, however, that Liquidity Provider Bonds shall be redeemed prior to the redemption of other 2023D Subordinated Bonds; provided further, however, that during a Direct Purchase Index Rate Period, the 2023D Subordinated Bonds shall be redeemed pro rata. The Trustee shall promptly notify the District in writing of the numbers of the 2023D Subordinated Bonds so selected for redemption.

**Section 89.08. Notice of Redemption.** Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023D Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023D Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023D Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023D Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023D Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023D Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023D Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023D Subordinated Bonds to be redeemed.

Notice of optional redemption shall be given by the Trustee for and on behalf of the District, at the written request of the District (which request shall be given to the Trustee (unless waived by the Trustee) at least twenty-five (25) days prior to the date fixed for redemption or such shorter period as is acceptable to the Trustee). Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption.

Notwithstanding the foregoing, notice of redemption shall not be required for 2023D Subordinated Bonds redeemed on a Mandatory Purchase Date.

**Section 89.09. Partial Redemption of 2023D Subordinated Bond.** Upon surrender of any 2023D Subordinated Bond redeemed in part only, the District shall execute and the Trustee shall deliver to the registered owner thereof, at the expense of the District, a new 2023D Subordinated Bond or Bonds, of the same maturity, of Authorized Denominations in



aggregate principal amount equal to the unredeemed portion of the 2023D Subordinated Bond surrendered.

**Section 89.10. Effect of Redemption.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price being held by the Trustee, the 2023D Subordinated Bonds so to be redeemed shall, on the date designated in such notice, become due and payable at the Redemption Price specified in such notice; and from and after the date so designated interest on the 2023D Subordinated Bonds so designated for redemption shall cease to accrue and the Holders and Beneficial Owners of said 2023D Subordinated Bonds shall have no rights in respect thereof, except to receive payment of the Redemption Price thereof.

**Section 89.11. Disposition of Redeemed 2023D Subordinated Bonds.** All 2023D Subordinated Bonds redeemed pursuant to the provisions of this Article LXXXIX shall be delivered to and cancelled by the Trustee and shall thereafter be delivered by the Trustee to, or upon the order of, the District, and no 2023D Subordinated Bonds shall be issued in place thereof.

## ARTICLE XC

### PURCHASE OF 2023D SUBORDINATED BONDS

**Section 90.01. Optional Tenders of 2023D Subordinated Bonds in the Daily Mode or the Weekly Mode.** Subject to Section 90.06, the Beneficial Owners of 2023D Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023D Subordinated Bonds (or portions of those 2023D Subordinated Bonds, provided that no 2023D Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

**Section 90.02. Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode.**

(a) The 2023D Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023D Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023D Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023D Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023D

Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

(b) Notwithstanding subparagraph (a) above and anything to the contrary in this Fifteenth Supplemental Resolution, in the event the 2023D Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023D Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023D Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing, in which case the 2023D Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023D Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023D Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023D Subordinated Bonds may be subject to optional redemption or purchase at the sole option of the District at any time with notice as and to the extent provided in the Continuing Covenant Agreement.

#### **Section 90.03. Remarketing of 2023D Subordinated Bonds; Notices.**

(a) Remarketing of 2023D Subordinated Bonds. The Remarketing Agent shall use its best efforts pursuant to the terms and conditions of the Remarketing Agreement to offer for sale:

(i) all 2023D Subordinated Bonds or portions thereof as to which a Tender Notice has been delivered pursuant to Section 90.01; and

(ii) all 2023D Subordinated Bonds required to be purchased on a Mandatory Purchase Date described in clauses (i), (ii), (iii), (iv), (viii) or (ix) of the definition thereof; and

(iii) any Liquidity Provider Bonds (A) purchased on a Purchase Date described in clause (i) or (ii) above, (B) with respect to which the Liquidity Provider has provided notice to the Trustee and the Remarketing Agent that it has reinstated the Available Amount, (C) with respect to which an Alternate Liquidity Facility and Alternate Credit Enhancement is in effect (if such funds were secured by a Credit Enhancement prior to becoming Liquidity Provider Bonds, which Credit Enhancement is no longer in effect), and/or (D) which are being marketed as Fixed Rate Bonds.

The Remarketing Agent shall not remarket 2023D Subordinated Bonds to the District or any affiliate thereof. In connection with the remarketing of any 2023D Subordinated Bonds with respect to which notice of redemption or notice of mandatory purchase has been

given, the Remarketing Agent shall notify each person to which such 2023D Subordinated Bonds are remarketed of such notice of redemption or notice of mandatory purchase.

Anything in this Fifteenth Supplemental Resolution to the contrary notwithstanding, if there shall have occurred and be continuing either a Credit Provider Failure or a Liquidity Provider Failure with respect to a Series of 2023D Subordinated Bonds, the Remarketing Agent shall not remarket such 2023D Subordinated Bonds. All other provisions of this Fifteenth Supplemental Resolution, including without limitation, those relating to the setting of interest rates and Interest Periods and mandatory and optional purchases, shall remain in full force and effect during the continuance of such Credit Provider Failure or Liquidity Provider Failure.

(b) Notice of Remarketing; Registration Instructions; New Bonds. On each date on which a 2023D Subordinated Bond is to be purchased pursuant to this Article XC:

(i) the Remarketing Agent shall notify the Trustee by Electronic Means by 11:30 a.m. if it has been unable to remarket any tendered 2023D Subordinated Bonds, and shall include in such notice the principal amount of 2023D Subordinated Bonds it has been unable to remarket;

(ii) the Remarketing Agent shall notify the Trustee by Electronic Means not later than 1:00 p.m. of the names of the purchasers of the successfully remarketed 2023D Subordinated Bonds and such information as may be necessary to register the 2023D Subordinated Bonds and the registration instructions with respect thereto;

(iii) the Remarketing Agent shall cause the proceeds of the remarketing by such Remarketing Agent of tendered 2023D Subordinated Bonds to be paid to the Trustee in immediately available funds not later than 12:00 noon on the Purchase Date for such 2023D Subordinated Bonds; and

(iv) if the 2023D Subordinated Bonds are not in the Book-Entry System, the Trustee shall authenticate new 2023D Subordinated Bonds for the respective purchasers thereof which shall be available for pick-up by the Remarketing Agent not later than 2:30 p.m.

(c) Draw on Liquidity Facility or Request for Funds. On each date on which a 2023D Subordinated Bond is to be purchased pursuant to this Article XC, if (i) the Remarketing Agent shall have given notice to the Trustee pursuant to clause (b)(i) above that it has been unable to remarket any of the 2023D Subordinated Bonds or (ii) the Trustee has not received from the Remarketing Agent an amount sufficient to pay the Purchase Price of tendered Bonds, by 12:00 noon on the Purchase Date, then the Trustee shall draw on the applicable Liquidity Facility (or if no Liquidity Facility, request funds from the District) by 12:15 p.m. in an amount equal to the Purchase Price of all such 2023D Subordinated Bonds which have not been successfully remarketed, requesting payment not later than 2:45 p.m. on the Purchase Date. Subject to Section 90.04, if a Liquidity Facility is in effect, the Trustee shall also give the District notice by 2:45 p.m. on the Purchase Date if it does not have funds in the Remarketing Proceeds

Account and the Liquidity Facility Purchase Account sufficient to pay the Purchase Price of 2023D Subordinated Bonds tendered on such Purchase Date. Any draw on a Liquidity Facility to be made on a Substitution Date shall be on the Liquidity Facility being replaced.

**Section 90.04. Source of Funds for Purchase of 2023D Subordinated Bonds.**

By 3:00 p.m. on the date on which a 2023D Subordinated Bond is to be purchased pursuant to this Article XC, and except as set forth in Section 90.06(b)(ii), the Trustee shall purchase tendered 2023D Subordinated Bonds from the tendering Holders at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and neither the Trustee nor the Remarketing Agent shall be obligated to provide funds from any other source:

(a) immediately available funds on deposit in the Remarketing Proceeds Account established for the 2023D Subordinated Bonds;

(b) immediately available funds on deposit in the Liquidity Facility Purchase Account established for the 2023D Subordinated Bonds; and

(c) moneys of the District on deposit in the District Purchase Account established for the 2023D Subordinated Bonds.

If no Liquidity Facility is in effect with respect to the 2023D Subordinated Bonds, then the District shall be obligated to deposit amounts into the District Purchase Account established for the 2023D Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023D Subordinated Bonds are insufficient therefor. If a Liquidity Facility is in effect with respect to the 2023D Subordinated Bonds, then the District may, but shall not be obligated to, deposit amounts into the District Purchase Account established for the 2023D Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023D Subordinated Bonds and the Liquidity Facility Purchase Account established for the 2023D Subordinated Bonds are insufficient therefor. If so specified in the Sales Certificate with respect to the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period, the failure of the District to deposit amounts into the District Purchase Account when the District is obligated to deposit such amounts under this Section 90.04 shall constitute an “event of default” under Section 9.01 of the Subordinate Master Resolution.

**Section 90.05. Delivery of Subordinated Bonds.** On each date on which a 2023D Subordinated Bond is to be purchased pursuant to this Article XC, such 2023D Subordinated Bond shall be delivered as follows:

(a) 2023D Subordinated Bonds sold by the Remarketing Agent and described in Section 90.04(a) shall be delivered by the Remarketing Agent to the purchasers of such 2023D Subordinated Bonds by 3:00 p.m.;

(b) 2023D Subordinated Bonds purchased by the Trustee with moneys described in Section 90.04(b) shall be registered immediately in the name of the Liquidity

Provider or its nominee (which may be the Securities Depository) or as otherwise specified in writing by the Liquidity Provider and held as specified in writing by the Liquidity Provider, in either case on or before 3:00 p.m.; and

(c) 2023D Subordinated Bonds purchased by the District with moneys described in Section 90.04(c) shall be registered immediately in the name of the District or its nominee on or before 3:00 p.m. 2023D Subordinated Bonds so owned by the District shall continue to be Outstanding under the terms of the Subordinate Master Resolution and be subject to all of the terms and conditions of the Subordinate Master Resolution and shall be subject to remarketing by the Remarketing Agent.

When any Liquidity Provider Bonds are remarketed, the Trustee shall not release 2023D Subordinated Bonds so remarketed to the Remarketing Agent until the Trustee has received confirmation that the Liquidity Facility has been reinstated.

#### **Section 90.06. Book-Entry Tenders.**

(a) Notwithstanding any other provision of this Article XC to the contrary, all tenders for purchase during any period in which the 2023D Subordinated Bonds are registered in the name of any Securities Depository or its nominee shall be subject to the terms and conditions set forth in the Representations Letter and to any regulations promulgated by the Securities Depository. During any period that the 2023D Subordinated Bonds are registered in the name of DTC or its nominee, the tender option rights of holders of 2023D Subordinated Bonds may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of 2023D Subordinated Bonds by giving notice of its election to tender 2023D Subordinated Bonds or portions thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender 2023D Subordinated Bonds directly to the Trustee. Procedures under which a Beneficial Owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Director Participant of DTC, to exercise a tender option right in respect of 2023D Subordinated Bonds or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. During any period that the 2023D Subordinated Bonds are registered in the name of DTC or its nominee, delivery of 2023D Subordinated Bonds required to be tendered for purchase shall be effected by the transfer by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Trustee of a beneficial ownership interest in such 2023D Subordinated Bonds.

(b) Notwithstanding anything expressed or implied herein to the contrary, during any period that a Book-Entry System for the 2023D Subordinated Bonds is maintained by the District:

(i) there shall be no requirement of physical delivery to or by the Trustee or the Remarketing Agent of:

(1) any 2023D Subordinated Bonds subject to mandatory or optional purchase as a condition to the payment of the Purchase Price therefor;

(2) any 2023D Subordinated Bonds that have become Liquidity Provider Bonds; or

(3) any remarketing proceeds of such 2023D Subordinated Bonds or Liquidity Provider Bonds; and

(ii) except as provided in (iii) below, neither the Trustee nor the Paying Agent shall have any responsibility for paying the Purchase Price of any tendered 2023D Subordinated Bond or for remitting remarketing proceeds to any Person; and

(iii) the Trustee's sole responsibilities in connection with the purchase and remarketing of a tendered 2023D Subordinated Bond shall be to:

(1) draw upon the Liquidity Facility to pay the Purchase Price of 2023D Subordinated Bond in the manner provided herein and to remit the amount so drawn to or upon the order of the Securities Depository for the benefit of the tendering Beneficial Owners; and

(2) remit any proceeds derived from the remarketing of a Liquidity Provider Bond and any unused proceeds from a drawing on the Liquidity Facility to the Liquidity Provider.

**Section 90.07. No Book-Entry System.** During any period that the 2023D Subordinated Bonds shall not be in a Book-Entry System, the following procedures shall be followed:

(a) 2023D Subordinated Bonds shall be delivered (with all necessary endorsements) at or before 12:00 noon on the Purchase Date at the office of the Paying Agent in New York, New York; provided, however, that payment of the Purchase Price shall be made pursuant to this Section only if the 2023D Subordinated Bond so delivered to the Paying Agent conforms in all respects to the description thereof in the notice described in this Section. Payment of the Purchase Price with respect to purchases under this Section shall be made to the Holders of tendered 2023D Subordinated Bonds by wire transfer in immediately available funds by the Paying Agent by 3:00 p.m. on the Purchase Date.

(b) If a 2023D Subordinated Bond to be purchased pursuant to this Article XC is not delivered by the Holder to the Paying Agent by 12:00 noon on the date in which such 2023D Subordinated Bond is to be purchased, the Paying Agent shall hold any funds received for the purchase of those 2023D Subordinated Bonds in trust in a separate account and shall pay such funds to the former Holders of the 2023D Subordinated Bonds upon presentation of the 2023D Subordinated Bonds. Such undelivered 2023D Subordinated Bonds shall cease to accrue interest as to the former Holders on such purchase date and moneys representing the Purchase Price shall be available against delivery of those 2023D Subordinated Bonds at the Principal Office of the Paying Agent; provided, however, that any funds which shall be so held by the Paying Agent and which remain unclaimed by the former Holder of a 2023D Subordinated Bond not presented for purchase for a period of two years after delivery of such funds to the Paying Agent, shall, to the extent permitted by law, upon request in writing by the District and the furnishing of security or indemnity to the Paying Agent's satisfaction, be paid to the District free of any trust or lien and thereafter the former Holder of such 2023D Subordinated Bond shall look

only to the District and then only to the extent of the amounts so received by the District without any interest thereon and the Paying Agent shall have no further responsibility with respect to such moneys or payment of the Purchase Price of such 2023D Subordinated Bonds. The Paying Agent shall authenticate a replacement 2023D Subordinated Bond for any undelivered 2023D Subordinated Bond which may then be remarketed by the Remarketing Agent.

(c) The Paying Agent shall hold all 2023D Subordinated Bonds properly tendered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Holders of the 2023D Subordinated Bonds which shall have so tendered such 2023D Subordinated Bonds until moneys representing the Purchase Price of such 2023D Subordinated Bonds shall have been delivered to or for the account of or to the order of such Holders.

#### **Section 90.08. Credit Enhancement and Liquidity Facility.**

(a) While a Credit Enhancement is in effect with respect to the 2023D Subordinated Bonds, the Trustee shall, on the Business Day preceding each Interest Payment Date and Principal Payment Date draw on the Credit Enhancement in accordance with the terms thereof so as to receive thereunder with respect to the 2023D Subordinated Bonds secured by the Credit Enhancement by 1:00 p.m. on said Interest Payment Date and Principal Payment Date, an amount, in immediately available funds, equal to the amount of interest and principal payable on such 2023D Subordinated Bonds on such Interest Payment Date and Principal Payment Date. The proceeds of such draws shall be deposited in a separate account in the Subordinated Bond Interest and Principal Fund and shall be applied to pay principal of and interest on such 2023D Subordinated Bonds prior to the application of any other funds held by the Trustee therefor. Amounts held in such account shall be held uninvested and separate and apart from all other funds and accounts. Such accounts shall at all times be Eligible Accounts.

(b) If a Liquidity Facility is in effect with respect to the 2023D Subordinated Bonds, on each date on which a 2023D Subordinated Bond is to be purchased, the Trustee, by demand given by Electronic Means by 12:15 p.m., shall draw on the Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:45 p.m. on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2023D Subordinated Bonds on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The Trustee shall deposit said proceeds in the Liquidity Facility Purchase Account established for the 2023D Subordinated Bonds pursuant to Section 90.09(b) hereof.

(c) Notwithstanding the foregoing paragraphs of this Section, if the Credit Provider and the Liquidity Provider are the same entity, the Trustee shall not draw on the Credit Enhancement with respect to any payments due or made in connection with Liquidity Provider Bonds. In no event shall the Trustee draw on the Credit Enhancement or Liquidity Facility with respect to any payments made or made in connection with 2023D Subordinated Bonds not covered by the Credit Enhancement or Liquidity Facility or 2023D Subordinated Bonds owned by the District.

(d) The District may provide an Alternate Credit Enhancement or Alternate Liquidity Facility on any day on which 2023D Subordinated Bonds to be secured by such

Alternate Credit Enhancement or Alternate Liquidity Facility are subject to redemption at par and not later than the fifth (5th) Business Day prior to the Expiration Date of the Credit Enhancement or Liquidity Facility then in effect and supporting such 2023D Subordinated Bonds. The District shall give the Notice Parties written notice of the proposed substitution of an Alternate Credit Enhancement or Alternate Liquidity Facility no less than two (2) Business Days prior to the date on which the Trustee is required to provide notice of the proposed substitution to the Holders of the 2023D Subordinated Bonds. The Trustee shall give notice of such Substitution Date in accordance with Section 90.02. On or before the Substitution Date there shall be delivered to the Trustee (i) the Alternate Credit Enhancement or the Alternate Liquidity Facility in substitution for the Credit Enhancement or Liquidity Facility then in effect, (ii) a Favorable Opinion of Bond Counsel, (iii) a written Opinion of Counsel for the provider of the Alternate Credit Enhancement or Alternate Liquidity Facility, as applicable, to the effect that such Alternate Credit Enhancement or Alternate Liquidity Facility is a valid, legal and binding obligation of the provider thereof, and (iv) unless waived by such entity, written evidence satisfactory to the Credit Provider and the Liquidity Provider of the provision for purchase from the Liquidity Provider of all Liquidity Provider Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due to the Credit Provider and the Liquidity Provider under the applicable Reimbursement Agreement or Liquidity Facility on or before the effective date of such Alternate Credit Enhancement or Alternate Liquidity Facility. Upon the satisfaction of the conditions described in the preceding sentence, the Trustee shall accept such Alternate Credit Enhancement or Alternate Liquidity Facility on the close of business on the Substitution Date and shall surrender the Credit Enhancement or Liquidity Facility then in effect to the provider thereof on the Substitution Date; provided, however, that the Trustee shall not surrender the Credit Enhancement or Liquidity Facility then in effect unless and until the Trustee has received all amounts drawn thereunder. If any condition to the substitution is not satisfied, the substitution shall not occur but the 2023D Subordinated Bonds shall remain subject to mandatory purchase on the proposed Substitution Date.

(e) In the event of an extension of the Expiration Date, the District shall give to the Notice Parties, a written notice of the new Expiration Date at least fifteen (15) days prior to the fifth Business Day prior to the Expiration Date in effect prior to such extension.

(f) The references to Credit Enhancement and Liquidity Facility and Credit Provider and Liquidity Provider shall be disregarded during any period during which a Credit Enhancement or Liquidity Facility, as applicable, is not in effect.

(g) The Trustee shall not have any lien on or security interest in any amounts drawn under a Credit Enhancement or a Liquidity Facility or any amounts on deposit in the account described in Section 90.08(a) above in which proceeds of draws on a Credit Enhancement are deposited or a Liquidity Facility Purchase Account.

(h) If at any time during the term of a Credit Enhancement and/or Liquidity Facility any successor Trustee shall be appointed and qualified under the Subordinate Master Resolution, the resigning or removed Trustee shall request that the Credit Provider and/or Liquidity Provider, as applicable, transfer such Credit Enhancement and/or Liquidity Facility to the successor Trustee and such resignation or removal of the Trustee shall not be effective until the Credit Enhancement and/or Liquidity Facility has been duly transferred (including the



payment of any required transfer fee) to such successor Trustee. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment.

(i) The Trustee may accept, hold and draw upon a Credit Enhancement and/or a Liquidity Facility issued by itself or by any of its corporate affiliates to provide security and a source of payment for the 2023D Subordinated Bonds. The Trustee covenants that it shall at all times maintain adequate controls to manage any potential conflict of interest. Notwithstanding any other provision herein to the contrary, while the Credit Provider and/or Liquidity Provider is the Trustee or an affiliate of the Trustee and such Credit Provider and/or Liquidity Provider has not failed to honor a properly presented draw on the Credit Enhancement and/or Liquidity Facility, the Trustee shall have no discretion with respect to the acceleration of the 2023D Subordinated Bonds and shall do so only upon the written direction of such Credit Provider and/or Liquidity Provider and as otherwise permitted by the Subordinate Master Resolution. The Trustee shall immediately tender its resignation and take prompt steps to have a successor trustee appointed satisfying the requirements of the Subordinate Master Resolution if such affiliated Credit Provider and/or Liquidity Provider shall fail at any time to honor a properly presented and conforming draw on the Credit Enhancement and/or Liquidity Facility.

**Section 90.09. Purchase Fund.** There is hereby established and there shall be maintained with the Trustee a separate fund to be known as the “Purchase Fund.” The Trustee shall further establish separate accounts within the Purchase Fund to be known as the “Liquidity Facility Purchase Account”, the “Remarketing Proceeds Account” and the “District Purchase Account”. At any time at which there is a Liquidity Facility in effect with respect to the 2023D Subordinated Bonds, the Purchase Fund shall be required to be an Eligible Account.

(a) Remarketing Proceeds Account. Upon receipt of the proceeds of a remarketing of a 2023D Subordinated Bond on the date such 2023D Subordinated Bond is to be purchased, the Trustee shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of such 2023D Subordinated Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of a remarketing of Liquidity Provider Bonds, the Trustee shall immediately pay such proceeds to the Liquidity Provider to the extent of any amount owing to the Liquidity Provider.

(b) Liquidity Facility Purchase Account. Upon receipt of the immediately available funds pursuant to Section 90.08(b), the Trustee shall deposit such money in the Liquidity Facility Purchase Account for application to the Purchase Price of the 2023D Subordinated Bonds to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to the Purchase Price of any 2023D Subordinated Bonds shall be immediately returned to the Liquidity Provider.

(c) District Purchase Account. Upon receipt of funds from the District pursuant to Section 90.04, the Trustee shall deposit such funds in the District Purchase Account for application to the Purchase Price of the 2023D Subordinated Bonds. Any amounts deposited in the District Purchase Account and not needed with respect to the Purchase Price for any 2023D Subordinated Bonds shall be immediately returned to the District.

(d) Investment. Amounts held in the Liquidity Facility Purchase Account, the Remarketing Proceeds Account and the District Purchase Account by the Trustee shall be held uninvested and separate and apart from all other funds and accounts.

**Section 90.10. Inadequate Funds for Tenders.**

(a) If moneys sufficient to pay the Purchase Price of all Tendered Bonds to be purchased on any Purchase Date are not available (1) no purchase shall be consummated of Tendered Bonds on such Purchase Date; (2) all Tendered Bonds shall be returned to the Holders thereof; and (3) all remarketing proceeds with respect to the 2023D Subordinated Bonds shall be returned to the Remarketing Agent for return to the Persons providing such moneys. Thereafter, the Trustee shall continue to take all such action available to it to obtain remarketing proceeds with respect to all Tendered Bonds from the Remarketing Agent and sufficient other funds from the Liquidity Provider, if any, or, subject to Section 90.04, the District to effect a subsequent successful remarketing or purchase of any Tendered Bonds.

(b) All Tendered Bonds (other than Liquidity Provider Bonds and 2023D Subordinated Bonds in the Direct Purchase Index Mode) shall bear interest at the Maximum Rate (or such lower interest rate or rates specified in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period) during the period of time from and including the applicable Purchase Date to (but not including) the date that all such Tendered Bonds are successfully remarketed, redeemed, purchased or paid (the "Delayed Remarketing Period").

(c) The District may direct the conversion of the Tendered Bonds to a different Interest Rate Mode, Index Rate Period or Term Rate Period during the Delayed Remarketing Period in accordance with Section 88.11 hereof; provided that the District shall not be required to comply with the notice requirements described in Section 88.11.

(d) Subject to the terms of the Remarketing Agreement, if any, the Remarketing Agent shall continue to use its best efforts to remarket all of the Tendered Bonds at rates up to and including the Maximum Rate.

(e) During the Delayed Remarketing Period, the Trustee may, upon direction of the District, apply amounts on deposit in the Redemption Fund to the redemption of such Tendered Bonds, as a whole or in part on any Business Day during the Delayed Remarketing Period, at a redemption price equal to the principal amount thereof, together with interest accrued thereon to the date fixed for redemption, without premium. Notwithstanding Section 89.08 to the contrary, the Trustee shall give five Business Days' notice of such redemption to the Holders of the 2023D Subordinated Bonds to be redeemed.

(f) During the Delayed Remarketing Period, interest on such Tendered Bonds (other than 2023D Subordinated Bonds in the Direct Purchase Index Mode) shall be paid to the Holders thereof (i) on the first Business Day of each calendar month occurring during the Delayed Remarketing Period and (ii) on the last day of the Delayed Remarketing Period.

## ARTICLE XCI

### REMARKETING AGENT

#### **Section 91.01. Appointment of Remarketing Agent.**

(a) The Remarketing Agent shall be appointed pursuant to the Remarketing Agreement to remarket 2023D Subordinated Bonds pursuant to this Fifteenth Supplemental Resolution and perform the other duties of the Remarketing Agent described hereunder, and to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the District and the Trustee at all reasonable times. The Remarketing Agent shall act as such under the Remarketing Agreement.

(b) The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Fifteenth Supplemental Resolution as set forth in the Remarketing Agreement. The Remarketing Agent may suspend its remarketing efforts as set forth in the Remarketing Agreement. The Remarketing Agent may be removed at any time, at the direction of the District as set forth in the Remarketing Agreement. Any successor Remarketing Agent shall be selected by the District, and shall be a member of the Financial Industry Regulatory Authority, or its successors, shall have a capitalization of at least fifteen million dollars (\$15,000,000), shall be authorized by law to perform all the duties set forth in this Fifteenth Supplemental Resolution and shall be acceptable to the Credit Provider and Liquidity Provider. The District's delivery to the Trustee of a certificate setting forth the effective date of the appointment of a successor Remarketing Agent and the name of such successor shall be conclusive evidence that (i) if applicable, the predecessor Remarketing Agent has been removed in accordance with the provisions of this Fifteenth Supplemental Resolution and (ii) such successor has been appointed and is qualified to act as Remarketing Agent under the terms of this Fifteenth Supplemental Resolution.

(c) If the Remarketing Agent consolidates with, merges or converts into, or transfers all or substantially all of its assets (or, in the case of a bank, national banking association or trust company, its corporate assets) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Remarketing Agent.

## ARTICLE XCII

### MISCELLANEOUS

#### **Section 92.01. 2023D Subordinated Sinking Fund Account; Payments of Interest, Principal and Redemption Price and Defeasance While Credit Enhancement in Effect.**

(a) An account is hereby established within the Subordinated Bonds Interest and Principal Fund to be designated the "Series 2023D Sinking Fund Account." The Treasurer shall deposit in the Series 2023D Sinking Fund Account the mandatory sinking fund account payments in the amounts, on the mandatory sinking fund account payment dates, set forth in

Section 89.05(a) and shall transfer such amounts to the Trustee on such date for application as provided in Section 92.01(b).

(b) On each mandatory sinking fund account payment date established for the 2023D Subordinated Bonds, the Trustee shall apply the mandatory sinking fund account payment required on that date to the redemption (or payment at maturity, as the case may be) of the 2023D Subordinated Bonds for which the mandatory sinking fund account payment has been made, upon the notice and in the manner provided in Section 89.08; provided that, at any time prior to giving such notice of such redemption, the Trustee shall, upon direction of the District, apply such moneys to the purchase of such 2023D Subordinated Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest) as the District may direct, except that the purchase price (excluding accrued interest) shall not exceed the par amount of such 2023D Subordinated Bonds. If, during the twelve-month period immediately preceding said mandatory sinking fund account payment date, the Trustee has purchased 2023D Subordinated Bonds with moneys in the Series 2023D Sinking Fund Account, or, during said period and prior to giving said notice of redemption, the District has deposited 2023D Subordinated Bonds with the Trustee, such 2023D Subordinated Bonds so purchased or deposited or redeemed shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking fund account payment. All 2023D Subordinated Bonds purchased or deposited pursuant to this subsection shall be cancelled and destroyed by the Trustee. All 2023D Subordinated Bonds purchased from the Series 2023D Sinking Fund Account or deposited by the District with the Trustee shall be allocated first to the next succeeding mandatory sinking fund account payment, then to the remaining mandatory sinking fund account payments as selected by the District.

(c) Any moneys remaining in the Series 2023D Sinking Fund Account after all 2023D Subordinated Bonds have been retired shall be returned to the District for any lawful District use.

(d) Notwithstanding the foregoing provisions of this Section 92.01 or Section 5.02 or any other provision of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023D Subordinated Bonds, the principal and Redemption Price of, and interest on, the 2023D Subordinated Bonds shall be paid solely (1) first, from moneys obtained from a drawing on the Credit Enhancement pursuant to Section 90.08(a) and (2) second, in the event moneys are not available pursuant to clause (1) for such purpose for any reason, from Available Moneys and moneys on deposit in the Series 2023D Sinking Fund Account shall be withdrawn by the Trustee and used solely for the purpose of reimbursing the Credit Provider for drawings under the Credit Enhancement. To the extent the Credit Provider honors a drawing under the Credit Enhancement for the purpose of paying the principal or Redemption Price of, or interest on, the 2023D Subordinated Bonds, the District shall receive a credit against its obligation to make deposits into the Subordinated Bonds Interest and Principal Fund and shall not be required to transfer funds to the Trustee in the amount of such drawing.

(e) Notwithstanding the provisions of Article X of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023D Subordinated Bonds, 2023D Subordinated

Bonds shall not be deemed defeased or otherwise paid or satisfied unless such 2023D Subordinated Bonds are defeased with (1) moneys obtained from a drawing on the Credit Enhancement pursuant to Section 90.08(a), (2) Available Moneys or (3) Defeasance Securities acquired with moneys described in (1) or (2). Any Defeasance Securities used to defease 2023D Subordinated Bonds for which Credit Enhancement is in effect shall be not callable by the issuer thereof prior to maturity and shall mature no later than the earlier of (x) the first day upon which such 2023D Subordinated Bonds may be tendered or (y) the first day upon which such 2023D Subordinated Bonds may be redeemed. For purpose of Article X of the Subordinate Master Resolution, interest on the 2023D Subordinated Bonds shall be calculated based on an assumed interest rate equal to the Maximum Rate for periods for which the actual interest rate on the 2023D Subordinated Bonds cannot be determined.

**Section 92.02. Form and Execution of 2023D Subordinated Bonds.** The 2023D Subordinated Bonds, and the certificate of authentication and registration to be executed thereon, shall be in substantially the form set forth as Exhibit A to this Fifteenth Supplemental Resolution.

The 2023D Subordinated Bonds shall be executed in the name and on behalf of the District with the manual or facsimile signature of the President or Vice President of its Board of Directors. The 2023D Subordinated Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who shall have signed any of the 2023D Subordinated Bonds shall cease to be such officer of the District before the 2023D Subordinated Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the District, such 2023D Subordinated Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the District as though those who signed the same had continued to be such officer of the District, and also any 2023D Subordinated Bond may be signed on behalf of the District by such person as at the actual date of execution of such 2023D Subordinated Bond shall be the proper officer of the District although at the nominal date of such 2023D Subordinated Bond any such person shall not have been such officer of the District.

Only such of the 2023D Subordinated Bonds as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A to this Fifteenth Supplemental Resolution, manually executed by an authorized signatory of the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of the Subordinate Master Resolution, and such certificate of the Trustee shall be conclusive evidence that the 2023D Subordinated Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of the Subordinate Master Resolution.

**Section 92.03. Issuance of 2023D Subordinated Bonds.** At any time after the adoption of this Fifteenth Supplemental Resolution, the District may execute and deliver the 2023D Subordinated Bonds in the aggregate principal amount set forth in the Sales Certificate. The Trustee shall authenticate and deliver the 2023D Subordinated Bonds upon written order of the District. The proceeds of the sale of the 2023D Subordinated Bonds shall be deposited and applied as set forth in the Sales Certificate.

**Section 92.04. Use of Depository.** Notwithstanding any provision of the Subordinate Master Resolution or this Fifteenth Supplemental Resolution to the contrary:

(a) The 2023D Subordinated Bonds shall be initially issued as provided in Section 88.02; provided, that 2023D Subordinated Bonds in the Direct Purchase Index Mode shall be issued in definitive certificated form registered in the name of the Holder thereof or as otherwise directed by the Holder. 2023D Subordinated Bonds in any other Interest Rate Mode shall be registered in the name of Cede & Co. or as otherwise directed by the Securities Depository and registered ownership thereof, or any portion thereof, may not thereafter be transferred except:

(i) To any successor of DTC or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (a) (“substitute depository”); provided that any successor of DTC or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) To any substitute depository not objected to by the Trustee, upon (1) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or (2) a determination by the District that DTC or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of DTC or its successor (or substitute depository or its successor) from its functions as depository; provided that no substitute depository which is not objected to by the Trustee can be obtained or (2) a determination by the District that it is in the best interests of the District to remove DTC or its successor (or any substitute depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 92.04(a) hereof, upon receipt of all outstanding 2023D Subordinated Bonds by the Trustee, together with a Certificate of the District to the Trustee, a single new 2023D Subordinated Bond shall be executed and delivered for each maturity of 2023D Subordinated Bonds then outstanding registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Certificate of the District. In the case of any transfer pursuant to clause (iii) of subsection 92.04(a) hereof, upon receipt of all outstanding 2023D Subordinated Bonds by the Trustee together with a Certificate of the District to the Trustee, new 2023D Subordinated Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the District, subject to the limitations of Section 92.04(a) hereof, provided the Trustee shall not be required to deliver such new 2023D Subordinated Bonds within a period less than 60 days from the date of receipt of such a Certificate of the District. Subsequent to any transfer pursuant to clause (iii) of subsection 92.04(a) hereof, the 2023D Subordinated Bonds shall be transferred as provided in Article II of the Subordinate Master Resolution.

(c) In the case of partial redemption or an advance refunding of the 2023D Subordinated Bonds evidencing all or a portion of the principal maturing in a particular year, DTC shall make an appropriate notation on the 2023D Subordinated Bonds indicating the date and amounts of such reduction in principal. The Trustee shall incur no liability for the failure or any error by DTC in making such notation and the records of the Trustee shall be determinative of the outstanding principal amount of 2023D Subordinated Bonds.

(d) The District and the Trustee shall be entitled to treat the person in whose name any 2023D Subordinated Bond is registered as the Bondholder thereof for all purposes of the Subordinate Master Resolution and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the District; and the District and the Trustee shall have no responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with, any Beneficial Owners of the 2023D Subordinated Bonds. Neither the District nor the Trustee will have any responsibility or obligations, legal or otherwise, to the Beneficial Owners or to any other party including DTC or its successor (or substitute depository or its successor), except for the Holder of any 2023D Subordinated Bond.

(e) During any period that the Outstanding 2023D Subordinated Bonds are registered in the name of Cede & Co. or its registered assigns, the District and the Trustee (to the extent funds are provided to it by the District) shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns, in effecting payment of the principal of and redemption premium, if any, and interest on the 2023D Subordinated Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

#### **Section 92.05. Tax Covenants.**

(a) The District shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that interest paid on the 2023D Subordinated Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the District agrees to comply with the provisions of the 2023 Tax Certificate. This covenant shall survive payment in full or defeasance of the 2023D Subordinated Bonds.

(b) Without limiting the generality of the foregoing, the District agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Internal Revenue Code of 1986 (the "Code") and any temporary, proposed or final United States Treasury Regulations as may be applicable to the 2023D Subordinated Bonds from time to time (the "Rebate Requirement"). The District specifically covenants to pay or cause to be paid the Rebate Requirement as provided in the 2023 Tax Certificate to the United States of America from any Net Subordinate Revenues lawfully available to the District. This covenant shall survive payment in full or defeasance of the 2023D Subordinated Bonds. Capitalized terms in this Section not otherwise defined in the Subordinate Master Resolution or this Fifteenth Supplemental Resolution shall have the meanings ascribed to them in the 2023 Tax Certificate.

(c) The District shall establish, maintain and hold in trust a fund separate from any other fund established and maintained hereunder designated the Rebate Fund. The District shall cause to be deposited in the Rebate Fund the Rebate Requirement as provided in the 2023 Tax Certificate. Subject to the provisions of this Section, moneys held in the Rebate Fund are hereby pledged to secure payments to the United States government, and the District and the Bondholders shall have no rights in or claim to such moneys.

(d) In accordance with the 2023 Tax Certificate, the District shall remit part or all of the balance held in the Rebate Fund to the United States government as so directed.

(e) Notwithstanding any provision of this Section, if the District shall obtain an opinion of counsel of recognized national standing in the field of obligations the interest on which is excluded from gross income for purposes of federal income taxation to the effect that any specified action required under this Section is no longer required, or to the effect that some different action is required, to maintain the exclusion from gross income of the interest on the 2023D Subordinated Bonds under Section 103 of the Code, the District may rely conclusively on such opinion in complying with the provisions hereof, and the agreements and covenants hereunder shall be deemed to be modified to that extent without the necessity of an amendment of the Subordinate Master Resolution or this Fifteenth Supplemental Resolution or the consent at any time of the Bondholders.

#### **Section 92.06. Rights of Credit Provider.**

(a) Unless a Credit Provider Failure has occurred and is continuing, the Credit Provider shall be deemed the sole Holder of the 2023D Subordinated Bonds for the purpose of directing the Trustee with respect to the exercise of remedies and the declaration or waiver of Events of Default pursuant to Article IX of the Subordinate Resolution.

(b) Unless a Credit Provider Failure has occurred and is continuing, the Subordinate Master Resolution and this Fifteenth Supplemental Resolution shall not be amended without the written consent of the Credit Provider.

(c) Unless a Credit Provider Failure has occurred and is continuing, the District shall not appoint a successor Remarketing Agent or Trustee without the written consent of the Credit Provider.

#### **Section 92.07. Limitations on Rights of Trustee.**

(a) Proceeds of drawings on the Credit Enhancement and the Liquidity Facility and moneys on deposit in the Purchase Fund shall be used solely for the purposes set forth herein, and the Trustee shall have no lien on such proceeds or money, nor shall such proceeds or moneys be used for, the payment of the fees and/or expenses of the Trustee.

(b) The Trustee shall draw on the Credit Enhancement and the Liquidity Facility at the times and in the manner provided herein and therein and shall have no right to seek or obtain indemnification from the District, the Holders or any other party as a condition of making any such drawing.



**Section 92.08. Terms of 2023D Subordinated Bonds Subject to the Subordinate Master Resolution.**

(a) Except as in this Fifteenth Supplemental Resolution expressly provided, every term and condition contained in the Subordinate Master Resolution shall apply to this Fifteenth Supplemental Resolution and to the 2023D Subordinated Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Fifteenth Supplemental Resolution.

(b) This Fifteenth Supplemental Resolution and all the terms and provisions herein contained shall form part of the Subordinate Master Resolution as fully and with the same effect as if all such terms and provisions had been set forth in the Subordinate Master Resolution. The Subordinate Master Resolution is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

**Section 92.09. Resolution of Trust to Remain in Effect.** Save and except as supplemented by this Fifteenth Supplemental Resolution, the Subordinate Master Resolution shall remain in full force and effect.

**Section 92.10. Notice to Rating Agencies.** (a) The District shall provide or cause to be provided prompt notice of the following events to the Rating Agencies, if any:

(1) the expiration, termination, extension or substitution of any Credit Enhancement or Liquidity Facility relating to the 2023D Subordinated Bonds;

(2) any optional redemption (as a whole or in part), mandatory purchase or acceleration of the 2023D Subordinated Bonds;

(3) any Conversion of the 2023D Subordinated Bonds;

(4) any amendment, modification or supplement of or to the Subordinate Master Resolution or any Credit Enhancement or Liquidity Facility relating to the 2023D Subordinated Bonds (which notice shall be provided or caused to be provided at least ten days prior to the effective date thereof);

(5) any change in the party instructed to draw on any Credit Enhancement or Liquidity Facility relating to the 2023D Subordinated Bonds;

(6) any removal or resignation of the Trustee or the Remarketing Agent; or

(7) any legal defeasance of the 2023D Subordinated Bonds.

(b) The District and the Trustee shall provide or cause to be provided to the Rating Agencies any information reasonably requested by such Rating Agency to maintain its rating, if any, on the 2023D Subordinated Bonds.

**Section 92.11. Continuing Disclosure.** The District hereby covenants and agrees that it will comply with and carry out all of the provisions of any Continuing Disclosure Agreement executed in connection with the 2023D Subordinated Bonds. Notwithstanding any other provision of the Subordinate Master Resolution or this Fifteenth Supplemental Resolution, failure of the District to comply with any such Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee shall, at the written request of any Participating Underwriter (as defined in any such Continuing Disclosure Agreement) or the Holders of at least 25% aggregate principal amount of Outstanding 2023D Subordinated Bonds upon receipt of indemnity satisfactory to the Trustee or any Holder of 2023D Subordinated Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Section. For purposes of this Section, “Beneficial Owner” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023D Subordinated Bonds (including persons holding 2023D Subordinated Bonds through nominees, depositories or other intermediaries).

**Section 92.12. Designation of Credit Provider and Liquidity Provider Reimbursement Obligations as Parity Subordinated Debt; Authorization and Issuance of Revolving Notes.** For the avoidance of doubt, the District hereby designates as Parity Subordinated Debt, secured by the pledge of Net Subordinated Revenues made by the District pursuant to Section 5.01 of the Subordinate Master Resolution on the same basis as the Subordinated Bonds and all other Parity Subordinated Debt as provided in the Subordinate Master Resolution, any and all obligations of the District pursuant to any Credit Enhancement, Liquidity Facility, or Reimbursement Agreement to reimburse each Credit Provider or Liquidity Provider for drawings or other advances on or pursuant to the related Credit Enhancement or Liquidity Facility, including, without limitation, any accrued interest on such drawings or advances, all as set forth in the related Credit Enhancement, Liquidity Facility, or Reimbursement Agreement (collectively, the “Reimbursement Obligations”). In order to more fully evidence the Reimbursement Obligations as Parity Subordinated Debt, the Board hereby authorizes the issuance from time to time of one or more revenue bonds pursuant to the Act in substantially the form of and with the terms stated in the form of the revolving note set forth as Exhibit B to this Fifteenth Supplemental Resolution (each a “Revolving Note”), but the delivery of such Revolving Note shall not be required to secure such Reimbursement Obligations as Parity Subordinated Debt. At the time of each delivery of a Credit Enhancement or Liquidity Facility pursuant to the terms of this Fifteenth Supplemental Resolution, the District may deliver a Revolving Note to the related Credit Provider or Liquidity Provider with a stated amount equal to the Available Amount under such Credit Enhancement or Liquidity Facility and with all blanks and brackets filled in as appropriate and with such other changes as may be necessary or appropriate to conform to the terms of such Credit Enhancement, Liquidity Facility, or Reimbursement Agreement.



**EXHIBIT A**

**FORM OF 2023D SUBORDINATED BOND**

[TO BE CONFORMED TO SALES CERTIFICATE]

No. R-\_\_\_\_\_ \$ \_\_\_\_\_

**SACRAMENTO MUNICIPAL UTILITY DISTRICT  
SUBORDINATED ELECTRIC REVENUE BOND  
2023 SERIES D**

<u>Maturity</u>	<u>Interest Per Annum</u>	<u>Date</u>	<u>CUSIP</u>
August 15, 20__	Variable	_____, 2023	

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Net Subordinated Revenues hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above, the principal sum specified above together with interest thereon from \_\_\_\_\_, 2023, until the principal hereof shall have been paid, at the interest rates per annum determined as set forth below, payable on each Interest Payment Date, as defined below. The principal of and premium, if any, and interest on the 2023D Subordinated Bonds, as defined below, shall be payable in lawful money of the United States of America. Interest on the 2023D Subordinated Bonds shall be paid on each Interest Payment Date, as defined below, by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode, by check mailed on the date on which due to the Holders of the 2023D Subordinated Bonds at the close of business on the Record Date for the 2023D Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023D Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023D Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023D Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023D Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written wire transfer instructions, interest payable on such 2023D Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer instructions provided by the Holder of such 2023D Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023D Subordinated Bonds registered in the name of

the Securities Depository (or its nominee), interest on any such 2023D Subordinated Bond shall be payable only upon surrender of such 2023D Subordinated Bond at the office of the Paying Agent. The principal of and premium, if any, on each 2023D Subordinated Bond shall be payable on the Principal Payment Date of such 2023D Subordinated Bond upon surrender thereof at the office of the Paying Agent, subject to the terms of the Fifteenth Supplemental Resolution, as defined below.

This Bond is one of a duly authorized issue of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds (hereinafter called the “Subordinated Bonds”) designated as Subordinated Electric Revenue Bonds, 2023 Series D (the “2023D Subordinated Bonds”). The Subordinated Bonds are not limited in aggregate principal amount, except as otherwise provided in the Subordinate Resolution hereinafter mentioned, and consist or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Subordinate Resolution provided, all issued and to be issued pursuant to the provisions of the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6, Division 6, of the California Public Utilities Code and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (hereinafter called the “Act”). This 2023D Subordinated Bond is issued pursuant to Resolution No. 85-11-1 of the District, adopted November 7, 1985, providing for the issuance of the Subordinated Bonds, as amended and restated by Resolution No. 01-06-10 of the District, adopted on June 21, 2001 (as amended and restated, the “Subordinate Master Resolution”), and as supplemented and amended by resolutions to date, including by a Fifteenth Supplemental Resolution, adopted May 18, 2023, authorizing the issuance of the 2023D Subordinated Bonds (said resolution as amended, restated and supplemented and the Fifteenth Supplemental Resolution being hereinafter collectively called the “Subordinate Resolution”). Reference is hereby made to the Subordinate Resolution and the Act for a description of the terms on which the Subordinated Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Revenues, as that term is defined in the Subordinate Resolution, and the rights of the registered owners of the Subordinated Bonds; and all the terms of the Subordinate Resolution and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this 2023D Subordinated Bond, and to all the provisions thereof the registered owner of this 2023D Subordinated Bond, by its acceptance hereof, consents and agrees. Additional bonds may be issued on a parity with the Subordinated Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Subordinate Resolution. Capitalized terms used, but not defined herein shall have the meaning given such terms in the Subordinate Resolution.

The Subordinated Bonds and the interest thereon, together with the Parity Subordinated Debt (as defined in the Subordinate Resolution) heretofore or hereafter issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the Net Subordinated Revenues derived by the District from the Electric System (as those terms are defined in the Subordinate Resolution). The District covenants and warrants that for the payment of the Subordinated Bonds, and interest thereon, there have been created and will be maintained by the District special funds into which there shall be deposited from Net Subordinated Revenues available for that purpose sums sufficient to pay the principal of, and interest on, all of the Subordinated Bonds, as such principal and interest become due, and as an irrevocable charge the District has allocated Net Subordinated Revenues to such payment, all in accordance with the Subordinate Resolution.

The Subordinated Bonds, including the 2023D Subordinated Bonds, are expressly subordinated in right of payment to the prior payment in full of all Parity Bonds, as that term is defined in Resolution No. 6649 of the District, adopted on January 7, 1971 (the “Senior Bond Resolution”), including the District’s Electric Revenue Bonds. The holder of this 2023D Subordinated Bond, by acceptance hereof, authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this paragraph and in the Subordinate Resolution and appoints the Trustee its attorney-in-fact for any and all such purposes.

The Subordinated Bonds are special obligations of the District, and are payable, both as to principal and interest, out of the Net Subordinated Revenues pertaining to the Electric System, and not out of any other fund or moneys of the District. No holder of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The term of the 2023D Subordinated Bonds will be divided into consecutive Interest Periods during each of which the 2023D Subordinated Bonds shall bear interest at a Flexible Rate or Flexible Rates, a Daily Rate, a Weekly Rate, a Direct Purchase Index Rate, a Term Rate, an Index Rate or a Fixed Rate or Fixed Rates. The 2023D Subordinated Bonds shall initially bear interest at a Term Rate for an initial Term Rate Period ending on [\_\_\_\_\_, 20\_\_]. The Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023D Subordinated Bonds thereafter may be changed from time to time as provided in the Subordinate Resolution. As hereinafter described, the 2023D Subordinated Bonds are subject to mandatory purchase on any Conversion Date.

Interest on the 2023D Subordinated Bonds is to be paid on: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023D Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023D Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified (a) in the Sales Certificate in connection with the initial issuance of the 2023D Subordinated Bonds or (b) in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility (each an “Interest Payment Date”).

The interest rate on the 2023D Subordinated Bonds shall be determined as follows:

Determination of Flexible Rates and Interest Periods During Flexible Mode. An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and

in Section 88.04 of the Fifteenth Supplemental Resolution, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023D Subordinated Bond the Interest Period which would result in the Remarketing Agent being able to remarket such 2023D Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023D Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023D Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023D Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

Determination of Interest Rates During the Daily Mode and the Weekly Mode. The interest rate for 2023D Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023D Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period.

During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

Term Rates. The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. The Term Rate shall be the minimum rate which, in

the sole judgment of the Remarketing Agent, would result in a sale of such 2023D Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.

Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023D Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023D Subordinated Bonds will have Serial Maturity Dates in accordance with Section 88.11(b)(v) of the Fifteenth Supplemental Resolution). Except as set forth in Section 88.11(b)(v) of the Fifteenth Supplemental Resolution, the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023D Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 88.11(b)(v) of the Fifteenth Supplemental Resolution, the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023D Subordinated Bonds.

Alternate Rates. The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023D Subordinated Bonds (other than 2023D Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023D Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023D Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023D Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023D Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023D Subordinated Bonds.

For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but



excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such 2023D Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

For 2023D Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023D Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

Direct Purchase Index Rates.

(a) During each Direct Purchase Index Rate Period, the 2023D Subordinated Bonds shall, subject to subparagraph (b) below, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023D Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023D Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023D Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023D Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 90.02(b) thereof, but subject to Section 88.04(c) and Section 88.09(b)(ii) and (iii) thereof, from and after any Taxable Date, the interest rate on 2023D Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 90.02(b) thereof, but subject to Section 88.04(c) and Section 88.09(b)(iii) thereof, from and after the effective date of any “Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023D Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023D Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023D Subordinated Bonds exceeds the Maximum Rate for such 2023D Subordinated Bonds, then (A) such 2023D Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023D Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023D Subordinated Bonds as otherwise calculated pursuant to the above provisions and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023D Subordinated Bonds as otherwise calculated pursuant to the above provisions is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023D Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023D Subordinated Bonds are redeemed or tendered for purchase in accordance with the Fifteenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023D Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything in the Subordinate Resolution to the contrary, but subject to Section 88.04(c) and Section 88.09(b)(i), (ii) and (iii) thereof, during any Amortization Period, the 2023D Subordinated Bonds shall bear interest at the Bank Rate.

Index Rates. During each Index Rate Period, the 2023D Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023D Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023D Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023D Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023D Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023D Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023D Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023D Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect

during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023D Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a percentage point with five hundred thousandths of a percentage point rounded upward. All dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023D Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

Optional Tenders of 2023D Subordinated Bonds in the Daily Mode or the Weekly Mode. Subject to Section 90.06, the Beneficial Owners of 2023D Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023D Subordinated Bonds (or portions of those 2023D Subordinated Bonds, provided that no 2023D Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode. The 2023D Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023D Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023D Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023D Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023D Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

The term “Mandatory Purchase Date” means: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Bond, (ii) with respect to 2023D Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023D Subordinated Bonds, (iii) with respect to any 2023D Subordinated Bonds, any Conversion Date applicable to such 2023D Subordinated Bond (except for any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 88.11 not failed to occur (except for any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023D Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023D Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023D Subordinated Bonds, (vi) with respect to any 2023D Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023D Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee’s receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023D Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023D Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023D Subordinated Bonds (other than interest on 2023D Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023D Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee’s receipt of such notice, (viii) with respect to 2023D Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee’s receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023D Subordinated Bonds, (ix) with respect to 2023D Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023D Subordinated Bonds, and (x) with respect to 2023D Subordinated Bonds in the Direct Purchase Index Mode, each Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

Notwithstanding the above paragraphs and anything to the contrary in the Fifteenth Supplemental Resolution, in the event the 2023D Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the

Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023D Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023D Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), in which case the 2023D Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023D Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023D Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023D Subordinated Bonds may be subject to redemption or purchase at the sole option of the District at any time without notice as and to the extent provided in the Continuing Covenant Agreement.

Optional Redemption of Flexible Rate Bonds. 2023D Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023D Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

Optional Redemption of 2023D Subordinated Bonds in the Daily Mode or the Weekly Mode. 2023D Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023D Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Optional Redemption of 2023D Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.

2023D Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023D Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023D Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023D Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

2023D Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023D Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023D Subordinated Bonds so changed to a

Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023D Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

Optional and Mandatory Redemption of 2023D Subordinated Bonds in the Direct Purchase Index Mode.

Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023D Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023D Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

2023D Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Mandatory Sinking Fund Account Redemption of 2023D Subordinated Bonds. The 2023D Subordinated Bonds [maturing on August 15, 20[\_\_\_],] shall be subject to redemption prior to maturity from mandatory sinking fund account payments for such 2023D Subordinated Bonds on August 15 of each year on and after August 15, 20\_\_, at a Redemption Price equal to the principal amount of such 2023D Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The following shall be the mandatory sinking fund account payments for the 2023D Subordinated Bonds [maturing on August 15, 20[\_\_\_]]. Such mandatory sinking fund account payments shall be due on August 15 of the years set forth in the following table in the respective amounts set forth opposite such years in said table:

Year	Amount	Year	Amount
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\* Payment at Maturity

Notice of Redemption. Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023D Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023D Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023D Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023D Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023D Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023D Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023D Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023D Subordinated Bonds to be redeemed. Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption. Notwithstanding the foregoing, notice of redemption shall not be required for 2023D Subordinated Bonds redeemed on a Mandatory Purchase Date.

This 2023D Subordinated Bond is transferable by the registered owner hereof, in person or by the attorney of such owner duly authorized in writing, at the principal office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Subordinate Resolution, and upon surrender and cancellation of this 2023D Subordinated Bond. Upon such transfer a new fully registered Bond or Subordinated Bonds without coupons, of authorized denomination or denominations, for the same aggregate principal amount and maturity will be issued to the transferee in exchange herefor.

The District and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District and the Trustee shall not be affected by any notice to the contrary.

To the extent this 2023D Subordinated Bond constitutes a Liquidity Facility Bond, the terms and conditions of the Fifteenth Supplemental Resolution with respect to Liquidity Facility Bonds shall control this 2023D Subordinated Bond.

The rights and obligations of the District and of the holders and registered owners of the Subordinated Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Subordinate Resolution, provided that no such modification or amendment shall (i) extend the fixed maturity of any Subordinated Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of any premium payable upon the redemption thereof, without the consent of the holder of each Subordinated Bond so affected, or (ii) reduce the percentage of Subordinated Bonds required for the affirmative vote or written consent to an amendment or modification, without the consent of the holders of all the Subordinated Bonds then outstanding, or (iii) without its written consent thereto, modify any of the rights or obligations of the Trustee.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this 2023D Subordinated Bond, and in the issuing of this 2023D Subordinated Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this 2023D Subordinated Bond, together with all other indebtedness of the District pertaining to the Electric System, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Subordinated Bonds permitted to be issued under the Subordinate Resolution.

This 2023D Subordinated Bond shall not be entitled to any benefit under the Subordinate Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee. To the extent of any conflict or inconsistency between any provisions contained in this 2023D Subordinated Bond and the Subordinate Resolution, the provisions of the Subordinate Resolution shall control.



IN WITNESS WHEREOF, SACRAMENTO MUNICIPAL UTILITY DISTRICT has caused this 2023D Subordinated Bond to be executed in its name and on its behalf by the facsimile signature of its President of its Board of Directors and by the facsimile signature of its Treasurer and countersigned by the facsimile signature of its Secretary, and the seal of the District to be reproduced hereon, by facsimile and this 2023D Subordinated Bond to be dated as of the date first written above.

SACRAMENTO MUNICIPAL UTILITY  
DISTRICT

By \_\_\_\_\_  
President of the Board of Directors

By \_\_\_\_\_  
Treasurer of the District

(SEAL)

Countersigned:

\_\_\_\_\_  
Secretary of the District

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Subordinated Bonds described in the within-mentioned Subordinate Resolution and registered on the date set forth below.

Dated: \_\_\_\_\_, 2023

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

## ASSIGNMENT

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ whose taxpayer identification number is \_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

Dated:

Signature Guaranteed by:

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NOTE: Signature must be guaranteed by an eligible guarantor institution

## EXHIBIT B

### FORM OF REVOLVING NOTE

#### SACRAMENTO MUNICIPAL UTILITY DISTRICT SUBORDINATED ELECTRIC REVENUE BONDS 2023 SERIES D

[Delivery Date] \$ \_\_\_\_\_

The Sacramento Municipal Utility District (the “District”), for value received, hereby promises to pay to the order of [Bank] (the “Bank”), pursuant to that certain \_\_\_\_\_ dated as of \_\_\_\_\_ (the “Agreement”), between the District and the Bank, at the office of the Bank at \_\_\_\_\_, the aggregate unpaid principal amount of all Reimbursement Obligations (as defined in the Agreement) pursuant to the Agreement on the dates and in the amounts provided for in the Agreement.

The District promises to pay interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. All payments of principal and interest shall be made in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts in immediately available funds. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Revolving Note is a Revolving Note as referred to in Section 92.12 of Resolution No. 01-06-10 of the District adopted June 21, 2001, amending and restating Resolution No. 85-11-1 of the District adopted November 7, 1985, as amended and supplemented, including as supplemented by Resolution No. \_\_\_\_\_ of the District adopted May 18, 2023 (the “Fifteenth Supplemental Resolution”) (collectively, the “Subordinate Master Resolution”). This Revolving Note evidences the Reimbursement Obligations owed to the Bank by the District pursuant to the Agreement which have been designated by the District as, and constitute, Parity Subordinated Debt under and as defined in the Subordinate Master Resolution and, as such Parity Subordinated Debt, is entitled to the benefits afforded Parity Subordinated Debt and the holders thereof pursuant to the Subordinate Master Resolution and is secured by a lien on the Net Subordinated Revenues as more fully set forth in and subject to the terms of the Subordinate Master Resolution. As provided in the Agreement, the Reimbursement Obligations and this Revolving Note are subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

The Bank agrees, by acceptance of this Revolving Note, that it will make a notation on the schedule attached hereto of all Reimbursement Obligations evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid, all as provided in the Agreement; *provided, however*, that the failure to make any such notation or any error in such notation shall not limit or otherwise affect the obligation of the District hereunder with respect to payments of principal of and interest on this Revolving Note.

This Revolving Note is authorized by the District to be issued to provide for the payment of the principal of and interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. This Revolving Note is issued under and pursuant to and in full compliance with the Subordinate Master Resolution and the Fifteenth Supplemental Resolution.

It is hereby certified that all conditions, acts and things essential to the validity of this Revolving Note exist, have happened and have been done and that every requirement of law affecting the issuance hereof has been duly complied with.

IN WITNESS WHEREOF, SMUD, has caused this Revolving Note to be executed by an authorized officer of SMUD and this Revolving Note to be dated as of date set forth above.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE FOR REVOLVING NOTE**  
**DATED \_\_\_\_\_**  
**BY SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**PAYABLE TO [BANK]**

<u>Date</u>	<u>Amount of Drawing or Advance Made</u>	<u>Amount of Principal Paid</u>	<u>Date to Which Interest Paid</u>	<u>Due Date</u>	<u>Notation Made by</u>
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# SACRAMENTO MUNICIPAL UTILITY DISTRICT

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2023 S S

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SACRAMENTO MUNICIPAL UTILITY DISTRICT

RESOLUTION NO. \_\_\_\_\_

SIXTEENTH SUPPLEMENTAL RESOLUTION

AUTHORIZING THE ISSUANCE OF

SUBORDINATED ELECTRIC REVENUE BONDS,  
2023 SERIES E

Adopted: \_\_\_\_\_

(Supplemental to Resolution No. 85-11-1 adopted November 7, 1985  
as amended and restated by Resolution No. 01-06-10 adopted June 21, 2001)



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RESOLUTION NO. \_\_\_\_\_

Sixteenth Supplemental Resolution  
(Supplemental to Resolution No. 85-11-1 Adopted November 7, 1985,  
as amended and restated by Resolution No. 01-06-10 Adopted June 21, 2001)

Subordinated Electric Revenue Bonds,  
2023 Series E

WHEREAS, the Board of Directors (the “Board”) of the Sacramento Municipal Utility District (the “District”), on November 7, 1985, adopted its Resolution No. 85-11-1 which was amended and restated by Resolution No. 01-06-10, adopted on June 21, 2001, providing for the issuance of the District’s Subordinated Electric Revenue Bonds (as supplemented and amended, herein called the “Subordinate Master Resolution”);

WHEREAS, the Subordinate Master Resolution provides that the District may issue bonds from time to time as the issuance thereof is authorized by the Board by a supplemental resolution;

WHEREAS, revenue bonds may be issued pursuant to the provisions of the Subordinate Master Resolution and the Act (as defined in the Subordinate Master Resolution); and

WHEREAS, the District has determined to issue its Subordinated Electric Revenue Bonds, 2023 Series E (the “2023E Subordinated Bonds”), in the aggregate principal amount determined as set forth in Section 94.02 to (i) finance and refinance improvements and additions to the District’s Electric System, including through the payment of all or a portion of the District’s outstanding commercial paper notes (to the extent set forth in the Sales Certificate), (ii) refund certain series of the District’s Electric Revenue Bonds (to the extent set forth, and to be identified, in the Sales Certificate) (the “Refunded Bonds”), and (iii) pay costs of issuance (to the extent set forth in the Sales Certificate);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sacramento Municipal Utility District, as follows:

**ARTICLE XCIII**

**AUTHORITY AND DEFINITIONS**

**Section 93.01. Supplemental Resolution.** This Sixteenth Supplemental Resolution is supplemental to the Subordinate Master Resolution.

**Section 93.02. Definitions; Prevailing Time.**

(1) Except as provided by this Sixteenth Supplemental Resolution, all terms which are defined in Section 1.03 of the Subordinate Master Resolution shall have the same meanings in this Sixteenth Supplemental Resolution as such terms are given in said Section 1.03. Unless otherwise provided herein, all references to a particular time are to New York City time.

In the event of a conflict between the meanings given in said Section 1.03 and the meanings given in this Section, the meanings given in this Section shall prevail.

(2) In this Sixteenth Supplemental Resolution:

**Alternate Credit Enhancement** shall mean a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof as a replacement or substitute for any Credit Enhancement then in effect and providing for or supporting the payment of the principal of and interest on the 2023E Subordinated Bonds.

**Alternate Liquidity Facility** shall mean a letter of credit, line of credit, standby bond purchase agreement or other liquidity instrument issued in accordance with the terms hereof as a replacement or substitute for any Liquidity Facility then in effect and providing for the payment of the Purchase Price of Tendered Bonds.

**Alternate Rate** shall mean, on any Rate Determination Date, for any Interest Rate Mode other than a Direct Purchase Index Mode, an Index Mode or a Term Rate Mode, a rate per annum equal to 110% of (a) the SIFMA Municipal Swap Index of Municipal Market Data most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Municipal Swap Index is no longer published, the S&P Municipal Bond 7 Day High Grade Rate Index, or if neither the SIFMA Municipal Swap Index nor the S&P Municipal Bond 7 Day High Grade Rate Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Municipal Swap Index just prior to when the Securities and Financial Markets Association stopped publishing the SIFMA Municipal Swap Index. The Trustee shall make the determinations required by this definition, upon notification from the District, if there is no Remarketing Agent, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement.

**Amortization End Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Interest Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Period** shall mean, in the event the 2023E Subordinated Bonds are not purchased or remarketed on any Bank Purchase Date and the other conditions set forth in Section 96.02(b) are satisfied, the period commencing on the Bank Purchase Date and ending on the Amortization End Date.

**Amortization Principal Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Applicable Factor** shall mean, upon any Conversion to a Direct Purchase Index Rate Period, the percentage of the Direct Purchase Index designated in writing by the District as the Applicable Factor for such Direct Purchase Index Rate Period pursuant to Section 94.09(a); provided, however, that the Applicable Factor shall never be less than 65% unless a Favorable Opinion of Bond Counsel is delivered in connection with the Conversion to such Direct Purchase Index Rate Period.

**Applicable Spread** shall mean, with respect to any Direct Purchase Index Rate Period, the number of basis points determined by the Market Agent on or before the first day of such Direct Purchase Index Rate Period and designated by the District in accordance with Section 94.09(a) (which may include a schedule for the Applicable Spread based upon the ratings assigned to any indebtedness of the District) that, when added to the product of the Direct Purchase Index multiplied by the Applicable Factor, would equal the minimum interest rate per annum that would enable the 2023E Subordinated Bonds to be sold on such date at a price equal to the principal amount thereof (without regard to accrued interest, if any, thereon).

**Authorized Denominations** shall mean (i) with respect to 2023E Subordinated Bonds in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) with respect to 2023E Subordinated Bonds in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof; (iii) with respect to 2023E Subordinated Bonds in a Direct Purchase Index Mode or Index Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; and (iv) with respect to 2023E Subordinated Bonds in a Term Rate Mode or a Fixed Rate Mode, \$5,000 and any integral multiple thereof.

**Available Amount** shall mean the amount available under a Credit Enhancement or Liquidity Facility, as applicable, to pay the principal of and interest on the 2023E Subordinated Bonds or the Purchase Price of the 2023E Subordinated Bonds, as applicable.

**Available Moneys** shall mean (a) if a Credit Enhancement is in effect, (i) moneys drawn under the Credit Enhancement which at all times since their receipt by the Trustee were held in a separate segregated account or accounts or subaccount or subaccounts in which no moneys (other than those drawn under the Credit Enhancement) were at any time held, (ii) moneys which have been paid to the Trustee and have been on deposit with the Trustee for at least 124 days (or, if paid to the Trustee by an “affiliate,” as defined in Bankruptcy Code §101(2), of the District, 366 days) during and prior to which no Event of Bankruptcy shall have occurred, (iii) any other moneys, if, in the opinion of nationally recognized counsel experienced in bankruptcy matters (which opinion shall be acceptable to each Rating Agency then rating the 2023E Subordinated Bonds), the application of such moneys will not constitute a voidable preference in the event of the occurrence of an Event of Bankruptcy, and (iv) investment earnings on any of the moneys described in clauses (i), (ii) and (iii) of this definition; and (b) if a Credit Enhancement is not in effect, “Available Moneys” means any moneys deposited with the Trustee.

**Bank** shall mean, while the 2023E Subordinated Bonds are in a Direct Purchase Index Mode, the Holder of the 2023E Subordinated Bonds, provided that there is a single Holder of all of the 2023E Subordinated Bonds and provided further that the 2023E Subordinated Bonds are not then held under the book-entry system of a Securities Depository. If there is more than

one Holder of the 2023E Subordinated Bonds while the 2023E Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Holders owning a majority of the aggregate principal amount of the 2023E Subordinated Bonds then Outstanding. If the 2023E Subordinated Bonds are held under the book-entry system of a Securities Depository during any Direct Purchase Index Mode, “Bank” means the Beneficial Owner of the 2023E Subordinated Bonds, provided that there is a single Beneficial Owner of all of the 2023E Subordinated Bonds. If there is more than one Beneficial Owner of the 2023E Subordinated Bonds while the 2023E Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Beneficial Owners who are the beneficial owners of a majority of the aggregate principal amount of the 2023E Subordinated Bonds then Outstanding.

**Bank Purchase Date** shall mean, during any Direct Purchase Index Rate Period, (i) the date designated by the District pursuant to Section 94.11(a) and (ii) the date which is five Business Days after the date on which the Trustee receives written notice from the Bank under a Continuing Covenant Agreement which (x) advises the Trustee of the occurrence and continuance of an “Event of Default” under and as defined in such Continuing Covenant Agreement and (y) directs the Trustee to cause a mandatory tender for purchase of the 2023E Subordinated Bonds by reason of such “Event of Default.”

**Bank Rate** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Bankruptcy Code** means Title 11 of the United States Code, as amended, and any successor statute.

**Beneficial Owner** shall mean, so long as the 2023E Subordinated Bonds are held in the Book-Entry System, any Person who acquires a beneficial ownership interest in a 2023E Subordinated Bond held by the Securities Depository. If at any time the 2023E Subordinated Bonds are not held in the Book-Entry System, Beneficial Owner shall mean Holder for purposes of the Subordinate Master Resolution.

**Bond Counsel** shall mean any firm of nationally recognized municipal bond attorneys selected by the District and experienced in the issuance of municipal bonds and matters relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

**Book-Entry System** shall mean the system maintained by the Securities Depository.

**Business Day** shall mean any day other than (i) a Saturday or Sunday or (ii) a day on which banks located in (a) the State of California or the State of New York, (b) the city or cities in which the principal office of the Trustee, the Paying Agent, the Remarketing Agent, if any, the Bank, if any, or the Calculation Agent, if any, are located, or (c) the city or cities in which the office of the Credit Provider or Liquidity Provider at which it will pay draws or advances is located, are required or authorized to remain closed, (iii) a day on which The New York Stock Exchange or Federal Reserve Bank is closed or (iv) a day on which the principal offices of the Credit Provider or Liquidity Provider are closed.

**Calculation Agent** shall mean, (i) during any Direct Purchase Index Rate Period, the Bank or any other party appointed by the District with the consent of the Bank so long as the Bank owns a majority in aggregate principal amount of the 2023E Subordinated Bonds and (ii) during any Index Rate Period, the Trustee or any other party appointed by the District to act as calculation agent for the 2023E Subordinated Bonds.

**Call Protection Date** shall mean (i) with respect to the initial issuance of the 2023E Subordinated Bonds, if applicable, the date specified in the Sales Certificate as the Call Protection Date and (ii) with respect to any conversion to a Term Rate Period or Index Rate Period, the date specified by the District in writing as the Call Protection Date for such Term Rate Period or Index Rate Period on or before the first day of such Term Rate Period or Index Rate Period.

**Code** shall mean the Internal Revenue Code of 1986, as amended.

**Continuing Covenant Agreement** shall mean, during any Direct Purchase Index Rate Period, any agreement between the District and the Bank which may be designated as the Continuing Covenant Agreement.

**Conversion Date** shall mean, with respect to the 2023E Subordinated Bonds in a particular Interest Rate Mode, the day on which another Interest Rate Mode for the 2023E Subordinated Bonds begins, with respect to the 2023E Subordinated Bonds in a Term Rate Mode, the day on which a new Term Rate Period begins, with respect to 2023E Subordinated Bonds in a Direct Purchase Index Mode, the day on which a new Direct Purchase Index Rate Period begins, and with respect to 2023E Subordinated Bonds in an Index Mode, the day on which a new Index Rate Period begins.

**Conversion Notice** shall mean the notice from the District to the other Notice Parties pursuant to Section 94.11(a)(i).

**Credit Enhancement** shall mean, with respect to the 2023E Subordinated Bonds, a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof and then in effect and providing for or supporting the payment of the principal of and interest on the 2023E Subordinated Bonds and, upon replacement of any such Credit Enhancement with an Alternate Credit Enhancement, the Alternate Credit Enhancement then in effect.

**Credit Provider** shall mean, with respect to the 2023E Subordinated Bonds, any bank, insurance company, pension fund or other financial institution which provides the Credit Enhancement, if any, then in effect for the 2023E Subordinated Bonds.

**Credit Provider Failure or Liquidity Provider Failure** shall mean a failure of a Credit Provider or Liquidity Provider, as applicable, to pay a properly presented and strictly conforming draw or request for advance under a Credit Enhancement or Liquidity Facility, as applicable, or the filing or commencement of any bankruptcy or insolvency proceedings by or against a Credit Provider or Liquidity Provider, as applicable, or a Credit Provider or Liquidity Provider, as applicable, shall declare a moratorium on the payment of its unsecured debt obligations or shall repudiate a Credit Enhancement or Liquidity Facility, as applicable.

**Current Mode** shall have the meaning specified in Section 94.11(a).

**Daily Mode** shall mean the Interest Rate Mode during which the 2023E Subordinated Bonds bear interest at the Daily Rate.

**Daily Rate** shall mean the per annum interest rate on any 2023E Subordinated Bond in the Daily Mode determined pursuant to Section 94.06(a).

**Daily Rate Period** shall mean the period during which a 2023E Subordinated Bond in the Daily Mode shall bear a Daily Rate, which shall be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

**Default Rate** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Delayed Remarketing Period** shall have the meaning specified in Section 96.10(b) hereof.

**Determination of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Direct Purchase Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Market Agent.

**Direct Purchase Index Mode** shall mean the Interest Rate Mode during which the 2023E Subordinated Bonds bear interest at a Direct Purchase Index Rate.

**Direct Purchase Index Rate** shall mean the per annum interest rate on any 2023E Subordinated Bond in the Direct Purchase Index Mode determined in accordance with Section 94.09, being the Direct Purchase Index Rate, the Taxable Rate, the Default Rate or the Bank Rate, as applicable.

**Direct Purchase Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**Direct Purchase Index Rate Effective Period** shall mean, during any Direct Purchase Index Rate Period, the period from and including the first day of such Direct Purchase Index Rate Period to but excluding the next succeeding Direct Purchase Index Rate Reset Date and, thereafter, means each Direct Purchase Index Rate Reset Date to but excluding the next succeeding Direct Purchase Index Rate Reset Date.

**Direct Purchase Index Rate Period** shall mean the period from (and including) the date on which the 2023E Subordinated Bonds begin to bear interest in the Direct Purchase Index Mode to (but excluding) the earliest to occur of (i) the immediately succeeding Bank Purchase Date, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of



the 2023E Subordinated Bonds have been redeemed or defeased in full and (iv) the Maturity Date.

**Direct Purchase Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**District Purchase Account** shall mean the account by that name in the Purchase Fund created in Section 96.09.

**Electronic Means** shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

**Eligible Account** shall mean an account that is either (a) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor's short-term debt rating of at least 'A-2' (or, if no short-term debt rating, a long-term debt rating of 'BBB+'); or (b) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulation Section 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that a fund or account required to be an "Eligible Account" no longer complies with the requirements listed above, the Trustee shall promptly (and, in any case, within not more than 30 calendar days) move such fund or account to another financial institution such that the Eligible Account requirements stated above will again be satisfied.

**Event of Bankruptcy** shall mean any of the following events:

(i) the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023E Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the District (or such other Person) or of all or any substantial part of their respective property, (b) commence a voluntary case under the Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(ii) a proceeding or case shall be commenced, without the application or consent of the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023E Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) in any court of competent jurisdiction, seeking (a) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the District (or any such other Person), (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the District (or any such other Person) or of all or any substantial part of their respective property, or (c) similar relief in respect of the District (or any such other Person) under any law

relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

**Event of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Expiration Date** shall mean the stated expiration date of a Credit Enhancement or a Liquidity Facility, as it may be extended from time to time as provided in the Credit Enhancement or the Liquidity Facility, or any earlier date on which a Credit Enhancement or a Liquidity Facility shall terminate at the direction of the District.

**Favorable Opinion of Bond Counsel** shall mean, with respect to any action the occurrence of which requires such an opinion, an Opinion of Counsel, which shall be a Bond Counsel, to the effect that such action is permitted under the Subordinate Master Resolution and will not, in and of itself, cause interest on the 2023E Subordinated Bonds to be included in gross income for purposes of federal income taxation.

**Fitch** shall mean Fitch, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**Fixed Rate** shall mean the per annum interest rate on any 2023E Subordinated Bond in the Fixed Rate Mode determined pursuant to Section 94.07(b).

**Fixed Rate Bond** shall mean a 2023E Subordinated Bond in the Fixed Rate Mode.

**Fixed Rate Mode** shall mean the Interest Rate Mode during which the 2023E Subordinated Bonds bear interest at the Fixed Rate.

**Fixed Rate Period** shall mean the period from the Conversion Date upon which the 2023E Subordinated Bonds were converted to the Fixed Rate Mode to but not including the Maturity Date for the 2023E Subordinated Bonds.

**Flexible Mode** shall mean the Interest Rate Mode during which the 2023E Subordinated Bonds bear interest at Flexible Rates.

**Flexible Rate** shall mean the per annum interest rate on a Flexible Rate Bond determined for such Flexible Rate Bond pursuant to Section 94.05. The Flexible Rate Bonds may bear interest at different Flexible Rates.

**Flexible Rate Bond** shall mean a 2023E Subordinated Bond in the Flexible Mode.

**Flexible Rate Period** shall mean the period of from one to 270 calendar days (which period must end on either a day which immediately precedes a Business Day or the day

immediately preceding the Maturity Date) during which a Flexible Rate Bond shall bear interest at a Flexible Rate, as established by the Remarketing Agent pursuant to Section 94.05. The Flexible Rate Bonds may be in different Flexible Rate Periods.

**Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Remarketing Agent.

**Index Mode** shall mean the Interest Rate Mode during which the 2023E Subordinated Bonds bear interest at an Index Rate.

**Index Rate** shall mean the per annum interest rate on any 2023E Subordinated Bond in the Index Mode determined in accordance with Section 94.10.

**Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Rate Effective Period** shall mean, during any Index Rate Period, the period from and including the first day of such Index Rate Period through and including the day immediately preceding the next succeeding Index Rate Reset Date and, thereafter, means each Index Rate Reset Date through and including the day immediately preceding the next succeeding Index Rate Reset Date.

**Index Rate Period** shall mean the period from (and including) the date on which the 2023E Subordinated Bonds begin to bear interest in the Index Mode to (but excluding) the earliest to occur of (i) the Business Day immediately succeeding the last day thereof, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of the 2023E Subordinated Bonds have been redeemed or defeased in full and (iv) the final Maturity Date.

**Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Percentage** shall mean, upon any conversion to an Index Rate Period, the percentage of the Index determined by the Remarketing Agent in accordance with Section 94.10; provided, however, that the Index Percentage shall never be less than 65% unless a Favorable Opinion of Bond Counsel is delivered on or before the determination of the Index Percentage by the Remarketing Agent.

**Index Spread** shall mean, upon any conversion to an Index Rate Period, the fixed per annum rate determined by the Remarketing Agent in accordance with Section 94.10.

**Interest Accrual Period** shall mean the period during which a 2023E Subordinated Bond accrues interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period for 2023E Subordinated Bonds shall be the period commencing on (and including) the last Interest Payment Date to which interest has been paid

(or, if no interest has been paid in such Interest Rate Mode, commencing on (and including) the date of original authentication and delivery of the 2023E Subordinated Bonds, or the Conversion Date, as the case may be) to (and excluding) the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any 2023E Subordinated Bond, interest is in default or overdue on the 2023E Subordinated Bonds, such 2023E Subordinated Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on Outstanding 2023E Subordinated Bonds.

**Interest Payment Date** shall mean each date on which interest is to be paid and is: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023E Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023E Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified (a) in the Sales Certificate in connection with the initial issuance of the 2023E Subordinated Bonds or (b) in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility.

**Interest Period** shall mean, for 2023E Subordinated Bonds in a particular Interest Rate Mode, the period of time that such 2023E Subordinated Bonds bear interest at the rate (per annum) which becomes effective at the beginning of such period, and shall include a Flexible Rate Period, a Daily Rate Period, a Weekly Rate Period, a Direct Purchase Index Rate Effective Period, an Index Rate Effective Period, a Term Rate Period and a Fixed Rate Period.

**Interest Rate Mode** shall mean, as the context may require, the Flexible Mode, the Daily Mode, the Weekly Mode, the Direct Purchase Index Mode, the Index Mode, the Term Rate Mode or the Fixed Rate Mode.

**Liquidity Facility** shall mean, with respect to the 2023E Subordinated Bonds, a letter of credit, line of credit, standby bond purchase agreement or other liquidity instrument issued in accordance with the terms hereof and then in effect and providing for the payment of the Purchase Price of Tendered Bonds and upon replacement of such Liquidity Facility with an Alternate Liquidity Facility, the Alternate Liquidity Facility then in effect.

**Liquidity Facility Purchase Account** shall mean the account by that name in the Purchase Fund created by Section 96.09.

**Liquidity Provider** shall mean, with respect to the 2023E Subordinated Bonds, any bank, insurance company, pension fund or other financial institution which provides the Liquidity Facility, if any, then in effect for the 2023E Subordinated Bonds.

**Liquidity Provider Bonds** shall mean any 2023E Subordinated Bonds purchased by the Liquidity Provider with funds drawn on or advanced under the Liquidity Facility or Credit Enhancement, as applicable.

**Long-Term Mode** shall mean a Term Rate Mode or a Fixed Rate Mode.

**Mandatory Purchase Date** shall mean: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Bond, (ii) with respect to 2023E Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023E Subordinated Bonds, (iii) with respect to any 2023E Subordinated Bonds, any Conversion Date applicable to such 2023E Subordinated Bond (except, unless otherwise specified in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 94.11 not failed to occur (except, unless otherwise specified in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023E Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023E Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023E Subordinated Bonds, (vi) with respect to any 2023E Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023E Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee's receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023E Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023E Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023E Subordinated Bonds (other than interest on 2023E Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023E Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee's receipt of such notice, (viii) with respect to 2023E Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee's receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023E Subordinated Bonds, (ix) with respect to 2023E Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023E Subordinated Bonds, and (x) with respect to 2023E Subordinated Bonds in the Direct Purchase Index Mode, each Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

**Market Agent** shall mean the Person appointed by the District to serve as market agent in connection with a conversion to any Direct Purchase Index Rate Period.

**Maturity Date** shall mean the maturity date or maturity dates of the 2023E Subordinated Bonds set forth in the Sales Certificate, or, if established pursuant to Section 94.11(b)(v) upon a change to the Fixed Rate Mode, the Serial Maturity Dates.

**Maximum Rate** shall mean (i) with respect to Liquidity Provider Bonds and 2023E Subordinated Bonds in the Direct Purchase Index Mode, a rate of interest per annum not exceeding the maximum non-usurious lawful rate of interest permitted by applicable laws and (ii) with respect to all other 2023E Subordinated Bonds, a rate of interest of twelve percent (12%) per annum unless a lesser rate of interest is specified as the Maximum Rate in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period.

**Moody's** shall mean Moody's Investors Service and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**New Mode** shall have the meaning specified in Section 94.11(a).

**Notice Parties** shall mean the Trustee, the Remarketing Agent, if any, the Paying Agent, the Credit Provider, if any, the Liquidity Provider, if any, the Bank, if any, the Market Agent, if any, and the Calculation Agent, if any.

**Opinion of Counsel** shall mean a written legal opinion from a firm of attorneys experienced in the matters to be covered in the opinion.

**Outstanding**, when used with reference to 2023E Subordinated Bonds, shall mean, as of any date, 2023E Subordinated Bonds theretofore or thereupon being authenticated and delivered under this Sixteenth Supplemental Resolution except:

(i) 2023E Subordinated Bonds cancelled by the Trustee, or delivered to the Trustee for cancellation, at or prior to such date;

(ii) 2023E Subordinated Bonds paid or deemed paid pursuant to Section 10.01 of the Subordinate Master Resolution; and

(iii) 2023E Subordinated Bonds in lieu of or in substitution for which other 2023E Subordinated Bonds shall have been authenticated and delivered pursuant to this Sixteenth Supplemental Resolution.

**Person** shall mean an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**Principal Payment Date** shall mean any date upon which the principal amount of 2023E Subordinated Bonds is due under the Subordinate Master Resolution, including any Maturity Date, any Serial Maturity Date, any Redemption Date, or the date the maturity of any 2023E Subordinated Bond is accelerated pursuant to the terms of the Subordinate Master Resolution.

**Purchase Date** shall mean (i) for a 2023E Subordinated Bond in the Daily Mode or the Weekly Mode, any Business Day selected by the Beneficial Owner of said 2023E Subordinated Bond pursuant to the provisions of Section 96.01, and (ii) any Mandatory Purchase Date.

**Purchase Fund** shall mean the fund by that name created in Section 96.09.

**Purchase Price** shall mean an amount equal to the principal amount of any 2023E Subordinated Bonds purchased on any Purchase Date, plus accrued interest to but excluding the Purchase Date; provided, however, that (i) if the Purchase Date for any 2023E Subordinated Bond to be purchased is an Interest Payment Date for such 2023E Subordinated Bond, the Purchase Price thereof shall be the principal amount thereof, and interest on such 2023E Subordinated Bond shall be paid to the Holder of such 2023E Subordinated Bond pursuant to the Subordinate Master Resolution and this Sixteenth Supplemental Resolution and (ii) in the case of a purchase on a Conversion Date or proposed Conversion Date which is preceded by a Term Rate Period or an Index Rate Period and which occurs prior to the day originally established as the last day of such preceding Term Rate Period or Index Rate Period, the Purchase Price of any 2023E Subordinated Bond to be purchased on such Conversion Date shall be the Redemption Price which would have been applicable to such 2023E Subordinated Bond if the preceding Term Rate Period or Index Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

**Rate Determination Date** shall mean any date on which the interest rate on 2023E Subordinated Bonds shall be determined, which, (i) in the case of the Flexible Mode, shall be the first day of an Interest Period; (ii) in the case of the Daily Mode, shall be each Business Day commencing with the first day (which must be a Business Day) the 2023E Subordinated Bonds become subject to the Daily Mode; (iii) in the case of the Weekly Mode, shall be (A) each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday, and (B) not later than the Business Day preceding a Conversion Date, a Substitution Date or a Mandatory Purchase Date specified in clause (viii) of the definition of Mandatory Purchase Date; (iv) in the case of the Term Rate Mode, shall be a Business Day no later than the Business Day next preceding the first day of an Interest Period, as determined by the Remarketing Agent; (v) in the case of the Direct Purchase Index Mode, each Direct Purchase Index Rate Determination Date; (vi) in the case of the Index Mode, each Index Rate Determination Date, and (vii) in the case of the Fixed Rate Mode, shall be a date determined by the Remarketing Agent which shall be at least one Business Day prior to the Conversion Date.

**Rating Agencies** shall mean any of Moody's, S&P or Fitch, which is then providing a rating on the 2023E Subordinated Bonds at the request of the District.

**Record Date** shall mean (i) with respect to 2023E Subordinated Bonds in a Daily Mode, Weekly Mode, Flexible Mode, Direct Purchase Index Mode or Index Mode, the last Business Day before an Interest Payment Date, and (ii) with respect to 2023E Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, the fifteenth (15th) day (whether or not a Business Day) next preceding each Interest Payment Date.

**Redemption Date** shall mean the date fixed for redemption of 2023E Subordinated Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Subordinate Master Resolution.

**Redemption Price** shall mean an amount equal to the principal of and premium, if any, and accrued interest, if any, on the 2023E Subordinated Bonds to be paid on the Redemption Date.

**Reimbursement Agreement** shall mean any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement by and between a Credit Provider or Liquidity Provider, as applicable, and the District.

**Remarketing Agent** shall mean any investment banking firm which may be appointed with respect to the 2023E Subordinated Bonds pursuant to Section 97.01.

**Remarketing Agreement** shall mean any agreement relating to the 2023E Subordinated Bonds by and between the District and a Remarketing Agent, as it may be amended or supplemented from time to time in accordance with its terms.

**Remarketing Proceeds Account** shall mean the account by that name in the Purchase Fund created in Section 96.09.

**Representations Letter** shall mean the Letter of Representations from the District to the Securities Depository in connection with the 2023E Subordinated Bonds in a book-entry system, as supplemented and amended from time to time.

**Sales Certificate** shall mean a written certificate of the District executed by the Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District or the Chief Financial Officer of the District or the designee of any of them prior to the issuance of the 2023E Subordinated Bonds setting forth the principal amount, Maturity Date or Maturity Dates, initial Interest Rate Mode, initial interest rate or rates, and such other matters with respect to the 2023E Subordinated Bonds as such officer may deem appropriate, as provided in Section 94.02.

**S&P** shall mean S&P Global Ratings and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent, if any.

**S&P Municipal Bond 7 Day High Grade Rate Index** shall mean for a Rate Determination Date, the level of the “S&P Municipal Bond 7 Day High Grade Rate Index”



(formerly known as the J.J. Kenny Index) maintained by Standard and Poor's for a one-week maturity as published each day.

**Securities Depository** shall mean The Depository Trust Company, and such other securities depository as the District may designate in a certificate of the District delivered to the Trustee.

**Serial Bonds** shall mean the 2023E Subordinated Bonds maturing on the Serial Maturity Dates, as determined pursuant to Section 94.11(b).

**Serial Maturity Dates** shall mean the dates on which the Serial Bonds mature, as determined pursuant to Section 94.11(b).

**Serial Payments** shall mean the payments to be made in payment of the principal of the Serial Bonds on the Serial Maturity Dates.

**Short-Term Mode** shall mean the Daily Mode, the Weekly Mode or the Flexible Mode.

**SIFMA Index** shall mean, for any applicable Rate Determination Date, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day. If the SIFMA Index is no longer published, then "SIFMA Index" shall mean the S&P Municipal Bond 7 Day High Grade Rate Index. If the S&P Municipal Bond 7 Day High Grade Rate Index is no longer published, then "SIFMA Index" shall mean the prevailing rate determined by the Calculation Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Calculation Agent to be comparable under the circumstances to the criteria used by SIFMA to determine the SIFMA Index immediately prior to the date on which SIFMA ceased publication of the SIFMA Index. Notwithstanding the foregoing, if the SIFMA Index as determined as provided above would be less than 0.0%, then the SIFMA Index will be deemed to be 0.0%.

**Substitution Date** shall mean the date upon which an Alternate Credit Enhancement or Alternate Liquidity Facility is scheduled to be substituted for a Credit Enhancement or Liquidity Facility then in effect.

**Taxable Date** shall mean the date on which interest on the 2023E Subordinated Bonds is first includable in gross income of the Holder (including, without limitation, any previous Holder) thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

**Taxable Rate** shall mean an interest rate per annum at all times equal to the product of the Direct Purchase Index Rate then in effect multiplied by the Taxable Rate Factor.

**Taxable Rate Factor** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Tendered Bonds** shall mean 2023E Subordinated Bonds tendered for purchase by the Holders or Beneficial Owners thereof pursuant to Section 96.01 or subject to mandatory tender for purchase on a Mandatory Purchase Date pursuant to Section 96.02.

**Tender Notice** shall mean a notice delivered by Electronic Means or in writing with respect to a 2023E Subordinated Bond that states (i) the principal amount of such 2023E Subordinated Bond to be purchased pursuant to Section 96.01, (ii) the Purchase Date on which such 2023E Subordinated Bond is to be purchased, (iii) applicable payment instructions with respect to the 2023E Subordinated Bonds being tendered for purchase and (iv) an irrevocable demand for such purchase.

**Tender Notice Deadline** with respect to a 2023E Subordinated Bond shall mean (i) during a Daily Mode with respect to such 2023E Subordinated Bond, 11:00 a.m. on any Business Day and (ii) during a Weekly Mode with respect to such 2023E Subordinated Bond, 5:00 p.m. on a Business Day not less than seven days prior to the applicable Purchase Date.

**Term Rate** shall mean the per annum interest rate for 2023E Subordinated Bonds in the Term Rate Mode determined pursuant to Section 94.07(a).

**Term Rate Mode** shall mean the Interest Rate Mode during which the 2023E Subordinated Bonds bear interest at the Term Rate.

**Term Rate Period** shall mean the period from (and including) the date on which the 2023E Subordinated Bonds begin to bear interest in a Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period.

**2023 Tax Certificate** shall mean the Tax Certificate executed and delivered by the District in connection with the issuance of the 2023E Subordinated Bonds, as amended or supplemented from time to time in accordance with its terms.

**Weekly Mode** shall mean the Interest Rate Mode during which the 2023E Subordinated Bonds bear interest at the Weekly Rate.

**Weekly Rate** shall mean the per annum interest rate on 2023E Subordinated Bonds in the Weekly Mode determined pursuant to Section 94.06(b).

**Weekly Rate Period** shall mean the period during which a 2023E Subordinated Bond in the Weekly Mode shall bear a Weekly Rate, which shall be the period commencing on Thursday of each week to and including Wednesday of the following week, except (i) the first Weekly Rate Period, which shall be from the Conversion Date on which the Interest Rate Mode for the 2023E Subordinated Bonds is changed to a Weekly Mode to and including the Wednesday of the following week, and (ii) the last Weekly Rate Period which shall end on the day preceding the earliest to occur of the Conversion Date on which the Interest Rate Mode for the 2023E Subordinated Bonds is changed from the Weekly Mode to a different Interest Rate Mode, the Maturity Date or the Mandatory Purchase Date for such 2023E Subordinated Bond.

## ARTICLE XCIV

### THE 2023E SUBORDINATED BONDS

#### **Section 94.01. Authorization and Purpose of 2023E Subordinated Bonds.**

The Board hereby authorizes the issuance of a series of revenue bonds of the District in accordance with the Subordinate Master Resolution, designated as “Subordinated Electric Revenue Bonds, 2023 Series E” (the “2023E Subordinated Bonds”) for the purpose of (i) financing and refinancing improvements and additions to the District’s Electric System, including through the payment of all or a portion of the District’s outstanding commercial paper notes (to the extent set forth in the Sales Certificate), (ii) refunding the Refunded Bonds (to the extent set forth in the Sales Certificate), and (iii) paying costs of issuance (to the extent set forth in the Sales Certificate).

#### **Section 94.02. Terms, Registration, Denominations, Medium, Method and Place of Payment and Dating of 2023E Subordinated Bonds.**

(a) The 2023E Subordinated Bonds shall be issued in the aggregate principal amount which, together with the aggregate principal amount, if any, of the District’s Electric Revenue Bonds sold and issued pursuant to the District’s Sixty-Sixth Supplemental Resolution adopted on the date hereof, Subordinated Electric Revenue Refunding Bonds, 2023 Series C, Subordinated Electric Revenue Bonds, 2023 Series D, and Subordinated Electric Revenue Refunding Bonds, 2023 Series F, shall not exceed \$630,000,000, shall bear interest at such initial rate or rates for such initial Interest Period, shall bear interest in such initial Interest Rate Mode, shall mature and become payable as to principal on such Maturity Date or Maturity Dates (not to exceed forty (40) years from the date of issuance of the 2023E Subordinated Bonds) in the amount and be subject to such mandatory sinking fund account payments on such mandatory sinking fund account payment dates, if any, all as set forth in the Sales Certificate. In addition to the provisions required pursuant to the terms of this Sixteenth Supplemental Resolution to be specified in the Sales Certificate, the Sales Certificate may contain such provisions, in a form approved by the District’s Bond Counsel and the District’s counsel, as the officer executing the Sales Certificate may deem necessary or desirable and consistent with the purpose of this Sixteenth Supplemental Resolution, including provisions (i) adding additional covenants and agreements to be observed by the District, (ii) curing, correcting, amending or supplementing any ambiguous, defective or ineffective provision contained in the Subordinate Master Resolution or this Sixteenth Supplemental Resolution, or (iii) amending or supplementing any provision contained herein to the extent necessary to obtain Credit Enhancement or a Liquidity Facility, to obtain a rating on the 2023E Subordinated Bonds, or to provide for the issuance of the 2023E Subordinated Bonds if, in the judgment of such officer such rating or provision is reasonable. The Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District or the Chief Financial Officer of the District, or the designee of any of them, is hereby authorized and instructed to execute and deliver the Sales Certificate and, upon execution and delivery thereof, the Sales Certificate shall be incorporated herein and in the Subordinate Master Resolution by reference. The execution and delivery of the Sales Certificate by any such officer shall be conclusive evidence that, where any approval, determination of necessity, desirability or consistency with the purpose of this Sixteenth Supplemental Resolution, or judgment or

determination of reasonableness is required to be given or made, such approval, judgment or determination has been given or made.

(b) The 2023E Subordinated Bonds shall be issued in the form of fully registered 2023E Subordinated Bonds in Authorized Denominations and no provision of the Subordinate Master Resolution relating to coupon bonds or coupons shall apply to the 2023E Subordinated Bonds. 2023E Subordinated Bonds (other than 2023E Subordinated Bonds in the Direct Purchase Index Mode) shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023E Subordinated Bonds and shall be registered as set forth in Section 98.04 of this Sixteenth Supplemental Resolution. 2023E Subordinated Bonds in the Direct Purchase Index Mode shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023E Subordinated Bonds and shall be registered in the name of the Holder thereof or as otherwise directed by such Holder. Registered ownership of the 2023E Subordinated Bonds, or any portion thereof, may not thereafter be transferred except as set forth in the Continuing Covenant Agreement (during any time that the 2023E Subordinated Bonds are in the Direct Purchase Index Mode), Section 2.05 of the Subordinate Master Resolution and Section 98.04 of this Sixteenth Supplemental Resolution. Each 2023E Subordinated Bond in the Direct Purchase Index Mode shall contain a legend indicating that the transferability of such 2023E Subordinated Bond is subject to the restrictions set forth in this Sixteenth Supplemental Resolution.

(c) The 2023E Subordinated Bonds shall be dated as of the date of their initial issuance and shall be numbered in such manner as is determined by the Trustee.

(d) The principal of and premium, if any, and interest on the 2023E Subordinated Bonds shall be payable in lawful money of the United States of America.

(e) Subject to Section 98.04 of this Sixteenth Supplemental Resolution, interest on the 2023E Subordinated Bonds shall be paid on each Interest Payment Date by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode by check mailed on the date on which due to the Holders of the 2023E Subordinated Bonds at the close of business on the Record Date for the 2023E Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023E Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023E Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023E Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023E Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written with written wire transfer instructions, interest payable on such 2023E Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer instructions provided by the Holder of such 2023E Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023E Subordinated Bonds registered in the name of the Securities Depository (or its nominee), interest on any such 2023E Subordinated Bond shall be payable only upon surrender of such 2023E Subordinated Bond at the office of the Paying Agent.

(f) Subject to Section 98.04 of this Sixteenth Supplemental Resolution, the principal of and premium, if any, on each 2023E Subordinated Bond shall be payable on the Principal Payment Date of such 2023E Subordinated Bond upon surrender thereof at the office of the Paying Agent; provided that the Paying Agent may agree with the Holder of any 2023E Subordinated Bond (and hereby does so agree with the Bank during any Direct Purchase Index Rate Period) that such Holder may, in lieu of surrendering the same for a new 2023E Subordinated Bond, endorse on such 2023E Subordinated Bond a record of partial payment of the principal of such 2023E Subordinated Bond in the form set forth below (which shall be typed or printed on such 2023E Subordinated Bond):

PAYMENTS ON ACCOUNT OF PRINCIPAL

Payment Date	Principal Amount Paid	Balance of Principal Amount Unpaid	Signature of Holder
<hr/>	<hr/>	<hr/>	<hr/>

The Paying Agent shall maintain a record of each such partial payment made in accordance with the foregoing agreement and such record of the Paying Agent shall be conclusive. Such partial payment shall be valid upon payment of the amount thereof to the Holder of such 2023E Subordinated Bond, and the District, the Trustee and the Paying Agent shall be fully released and discharged from all liability to the extent of such payment regardless of whether such endorsement shall or shall not have been made upon such 2023E Subordinated Bond by the Holder thereof and regardless of any error or omission in such endorsement.

(g) Except as may be specifically set forth herein, the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District may treat the Holder of a 2023E Subordinated Bond as the absolute owner thereof for all purposes, whether or not such 2023E Subordinated Bond shall be overdue, and the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District shall not be affected by any knowledge or notice to the contrary. Payment of the principal of and premium, if any, and interest on each 2023E Subordinated Bond shall be made only to such Holder, which payments shall be valid and effectual to satisfy and discharge the liability of such 2023E Subordinated Bond to the extent of the sum or sums so paid. All 2023E Subordinated Bonds paid at maturity or on earlier redemption pursuant to the provisions of this Section shall be cancelled by the Paying Agent.

(h) Each 2023E Subordinated Bond shall bear interest at the applicable rate or rates during each applicable Interest Accrual Period until the entire Principal Amount thereof has been paid.

(i) The Sales Certificate shall designate the series, amounts and maturity or sinking fund payment dates of the Refunded Bonds, if any.

**Section 94.03. Payment of Principal and Interest of 2023E Subordinated Bonds; Acceptance of Terms and Conditions.**

(a) The interest on each 2023E Subordinated Bond shall become due and payable on the Interest Payment Dates with respect to such 2023E Subordinated Bond to and including the Maturity Date of such 2023E Subordinated Bond, and on each Redemption Date and on the date of any acceleration prior thereto. The principal of each 2023E Subordinated Bond shall become due and payable on the Principal Payment Date of such 2023E Subordinated Bond.

(b) By the acceptance of its 2023E Subordinated Bond, the Holder thereof shall be deemed to have agreed to all the terms and provisions of such 2023E Subordinated Bond as specified in such 2023E Subordinated Bond and the Subordinate Master Resolution, including without limitation the applicable Interest Periods, interest rates (including any applicable Alternate Rate), Purchase Dates, Mandatory Purchase Dates, Purchase Prices, mandatory and optional purchase and redemption provisions applicable to such 2023E Subordinated Bond, method and timing of purchase, redemption and payment. Such Holder further agrees that if, on any date upon which its 2023E Subordinated Bond is to be purchased, redeemed or paid at maturity or earlier due date, funds are on deposit with the Paying Agent or the Trustee to pay the full amount due on such 2023E Subordinated Bond, then such Holder shall have no rights under the Subordinate Master Resolution other than to receive such full amount due with respect to such 2023E Subordinated Bond and that interest on such 2023E Subordinated Bond shall cease to accrue as of such date.

(c) Notwithstanding anything herein to the contrary, while any 2023E Subordinated Bonds are Liquidity Provider Bonds, such Liquidity Provider Bonds shall bear interest and be payable at the times, in the manner and in the amounts required under the Liquidity Facility supporting such 2023E Subordinated Bonds or the Reimbursement Agreement related thereto.

**Section 94.04. Calculation and Payment of Interest; Change in Interest Rate Mode; Maximum Rate.**

(a) When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is the SIFMA Index, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is an index other than the SIFMA Index, interest shall be calculated on the basis specified in writing by the District on or before the first day of the applicable Direct Purchase Index Rate Period or Index Rate Period. When a Short-Term Mode is in effect, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Term Rate Mode or a Fixed Rate Mode is in effect, interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Payment of unpaid interest accrued on each 2023E Subordinated Bond during each Interest Accrual Period shall be made on the applicable Interest Payment Date for such 2023E Subordinated Bond to the Holder of record of such 2023E Subordinated Bond on the applicable Record Date.

(b) The 2023E Subordinated Bonds in any Interest Rate Mode other than a Fixed Rate Mode may be changed to any other Interest Rate Mode at the times and in the manner hereinafter provided. Subsequent to such change in Interest Rate Mode (other than a change to a Fixed Rate Mode), the 2023E Subordinated Bonds may again be changed to a different Interest Rate Mode at the times and in the manner hereinafter provided. A Fixed Rate Mode shall be in effect until the Maturity Date, or acceleration thereof prior to the Maturity Date, and the 2023E Subordinated Bonds in a Fixed Rate Mode may not be changed to any other Interest Rate Mode.

(c) Subject to Section 94.09(b)(iii), no 2023E Subordinated Bonds shall bear interest at an interest rate higher than the Maximum Rate with respect thereto.

(d) In the absence of manifest error, the determination of interest rates (including any determination of rates in connection with a New Mode) and Interest Periods by the Remarketing Agent or the Calculation Agent, as applicable, as provided herein, and the record of interest rates maintained by the Paying Agent shall be conclusive and binding upon the Remarketing Agent, the Paying Agent, the Trustee, the District, the Holders and the Beneficial Owners.

**Section 94.05. Determination of Flexible Rates and Interest Periods During Flexible Mode.** An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and in Section 94.04 hereof, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023E Subordinated Bond the Interest Period which would result in the Remarketing Agent being able to remarket such 2023E Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023E Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023E Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023E Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or

Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

**Section 94.06. Determination of Interest Rates During the Daily Mode and the Weekly Mode.** The interest rate for 2023E Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023E Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period. In making any such determination the Remarketing Agent shall not take into account the per annum rate of interest that would be applicable to Liquidity Provider Bonds pursuant to the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

(a) During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

(b) During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

**Section 94.07. Determination of Term Rates and Fixed Rates.**

(a) **Term Rates.** The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. Except as set forth in Section 94.11(a)(ii), the Term Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such 2023E Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected, and the Call Protection Date specified, by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.



(b) Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023E Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023E Subordinated Bonds will have Serial Maturity Dates in accordance with Section 94.11(b)(v)). Except as set forth in Section 94.11(b)(v), the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023E Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 94.11(b)(v), the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023E Subordinated Bonds.

**Section 94.08. Alternate Rates.** The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023E Subordinated Bonds (other than 2023E Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023E Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023E Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023E Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023E Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023E Subordinated Bonds.

(a) For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such 2023E Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

(b) For 2023E Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023E Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

**Section 94.09. Determination of Direct Purchase Index Rates.**

(a) During each Direct Purchase Index Rate Period, the 2023E Subordinated Bonds shall, subject to subsection (b) of this Section 94.09, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023E Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023E Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023E Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023E Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Master Resolution or this Sixteenth Supplemental Resolution to the contrary, including, without limitation, Section 96.02(b), but subject to Section 94.04(c) and Section 94.09(b)(ii) and (iii), from and after any Taxable Date, the interest rate on 2023E Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Master Resolution or this Sixteenth Supplemental Resolution to the contrary, including, without limitation, Section 96.02(b), but subject to Section 94.04(c) and Section 94.09(b)(iii), from and after the effective date of any “Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023E Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023E

Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Master Resolution or this Sixteenth Supplemental Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023E Subordinated Bonds exceeds the Maximum Rate for such 2023E Subordinated Bonds, then (A) such 2023E Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023E Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023E Subordinated Bonds as calculated pursuant to this Section 94.09 and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023E Subordinated Bonds as calculated pursuant to this Section 94.09 is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023E Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023E Subordinated Bonds are redeemed or tendered for purchase in accordance with this Sixteenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023E Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything herein to the contrary, but subject to Section 94.04(c) and Section 94.09(b)(i), (ii) and (iii) during any Amortization Period, the 2023E Subordinated Bonds shall bear interest at the Bank Rate.

**Section 94.10. Determination of Index Rates.** During each Index Rate Period, the 2023E Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023E Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023E Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023E Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023E Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023E Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023E Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023E Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023E Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a percentage point with five hundred thousandths of a percentage point rounded upward. All

dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023E Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

**Section 94.11. Changes in Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period.** Subject to the provisions of this Section, the District may effect a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period with respect to the 2023E Subordinated Bonds by following the procedures set forth in this Section.

(a) Changes to Interest Rate Modes Other Than Fixed Rate Mode; Changes in Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period. The Interest Rate Mode for the 2023E Subordinated Bonds (other than the 2023E Subordinated Bonds in the Fixed Rate Mode) may be changed from one Interest Rate Mode to another Interest Rate Mode (other than the Fixed Rate Mode) and the Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023E Subordinated Bonds may be changed, as follows:

(i) Notice to Notice Parties; Notice to Holders. No later than a Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023E Subordinated Bonds preceding the proposed Conversion Date, the District shall give written notice to the Notice Parties of its intention to effect a change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period from the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period then prevailing (for purposes of this Section, the “Current Mode”) to another Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period (for purposes of this Section, the “New Mode”) specified in such written notice. Notice of the proposed change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be given by the Trustee by mail to the Holders of the 2023E Subordinated Bonds not less than the 10th day next preceding the proposed Conversion Date, provided that no notice need be given for a Conversion Date occurring on the Business Day following the last day of a Flexible Rate Period, an Index Rate Period or a Term Rate Period or on a Substitution Date. Such notice shall state: (1) the proposed Conversion Date; (2) that the 2023E Subordinated Bonds will be subject to mandatory tender for purchase on the proposed Conversion Date (regardless of whether all of the conditions to the change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period are satisfied); and (3) the Purchase Price of the 2023E Subordinated Bonds and the place of delivery for purchase of the 2023E Subordinated Bonds; provided that, if the proposed change is from one Direct Purchase Index Rate Period to a new Direct Purchase Index Rate Period and any Holder of the 2023E Subordinated Bonds shall continue to be a Holder of 2023E Subordinated Bonds

in the new Direct Purchase Index Rate Period, the Holder may elect to retain its 2023E Subordinated Bonds by filing with the District and the Trustee not less than five days prior to the proposed Conversion Date a written notice identifying such 2023E Subordinated Bonds and the principal amount it wishes to retain.

(ii) Determination of Interest Rates. The New Mode shall commence on the Conversion Date and the interest rate(s) (together, in the case of a change to the Flexible Mode, with the Interest Period(s)) shall be determined in the manner provided in Sections 94.05, 94.06, 94.07, 94.09 and 94.10, as applicable; provided, however, that, in the case of a change to the Term Rate Mode, or from one Term Rate Period to a new Term Rate Period, if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to sell some or all of the 2023E Subordinated Bonds at a premium or a discount to par.

(iii) Conditions Precedent.

(1) The Conversion Date shall be:

(A) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023E Subordinated Bonds end;

(B) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(C) in the case of a change from the Term Rate Mode to another Interest Rate Mode, or from one Term Rate Period to a new Term Rate Period, any day on which the applicable 2023E Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(D) in the case of a change from the Index Mode to another Interest Rate Mode, or from one Index Rate Period to a new Index Rate Period, any day on which the applicable 2023E Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and

(E) in the case of a change from the Direct Purchase Index Mode or from one Direct Purchase Index Rate Period to another Direct Purchase Index Rate Period, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(2) If the 2023E Subordinated Bonds to be converted are Flexible Rate Bonds, no Interest Period with respect to such 2023E Subordinated Bonds set after delivery by the

District to the Remarketing Agent of the notice of the intention to effect a change in Interest Rate Mode shall extend beyond the proposed Conversion Date.

(3) The following items shall have been delivered to the District and the Trustee, on or prior to the Conversion Date:

(A) a Favorable Opinion of Bond Counsel dated the Conversion Date; and

(B) if there is to be a Liquidity Facility or an Alternate Liquidity Facility or Credit Enhancement or an Alternate Credit Enhancement delivered in connection with such change, the items required by Section 96.08(d).

(4) If no Liquidity Facility is in effect to provide funds for the purchase of 2023E Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 96.04 shall not be less than the amount required to purchase all of the 2023E Subordinated Bonds on the Conversion Date at the Purchase Price.

(b) Change to Fixed Rate Mode. At the option of the District, the Interest Rate Mode for the 2023E Subordinated Bonds may be changed to the Fixed Rate Mode as provided in this Section 94.11(b). On any Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023E Subordinated Bonds before the proposed Conversion Date pursuant to clause (ii) of this subsection (b), the District shall give written notice to the Notice Parties stating that the Interest Rate Mode will be changed to the Fixed Rate Mode and setting forth the proposed Conversion Date. In addition, such notice shall state whether some or all of the 2023E Subordinated Bonds to be converted shall be converted to Serial Bonds and, if so, the applicable Serial Maturity Dates and Serial Payments, all as determined pursuant to clause (v) of this subsection (b). Any such change in Interest Rate Mode shall be made as follows:

(i) Conversion Date. The Conversion Date shall be:

(1) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023E Subordinated Bonds end;

(2) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(3) in the case of a change from the Term Rate Mode, any day on which the applicable 2023E Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(4) in the case of a change from the Index Mode, any day on which the applicable 2023E Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and

(5) in the case of a change from the Direct Purchase Index Mode, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(ii) Notice to Holders. Not less than the 10th day next preceding the Conversion Date, the Trustee shall mail, in the name of the District, a notice of such proposed change to the Holders of the 2023E Subordinated Bonds stating that the Interest Rate Mode will be changed to the Fixed Rate Mode, the proposed Conversion Date and that such Holder is required to tender such Holder's 2023E Subordinated Bonds for purchase on such proposed Conversion Date.

(iii) General Provisions Applying to Change to Fixed Rate Mode. The change to the Fixed Rate Mode shall not occur unless the following items shall have been delivered to the District and the Trustee and the following conditions shall have been satisfied, in each case on or prior to the Conversion Date:

(1) a Favorable Opinion of Bond Counsel dated the Conversion Date;

(2) if there is to be Credit Enhancement or Alternate Credit Enhancement delivered in connection with such change, the items required by Section 96.08(d) in connection with the delivery of Credit Enhancement or Alternate Credit Enhancement; and

(3) if no Liquidity Facility is in effect to provide funds for the purchase of 2023E Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 96.04 shall not be less than the amount required to purchase all of the 2023E Subordinated Bonds on the Conversion Date at the Purchase Price.

(iv) Determination of Interest Rate. The Fixed Rate (or Fixed Rates in the case of Serial Bonds) for the 2023E Subordinated Bonds to be converted to the Fixed Rate Mode shall be established by the Remarketing Agent on the Rate Determination Date applicable thereto pursuant to the provisions of Section 94.07(b). Such Fixed Rate or Fixed Rates shall remain in effect until the Maturity Date or Serial Maturity Dates, as applicable, of such 2023E Subordinated Bonds. Such determination shall be conclusive and binding upon the District, the Trustee, the Credit Provider, if any, and the Holders of the 2023E Subordinated Bonds to which such rate will be applicable. Not later than 5:00 p.m. on the date of determination of the Fixed Rate, the Remarketing Agent shall notify the District, the Trustee and the Credit Provider, if any, of such rate by telephone.

(v) Serialization and Sinking Fund Account Redemption; Price. Upon conversion of the 2023E Subordinated Bonds to the Fixed Rate Mode, the 2023E Subordinated Bonds shall be remarketed at par, shall mature on the same Maturity Date and be subject to the same mandatory sinking fund account redemption, if any, and optional redemption provisions as set forth in this Sixteenth Supplemental Resolution prior to the Conversion; provided, however, that if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to (1) have some of the 2023E Subordinated Bonds be Serial Bonds and some subject to mandatory sinking fund

account redemption even if such 2023E Subordinated Bonds were not Serial Bonds or subject to mandatory sinking fund account redemption prior to such change, (2) change the optional redemption dates and/or premiums set forth in Section 95.03(b), and/or (3) sell some or all of the 2023E Subordinated Bonds at a premium or a discount to par.

(c) Failure to Satisfy Conditions Precedent to an Interest Rate Mode Change.

In the event the conditions described above in subsections (a) or (b), as applicable, of this Section have not been satisfied by the applicable Conversion Date, then the New Mode shall not take effect (although any mandatory tender shall be made on such date if notice has been sent to the Holders stating that such 2023E Subordinated Bonds would be subject to mandatory purchase on such date). If the failed change in Interest Rate Mode was from the Flexible Mode, such 2023E Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the failed Conversion Date in accordance with Section 94.05. If the failed change in Interest Rate Mode was from the Daily Mode, such 2023E Subordinated Bonds shall remain in the Daily Mode, and if the failed change in Interest Rate Mode was from the Weekly Mode, such 2023E Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 94.06 on and as of the failed Conversion Date. If the failed change in Interest Rate Mode was from the Term Rate Mode, then such 2023E Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 94.07. If the failed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023E Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 94.09. If the failed change in Interest Rate Mode was from the Index Mode, then the 2023E Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 94.10.

(d) Rescission of Election. Notwithstanding anything herein to the contrary, the District may rescind any election by it to change an Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period as described above prior to the Conversion Date by giving written notice thereof to the Notice Parties prior to 10:00 a.m. on the Business Day preceding such Conversion Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Holders of the 2023E Subordinated Bonds, then such notice of change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be of no force and effect. If the Trustee receives notice from the District of rescission of a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period after the Trustee has given notice thereof to the Holders of the 2023E Subordinated Bonds, then, if the proposed Conversion Date would have been a Mandatory Purchase Date, such date shall continue to be a Mandatory Purchase Date and the Interest Rate Mode for the 2023E Subordinated Bonds shall be determined as set forth in the remainder of this paragraph. If the proposed change in Interest Rate Mode was from the Flexible Mode, such 2023E Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the proposed Conversion Date in accordance with Section 94.05. If the proposed change in Interest Rate Mode was from the Daily Mode, such 2023E Subordinated Bonds shall remain in the Daily Mode, and if the proposed change in Interest Rate Mode was from the Weekly Mode, such 2023E Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in



accordance with the applicable provisions of Section 94.06 on and as of the proposed Conversion Date. If the proposed change in Interest Rate Mode was from the Term Rate Mode, then such 2023E Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 94.07. If the proposed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023E Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 94.09. If the proposed change in Interest Rate Mode was from the Index Mode, then the 2023E Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 94.10.

## **ARTICLE XCV**

### **REDEMPTION OF 2023E SUBORDINATED BONDS**

**Section 95.01. Optional Redemption of Flexible Rate Bonds.** 2023E Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023E Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

**Section 95.02. Optional Redemption of 2023E Subordinated Bonds in the Daily Mode and the Weekly Mode.** 2023E Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023E Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 95.03. Optional Redemption of 2023E Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.**

(a) 2023E Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023E Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023E Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023E Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(b) 2023E Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023E Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(c) The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023E Subordinated Bonds so changed to a Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

(d) Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023E Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

**Section 95.04. Optional and Mandatory Redemption of 2023E Subordinated Bonds in the Direct Purchase Index Mode.**

(a) Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023E Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023E Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

(b) 2023E Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 95.05. Mandatory Sinking Fund Account Redemption of 2023E Subordinated Bonds and Redemption of Liquidity Provider Bonds.**

(a) The 2023E Subordinated Bonds shall be subject to redemption prior to maturity from mandatory sinking fund account payments for the 2023E Subordinated Bonds on the dates, if any, specified in the Sales Certificate, at a Redemption Price equal to the principal amount of the 2023E Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The mandatory sinking fund account payments for the 2023E Subordinated Bonds shall be in the amounts and payable on the dates set forth in the Sales Certificate.

(b) Notwithstanding anything herein to the contrary, Liquidity Provider Bonds are subject to redemption on the dates, in the amounts and otherwise in accordance with the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

**Section 95.06. Funds for Redemption of 2023E Subordinated Bonds.** Unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023E Subordinated Bonds, the Redemption Price of 2023E Subordinated Bonds

(other than Liquidity Provider Bonds) shall be paid solely from (1) moneys obtained from a drawing on the Credit Enhancement supporting the 2023E Subordinated Bonds pursuant to Section 96.08(a) or (2) Available Moneys.

**Section 95.07. Selection of 2023E Subordinated Bonds for Redemption.**

Whenever provision is made for the redemption of less than all of the 2023E Subordinated Bonds of any one maturity, the Trustee shall select the 2023E Subordinated Bonds to be redeemed, from the Outstanding 2023E Subordinated Bonds of such maturity not previously called for redemption, by lot in any manner which the Trustee deems fair; provided, however, that Liquidity Provider Bonds shall be redeemed prior to the redemption of other 2023E Subordinated Bonds; provided further, however, that during a Direct Purchase Index Rate Period, the 2023E Subordinated Bonds shall be redeemed pro rata. The Trustee shall promptly notify the District in writing of the numbers of the 2023E Subordinated Bonds so selected for redemption.

**Section 95.08. Notice of Redemption.** Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023E Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023E Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023E Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023E Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023E Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023E Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023E Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023E Subordinated Bonds to be redeemed.

Notice of optional redemption shall be given by the Trustee for and on behalf of the District, at the written request of the District (which request shall be given to the Trustee (unless waived by the Trustee) at least twenty-five (25) days prior to the date fixed for redemption or such shorter period as is acceptable to the Trustee). Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption.

Notwithstanding the foregoing, notice of redemption shall not be required for 2023E Subordinated Bonds redeemed on a Mandatory Purchase Date.

**Section 95.09. Partial Redemption of 2023E Subordinated Bond.** Upon surrender of any 2023E Subordinated Bond redeemed in part only, the District shall execute and the Trustee shall deliver to the registered owner thereof, at the expense of the District, a new 2023E Subordinated Bond or Bonds, of the same maturity, of Authorized Denominations in

aggregate principal amount equal to the unredeemed portion of the 2023E Subordinated Bond surrendered.

**Section 95.10. Effect of Redemption.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price being held by the Trustee, the 2023E Subordinated Bonds so to be redeemed shall, on the date designated in such notice, become due and payable at the Redemption Price specified in such notice; and from and after the date so designated interest on the 2023E Subordinated Bonds so designated for redemption shall cease to accrue and the Holders and Beneficial Owners of said 2023E Subordinated Bonds shall have no rights in respect thereof, except to receive payment of the Redemption Price thereof.

**Section 95.11. Disposition of Redeemed 2023E Subordinated Bonds.** All 2023E Subordinated Bonds redeemed pursuant to the provisions of this Article XCV shall be delivered to and cancelled by the Trustee and shall thereafter be delivered by the Trustee to, or upon the order of, the District, and no 2023E Subordinated Bonds shall be issued in place thereof.

## **ARTICLE XCVI**

### **PURCHASE OF 2023E SUBORDINATED BONDS**

**Section 96.01. Optional Tenders of 2023E Subordinated Bonds in the Daily Mode or the Weekly Mode.** Subject to Section 96.06, the Beneficial Owners of 2023E Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023E Subordinated Bonds (or portions of those 2023E Subordinated Bonds, provided that no 2023E Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

**Section 96.02. Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode.**

(a) The 2023E Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023E Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023E Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023E Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023E

Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

(b) Notwithstanding subparagraph (a) above and anything to the contrary in this Sixteenth Supplemental Resolution, in the event the 2023E Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023E Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023E Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing, in which case the 2023E Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023E Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023E Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023E Subordinated Bonds may be subject to optional redemption or purchase at the sole option of the District at any time with notice as and to the extent provided in the Continuing Covenant Agreement.

#### **Section 96.03. Remarketing of 2023E Subordinated Bonds; Notices.**

(a) Remarketing of 2023E Subordinated Bonds. The Remarketing Agent shall use its best efforts pursuant to the terms and conditions of the Remarketing Agreement to offer for sale:

(i) all 2023E Subordinated Bonds or portions thereof as to which a Tender Notice has been delivered pursuant to Section 96.01; and

(ii) all 2023E Subordinated Bonds required to be purchased on a Mandatory Purchase Date described in clauses (i), (ii), (iii), (iv), (viii) or (ix) of the definition thereof; and

(iii) any Liquidity Provider Bonds (A) purchased on a Purchase Date described in clause (i) or (ii) above, (B) with respect to which the Liquidity Provider has provided notice to the Trustee and the Remarketing Agent that it has reinstated the Available Amount, (C) with respect to which an Alternate Liquidity Facility and Alternate Credit Enhancement is in effect (if such funds were secured by a Credit Enhancement prior to becoming Liquidity Provider Bonds, which Credit Enhancement is no longer in effect), and/or (D) which are being marketed as Fixed Rate Bonds.

The Remarketing Agent shall not remarket 2023E Subordinated Bonds to the District or any affiliate thereof. In connection with the remarketing of any 2023E Subordinated Bonds with respect to which notice of redemption or notice of mandatory purchase has been

given, the Remarketing Agent shall notify each person to which such 2023E Subordinated Bonds are remarketed of such notice of redemption or notice of mandatory purchase.

Anything in this Sixteenth Supplemental Resolution to the contrary notwithstanding, if there shall have occurred and be continuing either a Credit Provider Failure or a Liquidity Provider Failure with respect to a Series of 2023E Subordinated Bonds, the Remarketing Agent shall not remarket such 2023E Subordinated Bonds. All other provisions of this Sixteenth Supplemental Resolution, including without limitation, those relating to the setting of interest rates and Interest Periods and mandatory and optional purchases, shall remain in full force and effect during the continuance of such Credit Provider Failure or Liquidity Provider Failure.

(b) Notice of Remarketing; Registration Instructions; New Bonds. On each date on which a 2023E Subordinated Bond is to be purchased pursuant to this Article XCVI:

(i) the Remarketing Agent shall notify the Trustee by Electronic Means by 11:30 a.m. if it has been unable to remarket any tendered 2023E Subordinated Bonds, and shall include in such notice the principal amount of 2023E Subordinated Bonds it has been unable to remarket;

(ii) the Remarketing Agent shall notify the Trustee by Electronic Means not later than 1:00 p.m. of the names of the purchasers of the successfully remarketed 2023E Subordinated Bonds and such information as may be necessary to register the 2023E Subordinated Bonds and the registration instructions with respect thereto;

(iii) the Remarketing Agent shall cause the proceeds of the remarketing by such Remarketing Agent of tendered 2023E Subordinated Bonds to be paid to the Trustee in immediately available funds not later than 12:00 noon on the Purchase Date for such 2023E Subordinated Bonds; and

(iv) if the 2023E Subordinated Bonds are not in the Book-Entry System, the Trustee shall authenticate new 2023E Subordinated Bonds for the respective purchasers thereof which shall be available for pick-up by the Remarketing Agent not later than 2:30 p.m.

(c) Draw on Liquidity Facility or Request for Funds. On each date on which a 2023E Subordinated Bond is to be purchased pursuant to this Article XCVI, if (i) the Remarketing Agent shall have given notice to the Trustee pursuant to clause (b)(i) above that it has been unable to remarket any of the 2023E Subordinated Bonds or (ii) the Trustee has not received from the Remarketing Agent an amount sufficient to pay the Purchase Price of tendered Bonds, by 12:00 noon on the Purchase Date, then the Trustee shall draw on the applicable Liquidity Facility (or if no Liquidity Facility, request funds from the District) by 12:15 p.m. in an amount equal to the Purchase Price of all such 2023E Subordinated Bonds which have not been successfully remarketed, requesting payment not later than 2:45 p.m. on the Purchase Date. Subject to Section 96.04, if a Liquidity Facility is in effect, the Trustee shall also give the District notice by 2:45 p.m. on the Purchase Date if it does not have funds in the Remarketing Proceeds

Account and the Liquidity Facility Purchase Account sufficient to pay the Purchase Price of 2023E Subordinated Bonds tendered on such Purchase Date. Any draw on a Liquidity Facility to be made on a Substitution Date shall be on the Liquidity Facility being replaced.

**Section 96.04. Source of Funds for Purchase of 2023E Subordinated Bonds.**

By 3:00 p.m. on the date on which a 2023E Subordinated Bond is to be purchased pursuant to this Article XCVI, and except as set forth in Section 96.06(b)(ii), the Trustee shall purchase tendered 2023E Subordinated Bonds from the tendering Holders at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and neither the Trustee nor the Remarketing Agent shall be obligated to provide funds from any other source:

(a) immediately available funds on deposit in the Remarketing Proceeds Account established for the 2023E Subordinated Bonds;

(b) immediately available funds on deposit in the Liquidity Facility Purchase Account established for the 2023E Subordinated Bonds; and

(c) moneys of the District on deposit in the District Purchase Account established for the 2023E Subordinated Bonds.

If no Liquidity Facility is in effect with respect to the 2023E Subordinated Bonds, then the District shall be obligated to deposit amounts into the District Purchase Account established for the 2023E Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023E Subordinated Bonds are insufficient therefor. If a Liquidity Facility is in effect with respect to the 2023E Subordinated Bonds, then the District may, but shall not be obligated to, deposit amounts into the District Purchase Account established for the 2023E Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023E Subordinated Bonds and the Liquidity Facility Purchase Account established for the 2023E Subordinated Bonds are insufficient therefor. If so specified in the Sales Certificate with respect to the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period, the failure of the District to deposit amounts into the District Purchase Account when the District is obligated to deposit such amounts under this Section 96.04 shall constitute an “event of default” under Section 9.01 of the Subordinate Master Resolution.

**Section 96.05. Delivery of Subordinated Bonds.** On each date on which a 2023E Subordinated Bond is to be purchased pursuant to this Article XCVI, such 2023E Subordinated Bond shall be delivered as follows:

(a) 2023E Subordinated Bonds sold by the Remarketing Agent and described in Section 96.04(a) shall be delivered by the Remarketing Agent to the purchasers of such 2023E Subordinated Bonds by 3:00 p.m.;

(b) 2023E Subordinated Bonds purchased by the Trustee with moneys described in Section 96.04(b) shall be registered immediately in the name of the Liquidity

Provider or its nominee (which may be the Securities Depository) or as otherwise specified in writing by the Liquidity Provider and held as specified in writing by the Liquidity Provider, in either case on or before 3:00 p.m.; and

(c) 2023E Subordinated Bonds purchased by the District with moneys described in Section 96.04(c) shall be registered immediately in the name of the District or its nominee on or before 3:00 p.m. 2023E Subordinated Bonds so owned by the District shall continue to be Outstanding under the terms of the Subordinate Master Resolution and be subject to all of the terms and conditions of the Subordinate Master Resolution and shall be subject to remarketing by the Remarketing Agent.

When any Liquidity Provider Bonds are remarketed, the Trustee shall not release 2023E Subordinated Bonds so remarketed to the Remarketing Agent until the Trustee has received confirmation that the Liquidity Facility has been reinstated.

#### **Section 96.06. Book-Entry Tenders.**

(a) Notwithstanding any other provision of this Article XCVI to the contrary, all tenders for purchase during any period in which the 2023E Subordinated Bonds are registered in the name of any Securities Depository or its nominee shall be subject to the terms and conditions set forth in the Representations Letter and to any regulations promulgated by the Securities Depository. During any period that the 2023E Subordinated Bonds are registered in the name of DTC or its nominee, the tender option rights of holders of 2023E Subordinated Bonds may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of 2023E Subordinated Bonds by giving notice of its election to tender 2023E Subordinated Bonds or portions thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender 2023E Subordinated Bonds directly to the Trustee. Procedures under which a Beneficial Owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Director Participant of DTC, to exercise a tender option right in respect of 2023E Subordinated Bonds or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. During any period that the 2023E Subordinated Bonds are registered in the name of DTC or its nominee, delivery of 2023E Subordinated Bonds required to be tendered for purchase shall be effected by the transfer by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Trustee of a beneficial ownership interest in such 2023E Subordinated Bonds.

(b) Notwithstanding anything expressed or implied herein to the contrary, during any period that a Book-Entry System for the 2023E Subordinated Bonds is maintained by the District:

(i) there shall be no requirement of physical delivery to or by the Trustee or the Remarketing Agent of:

(1) any 2023E Subordinated Bonds subject to mandatory or optional purchase as a condition to the payment of the Purchase Price therefor;



(2) any 2023E Subordinated Bonds that have become Liquidity Provider Bonds; or

(3) any remarketing proceeds of such 2023E Subordinated Bonds or Liquidity Provider Bonds; and

(ii) except as provided in (iii) below, neither the Trustee nor the Paying Agent shall have any responsibility for paying the Purchase Price of any tendered 2023E Subordinated Bond or for remitting remarketing proceeds to any Person; and

(iii) the Trustee's sole responsibilities in connection with the purchase and remarketing of a tendered 2023E Subordinated Bond shall be to:

(1) draw upon the Liquidity Facility to pay the Purchase Price of 2023E Subordinated Bond in the manner provided herein and to remit the amount so drawn to or upon the order of the Securities Depository for the benefit of the tendering Beneficial Owners; and

(2) remit any proceeds derived from the remarketing of a Liquidity Provider Bond and any unused proceeds from a drawing on the Liquidity Facility to the Liquidity Provider.

**Section 96.07. No Book-Entry System.** During any period that the 2023E Subordinated Bonds shall not be in a Book-Entry System, the following procedures shall be followed:

(a) 2023E Subordinated Bonds shall be delivered (with all necessary endorsements) at or before 12:00 noon on the Purchase Date at the office of the Paying Agent in New York, New York; provided, however, that payment of the Purchase Price shall be made pursuant to this Section only if the 2023E Subordinated Bond so delivered to the Paying Agent conforms in all respects to the description thereof in the notice described in this Section. Payment of the Purchase Price with respect to purchases under this Section shall be made to the Holders of tendered 2023E Subordinated Bonds by wire transfer in immediately available funds by the Paying Agent by 3:00 p.m. on the Purchase Date.

(b) If a 2023E Subordinated Bond to be purchased pursuant to this Article XCVI is not delivered by the Holder to the Paying Agent by 12:00 noon on the date in which such 2023E Subordinated Bond is to be purchased, the Paying Agent shall hold any funds received for the purchase of those 2023E Subordinated Bonds in trust in a separate account and shall pay such funds to the former Holders of the 2023E Subordinated Bonds upon presentation of the 2023E Subordinated Bonds. Such undelivered 2023E Subordinated Bonds shall cease to accrue interest as to the former Holders on such purchase date and moneys representing the Purchase Price shall be available against delivery of those 2023E Subordinated Bonds at the Principal Office of the Paying Agent; provided, however, that any funds which shall be so held by the Paying Agent and which remain unclaimed by the former Holder of a 2023E Subordinated Bond not presented for purchase for a period of two years after delivery of such funds to the Paying Agent, shall, to the extent permitted by law, upon request in writing by the District and the furnishing of security or indemnity to the Paying Agent's satisfaction, be paid to the District free of any trust or lien and thereafter the former Holder of such 2023E Subordinated Bond shall

look only to the District and then only to the extent of the amounts so received by the District without any interest thereon and the Paying Agent shall have no further responsibility with respect to such moneys or payment of the Purchase Price of such 2023E Subordinated Bonds. The Paying Agent shall authenticate a replacement 2023E Subordinated Bond for any undelivered 2023E Subordinated Bond which may then be remarketed by the Remarketing Agent.

(c) The Paying Agent shall hold all 2023E Subordinated Bonds properly tendered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Holders of the 2023E Subordinated Bonds which shall have so tendered such 2023E Subordinated Bonds until moneys representing the Purchase Price of such 2023E Subordinated Bonds shall have been delivered to or for the account of or to the order of such Holders.

**Section 96.08. Credit Enhancement and Liquidity Facility.**

(a) While a Credit Enhancement is in effect with respect to the 2023E Subordinated Bonds, the Trustee shall, on the Business Day preceding each Interest Payment Date and Principal Payment Date draw on the Credit Enhancement in accordance with the terms thereof so as to receive thereunder with respect to the 2023E Subordinated Bonds secured by the Credit Enhancement by 1:00 p.m. on said Interest Payment Date and Principal Payment Date, an amount, in immediately available funds, equal to the amount of interest and principal payable on such 2023E Subordinated Bonds on such Interest Payment Date and Principal Payment Date. The proceeds of such draws shall be deposited in a separate account in the Subordinated Bond Interest and Principal Fund and shall be applied to pay principal of and interest on such 2023E Subordinated Bonds prior to the application of any other funds held by the Trustee therefor. Amounts held in such account shall be held uninvested and separate and apart from all other funds and accounts. Such accounts shall at all times be Eligible Accounts.

(b) If a Liquidity Facility is in effect with respect to the 2023E Subordinated Bonds, on each date on which a 2023E Subordinated Bond is to be purchased, the Trustee, by demand given by Electronic Means by 12:15 p.m., shall draw on the Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:45 p.m. on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2023E Subordinated Bonds on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The Trustee shall deposit said proceeds in the Liquidity Facility Purchase Account established for the 2023E Subordinated Bonds pursuant to Section 96.09(b) hereof.

(c) Notwithstanding the foregoing paragraphs of this Section, if the Credit Provider and the Liquidity Provider are the same entity, the Trustee shall not draw on the Credit Enhancement with respect to any payments due or made in connection with Liquidity Provider Bonds. In no event shall the Trustee draw on the Credit Enhancement or Liquidity Facility with respect to any payments made or made in connection with 2023E Subordinated Bonds not covered by the Credit Enhancement or Liquidity Facility or 2023E Subordinated Bonds owned by the District.

(d) The District may provide an Alternate Credit Enhancement or Alternate Liquidity Facility on any day on which 2023E Subordinated Bonds to be secured by such Alternate Credit Enhancement or Alternate Liquidity Facility are subject to redemption at par and not later than the fifth (5th) Business Day prior to the Expiration Date of the Credit Enhancement or Liquidity Facility then in effect and supporting such 2023E Subordinated Bonds. The District shall give the Notice Parties written notice of the proposed substitution of an Alternate Credit Enhancement or Alternate Liquidity Facility no less than two (2) Business Days prior to the date on which the Trustee is required to provide notice of the proposed substitution to the Holders of the 2023E Subordinated Bonds. The Trustee shall give notice of such Substitution Date in accordance with Section 96.02. On or before the Substitution Date there shall be delivered to the Trustee (i) the Alternate Credit Enhancement or the Alternate Liquidity Facility in substitution for the Credit Enhancement or Liquidity Facility then in effect, (ii) a Favorable Opinion of Bond Counsel, (iii) a written Opinion of Counsel for the provider of the Alternate Credit Enhancement or Alternate Liquidity Facility, as applicable, to the effect that such Alternate Credit Enhancement or Alternate Liquidity Facility is a valid, legal and binding obligation of the provider thereof, and (iv) unless waived by such entity, written evidence satisfactory to the Credit Provider and the Liquidity Provider of the provision for purchase from the Liquidity Provider of all Liquidity Provider Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due to the Credit Provider and the Liquidity Provider under the applicable Reimbursement Agreement or Liquidity Facility on or before the effective date of such Alternate Credit Enhancement or Alternate Liquidity Facility. Upon the satisfaction of the conditions described in the preceding sentence, the Trustee shall accept such Alternate Credit Enhancement or Alternate Liquidity Facility on the close of business on the Substitution Date and shall surrender the Credit Enhancement or Liquidity Facility then in effect to the provider thereof on the Substitution Date; provided, however, that the Trustee shall not surrender the Credit Enhancement or Liquidity Facility then in effect unless and until the Trustee has received all amounts drawn thereunder. If any condition to the substitution is not satisfied, the substitution shall not occur but the 2023E Subordinated Bonds shall remain subject to mandatory purchase on the proposed Substitution Date.

(e) In the event of an extension of the Expiration Date, the District shall give to the Notice Parties, a written notice of the new Expiration Date at least fifteen (15) days prior to the fifth Business Day prior to the Expiration Date in effect prior to such extension.

(f) The references to Credit Enhancement and Liquidity Facility and Credit Provider and Liquidity Provider shall be disregarded during any period during which a Credit Enhancement or Liquidity Facility, as applicable, is not in effect.

(g) The Trustee shall not have any lien on or security interest in any amounts drawn under a Credit Enhancement or a Liquidity Facility or any amounts on deposit in the account described in Section 96.08(a) above in which proceeds of draws on a Credit Enhancement are deposited or a Liquidity Facility Purchase Account.

(h) If at any time during the term of a Credit Enhancement and/or Liquidity Facility any successor Trustee shall be appointed and qualified under the Subordinate Master Resolution, the resigning or removed Trustee shall request that the Credit Provider and/or Liquidity Provider, as applicable, transfer such Credit Enhancement and/or Liquidity Facility to

the successor Trustee and such resignation or removal of the Trustee shall not be effective until the Credit Enhancement and/or Liquidity Facility has been duly transferred (including the payment of any required transfer fee) to such successor Trustee. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment.

(i) The Trustee may accept, hold and draw upon a Credit Enhancement and/or a Liquidity Facility issued by itself or by any of its corporate affiliates to provide security and a source of payment for the 2023E Subordinated Bonds. The Trustee covenants that it shall at all times maintain adequate controls to manage any potential conflict of interest. Notwithstanding any other provision herein to the contrary, while the Credit Provider and/or Liquidity Provider is the Trustee or an affiliate of the Trustee and such Credit Provider and/or Liquidity Provider has not failed to honor a properly presented draw on the Credit Enhancement and/or Liquidity Facility, the Trustee shall have no discretion with respect to the acceleration of the 2023E Subordinated Bonds and shall do so only upon the written direction of such Credit Provider and/or Liquidity Provider and as otherwise permitted by the Subordinate Master Resolution. The Trustee shall immediately tender its resignation and take prompt steps to have a successor trustee appointed satisfying the requirements of the Subordinate Master Resolution if such affiliated Credit Provider and/or Liquidity Provider shall fail at any time to honor a properly presented and conforming draw on the Credit Enhancement and/or Liquidity Facility.

**Section 96.09. Purchase Fund.** There is hereby established and there shall be maintained with the Trustee a separate fund to be known as the “Purchase Fund.” The Trustee shall further establish separate accounts within the Purchase Fund to be known as the “Liquidity Facility Purchase Account”, the “Remarketing Proceeds Account” and the “District Purchase Account”. At any time at which there is a Liquidity Facility in effect with respect to the 2023E Subordinated Bonds, the Purchase Fund shall be required to be an Eligible Account.

(a) Remarketing Proceeds Account. Upon receipt of the proceeds of a remarketing of a 2023E Subordinated Bond on the date such 2023E Subordinated Bond is to be purchased, the Trustee shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of such 2023E Subordinated Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of a remarketing of Liquidity Provider Bonds, the Trustee shall immediately pay such proceeds to the Liquidity Provider to the extent of any amount owing to the Liquidity Provider.

(b) Liquidity Facility Purchase Account. Upon receipt of the immediately available funds pursuant to Section 96.08(b), the Trustee shall deposit such money in the Liquidity Facility Purchase Account for application to the Purchase Price of the 2023E Subordinated Bonds to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to the Purchase Price of any 2023E Subordinated Bonds shall be immediately returned to the Liquidity Provider.

(c) District Purchase Account. Upon receipt of funds from the District pursuant to Section 96.04, the Trustee shall deposit such funds in the District Purchase Account for application to the Purchase Price of the 2023E Subordinated Bonds. Any amounts deposited

in the District Purchase Account and not needed with respect to the Purchase Price for any 2023E Subordinated Bonds shall be immediately returned to the District.

(d) Investment. Amounts held in the Liquidity Facility Purchase Account, the Remarketing Proceeds Account and the District Purchase Account by the Trustee shall be held uninvested and separate and apart from all other funds and accounts.

**Section 96.10. Inadequate Funds for Tenders.**

(a) If moneys sufficient to pay the Purchase Price of all Tendered Bonds to be purchased on any Purchase Date are not available (1) no purchase shall be consummated of Tendered Bonds on such Purchase Date; (2) all Tendered Bonds shall be returned to the Holders thereof; and (3) all remarketing proceeds with respect to the 2023E Subordinated Bonds shall be returned to the Remarketing Agent for return to the Persons providing such moneys. Thereafter, the Trustee shall continue to take all such action available to it to obtain remarketing proceeds with respect to all Tendered Bonds from the Remarketing Agent and sufficient other funds from the Liquidity Provider, if any, or, subject to Section 96.04, the District to effect a subsequent successful remarketing or purchase of any Tendered Bonds.

(b) All Tendered Bonds (other than Liquidity Provider Bonds and 2023E Subordinated Bonds in the Direct Purchase Index Mode) shall bear interest at the Maximum Rate (or such lower interest rate or rates specified in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period) during the period of time from and including the applicable Purchase Date to (but not including) the date that all such Tendered Bonds are successfully remarketed, redeemed, purchased or paid (the “Delayed Remarketing Period”).

(c) The District may direct the conversion of the Tendered Bonds to a different Interest Rate Mode, Index Rate Period or Term Rate Period during the Delayed Remarketing Period in accordance with Section 94.11 hereof; provided that the District shall not be required to comply with the notice requirements described in Section 94.11.

(d) Subject to the terms of the Remarketing Agreement, if any, the Remarketing Agent shall continue to use its best efforts to remarket all of the Tendered Bonds at rates up to and including the Maximum Rate.

(e) During the Delayed Remarketing Period, the Trustee may, upon direction of the District, apply amounts on deposit in the Redemption Fund to the redemption of such Tendered Bonds, as a whole or in part on any Business Day during the Delayed Remarketing Period, at a redemption price equal to the principal amount thereof, together with interest accrued thereon to the date fixed for redemption, without premium. Notwithstanding Section 95.08 to the contrary, the Trustee shall give five Business Days’ notice of such redemption to the Holders of the 2023E Subordinated Bonds to be redeemed.

(f) During the Delayed Remarketing Period, interest on such Tendered Bonds (other than 2023E Subordinated Bonds in the Direct Purchase Index Mode) shall be paid to the Holders thereof (i) on the first Business Day of each calendar month occurring during the Delayed Remarketing Period and (ii) on the last day of the Delayed Remarketing Period.

## ARTICLE XCVII

### REMARKETING AGENT

#### **Section 97.01. Appointment of Remarketing Agent.**

(a) The Remarketing Agent shall be appointed pursuant to the Remarketing Agreement to remarket 2023E Subordinated Bonds pursuant to this Sixteenth Supplemental Resolution and perform the other duties of the Remarketing Agent described hereunder, and to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the District and the Trustee at all reasonable times. The Remarketing Agent shall act as such under the Remarketing Agreement.

(b) The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Sixteenth Supplemental Resolution as set forth in the Remarketing Agreement. The Remarketing Agent may suspend its remarketing efforts as set forth in the Remarketing Agreement. The Remarketing Agent may be removed at any time, at the direction of the District as set forth in the Remarketing Agreement. Any successor Remarketing Agent shall be selected by the District, and shall be a member of the Financial Industry Regulatory Authority, or its successors, shall have a capitalization of at least fifteen million dollars (\$15,000,000), shall be authorized by law to perform all the duties set forth in this Sixteenth Supplemental Resolution and shall be acceptable to the Credit Provider and Liquidity Provider. The District's delivery to the Trustee of a certificate setting forth the effective date of the appointment of a successor Remarketing Agent and the name of such successor shall be conclusive evidence that (i) if applicable, the predecessor Remarketing Agent has been removed in accordance with the provisions of this Sixteenth Supplemental Resolution and (ii) such successor has been appointed and is qualified to act as Remarketing Agent under the terms of this Sixteenth Supplemental Resolution.

(c) If the Remarketing Agent consolidates with, merges or converts into, or transfers all or substantially all of its assets (or, in the case of a bank, national banking association or trust company, its corporate assets) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Remarketing Agent.

## ARTICLE XCVIII

### MISCELLANEOUS

#### **Section 98.01. 2023E Subordinated Sinking Fund Account; Payments of Interest, Principal and Redemption Price and Defeasance While Credit Enhancement in Effect.**

(a) An account is hereby established within the Subordinated Bonds Interest and Principal Fund to be designated the "Series 2023E Sinking Fund Account." The Treasurer shall deposit in the Series 2023E Sinking Fund Account the mandatory sinking fund account payments in the amounts, on the mandatory sinking fund account payment dates, set forth in

Section 95.05(a) and shall transfer such amounts to the Trustee on such date for application as provided in Section 98.01(b).

(b) On each mandatory sinking fund account payment date established for the 2023E Subordinated Bonds, the Trustee shall apply the mandatory sinking fund account payment required on that date to the redemption (or payment at maturity, as the case may be) of the 2023E Subordinated Bonds for which the mandatory sinking fund account payment has been made, upon the notice and in the manner provided in Section 95.08; provided that, at any time prior to giving such notice of such redemption, the Trustee shall, upon direction of the District, apply such moneys to the purchase of such 2023E Subordinated Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest) as the District may direct, except that the purchase price (excluding accrued interest) shall not exceed the par amount of such 2023E Subordinated Bonds. If, during the twelve-month period immediately preceding said mandatory sinking fund account payment date, the Trustee has purchased 2023E Subordinated Bonds with moneys in the Series 2023E Sinking Fund Account, or, during said period and prior to giving said notice of redemption, the District has deposited 2023E Subordinated Bonds with the Trustee, such 2023E Subordinated Bonds so purchased or deposited or redeemed shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking fund account payment. All 2023E Subordinated Bonds purchased or deposited pursuant to this subsection shall be cancelled and destroyed by the Trustee. All 2023E Subordinated Bonds purchased from the Series 2023E Sinking Fund Account or deposited by the District with the Trustee shall be allocated first to the next succeeding mandatory sinking fund account payment, then to the remaining mandatory sinking fund account payments as selected by the District.

(c) Any moneys remaining in the Series 2023E Sinking Fund Account after all 2023E Subordinated Bonds have been retired shall be returned to the District for any lawful District use.

(d) Notwithstanding the foregoing provisions of this Section 98.01 or Section 5.02 or any other provision of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023E Subordinated Bonds, the principal and Redemption Price of, and interest on, the 2023E Subordinated Bonds shall be paid solely (1) first, from moneys obtained from a drawing on the Credit Enhancement pursuant to Section 96.08(a) and (2) second, in the event moneys are not available pursuant to clause (1) for such purpose for any reason, from Available Moneys and moneys on deposit in the Series 2023E Sinking Fund Account shall be withdrawn by the Trustee and used solely for the purpose of reimbursing the Credit Provider for drawings under the Credit Enhancement. To the extent the Credit Provider honors a drawing under the Credit Enhancement for the purpose of paying the principal or Redemption Price of, or interest on, the 2023E Subordinated Bonds, the District shall receive a credit against its obligation to make deposits into the Subordinated Bonds Interest and Principal Fund and shall not be required to transfer funds to the Trustee in the amount of such drawing.

(e) Notwithstanding the provisions of Article X of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023E Subordinated Bonds, 2023E Subordinated

Bonds shall not be deemed defeased or otherwise paid or satisfied unless such 2023E Subordinated Bonds are defeased with (1) moneys obtained from a drawing on the Credit Enhancement pursuant to Section 96.08(a), (2) Available Moneys or (3) Defeasance Securities acquired with moneys described in (1) or (2). Any Defeasance Securities used to defease 2023E Subordinated Bonds for which Credit Enhancement is in effect shall be not callable by the issuer thereof prior to maturity and shall mature no later than the earlier of (x) the first day upon which such 2023E Subordinated Bonds may be tendered or (y) the first day upon which such 2023E Subordinated Bonds may be redeemed. For purpose of Article X of the Subordinate Master Resolution, interest on the 2023E Subordinated Bonds shall be calculated based on an assumed interest rate equal to the Maximum Rate for periods for which the actual interest rate on the 2023E Subordinated Bonds cannot be determined.

**Section 98.02. Form and Execution of 2023E Subordinated Bonds.** The 2023E Subordinated Bonds, and the certificate of authentication and registration to be executed thereon, shall be in substantially the form set forth as Exhibit A to this Sixteenth Supplemental Resolution.

The 2023E Subordinated Bonds shall be executed in the name and on behalf of the District with the manual or facsimile signature of the President or Vice President of its Board of Directors. The 2023E Subordinated Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who shall have signed any of the 2023E Subordinated Bonds shall cease to be such officer of the District before the 2023E Subordinated Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the District, such 2023E Subordinated Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the District as though those who signed the same had continued to be such officer of the District, and also any 2023E Subordinated Bond may be signed on behalf of the District by such person as at the actual date of execution of such 2023E Subordinated Bond shall be the proper officer of the District although at the nominal date of such 2023E Subordinated Bond any such person shall not have been such officer of the District.

Only such of the 2023E Subordinated Bonds as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A to this Sixteenth Supplemental Resolution, manually executed by an authorized signatory of the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of the Subordinate Master Resolution, and such certificate of the Trustee shall be conclusive evidence that the 2023E Subordinated Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of the Subordinate Master Resolution.

**Section 98.03. Issuance of 2023E Subordinated Bonds.** At any time after the adoption of this Sixteenth Supplemental Resolution, the District may execute and deliver the 2023E Subordinated Bonds in the aggregate principal amount set forth in the Sales Certificate. The Trustee shall authenticate and deliver the 2023E Subordinated Bonds upon written order of the District. The proceeds of the sale of the 2023E Subordinated Bonds shall be deposited and applied as set forth in the Sales Certificate.



**Section 98.04. Use of Depository.** Notwithstanding any provision of the Subordinate Master Resolution or this Sixteenth Supplemental Resolution to the contrary:

(a) The 2023E Subordinated Bonds shall be initially issued as provided in Section 94.02; provided, that 2023E Subordinated Bonds in the Direct Purchase Index Mode shall be issued in definitive certificated form registered in the name of the Holder thereof or as otherwise directed by the Holder. 2023E Subordinated Bonds in any other Interest Rate Mode shall be registered in the name of Cede & Co. or as otherwise directed by the Securities Depository and registered ownership thereof, or any portion thereof, may not thereafter be transferred except:

(i) To any successor of DTC or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (a) (“substitute depository”); provided that any successor of DTC or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) To any substitute depository not objected to by the Trustee, upon (1) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or (2) a determination by the District that DTC or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of DTC or its successor (or substitute depository or its successor) from its functions as depository; provided that no substitute depository which is not objected to by the Trustee can be obtained or (2) a determination by the District that it is in the best interests of the District to remove DTC or its successor (or any substitute depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 98.04(a) hereof, upon receipt of all outstanding 2023E Subordinated Bonds by the Trustee, together with a Certificate of the District to the Trustee, a single new 2023E Subordinated Bond shall be executed and delivered for each maturity of 2023E Subordinated Bonds then outstanding registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Certificate of the District. In the case of any transfer pursuant to clause (iii) of subsection 98.04(a) hereof, upon receipt of all outstanding 2023E Subordinated Bonds by the Trustee together with a Certificate of the District to the Trustee, new 2023E Subordinated Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the District, subject to the limitations of Section 98.04(a) hereof, provided the Trustee shall not be required to deliver such new 2023E Subordinated Bonds within a period less than 60 days from the date of receipt of such a Certificate of the District. Subsequent to any transfer pursuant to clause (iii) of subsection 98.04(a) hereof, the 2023E Subordinated Bonds shall be transferred as provided in Article II of the Subordinate Master Resolution.

(c) In the case of partial redemption or an advance refunding of the 2023E Subordinated Bonds evidencing all or a portion of the principal maturing in a particular year, DTC shall make an appropriate notation on the 2023E Subordinated Bonds indicating the date and amounts of such reduction in principal. The Trustee shall incur no liability for the failure or any error by DTC in making such notation and the records of the Trustee shall be determinative of the outstanding principal amount of 2023E Subordinated Bonds.

(d) The District and the Trustee shall be entitled to treat the person in whose name any 2023E Subordinated Bond is registered as the Bondholder thereof for all purposes of the Subordinate Master Resolution and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the District; and the District and the Trustee shall have no responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with, any Beneficial Owners of the 2023E Subordinated Bonds. Neither the District nor the Trustee will have any responsibility or obligations, legal or otherwise, to the Beneficial Owners or to any other party including DTC or its successor (or substitute depository or its successor), except for the Holder of any 2023E Subordinated Bond.

(e) During any period that the Outstanding 2023E Subordinated Bonds are registered in the name of Cede & Co. or its registered assigns, the District and the Trustee (to the extent funds are provided to it by the District) shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns, in effecting payment of the principal of and redemption premium, if any, and interest on the 2023E Subordinated Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

#### **Section 98.05. Tax Covenants.**

(a) The District shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that interest paid on the 2023E Subordinated Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the District agrees to comply with the provisions of the 2023 Tax Certificate. This covenant shall survive payment in full or defeasance of the 2023E Subordinated Bonds.

(b) Without limiting the generality of the foregoing, the District agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Internal Revenue Code of 1986 (the "Code") and any temporary, proposed or final United States Treasury Regulations as may be applicable to the 2023E Subordinated Bonds from time to time (the "Rebate Requirement"). The District specifically covenants to pay or cause to be paid the Rebate Requirement as provided in the 2023 Tax Certificate to the United States of America from any Net Subordinate Revenues lawfully available to the District. This covenant shall survive payment in full or defeasance of the 2023E Subordinated Bonds. Capitalized terms in this Section not otherwise defined in the Subordinate Master Resolution or this Sixteenth Supplemental Resolution shall have the meanings ascribed to them in the 2023 Tax Certificate.

(c) The District shall establish, maintain and hold in trust a fund separate from any other fund established and maintained hereunder designated the Rebate Fund. The District shall cause to be deposited in the Rebate Fund the Rebate Requirement as provided in the 2023 Tax Certificate. Subject to the provisions of this Section, moneys held in the Rebate Fund are hereby pledged to secure payments to the United States government, and the District and the Bondholders shall have no rights in or claim to such moneys.

(d) In accordance with the 2023 Tax Certificate, the District shall remit part or all of the balance held in the Rebate Fund to the United States government as so directed.

(e) Notwithstanding any provision of this Section, if the District shall obtain an opinion of counsel of recognized national standing in the field of obligations the interest on which is excluded from gross income for purposes of federal income taxation to the effect that any specified action required under this Section is no longer required, or to the effect that some different action is required, to maintain the exclusion from gross income of the interest on the 2023E Subordinated Bonds under Section 103 of the Code, the District may rely conclusively on such opinion in complying with the provisions hereof, and the agreements and covenants hereunder shall be deemed to be modified to that extent without the necessity of an amendment of the Subordinate Master Resolution or this Sixteenth Supplemental Resolution or the consent at any time of the Bondholders.

#### **Section 98.06. Rights of Credit Provider.**

(a) Unless a Credit Provider Failure has occurred and is continuing, the Credit Provider shall be deemed the sole Holder of the 2023E Subordinated Bonds for the purpose of directing the Trustee with respect to the exercise of remedies and the declaration or waiver of Events of Default pursuant to Article IX of the Subordinate Resolution.

(b) Unless a Credit Provider Failure has occurred and is continuing, the Subordinate Master Resolution and this Sixteenth Supplemental Resolution shall not be amended without the written consent of the Credit Provider.

(c) Unless a Credit Provider Failure has occurred and is continuing, the District shall not appoint a successor Remarketing Agent or Trustee without the written consent of the Credit Provider.

#### **Section 98.07. Limitations on Rights of Trustee.**

(a) Proceeds of drawings on the Credit Enhancement and the Liquidity Facility and moneys on deposit in the Purchase Fund shall be used solely for the purposes set forth herein, and the Trustee shall have no lien on such proceeds or money, nor shall such proceeds or moneys be used for, the payment of the fees and/or expenses of the Trustee.

(b) The Trustee shall draw on the Credit Enhancement and the Liquidity Facility at the times and in the manner provided herein and therein and shall have no right to seek or obtain indemnification from the District, the Holders or any other party as a condition of making any such drawing.

**Section 98.08. Terms of 2023E Subordinated Bonds Subject to the Subordinate Master Resolution.**

(a) Except as in this Sixteenth Supplemental Resolution expressly provided, every term and condition contained in the Subordinate Master Resolution shall apply to this Sixteenth Supplemental Resolution and to the 2023E Subordinated Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Sixteenth Supplemental Resolution.

(b) This Sixteenth Supplemental Resolution and all the terms and provisions herein contained shall form part of the Subordinate Master Resolution as fully and with the same effect as if all such terms and provisions had been set forth in the Subordinate Master Resolution. The Subordinate Master Resolution is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

**Section 98.09. Resolution of Trust to Remain in Effect.** Save and except as supplemented by this Sixteenth Supplemental Resolution, the Subordinate Master Resolution shall remain in full force and effect.

**Section 98.10. Notice to Rating Agencies.** (a) The District shall provide or cause to be provided prompt notice of the following events to the Rating Agencies, if any:

(1) the expiration, termination, extension or substitution of any Credit Enhancement or Liquidity Facility relating to the 2023E Subordinated Bonds;

(2) any optional redemption (as a whole or in part), mandatory purchase or acceleration of the 2023E Subordinated Bonds;

(3) any Conversion of the 2023E Subordinated Bonds;

(4) any amendment, modification or supplement of or to the Subordinate Master Resolution or any Credit Enhancement or Liquidity Facility relating to the 2023E Subordinated Bonds (which notice shall be provided or caused to be provided at least ten days prior to the effective date thereof);

(5) any change in the party instructed to draw on any Credit Enhancement or Liquidity Facility relating to the 2023E Subordinated Bonds;

(6) any removal or resignation of the Trustee or the Remarketing Agent; or

(7) any legal defeasance of the 2023E Subordinated Bonds.

(b) The District and the Trustee shall provide or cause to be provided to the Rating Agencies any information reasonably requested by such Rating Agency to maintain its rating, if any, on the 2023E Subordinated Bonds.

**Section 98.11. Continuing Disclosure.** The District hereby covenants and agrees that it will comply with and carry out all of the provisions of any Continuing Disclosure Agreement executed in connection with the 2023E Subordinated Bonds. Notwithstanding any other provision of the Subordinate Master Resolution or this Sixteenth Supplemental Resolution, failure of the District to comply with any such Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee shall, at the written request of any Participating Underwriter (as defined in any such Continuing Disclosure Agreement) or the Holders of at least 25% aggregate principal amount of Outstanding 2023E Subordinated Bonds upon receipt of indemnity satisfactory to the Trustee or any Holder of 2023E Subordinated Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Section. For purposes of this Section, “Beneficial Owner” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023E Subordinated Bonds (including persons holding 2023E Subordinated Bonds through nominees, depositories or other intermediaries).

**Section 98.12. Designation of Credit Provider and Liquidity Provider Reimbursement Obligations as Parity Subordinated Debt; Authorization and Issuance of Revolving Notes.** For the avoidance of doubt, the District hereby designates as Parity Subordinated Debt, secured by the pledge of Net Subordinated Revenues made by the District pursuant to Section 5.01 of the Subordinate Master Resolution on the same basis as the Subordinated Bonds and all other Parity Subordinated Debt as provided in the Subordinate Master Resolution, any and all obligations of the District pursuant to any Credit Enhancement, Liquidity Facility, or Reimbursement Agreement to reimburse each Credit Provider or Liquidity Provider for drawings or other advances on or pursuant to the related Credit Enhancement or Liquidity Facility, including, without limitation, any accrued interest on such drawings or advances, all as set forth in the related Credit Enhancement, Liquidity Facility, or Reimbursement Agreement (collectively, the “Reimbursement Obligations”). In order to more fully evidence the Reimbursement Obligations as Parity Subordinated Debt, the Board hereby authorizes the issuance from time to time of one or more revenue bonds pursuant to the Act in substantially the form of and with the terms stated in the form of the revolving note set forth as Exhibit B to this Sixteenth Supplemental Resolution (each a “Revolving Note”), but the delivery of such Revolving Note shall not be required to secure such Reimbursement Obligations as Parity Subordinated Debt. At the time of each delivery of a Credit Enhancement or Liquidity Facility pursuant to the terms of this Sixteenth Supplemental Resolution, the District may deliver a Revolving Note to the related Credit Provider or Liquidity Provider with a stated amount equal to the Available Amount under such Credit Enhancement or Liquidity Facility and with all blanks and brackets filled in as appropriate and with such other changes as may be necessary or appropriate to conform to the terms of such Credit Enhancement, Liquidity Facility, or Reimbursement Agreement.



**EXHIBIT A**

**FORM OF 2023E SUBORDINATED BOND**

[TO BE CONFORMED TO SALES CERTIFICATE]

No. R-\_\_\_\_\_ \$ \_\_\_\_\_

**SACRAMENTO MUNICIPAL UTILITY DISTRICT  
SUBORDINATED ELECTRIC REVENUE BOND  
2023 SERIES E**

<u>Maturity</u>	<u>Interest Per Annum</u>	<u>Date</u>	<u>CUSIP</u>
August 15, 20__	Variable	_____, 2023	

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Net Subordinated Revenues hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above, the principal sum specified above together with interest thereon from \_\_\_\_\_, 2023, until the principal hereof shall have been paid, at the interest rates per annum determined as set forth below, payable on each Interest Payment Date, as defined below. The principal of and premium, if any, and interest on the 2023E Subordinated Bonds, as defined below, shall be payable in lawful money of the United States of America. Interest on the 2023E Subordinated Bonds shall be paid on each Interest Payment Date, as defined below, by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode, by check mailed on the date on which due to the Holders of the 2023E Subordinated Bonds at the close of business on the Record Date for the 2023E Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023E Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023E Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023E Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023E Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written wire transfer instructions, interest payable on such 2023E Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer instructions provided by the Holder of such 2023E Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023E Subordinated Bonds registered in the name of the Securities Depository

(or its nominee), interest on any such 2023E Subordinated Bond shall be payable only upon surrender of such 2023E Subordinated Bond at the office of the Paying Agent. The principal of and premium, if any, on each 2023E Subordinated Bond shall be payable on the Principal Payment Date of such 2023E Subordinated Bond upon surrender thereof at the office of the Paying Agent, subject to the terms of the Sixteenth Supplemental Resolution, as defined below.

This Bond is one of a duly authorized issue of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds (hereinafter called the “Subordinated Bonds”) designated as Subordinated Electric Revenue Bonds, 2023 Series E (the “2023E Subordinated Bonds”). The Subordinated Bonds are not limited in aggregate principal amount, except as otherwise provided in the Subordinate Resolution hereinafter mentioned, and consist or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Subordinate Resolution provided, all issued and to be issued pursuant to the provisions of the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6, Division 6, of the California Public Utilities Code and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (hereinafter called the “Act”). This 2023E Subordinated Bond is issued pursuant to Resolution No. 85-11-1 of the District, adopted November 7, 1985, providing for the issuance of the Subordinated Bonds, as amended and restated by Resolution No. 01-06-10 of the District, adopted on June 21, 2001 (as amended and restated, the “Subordinate Master Resolution”), and as supplemented and amended by resolutions to date, including by a Sixteenth Supplemental Resolution, adopted May 18, 2023, authorizing the issuance of the 2023E Subordinated Bonds (said resolution as amended, restated and supplemented and the Sixteenth Supplemental Resolution being hereinafter collectively called the “Subordinate Resolution”). Reference is hereby made to the Subordinate Resolution and the Act for a description of the terms on which the Subordinated Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Revenues, as that term is defined in the Subordinate Resolution, and the rights of the registered owners of the Subordinated Bonds; and all the terms of the Subordinate Resolution and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this 2023E Subordinated Bond, and to all the provisions thereof the registered owner of this 2023E Subordinated Bond, by its acceptance hereof, consents and agrees. Additional bonds may be issued on a parity with the Subordinated Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Subordinate Resolution. Capitalized terms used, but not defined herein shall have the meaning given such terms in the Subordinate Resolution.

The Subordinated Bonds and the interest thereon, together with the Parity Subordinated Debt (as defined in the Subordinate Resolution) heretofore or hereafter issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the Net Subordinated Revenues derived by the District from the Electric System (as those terms are defined in the Subordinate Resolution). The District covenants and warrants that for the payment of the Subordinated Bonds, and interest thereon, there have been created and will be maintained by the District special funds into which there shall be deposited from Net Subordinated Revenues available for that purpose sums sufficient to pay the principal of, and interest on, all of the Subordinated Bonds, as such principal and interest become due, and as an irrevocable charge the District has allocated Net Subordinated Revenues to such payment, all in accordance with the Subordinate Resolution.



The Subordinated Bonds, including the 2023E Subordinated Bonds, are expressly subordinated in right of payment to the prior payment in full of all Parity Bonds, as that term is defined in Resolution No. 6649 of the District, adopted on January 7, 1971 (the “Senior Bond Resolution”), including the District’s Electric Revenue Bonds. The holder of this 2023E Subordinated Bond, by acceptance hereof, authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this paragraph and in the Subordinate Resolution and appoints the Trustee its attorney-in-fact for any and all such purposes.

The Subordinated Bonds are special obligations of the District, and are payable, both as to principal and interest, out of the Net Subordinated Revenues pertaining to the Electric System, and not out of any other fund or moneys of the District. No holder of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The term of the 2023E Subordinated Bonds will be divided into consecutive Interest Periods during each of which the 2023E Subordinated Bonds shall bear interest at a Flexible Rate or Flexible Rates, a Daily Rate, a Weekly Rate, a Direct Purchase Index Rate, a Term Rate, an Index Rate or a Fixed Rate or Fixed Rates. The 2023E Subordinated Bonds shall initially bear interest at a Term Rate for an initial Term Rate Period ending on [\_\_\_\_\_, 20\_\_]. The Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023E Subordinated Bonds thereafter may be changed from time to time as provided in the Subordinate Resolution. As hereinafter described, the 2023E Subordinated Bonds are subject to mandatory purchase on any Conversion Date.

Interest on the 2023E Subordinated Bonds is to be paid on: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023E Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023E Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified (a) in the Sales Certificate in connection with the initial issuance of the 2023E Subordinated Bonds or (b) in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility (each an “Interest Payment Date”).

The interest rate on the 2023E Subordinated Bonds shall be determined as follows:

Determination of Flexible Rates and Interest Periods During Flexible Mode. An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and

in Section 94.04 of the Sixteenth Supplemental Resolution, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023E Subordinated Bond the Interest Period which would result in the Remarketing Agent being able to remarket such 2023E Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023E Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023E Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023E Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

Determination of Interest Rates During the Daily Mode and the Weekly Mode. The interest rate for 2023E Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023E Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period.

During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

Term Rates. The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. The Term Rate shall be the minimum rate which, in

the sole judgment of the Remarketing Agent, would result in a sale of such 2023E Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.

Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023E Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023E Subordinated Bonds will have Serial Maturity Dates in accordance with Section 94.11(b)(v) of the Sixteenth Supplemental Resolution). Except as set forth in Section 94.11(b)(v) of the Sixteenth Supplemental Resolution, the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023E Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 94.11(b)(v) of the Sixteenth Supplemental Resolution, the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023E Subordinated Bonds.

Alternate Rates. The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023E Subordinated Bonds (other than 2023E Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023E Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023E Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023E Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023E Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023E Subordinated Bonds.

For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but

excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such 2023E Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

For 2023E Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023E Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

Direct Purchase Index Rates.

(a) During each Direct Purchase Index Rate Period, the 2023E Subordinated Bonds shall, subject to subparagraph (b) below, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023E Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023E Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023E Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023E Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 96.02(b) thereof, but subject to Section 94.04(c) and Section 94.09(b)(ii) and (iii) thereof, from and after any Taxable Date, the interest rate on 2023E Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 96.02(b) thereof, but subject to Section 94.04(c) and Section 94.09(b)(iii) thereof, from and after the effective date of any “Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023E Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023E Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023E Subordinated Bonds exceeds the Maximum Rate for such 2023E Subordinated Bonds, then (A) such 2023E Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023E Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023E Subordinated Bonds as otherwise calculated pursuant to the above provisions and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023E Subordinated Bonds as otherwise calculated pursuant to the above provisions is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023E Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023E Subordinated Bonds are redeemed or tendered for purchase in accordance with the Sixteenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023E Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything in the Subordinate Resolution to the contrary, but subject to Section 94.04(c) and Section 94.09(b)(i), (ii) and (iii) thereof, during any Amortization Period, the 2023E Subordinated Bonds shall bear interest at the Bank Rate.

Index Rates. During each Index Rate Period, the 2023E Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023E Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023E Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023E Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023E Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023E Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023E Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023E Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect

during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023E Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a percentage point with five hundred thousandths of a percentage point rounded upward. All dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023E Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

Optional Tenders of 2023E Subordinated Bonds in the Daily Mode or the Weekly Mode. Subject to Section 96.06, the Beneficial Owners of 2023E Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023E Subordinated Bonds (or portions of those 2023E Subordinated Bonds, provided that no 2023E Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode. The 2023E Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023E Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023E Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023E Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023E Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

The term “Mandatory Purchase Date” means: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Bond, (ii) with respect to 2023E Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023E Subordinated Bonds, (iii) with respect to any 2023E Subordinated Bonds, any Conversion Date applicable to such 2023E Subordinated Bond (except for any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 94.11 not failed to occur (except for any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023E Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023E Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023E Subordinated Bonds, (vi) with respect to any 2023E Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023E Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee’s receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023E Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023E Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023E Subordinated Bonds (other than interest on 2023E Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023E Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee’s receipt of such notice, (viii) with respect to 2023E Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee’s receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023E Subordinated Bonds, (ix) with respect to 2023E Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023E Subordinated Bonds, and (x) with respect to 2023E Subordinated Bonds in the Direct Purchase Index Mode, each Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

Notwithstanding the above paragraphs and anything to the contrary in the Sixteenth Supplemental Resolution, in the event the 2023E Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the

Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023E Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023E Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), in which case the 2023E Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023E Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023E Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023E Subordinated Bonds may be subject to redemption or purchase at the sole option of the District at any time without notice as and to the extent provided in the Continuing Covenant Agreement.

Optional Redemption of Flexible Rate Bonds. 2023E Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023E Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

Optional Redemption of 2023E Subordinated Bonds in the Daily Mode or the Weekly Mode. 2023E Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023E Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Optional Redemption of 2023E Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.

2023E Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023E Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023E Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023E Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

2023E Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023E Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023E Subordinated Bonds so changed to a



Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023E Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

Optional and Mandatory Redemption of 2023E Subordinated Bonds in the Direct Purchase Index Mode.

Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023E Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023E Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

2023E Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Mandatory Sinking Fund Account Redemption of 2023E Subordinated Bonds. The 2023E Subordinated Bonds [maturing on August 15, 20[\_\_\_],] shall be subject to redemption prior to maturity from mandatory sinking fund account payments for such 2023E Subordinated Bonds on August 15 of each year on and after August 15, 20\_\_, at a Redemption Price equal to the principal amount of such 2023E Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The following shall be the mandatory sinking fund account payments for the 2023E Subordinated Bonds [maturing on August 15, 20[\_\_\_]]. Such mandatory sinking fund account payments shall be due on August 15 of the years set forth in the following table in the respective amounts set forth opposite such years in said table:

Year	Amount	Year	Amount
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\* Payment at Maturity

Notice of Redemption. Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023E Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023E Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023E Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023E Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023E Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023E Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023E Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023E Subordinated Bonds to be redeemed. Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption. Notwithstanding the foregoing, notice of redemption shall not be required for 2023E Subordinated Bonds redeemed on a Mandatory Purchase Date.

This 2023E Subordinated Bond is transferable by the registered owner hereof, in person or by the attorney of such owner duly authorized in writing, at the principal office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Subordinate Resolution, and upon surrender and cancellation of this 2023E Subordinated Bond. Upon such transfer a new fully registered Bond or Subordinated Bonds without coupons, of authorized denomination or denominations, for the same aggregate principal amount and maturity will be issued to the transferee in exchange herefor.

The District and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District and the Trustee shall not be affected by any notice to the contrary.

To the extent this 2023E Subordinated Bond constitutes a Liquidity Facility Bond, the terms and conditions of the Sixteenth Supplemental Resolution with respect to Liquidity Facility Bonds shall control this 2023E Subordinated Bond.

The rights and obligations of the District and of the holders and registered owners of the Subordinated Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Subordinate Resolution, provided that no such modification or amendment shall (i) extend the fixed maturity of any Subordinated Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of any premium payable upon the redemption thereof, without the consent of the holder of each Subordinated Bond so affected, or (ii) reduce the percentage of Subordinated Bonds required for the affirmative vote or written consent to an amendment or modification, without the consent of the holders of all the Subordinated Bonds then outstanding, or (iii) without its written consent thereto, modify any of the rights or obligations of the Trustee.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this 2023E Subordinated Bond, and in the issuing of this 2023E Subordinated Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this 2023E Subordinated Bond, together with all other indebtedness of the District pertaining to the Electric System, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Subordinated Bonds permitted to be issued under the Subordinate Resolution.

This 2023E Subordinated Bond shall not be entitled to any benefit under the Subordinate Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee. To the extent of any conflict or inconsistency between any provisions contained in this 2023E Subordinated Bond and the Subordinate Resolution, the provisions of the Subordinate Resolution shall control.

IN WITNESS WHEREOF, SACRAMENTO MUNICIPAL UTILITY DISTRICT has caused this 2023E Subordinated Bond to be executed in its name and on its behalf by the facsimile signature of its President of its Board of Directors and by the facsimile signature of its Treasurer and countersigned by the facsimile signature of its Secretary, and the seal of the District to be reproduced hereon, by facsimile and this 2023E Subordinated Bond to be dated as of the date first written above.

SACRAMENTO MUNICIPAL UTILITY  
DISTRICT

By \_\_\_\_\_  
President of the Board of Directors

By \_\_\_\_\_  
Treasurer of the District

(SEAL)

Countersigned:

\_\_\_\_\_  
Secretary of the District

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Subordinated Bonds described in the within-mentioned Subordinate Resolution and registered on the date set forth below.

Dated: \_\_\_\_\_, 2023

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Officer

## ASSIGNMENT

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ whose taxpayer identification number is \_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

Dated:

Signature Guaranteed by:

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NOTE: Signature must be guaranteed by an eligible guarantor institution

## EXHIBIT B

### FORM OF REVOLVING NOTE

#### SACRAMENTO MUNICIPAL UTILITY DISTRICT SUBORDINATED ELECTRIC REVENUE BONDS 2023 SERIES E

[Delivery Date]

\$ \_\_\_\_\_

The Sacramento Municipal Utility District (the “District”), for value received, hereby promises to pay to the order of [Bank] (the “Bank”), pursuant to that certain \_\_\_\_\_ dated as of \_\_\_\_\_ (the “Agreement”), between the District and the Bank, at the office of the Bank at \_\_\_\_\_, the aggregate unpaid principal amount of all Reimbursement Obligations (as defined in the Agreement) pursuant to the Agreement on the dates and in the amounts provided for in the Agreement.

The District promises to pay interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. All payments of principal and interest shall be made in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts in immediately available funds. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Revolving Note is a Revolving Note as referred to in Section 98.12 of Resolution No. 01-06-10 of the District adopted June 21, 2001, amending and restating Resolution No. 85-11-1 of the District adopted November 7, 1985, as amended and supplemented, including as supplemented by Resolution No. \_\_\_\_\_ of the District adopted May 18, 2023 (the “Sixteenth Supplemental Resolution”) (collectively, the “Subordinate Master Resolution”). This Revolving Note evidences the Reimbursement Obligations owed to the Bank by the District pursuant to the Agreement which have been designated by the District as, and constitute, Parity Subordinated Debt under and as defined in the Subordinate Master Resolution and, as such Parity Subordinated Debt, is entitled to the benefits afforded Parity Subordinated Debt and the holders thereof pursuant to the Subordinate Master Resolution and is secured by a lien on the Net Subordinated Revenues as more fully set forth in and subject to the terms of the Subordinate Master Resolution. As provided in the Agreement, the Reimbursement Obligations and this Revolving Note are subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

The Bank agrees, by acceptance of this Revolving Note, that it will make a notation on the schedule attached hereto of all Reimbursement Obligations evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid, all as provided in the Agreement; *provided, however*, that the failure to make any such notation or any error in such notation shall not limit or otherwise affect the obligation of the District hereunder with respect to payments of principal of and interest on this Revolving Note.

This Revolving Note is authorized by the District to be issued to provide for the payment of the principal of and interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. This Revolving Note is issued under and pursuant to and in full compliance with the Subordinate Master Resolution and the Sixteenth Supplemental Resolution.

It is hereby certified that all conditions, acts and things essential to the validity of this Revolving Note exist, have happened and have been done and that every requirement of law affecting the issuance hereof has been duly complied with.

IN WITNESS WHEREOF, SMUD, has caused this Revolving Note to be executed by an authorized officer of SMUD and this Revolving Note to be dated as of date set forth above.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**SCHEDULE FOR REVOLVING NOTE**  
**DATED \_\_\_\_\_**  
**BY SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**PAYABLE TO [BANK]**

<u>Date</u>	<u>Amount of Drawing or Advance Made</u>	<u>Amount of Principal Paid</u>	<u>Date to Which Interest Paid</u>	<u>Due Date</u>	<u>Notation Made by</u>
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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**SEVENTEENTH SUPPLEMENTAL RESOLUTION**  
**AUTHORIZING THE ISSUANCE OF**  
**SUBORDINATED ELECTRIC REVENUE REFUNDING**  
**BONDS,**  
**2023 SERIES F**

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SACRAMENTO MUNICIPAL UTILITY DISTRICT

RESOLUTION NO. \_\_\_\_\_

SEVENTEENTH SUPPLEMENTAL RESOLUTION

AUTHORIZING THE ISSUANCE OF

SUBORDINATED ELECTRIC REVENUE REFUNDING BONDS,  
2023 SERIES F

Adopted: \_\_\_\_\_

(Supplemental to Resolution No. 85-11-1 adopted November 7, 1985  
as amended and restated by Resolution No. 01-06-10 adopted June 21, 2001)

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RESOLUTION NO. \_\_\_\_\_

Seventeenth Supplemental Resolution  
(Supplemental to Resolution No. 85-11-1 Adopted November 7, 1985,  
as amended and restated by Resolution No. 01-06-10 Adopted June 21, 2001)

Subordinated Electric Revenue Refunding Bonds,  
2023 Series F

WHEREAS, the Board of Directors (the “Board”) of the Sacramento Municipal Utility District (the “District”), on November 7, 1985, adopted its Resolution No. 85-11-1 which was amended and restated by Resolution No. 01-06-10, adopted on June 21, 2001, providing for the issuance of the District’s Subordinated Electric Revenue Bonds (as supplemented and amended, herein called the “Subordinate Master Resolution”);

WHEREAS, the Subordinate Master Resolution provides that the District may issue bonds from time to time as the issuance thereof is authorized by the Board by a supplemental resolution;

WHEREAS, revenue bonds may be issued pursuant to the provisions of the Subordinate Master Resolution and the Act (as defined in the Subordinate Master Resolution); and

WHEREAS, the District has determined to issue its Subordinated Electric Revenue Refunding Bonds, 2023 Series F (the “2023F Subordinated Bonds”), in the aggregate principal amount determined as set forth in Section 100.02 to (i) refund certain series of the District’s Electric Revenue Bonds and/or Subordinated Electric Revenue Bonds (to be identified in the Sales Certificate) (the “Refunded Bonds”), and (ii) pay costs of issuance (to the extent set forth in the Sales Certificate);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Sacramento Municipal Utility District, as follows:

**ARTICLE XCIX**

**AUTHORITY AND DEFINITIONS**

**Section 99.01. Supplemental Resolution.** This Seventeenth Supplemental Resolution is supplemental to the Subordinate Master Resolution.

**Section 99.02. Definitions; Prevailing Time.**

(1) Except as provided by this Seventeenth Supplemental Resolution, all terms which are defined in Section 1.03 of the Subordinate Master Resolution shall have the same meanings in this Seventeenth Supplemental Resolution as such terms are given in said Section 1.03. Unless otherwise provided herein, all references to a particular time are to New York City time. In the event of a conflict between the meanings given in said Section 1.03 and the meanings given in this Section, the meanings given in this Section shall prevail.

(2) In this Seventeenth Supplemental Resolution:

**Alternate Credit Enhancement** shall mean a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof as a replacement or substitute for any Credit Enhancement then in effect and providing for or supporting the payment of the principal of and interest on the 2023F Subordinated Bonds.

**Alternate Liquidity Facility** shall mean a letter of credit, line of credit, standby bond purchase agreement or other liquidity instrument issued in accordance with the terms hereof as a replacement or substitute for any Liquidity Facility then in effect and providing for the payment of the Purchase Price of Tendered Bonds.

**Alternate Rate** shall mean, on any Rate Determination Date, for any Interest Rate Mode other than a Direct Purchase Index Mode, an Index Mode or a Term Rate Mode, a rate per annum equal to 110% of (a) the SIFMA Municipal Swap Index of Municipal Market Data most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Municipal Swap Index is no longer published, the S&P Municipal Bond 7 Day High Grade Rate Index, or if neither the SIFMA Municipal Swap Index nor the S&P Municipal Bond 7 Day High Grade Rate Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Municipal Swap Index just prior to when the Securities and Financial Markets Association stopped publishing the SIFMA Municipal Swap Index. The Trustee shall make the determinations required by this definition, upon notification from the District, if there is no Remarketing Agent, if the Remarketing Agent fails to make any such determination or if the Remarketing Agent has suspended its remarketing efforts in accordance with the Remarketing Agreement.

**Amortization End Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Interest Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Amortization Period** shall mean, in the event the 2023F Subordinated Bonds are not purchased or remarketed on any Bank Purchase Date and the other conditions set forth in Section 102.02(b) are satisfied, the period commencing on the Bank Purchase Date and ending on the Amortization End Date.

**Amortization Principal Payment Date** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Applicable Factor** shall mean, upon any Conversion to a Direct Purchase Index Rate Period, the percentage of the Direct Purchase Index designated in writing by the District as the Applicable Factor for such Direct Purchase Index Rate Period pursuant to Section 100.09(a); provided, however, that the Applicable Factor shall never be less than 65% unless a Favorable

Opinion of Bond Counsel is delivered in connection with the Conversion to such Direct Purchase Index Rate Period.

**Applicable Spread** shall mean, with respect to any Direct Purchase Index Rate Period, the number of basis points determined by the Market Agent on or before the first day of such Direct Purchase Index Rate Period and designated by the District in accordance with Section 100.09(a) (which may include a schedule for the Applicable Spread based upon the ratings assigned to any indebtedness of the District) that, when added to the product of the Direct Purchase Index multiplied by the Applicable Factor, would equal the minimum interest rate per annum that would enable the 2023F Subordinated Bonds to be sold on such date at a price equal to the principal amount thereof (without regard to accrued interest, if any, thereon).

**Authorized Denominations** shall mean (i) with respect to 2023F Subordinated Bonds in a Daily Mode or Weekly Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; (ii) with respect to 2023F Subordinated Bonds in a Flexible Mode, \$100,000 and any integral multiple of \$1,000 in excess thereof; (iii) with respect to 2023F Subordinated Bonds in a Direct Purchase Index Mode or Index Mode, \$100,000 and any integral multiple of \$5,000 in excess thereof; and (iv) with respect to 2023F Subordinated Bonds in a Term Rate Mode or a Fixed Rate Mode, \$5,000 and any integral multiple thereof.

**Available Amount** shall mean the amount available under a Credit Enhancement or Liquidity Facility, as applicable, to pay the principal of and interest on the 2023F Subordinated Bonds or the Purchase Price of the 2023F Subordinated Bonds, as applicable.

**Available Moneys** shall mean (a) if a Credit Enhancement is in effect, (i) moneys drawn under the Credit Enhancement which at all times since their receipt by the Trustee were held in a separate segregated account or accounts or subaccount or subaccounts in which no moneys (other than those drawn under the Credit Enhancement) were at any time held, (ii) moneys which have been paid to the Trustee and have been on deposit with the Trustee for at least 124 days (or, if paid to the Trustee by an “affiliate,” as defined in Bankruptcy Code §101(2), of the District, 366 days) during and prior to which no Event of Bankruptcy shall have occurred, (iii) any other moneys, if, in the opinion of nationally recognized counsel experienced in bankruptcy matters (which opinion shall be acceptable to each Rating Agency then rating the 2023F Subordinated Bonds), the application of such moneys will not constitute a voidable preference in the event of the occurrence of an Event of Bankruptcy, and (iv) investment earnings on any of the moneys described in clauses (i), (ii) and (iii) of this definition; and (b) if a Credit Enhancement is not in effect, “Available Moneys” means any moneys deposited with the Trustee.

**Bank** shall mean, while the 2023F Subordinated Bonds are in a Direct Purchase Index Mode, the Holder of the 2023F Subordinated Bonds, provided that there is a single Holder of all of the 2023F Subordinated Bonds and provided further that the 2023F Subordinated Bonds are not then held under the book-entry system of a Securities Depository. If there is more than one Holder of the 2023F Subordinated Bonds while the 2023F Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Holders owning a majority of the aggregate principal amount of the 2023F Subordinated Bonds then Outstanding. If the 2023F Subordinated Bonds are held under the book-entry system of a Securities Depository during any Direct



Purchase Index Mode, “Bank” means the Beneficial Owner of the 2023F Subordinated Bonds, provided that there is a single Beneficial Owner of all of the 2023F Subordinated Bonds. If there is more than one Beneficial Owner of the 2023F Subordinated Bonds while the 2023F Subordinated Bonds are in a Direct Purchase Index Mode, “Bank” means Beneficial Owners who are the beneficial owners of a majority of the aggregate principal amount of the 2023F Subordinated Bonds then Outstanding.

**Bank Purchase Date** shall mean, during any Direct Purchase Index Rate Period, (i) the date designated by the District pursuant to Section 100.11(a) and (ii) the date which is five Business Days after the date on which the Trustee receives written notice from the Bank under a Continuing Covenant Agreement which (x) advises the Trustee of the occurrence and continuance of an “Event of Default” under and as defined in such Continuing Covenant Agreement and (y) directs the Trustee to cause a mandatory tender for purchase of the 2023F Subordinated Bonds by reason of such “Event of Default.”

**Bank Rate** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Bankruptcy Code** means Title 11 of the United States Code, as amended, and any successor statute.

**Beneficial Owner** shall mean, so long as the 2023F Subordinated Bonds are held in the Book-Entry System, any Person who acquires a beneficial ownership interest in a 2023F Subordinated Bond held by the Securities Depository. If at any time the 2023F Subordinated Bonds are not held in the Book-Entry System, Beneficial Owner shall mean Holder for purposes of the Subordinate Master Resolution.

**Bond Counsel** shall mean any firm of nationally recognized municipal bond attorneys selected by the District and experienced in the issuance of municipal bonds and matters relating to the exclusion of the interest thereon from gross income for federal income tax purposes.

**Book-Entry System** shall mean the system maintained by the Securities Depository.

**Business Day** shall mean any day other than (i) a Saturday or Sunday or (ii) a day on which banks located in (a) the State of California or the State of New York, (b) the city or cities in which the principal office of the Trustee, the Paying Agent, the Remarketing Agent, if any, the Bank, if any, or the Calculation Agent, if any, are located, or (c) the city or cities in which the office of the Credit Provider or Liquidity Provider at which it will pay draws or advances is located, are required or authorized to remain closed, (iii) a day on which The New York Stock Exchange or Federal Reserve Bank is closed or (iv) a day on which the principal offices of the Credit Provider or Liquidity Provider are closed.

**Calculation Agent** shall mean, (i) during any Direct Purchase Index Rate Period, the Bank or any other party appointed by the District with the consent of the Bank so long as the Bank owns a majority in aggregate principal amount of the 2023F Subordinated Bonds and (ii)

during any Index Rate Period, the Trustee or any other party appointed by the District to act as calculation agent for the 2023F Subordinated Bonds.

**Call Protection Date** shall mean (i) with respect to the initial issuance of the 2023F Subordinated Bonds, if applicable, the date specified in the Sales Certificate as the Call Protection Date and (ii) with respect to any conversion to a Term Rate Period or Index Rate Period, the date specified by the District in writing as the Call Protection Date for such Term Rate Period or Index Rate Period on or before the first day of such Term Rate Period or Index Rate Period.

**Code** shall mean the Internal Revenue Code of 1986, as amended.

**Continuing Covenant Agreement** shall mean, during any Direct Purchase Index Rate Period, any agreement between the District and the Bank which may be designated as the Continuing Covenant Agreement.

**Conversion Date** shall mean, with respect to the 2023F Subordinated Bonds in a particular Interest Rate Mode, the day on which another Interest Rate Mode for the 2023F Subordinated Bonds begins, with respect to the 2023F Subordinated Bonds in a Term Rate Mode, the day on which a new Term Rate Period begins, with respect to 2023F Subordinated Bonds in a Direct Purchase Index Mode, the day on which a new Direct Purchase Index Rate Period begins, and with respect to 2023F Subordinated Bonds in an Index Mode, the day on which a new Index Rate Period begins.

**Conversion Notice** shall mean the notice from the District to the other Notice Parties pursuant to Section 100.11(a)(i).

**Credit Enhancement** shall mean, with respect to the 2023F Subordinated Bonds, a letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument issued in accordance with the terms hereof and then in effect and providing for or supporting the payment of the principal of and interest on the 2023F Subordinated Bonds and, upon replacement of any such Credit Enhancement with an Alternate Credit Enhancement, the Alternate Credit Enhancement then in effect.

**Credit Provider** shall mean, with respect to the 2023F Subordinated Bonds, any bank, insurance company, pension fund or other financial institution which provides the Credit Enhancement, if any, then in effect for the 2023F Subordinated Bonds.

**Credit Provider Failure** or **Liquidity Provider Failure** shall mean a failure of a Credit Provider or Liquidity Provider, as applicable, to pay a properly presented and strictly conforming draw or request for advance under a Credit Enhancement or Liquidity Facility, as applicable, or the filing or commencement of any bankruptcy or insolvency proceedings by or against a Credit Provider or Liquidity Provider, as applicable, or a Credit Provider or Liquidity Provider, as applicable, shall declare a moratorium on the payment of its unsecured debt obligations or shall repudiate a Credit Enhancement or Liquidity Facility, as applicable.

**Current Mode** shall have the meaning specified in Section 100.11(a).

**Daily Mode** shall mean the Interest Rate Mode during which the 2023F Subordinated Bonds bear interest at the Daily Rate.

**Daily Rate** shall mean the per annum interest rate on any 2023F Subordinated Bond in the Daily Mode determined pursuant to Section 100.06(a).

**Daily Rate Period** shall mean the period during which a 2023F Subordinated Bond in the Daily Mode shall bear a Daily Rate, which shall be from the Business Day upon which a Daily Rate is set to but not including the next succeeding Business Day.

**Default Rate** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Delayed Remarketing Period** shall have the meaning specified in Section 102.10(b) hereof.

**Determination of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Direct Purchase Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Market Agent.

**Direct Purchase Index Mode** shall mean the Interest Rate Mode during which the 2023F Subordinated Bonds bear interest at a Direct Purchase Index Rate.

**Direct Purchase Index Rate** shall mean the per annum interest rate on any 2023F Subordinated Bond in the Direct Purchase Index Mode determined in accordance with Section 100.09, being the Direct Purchase Index Rate, the Taxable Rate, the Default Rate or the Bank Rate, as applicable.

**Direct Purchase Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**Direct Purchase Index Rate Effective Period** shall mean, during any Direct Purchase Index Rate Period, the period from and including the first day of such Direct Purchase Index Rate Period to but excluding the next succeeding Direct Purchase Index Rate Reset Date and, thereafter, means each Direct Purchase Index Rate Reset Date to but excluding the next succeeding Direct Purchase Index Rate Reset Date.

**Direct Purchase Index Rate Period** shall mean the period from (and including) the date on which the 2023F Subordinated Bonds begin to bear interest in the Direct Purchase Index Mode to (but excluding) the earliest to occur of (i) the immediately succeeding Bank Purchase Date, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of the 2023F Subordinated Bonds have been redeemed or defeased in full and (iv) the Maturity Date.

**Direct Purchase Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Direct Purchase Index, the date or dates specified by the District in writing on or before the first day of any Direct Purchase Index Rate Period for which such Direct Purchase Index will be in effect.

**District Purchase Account** shall mean the account by that name in the Purchase Fund created in Section 102.09.

**Electronic Means** shall mean telecopy, facsimile transmission, e-mail transmission or other similar electronic means of communication providing evidence of transmission, including a telephonic communication confirmed by any other method set forth in this definition.

**Eligible Account** shall mean an account that is either (a) maintained with a federal or state-chartered depository institution or trust company that has a Standard & Poor's short-term debt rating of at least 'A-2' (or, if no short-term debt rating, a long-term debt rating of 'BBB+'); or (b) maintained with the corporate trust department of a federal depository institution or state-chartered depository institution subject to regulations regarding fiduciary funds on deposit similar to Title 12 of the U.S. Code of Federal Regulation Section 9.10(b), which, in either case, has corporate trust powers and is acting in its fiduciary capacity. In the event that a fund or account required to be an "Eligible Account" no longer complies with the requirements listed above, the Trustee shall promptly (and, in any case, within not more than 30 calendar days) move such fund or account to another financial institution such that the Eligible Account requirements stated above will again be satisfied.

**Event of Bankruptcy** shall mean any of the following events:

(i) the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023F Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) shall (a) apply for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee, liquidator or the like of the District (or such other Person) or of all or any substantial part of their respective property, (b) commence a voluntary case under the Bankruptcy Code, or (c) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts; or

(ii) a proceeding or case shall be commenced, without the application or consent of the District (or any other Person obligated, as guarantor or otherwise, to make payments on the 2023F Subordinated Bonds, or an "affiliate" of the District as defined in Bankruptcy Code § 101(2)) in any court of competent jurisdiction, seeking (a) the liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, of the District (or any such other Person), (b) the appointment of a trustee, receiver, custodian, liquidator or the like of the District (or any such other Person) or of all or any substantial part of their respective property, or (c) similar relief in respect of the District (or any such other Person) under any law relating to bankruptcy, insolvency, reorganization, winding-up or composition or adjustment of debts.

**Event of Taxability** shall have the meaning assigned to such term in the Continuing Covenant Agreement.

**Expiration Date** shall mean the stated expiration date of a Credit Enhancement or a Liquidity Facility, as it may be extended from time to time as provided in the Credit Enhancement or the Liquidity Facility, or any earlier date on which a Credit Enhancement or a Liquidity Facility shall terminate at the direction of the District.

**Favorable Opinion of Bond Counsel** shall mean, with respect to any action the occurrence of which requires such an opinion, an Opinion of Counsel, which shall be a Bond Counsel, to the effect that such action is permitted under the Subordinate Master Resolution and will not, in and of itself, cause interest on the 2023F Subordinated Bonds to be included in gross income for purposes of federal income taxation.

**Fitch** shall mean Fitch, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**Fixed Rate** shall mean the per annum interest rate on any 2023F Subordinated Bond in the Fixed Rate Mode determined pursuant to Section 100.07(b).

**Fixed Rate Bond** shall mean a 2023F Subordinated Bond in the Fixed Rate Mode.

**Fixed Rate Mode** shall mean the Interest Rate Mode during which the 2023F Subordinated Bonds bear interest at the Fixed Rate.

**Fixed Rate Period** shall mean the period from the Conversion Date upon which the 2023F Subordinated Bonds were converted to the Fixed Rate Mode to but not including the Maturity Date for the 2023F Subordinated Bonds.

**Flexible Mode** shall mean the Interest Rate Mode during which the 2023F Subordinated Bonds bear interest at Flexible Rates.

**Flexible Rate** shall mean the per annum interest rate on a Flexible Rate Bond determined for such Flexible Rate Bond pursuant to Section 100.05. The Flexible Rate Bonds may bear interest at different Flexible Rates.

**Flexible Rate Bond** shall mean a 2023F Subordinated Bond in the Flexible Mode.

**Flexible Rate Period** shall mean the period of from one to 270 calendar days (which period must end on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date) during which a Flexible Rate Bond shall bear interest at a Flexible Rate, as established by the Remarketing Agent pursuant to Section 100.05. The Flexible Rate Bonds may be in different Flexible Rate Periods.

**Index** shall mean (i) the SIFMA Index or (ii) any other index chosen by the District in consultation with the Remarketing Agent.

**Index Mode** shall mean the Interest Rate Mode during which the 2023F Subordinated Bonds bear interest at an Index Rate.

**Index Rate** shall mean the per annum interest rate on any 2023F Subordinated Bond in the Index Mode determined in accordance with Section 100.10.

**Index Rate Determination Date** shall mean (i) with respect to the SIFMA Index, Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Rate Effective Period** shall mean, during any Index Rate Period, the period from and including the first day of such Index Rate Period through and including the day immediately preceding the next succeeding Index Rate Reset Date and, thereafter, means each Index Rate Reset Date through and including the day immediately preceding the next succeeding Index Rate Reset Date.

**Index Rate Period** shall mean the period from (and including) the date on which the 2023F Subordinated Bonds begin to bear interest in the Index Mode to (but excluding) the earliest to occur of (i) the Business Day immediately succeeding the last day thereof, (ii) the immediately succeeding Conversion Date, (iii) the date on which all of the 2023F Subordinated Bonds have been redeemed or defeased in full and (iv) the final Maturity Date.

**Index Rate Reset Date** shall mean (i) with respect to the SIFMA Index, Thursday of each week and (ii) with respect to any other Index, the date or dates specified by the District in writing on or before the first day of any Index Rate Period for which such Index will be in effect.

**Index Percentage** shall mean, upon any conversion to an Index Rate Period, the percentage of the Index determined by the Remarketing Agent in accordance with Section 100.10; provided, however, that the Index Percentage shall never be less than 65% unless a Favorable Opinion of Bond Counsel is delivered on or before the determination of the Index Percentage by the Remarketing Agent.

**Index Spread** shall mean, upon any conversion to an Index Rate Period, the fixed per annum rate determined by the Remarketing Agent in accordance with Section 100.10.

**Interest Accrual Period** shall mean the period during which a 2023F Subordinated Bond accrues interest payable on the next Interest Payment Date applicable thereto. Each Interest Accrual Period for 2023F Subordinated Bonds shall be the period commencing on (and including) the last Interest Payment Date to which interest has been paid (or, if no interest has been paid in such Interest Rate Mode, commencing on (and including) the date of original authentication and delivery of the 2023F Subordinated Bonds, or the Conversion Date, as the case may be) to (and excluding) the Interest Payment Date on which interest is to be paid. If, at the time of authentication of any 2023F Subordinated Bond, interest is in default or

overdue on the 2023F Subordinated Bonds, such 2023F Subordinated Bond shall bear interest from the date to which interest has previously been paid in full or made available for payment in full on Outstanding 2023F Subordinated Bonds.

**Interest Payment Date** shall mean each date on which interest is to be paid and is: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023F Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023F Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified (a) in the Sales Certificate in connection with the initial issuance of the 2023F Subordinated Bonds or (b) in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility.

**Interest Period** shall mean, for 2023F Subordinated Bonds in a particular Interest Rate Mode, the period of time that such 2023F Subordinated Bonds bear interest at the rate (per annum) which becomes effective at the beginning of such period, and shall include a Flexible Rate Period, a Daily Rate Period, a Weekly Rate Period, a Direct Purchase Index Rate Effective Period, an Index Rate Effective Period, a Term Rate Period and a Fixed Rate Period.

**Interest Rate Mode** shall mean, as the context may require, the Flexible Mode, the Daily Mode, the Weekly Mode, the Direct Purchase Index Mode, the Index Mode, the Term Rate Mode or the Fixed Rate Mode.

**Liquidity Facility** shall mean, with respect to the 2023F Subordinated Bonds, a letter of credit, line of credit, standby bond purchase agreement or other liquidity instrument issued in accordance with the terms hereof and then in effect and providing for the payment of the Purchase Price of Tendered Bonds and upon replacement of such Liquidity Facility with an Alternate Liquidity Facility, the Alternate Liquidity Facility then in effect.

**Liquidity Facility Purchase Account** shall mean the account by that name in the Purchase Fund created by Section 102.09.

**Liquidity Provider** shall mean, with respect to the 2023F Subordinated Bonds, any bank, insurance company, pension fund or other financial institution which provides the Liquidity Facility, if any, then in effect for the 2023F Subordinated Bonds.

**Liquidity Provider Bonds** shall mean any 2023F Subordinated Bonds purchased by the Liquidity Provider with funds drawn on or advanced under the Liquidity Facility or Credit Enhancement, as applicable.

**Long-Term Mode** shall mean a Term Rate Mode or a Fixed Rate Mode.

**Mandatory Purchase Date** shall mean: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such

Flexible Rate Bond, (ii) with respect to 2023F Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023F Subordinated Bonds, (iii) with respect to any 2023F Subordinated Bonds, any Conversion Date applicable to such 2023F Subordinated Bond (except, unless otherwise specified in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 100.11 not failed to occur (except, unless otherwise specified in writing by the District in connection with a conversion of the Interest Rate Mode to the Daily Mode or the Weekly Mode, any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023F Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023F Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023F Subordinated Bonds, (vi) with respect to any 2023F Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023F Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee's receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023F Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023F Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023F Subordinated Bonds (other than interest on 2023F Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023F Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee's receipt of such notice, (viii) with respect to 2023F Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee's receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023F Subordinated Bonds, (ix) with respect to 2023F Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023F Subordinated Bonds, and (x) with respect to 2023F Subordinated Bonds in the Direct Purchase Index Mode, each Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

**Market Agent** shall mean the Person appointed by the District to serve as market agent in connection with a conversion to any Direct Purchase Index Rate Period.



**Maturity Date** shall mean the maturity date or maturity dates of the 2023F Subordinated Bonds set forth in the Sales Certificate, or, if established pursuant to Section 100.11(b)(v) upon a change to the Fixed Rate Mode, the Serial Maturity Dates.

**Maximum Rate** shall mean (i) with respect to Liquidity Provider Bonds and 2023F Subordinated Bonds in the Direct Purchase Index Mode, a rate of interest per annum not exceeding the maximum non-usurious lawful rate of interest permitted by applicable laws and (ii) with respect to all other 2023F Subordinated Bonds, a rate of interest of twelve percent (12%) per annum unless a lesser rate of interest is specified as the Maximum Rate in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period.

**Moody's** shall mean Moody's Investors Service and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term "Moody's" shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent.

**New Mode** shall have the meaning specified in Section 100.11(a).

**Notice Parties** shall mean the Trustee, the Remarketing Agent, if any, the Paying Agent, the Credit Provider, if any, the Liquidity Provider, if any, the Bank, if any, the Market Agent, if any, and the Calculation Agent, if any.

**Opinion of Counsel** shall mean a written legal opinion from a firm of attorneys experienced in the matters to be covered in the opinion.

**Outstanding**, when used with reference to 2023F Subordinated Bonds, shall mean, as of any date, 2023F Subordinated Bonds theretofore or thereupon being authenticated and delivered under this Seventeenth Supplemental Resolution except:

(i) 2023F Subordinated Bonds cancelled by the Trustee, or delivered to the Trustee for cancellation, at or prior to such date;

(ii) 2023F Subordinated Bonds paid or deemed paid pursuant to Section 10.01 of the Subordinate Master Resolution; and

(iii) 2023F Subordinated Bonds in lieu of or in substitution for which other 2023F Subordinated Bonds shall have been authenticated and delivered pursuant to this Seventeenth Supplemental Resolution.

**Person** shall mean an individual, a corporation, a partnership, an association, a joint venture, a trust, an unincorporated organization or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

**Principal Payment Date** shall mean any date upon which the principal amount of 2023F Subordinated Bonds is due under the Subordinate Master Resolution, including any Maturity Date, any Serial Maturity Date, any Redemption Date, or the date the maturity of any

2023F Subordinated Bond is accelerated pursuant to the terms of the Subordinate Master Resolution.

**Purchase Date** shall mean (i) for a 2023F Subordinated Bond in the Daily Mode or the Weekly Mode, any Business Day selected by the Beneficial Owner of said 2023F Subordinated Bond pursuant to the provisions of Section 102.01, and (ii) any Mandatory Purchase Date.

**Purchase Fund** shall mean the fund by that name created in Section 102.09.

**Purchase Price** shall mean an amount equal to the principal amount of any 2023F Subordinated Bonds purchased on any Purchase Date, plus accrued interest to but excluding the Purchase Date; provided, however, that (i) if the Purchase Date for any 2023F Subordinated Bond to be purchased is an Interest Payment Date for such 2023F Subordinated Bond, the Purchase Price thereof shall be the principal amount thereof, and interest on such 2023F Subordinated Bond shall be paid to the Holder of such 2023F Subordinated Bond pursuant to the Subordinate Master Resolution and this Seventeenth Supplemental Resolution and (ii) in the case of a purchase on a Conversion Date or proposed Conversion Date which is preceded by a Term Rate Period or an Index Rate Period and which occurs prior to the day originally established as the last day of such preceding Term Rate Period or Index Rate Period, the Purchase Price of any 2023F Subordinated Bond to be purchased on such Conversion Date shall be the Redemption Price which would have been applicable to such 2023F Subordinated Bond if the preceding Term Rate Period or Index Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

**Rate Determination Date** shall mean any date on which the interest rate on 2023F Subordinated Bonds shall be determined, which, (i) in the case of the Flexible Mode, shall be the first day of an Interest Period; (ii) in the case of the Daily Mode, shall be each Business Day commencing with the first day (which must be a Business Day) the 2023F Subordinated Bonds become subject to the Daily Mode; (iii) in the case of the Weekly Mode, shall be (A) each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday, and (B) not later than the Business Day preceding a Conversion Date, a Substitution Date or a Mandatory Purchase Date specified in clause (viii) of the definition of Mandatory Purchase Date; (iv) in the case of the Term Rate Mode, shall be a Business Day no later than the Business Day next preceding the first day of an Interest Period, as determined by the Remarketing Agent; (v) in the case of the Direct Purchase Index Mode, each Direct Purchase Index Rate Determination Date; (vi) in the case of the Index Mode, each Index Rate Determination Date, and (vii) in the case of the Fixed Rate Mode, shall be a date determined by the Remarketing Agent which shall be at least one Business Day prior to the Conversion Date.

**Rating Agencies** shall mean any of Moody's, S&P or Fitch, which is then providing a rating on the 2023F Subordinated Bonds at the request of the District.

**Record Date** shall mean (i) with respect to 2023F Subordinated Bonds in a Daily Mode, Weekly Mode, Flexible Mode, Direct Purchase Index Mode or Index Mode, the last Business Day before an Interest Payment Date, and (ii) with respect to 2023F Subordinated

Bonds in a Term Rate Mode or Fixed Rate Mode, the fifteenth (15th) day (whether or not a Business Day) next preceding each Interest Payment Date.

**Redemption Date** shall mean the date fixed for redemption of 2023F Subordinated Bonds subject to redemption in any notice of redemption given in accordance with the terms of the Subordinate Master Resolution.

**Redemption Price** shall mean an amount equal to the principal of and premium, if any, and accrued interest, if any, on the 2023F Subordinated Bonds to be paid on the Redemption Date.

**Reimbursement Agreement** shall mean any reimbursement agreement, credit agreement, line of credit agreement, standby purchase agreement or other agreement by and between a Credit Provider or Liquidity Provider, as applicable, and the District.

**Remarketing Agent** shall mean any investment banking firm which may be appointed with respect to the 2023F Subordinated Bonds pursuant to Section 103.01.

**Remarketing Agreement** shall mean any agreement relating to the 2023F Subordinated Bonds by and between the District and a Remarketing Agent, as it may be amended or supplemented from time to time in accordance with its terms.

**Remarketing Proceeds Account** shall mean the account by that name in the Purchase Fund created in Section 102.09.

**Representations Letter** shall mean the Letter of Representations from the District to the Securities Depository in connection with the 2023F Subordinated Bonds in a book-entry system, as supplemented and amended from time to time.

**Sales Certificate** shall mean a written certificate of the District executed by the Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District or the Chief Financial Officer of the District or the designee of any of them prior to the issuance of the 2023F Subordinated Bonds setting forth the principal amount, Maturity Date or Maturity Dates, initial Interest Rate Mode, initial interest rate or rates, and such other matters with respect to the 2023F Subordinated Bonds as such officer may deem appropriate, as provided in Section 100.02.

**S&P** shall mean S&P Global Ratings and its successors and assigns, except that if such shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “S&P” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District after consultation with the Remarketing Agent, if any.

**S&P Municipal Bond 7 Day High Grade Rate Index** shall mean for a Rate Determination Date, the level of the “S&P Municipal Bond 7 Day High Grade Rate Index” (formerly known as the J.J. Kenny Index) maintained by Standard and Poor’s for a one-week maturity as published each day.

**Securities Depository** shall mean The Depository Trust Company, and such other securities depository as the District may designate in a certificate of the District delivered to the Trustee.

**Serial Bonds** shall mean the 2023F Subordinated Bonds maturing on the Serial Maturity Dates, as determined pursuant to Section 100.11(b).

**Serial Maturity Dates** shall mean the dates on which the Serial Bonds mature, as determined pursuant to Section 100.11(b).

**Serial Payments** shall mean the payments to be made in payment of the principal of the Serial Bonds on the Serial Maturity Dates.

**Short-Term Mode** shall mean the Daily Mode, the Weekly Mode or the Flexible Mode.

**SIFMA Index** shall mean, for any applicable Rate Determination Date, the level of the index which is issued weekly and which is compiled from the weekly interest rate resets of tax-exempt variable rate issues included in a database maintained by Municipal Market Data which meet specific criteria established from time to time by SIFMA and issued on Wednesday of each week, or if any Wednesday is not a Business Day, the next succeeding Business Day. If the SIFMA Index is no longer published, then “SIFMA Index” shall mean the S&P Municipal Bond 7 Day High Grade Rate Index. If the S&P Municipal Bond 7 Day High Grade Rate Index is no longer published, then “SIFMA Index” shall mean the prevailing rate determined by the Calculation Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Calculation Agent to be comparable under the circumstances to the criteria used by SIFMA to determine the SIFMA Index immediately prior to the date on which SIFMA ceased publication of the SIFMA Index. Notwithstanding the foregoing, if the SIFMA Index as determined as provided above would be less than 0.0%, then the SIFMA Index will be deemed to be 0.0%.

**Substitution Date** shall mean the date upon which an Alternate Credit Enhancement or Alternate Liquidity Facility is scheduled to be substituted for a Credit Enhancement or Liquidity Facility then in effect.

**Taxable Date** shall mean the date on which interest on the 2023F Subordinated Bonds is first includable in gross income of the Holder (including, without limitation, any previous Holder) thereof as a result of an Event of Taxability as such a date is established pursuant to a Determination of Taxability.

**Taxable Rate** shall mean an interest rate per annum at all times equal to the product of the Direct Purchase Index Rate then in effect multiplied by the Taxable Rate Factor.

**Taxable Rate Factor** shall have the meaning set forth in the applicable Continuing Covenant Agreement.

**Tendered Bonds** shall mean 2023F Subordinated Bonds tendered for purchase by the Holders or Beneficial Owners thereof pursuant to Section 102.01 or subject to mandatory tender for purchase on a Mandatory Purchase Date pursuant to Section 102.02.

**Tender Notice** shall mean a notice delivered by Electronic Means or in writing with respect to a 2023F Subordinated Bond that states (i) the principal amount of such 2023F Subordinated Bond to be purchased pursuant to Section 102.01, (ii) the Purchase Date on which such 2023F Subordinated Bond is to be purchased, (iii) applicable payment instructions with respect to the 2023F Subordinated Bonds being tendered for purchase and (iv) an irrevocable demand for such purchase.

**Tender Notice Deadline** with respect to a 2023F Subordinated Bond shall mean (i) during a Daily Mode with respect to such 2023F Subordinated Bond, 11:00 a.m. on any Business Day and (ii) during a Weekly Mode with respect to such 2023F Subordinated Bond, 5:00 p.m. on a Business Day not less than seven days prior to the applicable Purchase Date.

**Term Rate** shall mean the per annum interest rate for 2023F Subordinated Bonds in the Term Rate Mode determined pursuant to Section 100.07(a).

**Term Rate Mode** shall mean the Interest Rate Mode during which the 2023F Subordinated Bonds bear interest at the Term Rate.

**Term Rate Period** shall mean the period from (and including) the date on which the 2023F Subordinated Bonds begin to bear interest in a Term Rate Mode to (but excluding) the commencement date of the next succeeding Interest Period, including another Term Rate Period.

**2023 Tax Certificate** shall mean the Tax Certificate executed and delivered by the District in connection with the issuance of the 2023F Subordinated Bonds, as amended or supplemented from time to time in accordance with its terms.

**Weekly Mode** shall mean the Interest Rate Mode during which the 2023F Subordinated Bonds bear interest at the Weekly Rate.

**Weekly Rate** shall mean the per annum interest rate on 2023F Subordinated Bonds in the Weekly Mode determined pursuant to Section 100.06(b).

**Weekly Rate Period** shall mean the period during which a 2023F Subordinated Bond in the Weekly Mode shall bear a Weekly Rate, which shall be the period commencing on Thursday of each week to and including Wednesday of the following week, except (i) the first Weekly Rate Period, which shall be from the Conversion Date on which the Interest Rate Mode for the 2023F Subordinated Bonds is changed to a Weekly Mode to and including the Wednesday of the following week, and (ii) the last Weekly Rate Period which shall end on the day preceding the earliest to occur of the Conversion Date on which the Interest Rate Mode for the 2023F Subordinated Bonds is changed from the Weekly Mode to a different Interest Rate Mode, the Maturity Date or the Mandatory Purchase Date for such 2023F Subordinated Bond.

## ARTICLE C

### THE 2023F SUBORDINATED BONDS

#### **Section 100.01. Authorization and Purpose of 2023F Subordinated Bonds.**

The Board hereby authorizes the issuance of a series of revenue bonds of the District in accordance with the Subordinate Master Resolution, designated as “Subordinated Electric Revenue Refunding Bonds, 2023 Series F” (the “2023F Subordinated Bonds”) for the purpose of (i) refunding the Refunded Bonds, and (ii) paying costs of issuance (to the extent set forth in the Sales Certificate).

#### **Section 100.02. Terms, Registration, Denominations, Medium, Method and Place of Payment and Dating of 2023F Subordinated Bonds.**

(a) The 2023F Subordinated Bonds shall be issued in the aggregate principal amount which, together with the aggregate principal amount, if any, of the District’s Electric Revenue Bonds sold and issued pursuant to the District’s Sixty-Sixth Supplemental Resolution adopted on the date hereof, Subordinated Electric Revenue Refunding Bonds, 2023 Series C, Subordinated Electric Revenue Bonds, 2023 Series D, and Subordinated Electric Revenue Bonds, 2023 Series E, shall not exceed \$630,000,000, shall bear interest at such initial rate or rates for such initial Interest Period, shall bear interest in such initial Interest Rate Mode, shall mature and become payable as to principal on such Maturity Date or Maturity Dates (not to exceed forty (40) years from the date of issuance of the 2023F Subordinated Bonds) in the amount and be subject to such mandatory sinking fund account payments on such mandatory sinking fund account payment dates, if any, all as set forth in the Sales Certificate. In addition to the provisions required pursuant to the terms of this Seventeenth Supplemental Resolution to be specified in the Sales Certificate, the Sales Certificate may contain such provisions, in a form approved by the District’s Bond Counsel and the District’s counsel, as the officer executing the Sales Certificate may deem necessary or desirable and consistent with the purpose of this Seventeenth Supplemental Resolution, including provisions (i) adding additional covenants and agreements to be observed by the District, (ii) curing, correcting, amending or supplementing any ambiguous, defective or ineffective provision contained in the Subordinate Master Resolution or this Seventeenth Supplemental Resolution, or (iii) amending or supplementing any provision contained herein to the extent necessary to obtain Credit Enhancement or a Liquidity Facility, to obtain a rating on the 2023F Subordinated Bonds, or to provide for the issuance of the 2023F Subordinated Bonds if, in the judgment of such officer such rating or provision is reasonable. The Chief Executive Officer and General Manager of the District, any Member of the Executive Committee of the District, the Treasurer of the District, the Secretary of the District or the Chief Financial Officer of the District, or the designee of any of them, is hereby authorized and instructed to execute and deliver the Sales Certificate and, upon execution and delivery thereof, the Sales Certificate shall be incorporated herein and in the Subordinate Master Resolution by reference. The execution and delivery of the Sales Certificate by any such officer shall be conclusive evidence that, where any approval, determination of necessity, desirability or consistency with the purpose of this Seventeenth Supplemental Resolution, or judgment or determination of reasonableness is required to be given or made, such judgment or determination has been given or made.

(b) The 2023F Subordinated Bonds shall be issued in the form of fully registered 2023F Subordinated Bonds in Authorized Denominations and no provision of the Subordinate Master Resolution relating to coupon bonds or coupons shall apply to the 2023F Subordinated Bonds. 2023F Subordinated Bonds (other than 2023F Subordinated Bonds in the Direct Purchase Index Mode) shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023F Subordinated Bonds and shall be registered as set forth in Section 104.04 of this Seventeenth Supplemental Resolution. 2023F Subordinated Bonds in the Direct Purchase Index Mode shall be issued in the form of one single certificated bond in the aggregate principal amount of the 2023F Subordinated Bonds and shall be registered in the name of the Holder thereof or as otherwise directed by such Holder. Registered ownership of the 2023F Subordinated Bonds, or any portion thereof, may not thereafter be transferred except as set forth in the Continuing Covenant Agreement (during any time that the 2023F Subordinated Bonds are in the Direct Purchase Index Mode), Section 2.05 of the Subordinate Master Resolution and Section 104.04 of this Seventeenth Supplemental Resolution. Each 2023F Subordinated Bond in the Direct Purchase Index Mode shall contain a legend indicating that the transferability of such 2023F Subordinated Bond is subject to the restrictions set forth in this Seventeenth Supplemental Resolution.

(c) The 2023F Subordinated Bonds shall be dated as of the date of their initial issuance and shall be numbered in such manner as is determined by the Trustee.

(d) The principal of and premium, if any, and interest on the 2023F Subordinated Bonds shall be payable in lawful money of the United States of America.

(e) Subject to Section 104.04 of this Seventeenth Supplemental Resolution, interest on the 2023F Subordinated Bonds shall be paid on each Interest Payment Date by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode by check mailed on the date on which due to the Holders of the 2023F Subordinated Bonds at the close of business on the Record Date for the 2023F Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023F Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023F Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023F Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023F Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written wire transfer instructions, interest payable on such 2023F Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer instructions provided by the Holder of such 2023F Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023F Subordinated Bonds registered in the name of the Securities Depository (or its nominee), interest on any such 2023F Subordinated Bond shall be payable only upon surrender of such 2023F Subordinated Bond at the office of the Paying Agent.

(f) Subject to Section 104.04 of this Seventeenth Supplemental Resolution, the principal of and premium, if any, on each 2023F Subordinated Bond shall be payable on the Principal Payment Date of such 2023F Subordinated Bond upon surrender thereof at the office of

the Paying Agent; provided that the Paying Agent may agree with the Holder of any 2023F Subordinated Bond (and hereby does so agree with the Bank during any Direct Purchase Index Rate Period) that such Holder may, in lieu of surrendering the same for a new 2023F Subordinated Bond, endorse on such 2023F Subordinated Bond a record of partial payment of the principal of such 2023F Subordinated Bond in the form set forth below (which shall be typed or printed on such 2023F Subordinated Bond):

PAYMENTS ON ACCOUNT OF PRINCIPAL

Payment Date	Principal Amount Paid	Balance of Principal Amount Unpaid	Signature of Holder

The Paying Agent shall maintain a record of each such partial payment made in accordance with the foregoing agreement and such record of the Paying Agent shall be conclusive. Such partial payment shall be valid upon payment of the amount thereof to the Holder of such 2023F Subordinated Bond, and the District, the Trustee and the Paying Agent shall be fully released and discharged from all liability to the extent of such payment regardless of whether such endorsement shall or shall not have been made upon such 2023F Subordinated Bond by the Holder thereof and regardless of any error or omission in such endorsement.

(g) Except as may be specifically set forth herein, the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District may treat the Holder of a 2023F Subordinated Bond as the absolute owner thereof for all purposes, whether or not such 2023F Subordinated Bond shall be overdue, and the Paying Agent, the Trustee, the Remarketing Agent, if any, and the District shall not be affected by any knowledge or notice to the contrary. Payment of the principal of and premium, if any, and interest on each 2023F Subordinated Bond shall be made only to such Holder, which payments shall be valid and effectual to satisfy and discharge the liability of such 2023F Subordinated Bond to the extent of the sum or sums so paid. All 2023F Subordinated Bonds paid at maturity or on earlier redemption pursuant to the provisions of this Section shall be cancelled by the Paying Agent.

(h) Each 2023F Subordinated Bond shall bear interest at the applicable rate or rates during each applicable Interest Accrual Period until the entire Principal Amount thereof has been paid.

(i) The Sales Certificate shall designate the series, amounts and maturity or sinking fund payment dates of the Refunded Bonds.

**Section 100.03. Payment of Principal and Interest of 2023F Subordinated Bonds; Acceptance of Terms and Conditions.**

(a) The interest on each 2023F Subordinated Bond shall become due and payable on the Interest Payment Dates with respect to such 2023F Subordinated Bond to and



including the Maturity Date of such 2023F Subordinated Bond, and on each Redemption Date and on the date of any acceleration prior thereto. The principal of each 2023F Subordinated Bond shall become due and payable on the Principal Payment Date of such 2023F Subordinated Bond.

(b) By the acceptance of its 2023F Subordinated Bond, the Holder thereof shall be deemed to have agreed to all the terms and provisions of such 2023F Subordinated Bond as specified in such 2023F Subordinated Bond and the Subordinate Master Resolution, including without limitation the applicable Interest Periods, interest rates (including any applicable Alternate Rate), Purchase Dates, Mandatory Purchase Dates, Purchase Prices, mandatory and optional purchase and redemption provisions applicable to such 2023F Subordinated Bond, method and timing of purchase, redemption and payment. Such Holder further agrees that if, on any date upon which its 2023F Subordinated Bond is to be purchased, redeemed or paid at maturity or earlier due date, funds are on deposit with the Paying Agent or the Trustee to pay the full amount due on such 2023F Subordinated Bond, then such Holder shall have no rights under the Subordinate Master Resolution other than to receive such full amount due with respect to such 2023F Subordinated Bond and that interest on such 2023F Subordinated Bond shall cease to accrue as of such date.

(c) Notwithstanding anything herein to the contrary, while any 2023F Subordinated Bonds are Liquidity Provider Bonds, such Liquidity Provider Bonds shall bear interest and be payable at the times, in the manner and in the amounts required under the Liquidity Facility supporting such 2023F Subordinated Bonds or the Reimbursement Agreement related thereto.

**Section 100.04. Calculation and Payment of Interest; Change in Interest Rate Mode; Maximum Rate.**

(a) When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is the SIFMA Index, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Direct Purchase Index Mode or Index Mode is in effect and the Direct Purchase Index or the Index, as applicable, is an index other than the SIFMA Index, interest shall be calculated on the basis specified in writing by the District on or before the first day of the applicable Direct Purchase Index Rate Period or Index Rate Period. When a Short-Term Mode is in effect, interest shall be calculated on the basis of a 365/366-day year for the actual number of days elapsed. When a Term Rate Mode or a Fixed Rate Mode is in effect, interest shall be calculated on the basis of a 360-day year comprised of twelve 30-day months. Payment of unpaid interest accrued on each 2023F Subordinated Bond during each Interest Accrual Period shall be made on the applicable Interest Payment Date for such 2023F Subordinated Bond to the Holder of record of such 2023F Subordinated Bond on the applicable Record Date.

(b) The 2023F Subordinated Bonds in any Interest Rate Mode other than a Fixed Rate Mode may be changed to any other Interest Rate Mode at the times and in the manner hereinafter provided. Subsequent to such change in Interest Rate Mode (other than a change to a Fixed Rate Mode), the 2023F Subordinated Bonds may again be changed to a different Interest Rate Mode at the times and in the manner hereinafter provided. A Fixed Rate Mode shall be in

effect until the Maturity Date, or acceleration thereof prior to the Maturity Date, and the 2023F Subordinated Bonds in a Fixed Rate Mode may not be changed to any other Interest Rate Mode.

(c) Subject to Section 100.09(b)(iii), no 2023F Subordinated Bonds shall bear interest at an interest rate higher than the Maximum Rate with respect thereto.

(d) In the absence of manifest error, the determination of interest rates (including any determination of rates in connection with a New Mode) and Interest Periods by the Remarketing Agent or the Calculation Agent, as applicable, as provided herein, and the record of interest rates maintained by the Paying Agent shall be conclusive and binding upon the Remarketing Agent, the Paying Agent, the Trustee, the District, the Holders and the Beneficial Owners.

**Section 100.05. Determination of Flexible Rates and Interest Periods During Flexible Mode.** An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and in Section 100.04 hereof, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023F Subordinated Bond the Interest Period which would result in the Remarketing Agent being able to remarket such 2023F Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023F Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023F Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023F Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

**Section 100.06. Determination of Interest Rates During the Daily Mode and the Weekly Mode.** The interest rate for 2023F Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on

and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023F Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period. In making any such determination the Remarketing Agent shall not take into account the per annum rate of interest that would be applicable to Liquidity Provider Bonds pursuant to the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

(a) During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

(b) During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

#### **Section 100.07. Determination of Term Rates and Fixed Rates.**

(a) Term Rates. The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. Except as set forth in Section 100.11(a)(ii), the Term Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such 2023F Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected, and the Call Protection Date specified, by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.

(b) Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023F Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023F Subordinated Bonds will have Serial Maturity Dates in accordance with Section 100.11(b)(v)). Except as set forth in Section 100.11(b)(v), the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023F Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 100.11(b)(v), the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023F Subordinated Bonds.

**Section 100.08. Alternate Rates.** The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023F Subordinated Bonds (other than 2023F Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023F Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023F Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023F Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023F Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023F Subordinated Bonds.

(a) For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such 2023F Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

(b) For 2023F Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023F Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

**Section 100.09. Determination of Direct Purchase Index Rates.**

(a) During each Direct Purchase Index Rate Period, the 2023F Subordinated Bonds shall, subject to subsection (b) of this Section 100.09, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023F Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023F Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023F Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023F Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Master Resolution or this Seventeenth Supplemental Resolution to the contrary, including, without limitation, Section 102.02(b), but subject to Section 100.04(c) and Section 100.09(b)(ii) and (iii), from and after any Taxable Date, the interest rate on 2023F Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Master Resolution or this Seventeenth Supplemental Resolution to the contrary, including, without limitation, Section 102.02(b), but subject to Section 100.04(c) and Section 100.09(b)(iii), from and after the effective date of any “Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023F Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023F

Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Master Resolution or this Seventeenth Supplemental Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023F Subordinated Bonds exceeds the Maximum Rate for such 2023F Subordinated Bonds, then (A) such 2023F Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023F Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023F Subordinated Bonds as calculated pursuant to this Section 100.09 and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023F Subordinated Bonds as calculated pursuant to this Section 100.09 is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023F Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023F Subordinated Bonds are redeemed or tendered for purchase in accordance with this Seventeenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023F Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything herein to the contrary, but subject to Section 100.04(c) and Section 100.09(b)(i), (ii) and (iii) during any Amortization Period, the 2023F Subordinated Bonds shall bear interest at the Bank Rate.

**Section 100.10. Determination of Index Rates**. During each Index Rate Period, the 2023F Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023F Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023F Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023F Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023F Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023F Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023F Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023F Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023F Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a

percentage point with five hundred thousandths of a percentage point rounded upward. All dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023F Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

**Section 100.11. Changes in Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period.** Subject to the provisions of this Section, the District may effect a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period with respect to the 2023F Subordinated Bonds by following the procedures set forth in this Section.

(a) Changes to Interest Rate Modes Other Than Fixed Rate Mode; Changes in Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period. The Interest Rate Mode for the 2023F Subordinated Bonds (other than the 2023F Subordinated Bonds in the Fixed Rate Mode) may be changed from one Interest Rate Mode to another Interest Rate Mode (other than the Fixed Rate Mode) and the Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023F Subordinated Bonds may be changed, as follows:

(i) Notice to Notice Parties; Notice to Holders. No later than a Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023F Subordinated Bonds preceding the proposed Conversion Date, the District shall give written notice to the Notice Parties of its intention to effect a change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period from the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period then prevailing (for purposes of this Section, the “Current Mode”) to another Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period (for purposes of this Section, the “New Mode”) specified in such written notice. Notice of the proposed change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be given by the Trustee by mail to the Holders of the 2023F Subordinated Bonds not less than the 10th day next preceding the proposed Conversion Date, provided that no notice need be given for a Conversion Date occurring on the Business Day following the last day of a Flexible Rate Period, an Index Rate Period or a Term Rate Period or on a Substitution Date. Such notice shall state: (1) the proposed Conversion Date; (2) that the 2023F Subordinated Bonds will be subject to mandatory tender for purchase on the proposed Conversion Date (regardless of whether all of the conditions to the change in the Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period are satisfied); and (3) the Purchase Price of the 2023F Subordinated Bonds and the place of delivery for purchase of the 2023F Subordinated Bonds; provided that, if the proposed change is from one Direct Purchase Index Rate Period to a new Direct Purchase Index Rate Period and any Holder of the

2023F Subordinated Bonds shall continue to be a Holder of 2023F Subordinated Bonds in the new Direct Purchase Index Rate Period, the Holder may elect to retain its 2023F Subordinated Bonds by filing with the District and the Trustee not less than five days prior to the proposed Conversion Date a written notice identifying such 2023F Subordinated Bonds and the principal amount it wishes to retain.

(ii) Determination of Interest Rates. The New Mode shall commence on the Conversion Date and the interest rate(s) (together, in the case of a change to the Flexible Mode, with the Interest Period(s)) shall be determined in the manner provided in Sections 100.05, 100.06, 100.07, 100.09 and 100.10, as applicable; provided, however, that, in the case of a change to the Term Rate Mode, or from one Term Rate Period to a new Term Rate Period, if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to sell some or all of the 2023F Subordinated Bonds at a premium or a discount to par.

(iii) Conditions Precedent.

(1) The Conversion Date shall be:

(A) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023F Subordinated Bonds end;

(B) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(C) in the case of a change from the Term Rate Mode to another Interest Rate Mode, or from one Term Rate Period to a new Term Rate Period, any day on which the applicable 2023F Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(D) in the case of a change from the Index Mode to another Interest Rate Mode, or from one Index Rate Period to a new Index Rate Period, any day on which the applicable 2023F Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and

(E) in the case of a change from the Direct Purchase Index Mode or from one Direct Purchase Index Rate Period to another Direct Purchase Index Rate Period, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(2) If the 2023F Subordinated Bonds to be converted are Flexible Rate Bonds, no Interest Period with respect to such 2023F Subordinated Bonds set after delivery by the



District to the Remarketing Agent of the notice of the intention to effect a change in Interest Rate Mode shall extend beyond the proposed Conversion Date.

(3) The following items shall have been delivered to the District and the Trustee, on or prior to the Conversion Date:

(A) a Favorable Opinion of Bond Counsel dated the Conversion Date; and

(B) if there is to be a Liquidity Facility or an Alternate Liquidity Facility or Credit Enhancement or an Alternate Credit Enhancement delivered in connection with such change, the items required by Section 102.08(d).

(4) If no Liquidity Facility is in effect to provide funds for the purchase of 2023F Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 102.04 shall not be less than the amount required to purchase all of the 2023F Subordinated Bonds on the Conversion Date at the Purchase Price.

(b) Change to Fixed Rate Mode. At the option of the District, the Interest Rate Mode for the 2023F Subordinated Bonds may be changed to the Fixed Rate Mode as provided in this Section 100.11(b). On any Business Day which is at least two Business Days prior to the date on which the Trustee is required to notify the Holders of the 2023F Subordinated Bonds before the proposed Conversion Date pursuant to clause (ii) of this subsection (b), the District shall give written notice to the Notice Parties stating that the Interest Rate Mode will be changed to the Fixed Rate Mode and setting forth the proposed Conversion Date. In addition, such notice shall state whether some or all of the 2023F Subordinated Bonds to be converted shall be converted to Serial Bonds and, if so, the applicable Serial Maturity Dates and Serial Payments, all as determined pursuant to clause (v) of this subsection (b). Any such change in Interest Rate Mode shall be made as follows:

(i) Conversion Date. The Conversion Date shall be:

(1) in the case of a change from the Flexible Mode, the Business Day next succeeding the date on which all Flexible Rate Periods determined for the 2023F Subordinated Bonds end;

(2) in the case of a change from the Daily Mode or the Weekly Mode, any Business Day;

(3) in the case of a change from the Term Rate Mode, any day on which the applicable 2023F Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Term Rate Period;

(4) in the case of a change from the Index Mode, any day on which the applicable 2023F Subordinated Bonds would be subject to optional redemption if the conversion did not occur or the day immediately following the last day of the current Index Rate Period; and

(5) in the case of a change from the Direct Purchase Index Mode, any Business Day, subject to any limitations, conditions or requirements set forth in the Continuing Covenant Agreement.

(ii) Notice to Holders. Not less than the 10th day next preceding the Conversion Date, the Trustee shall mail, in the name of the District, a notice of such proposed change to the Holders of the 2023F Subordinated Bonds stating that the Interest Rate Mode will be changed to the Fixed Rate Mode, the proposed Conversion Date and that such Holder is required to tender such Holder's 2023F Subordinated Bonds for purchase on such proposed Conversion Date.

(iii) General Provisions Applying to Change to Fixed Rate Mode. The change to the Fixed Rate Mode shall not occur unless the following items shall have been delivered to the District and the Trustee and the following conditions shall have been satisfied, in each case on or prior to the Conversion Date:

(1) a Favorable Opinion of Bond Counsel dated the Conversion Date;

(2) if there is to be Credit Enhancement or Alternate Credit Enhancement delivered in connection with such change, the items required by Section 102.08(d) in connection with the delivery of Credit Enhancement or Alternate Credit Enhancement; and

(3) if no Liquidity Facility is in effect to provide funds for the purchase of 2023F Subordinated Bonds on the Conversion Date, the remarketing proceeds available on the Conversion Date and the amounts required to be paid by the District pursuant to Section 102.04 shall not be less than the amount required to purchase all of the 2023F Subordinated Bonds on the Conversion Date at the Purchase Price.

(iv) Determination of Interest Rate. The Fixed Rate (or Fixed Rates in the case of Serial Bonds) for the 2023F Subordinated Bonds to be converted to the Fixed Rate Mode shall be established by the Remarketing Agent on the Rate Determination Date applicable thereto pursuant to the provisions of Section 100.07(b). Such Fixed Rate or Fixed Rates shall remain in effect until the Maturity Date or Serial Maturity Dates, as applicable, of such 2023F Subordinated Bonds. Such determination shall be conclusive and binding upon the District, the Trustee, the Credit Provider, if any, and the Holders of the 2023F Subordinated Bonds to which such rate will be applicable. Not later than 5:00 p.m. on the date of determination of the Fixed Rate, the Remarketing Agent shall notify the District, the Trustee and the Credit Provider, if any, of such rate by telephone.

(v) Serialization and Sinking Fund Account Redemption; Price. Upon conversion of the 2023F Subordinated Bonds to the Fixed Rate Mode, the 2023F Subordinated Bonds shall be remarketed at par, shall mature on the same Maturity Date and be subject to the same mandatory sinking fund account redemption, if any, and optional redemption provisions as set forth in this Seventeenth Supplemental Resolution prior to the Conversion; provided, however, that if the District shall deliver to the Trustee a Favorable Opinion of Bond Counsel, the District may elect to (1) have some of the 2023F Subordinated Bonds be Serial Bonds and some subject to mandatory sinking fund

account redemption even if such 2023F Subordinated Bonds were not Serial Bonds or subject to mandatory sinking fund account redemption prior to such change, (2) change the optional redemption dates and/or premiums set forth in Section 101.03(b), and/or (3) sell some or all of the 2023F Subordinated Bonds at a premium or a discount to par.

(c) Failure to Satisfy Conditions Precedent to an Interest Rate Mode Change.

In the event the conditions described above in subsections (a) or (b), as applicable, of this Section have not been satisfied by the applicable Conversion Date, then the New Mode shall not take effect (although any mandatory tender shall be made on such date if notice has been sent to the Holders stating that such 2023F Subordinated Bonds would be subject to mandatory purchase on such date). If the failed change in Interest Rate Mode was from the Flexible Mode, such 2023F Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the failed Conversion Date in accordance with Section 100.05. If the failed change in Interest Rate Mode was from the Daily Mode, such 2023F Subordinated Bonds shall remain in the Daily Mode, and if the failed change in Interest Rate Mode was from the Weekly Mode, such 2023F Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in accordance with the applicable provisions of Section 100.06 on and as of the failed Conversion Date. If the failed change in Interest Rate Mode was from the Term Rate Mode, then such 2023F Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 100.07. If the failed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023F Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 100.09. If the failed change in Interest Rate Mode was from the Index Mode, then the 2023F Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 100.10.

(d) Rescission of Election. Notwithstanding anything herein to the contrary, the District may rescind any election by it to change an Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period as described above prior to the Conversion Date by giving written notice thereof to the Notice Parties prior to 10:00 a.m. on the Business Day preceding such Conversion Date. If the Trustee receives notice of such rescission prior to the time the Trustee has given notice to the Holders of the 2023F Subordinated Bonds, then such notice of change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period shall be of no force and effect. If the Trustee receives notice from the District of rescission of a change in Interest Rate Mode, Term Rate Period, Index Rate Period or Direct Purchase Index Rate Period after the Trustee has given notice thereof to the Holders of the 2023F Subordinated Bonds, then, if the proposed Conversion Date would have been a Mandatory Purchase Date, such date shall continue to be a Mandatory Purchase Date and the Interest Rate Mode for the 2023F Subordinated Bonds shall be determined as set forth in the remainder of this paragraph. If the proposed change in Interest Rate Mode was from the Flexible Mode, such 2023F Subordinated Bonds shall remain in the Flexible Mode with interest rates and Interest Periods to be established by the Remarketing Agent on the proposed Conversion Date in accordance with Section 100.05. If the proposed change in Interest Rate Mode was from the Daily Mode, such 2023F Subordinated Bonds shall remain in the Daily Mode, and if the proposed change in Interest Rate Mode was from the Weekly Mode, such 2023F Subordinated Bonds shall remain in the Weekly Mode, in each case with interest rates established in

accordance with the applicable provisions of Section 100.06 on and as of the proposed Conversion Date. If the proposed change in Interest Rate Mode was from the Term Rate Mode, then such 2023F Subordinated Bonds shall remain in the Term Rate Mode with interest rates established in accordance with the applicable provisions of Section 100.07. If the proposed change in Interest Rate Mode was from the Direct Purchase Index Mode, then the 2023F Subordinated Bonds shall remain in the Direct Purchase Index Mode, with interest rates established in accordance with the applicable provisions of Section 100.09. If the proposed change in Interest Rate Mode was from the Index Mode, then the 2023F Subordinated Bonds shall remain in the Index Mode, with interest rates established in accordance with the applicable provisions of Section 100.10.

## **ARTICLE CI**

### **REDEMPTION OF 2023F SUBORDINATED BONDS**

**Section 101.01. Optional Redemption of Flexible Rate Bonds.** 2023F Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023F Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

**Section 101.02. Optional Redemption of 2023F Subordinated Bonds in the Daily Mode and the Weekly Mode.** 2023F Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023F Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 101.03. Optional Redemption of 2023F Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.**

(a) 2023F Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023F Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023F Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023F Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(b) 2023F Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023F Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

(c) The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023F Subordinated Bonds so changed to a Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

(d) Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023F Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

**Section 101.04. Optional and Mandatory Redemption of 2023F Subordinated Bonds in the Direct Purchase Index Mode.**

(a) Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023F Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023F Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

(b) 2023F Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

**Section 101.05. Mandatory Sinking Fund Account Redemption of 2023F Subordinated Bonds and Redemption of Liquidity Provider Bonds.**

(a) The 2023F Subordinated Bonds shall be subject to redemption prior to maturity from mandatory sinking fund account payments for the 2023F Subordinated Bonds on the dates, if any, specified in the Sales Certificate, at a Redemption Price equal to the principal amount of the 2023F Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The mandatory sinking fund account payments for the 2023F Subordinated Bonds shall be in the amounts and payable on the dates set forth in the Sales Certificate.

(b) Notwithstanding anything herein to the contrary, Liquidity Provider Bonds are subject to redemption on the dates, in the amounts and otherwise in accordance with the terms of the applicable Liquidity Facility or related Reimbursement Agreement.

**Section 101.06. Funds for Redemption of 2023F Subordinated Bonds.** Unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023F Subordinated Bonds, the Redemption Price of 2023F Subordinated Bonds

(other than Liquidity Provider Bonds) shall be paid solely from (1) moneys obtained from a drawing on the Credit Enhancement supporting the 2023F Subordinated Bonds pursuant to Section 102.08(a) or (2) Available Moneys.

**Section 101.07. Selection of 2023F Subordinated Bonds for Redemption.**

Whenever provision is made for the redemption of less than all of the 2023F Subordinated Bonds of any one maturity, the Trustee shall select the 2023F Subordinated Bonds to be redeemed, from the Outstanding 2023F Subordinated Bonds of such maturity not previously called for redemption, by lot in any manner which the Trustee deems fair; provided, however, that Liquidity Provider Bonds shall be redeemed prior to the redemption of other 2023F Subordinated Bonds; provided further, however, that during a Direct Purchase Index Rate Period, the 2023F Subordinated Bonds shall be redeemed pro rata. The Trustee shall promptly notify the District in writing of the numbers of the 2023F Subordinated Bonds so selected for redemption.

**Section 101.08. Notice of Redemption.** Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023F Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023F Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023F Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023F Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023F Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023F Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023F Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023F Subordinated Bonds to be redeemed.

Notice of optional redemption shall be given by the Trustee for and on behalf of the District, at the written request of the District (which request shall be given to the Trustee (unless waived by the Trustee) at least twenty-five (25) days prior to the date fixed for redemption or such shorter period as is acceptable to the Trustee). Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption.

Notwithstanding the foregoing, notice of redemption shall not be required for 2023F Subordinated Bonds redeemed on a Mandatory Purchase Date.

**Section 101.09. Partial Redemption of 2023F Subordinated Bond.** Upon surrender of any 2023F Subordinated Bond redeemed in part only, the District shall execute and the Trustee shall deliver to the registered owner thereof, at the expense of the District, a new 2023F Subordinated Bond or Bonds, of the same maturity, of Authorized Denominations in

aggregate principal amount equal to the unredeemed portion of the 2023F Subordinated Bond surrendered.

**Section 101.10. Effect of Redemption.** Notice of redemption having been duly given as aforesaid, and moneys for payment of the Redemption Price being held by the Trustee, the 2023F Subordinated Bonds so to be redeemed shall, on the date designated in such notice, become due and payable at the Redemption Price specified in such notice; and from and after the date so designated interest on the 2023F Subordinated Bonds so designated for redemption shall cease to accrue and the Holders and Beneficial Owners of said 2023F Subordinated Bonds shall have no rights in respect thereof, except to receive payment of the Redemption Price thereof.

**Section 101.11. Disposition of Redeemed 2023F Subordinated Bonds.** All 2023F Subordinated Bonds redeemed pursuant to the provisions of this Article CI shall be delivered to and cancelled by the Trustee and shall thereafter be delivered by the Trustee to, or upon the order of, the District, and no 2023F Subordinated Bonds shall be issued in place thereof.

## ARTICLE CII

### PURCHASE OF 2023F SUBORDINATED BONDS

**Section 102.01. Optional Tenders of 2023F Subordinated Bonds in the Daily Mode or the Weekly Mode.** Subject to Section 102.06, the Beneficial Owners of 2023F Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023F Subordinated Bonds (or portions of those 2023F Subordinated Bonds, provided that no 2023F Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

**Section 102.02. Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode.**

(a) The 2023F Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023F Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023F Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023F Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023F

Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

(b) Notwithstanding subparagraph (a) above and anything to the contrary in this Seventeenth Supplemental Resolution, in the event the 2023F Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023F Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023F Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing, in which case the 2023F Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023F Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023F Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023F Subordinated Bonds may be subject to optional redemption or purchase at the sole option of the District at any time with notice as and to the extent provided in the Continuing Covenant Agreement.

#### **Section 102.03. Remarketing of 2023F Subordinated Bonds; Notices.**

(a) Remarketing of 2023F Subordinated Bonds. The Remarketing Agent shall use its best efforts pursuant to the terms and conditions of the Remarketing Agreement to offer for sale:

(i) all 2023F Subordinated Bonds or portions thereof as to which a Tender Notice has been delivered pursuant to Section 102.01; and

(ii) all 2023F Subordinated Bonds required to be purchased on a Mandatory Purchase Date described in clauses (i), (ii), (iii), (iv), (viii) or (ix) of the definition thereof; and

(iii) any Liquidity Provider Bonds (A) purchased on a Purchase Date described in clause (i) or (ii) above, (B) with respect to which the Liquidity Provider has provided notice to the Trustee and the Remarketing Agent that it has reinstated the Available Amount, (C) with respect to which an Alternate Liquidity Facility and Alternate Credit Enhancement is in effect (if such funds were secured by a Credit Enhancement prior to becoming Liquidity Provider Bonds, which Credit Enhancement is no longer in effect), and/or (D) which are being marketed as Fixed Rate Bonds.

The Remarketing Agent shall not remarket 2023F Subordinated Bonds to the District or any affiliate thereof. In connection with the remarketing of any 2023F Subordinated Bonds with respect to which notice of redemption or notice of mandatory purchase has been



given, the Remarketing Agent shall notify each person to which such 2023F Subordinated Bonds are remarketed of such notice of redemption or notice of mandatory purchase.

Anything in this Seventeenth Supplemental Resolution to the contrary notwithstanding, if there shall have occurred and be continuing either a Credit Provider Failure or a Liquidity Provider Failure with respect to a Series of 2023F Subordinated Bonds, the Remarketing Agent shall not remarket such 2023F Subordinated Bonds. All other provisions of this Seventeenth Supplemental Resolution, including without limitation, those relating to the setting of interest rates and Interest Periods and mandatory and optional purchases, shall remain in full force and effect during the continuance of such Credit Provider Failure or Liquidity Provider Failure.

(b) Notice of Remarketing; Registration Instructions; New Bonds. On each date on which a 2023F Subordinated Bond is to be purchased pursuant to this Article CII:

(i) the Remarketing Agent shall notify the Trustee by Electronic Means by 11:30 a.m. if it has been unable to remarket any tendered 2023F Subordinated Bonds, and shall include in such notice the principal amount of 2023F Subordinated Bonds it has been unable to remarket;

(ii) the Remarketing Agent shall notify the Trustee by Electronic Means not later than 1:00 p.m. of the names of the purchasers of the successfully remarketed 2023F Subordinated Bonds and such information as may be necessary to register the 2023F Subordinated Bonds and the registration instructions with respect thereto;

(iii) the Remarketing Agent shall cause the proceeds of the remarketing by such Remarketing Agent of tendered 2023F Subordinated Bonds to be paid to the Trustee in immediately available funds not later than 12:00 noon on the Purchase Date for such 2023F Subordinated Bonds; and

(iv) if the 2023F Subordinated Bonds are not in the Book-Entry System, the Trustee shall authenticate new 2023F Subordinated Bonds for the respective purchasers thereof which shall be available for pick-up by the Remarketing Agent not later than 2:30 p.m.

(c) Draw on Liquidity Facility or Request for Funds. On each date on which a 2023F Subordinated Bond is to be purchased pursuant to this Article CII, if (i) the Remarketing Agent shall have given notice to the Trustee pursuant to clause (b)(i) above that it has been unable to remarket any of the 2023F Subordinated Bonds or (ii) the Trustee has not received from the Remarketing Agent an amount sufficient to pay the Purchase Price of tendered Bonds, by 12:00 noon on the Purchase Date, then the Trustee shall draw on the applicable Liquidity Facility (or if no Liquidity Facility, request funds from the District) by 12:15 p.m. in an amount equal to the Purchase Price of all such 2023F Subordinated Bonds which have not been successfully remarketed, requesting payment not later than 2:45 p.m. on the Purchase Date. Subject to Section 102.04, if a Liquidity Facility is in effect, the Trustee shall also give the District notice by 2:45 p.m. on the Purchase Date if it does not have funds in the Remarketing

Proceeds Account and the Liquidity Facility Purchase Account sufficient to pay the Purchase Price of 2023F Subordinated Bonds tendered on such Purchase Date. Any draw on a Liquidity Facility to be made on a Substitution Date shall be on the Liquidity Facility being replaced.

**Section 102.04. Source of Funds for Purchase of 2023F Subordinated Bonds.**

By 3:00 p.m. on the date on which a 2023F Subordinated Bond is to be purchased pursuant to this Article CII, and except as set forth in Section 102.06(b)(ii), the Trustee shall purchase tendered 2023F Subordinated Bonds from the tendering Holders at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and neither the Trustee nor the Remarketing Agent shall be obligated to provide funds from any other source:

(a) immediately available funds on deposit in the Remarketing Proceeds Account established for the 2023F Subordinated Bonds;

(b) immediately available funds on deposit in the Liquidity Facility Purchase Account established for the 2023F Subordinated Bonds; and

(c) moneys of the District on deposit in the District Purchase Account established for the 2023F Subordinated Bonds.

If no Liquidity Facility is in effect with respect to the 2023F Subordinated Bonds, then the District shall be obligated to deposit amounts into the District Purchase Account established for the 2023F Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023F Subordinated Bonds are insufficient therefor. If a Liquidity Facility is in effect with respect to the 2023F Subordinated Bonds, then the District may, but shall not be obligated to, deposit amounts into the District Purchase Account established for the 2023F Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023F Subordinated Bonds and the Liquidity Facility Purchase Account established for the 2023F Subordinated Bonds are insufficient therefor. If so specified in the Sales Certificate with respect to the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period, the failure of the District to deposit amounts into the District Purchase Account when the District is obligated to deposit such amounts under this Section 102.04 shall constitute an “event of default” under Section 9.01 of the Subordinate Master Resolution.

**Section 102.05. Delivery of Subordinated Bonds.** On each date on which a 2023F Subordinated Bond is to be purchased pursuant to this Article CII, such 2023F Subordinated Bond shall be delivered as follows:

(a) 2023F Subordinated Bonds sold by the Remarketing Agent and described in Section 102.04(a) shall be delivered by the Remarketing Agent to the purchasers of such 2023F Subordinated Bonds by 3:00 p.m.;

(b) 2023F Subordinated Bonds purchased by the Trustee with moneys described in Section 102.04(b) shall be registered immediately in the name of the Liquidity

Provider or its nominee (which may be the Securities Depository) or as otherwise specified in writing by the Liquidity Provider and held as specified in writing by the Liquidity Provider, in either case on or before 3:00 p.m.; and

(c) 2023F Subordinated Bonds purchased by the District with moneys described in Section 102.04(c) shall be registered immediately in the name of the District or its nominee on or before 3:00 p.m. 2023F Subordinated Bonds so owned by the District shall continue to be Outstanding under the terms of the Subordinate Master Resolution and be subject to all of the terms and conditions of the Subordinate Master Resolution and shall be subject to remarketing by the Remarketing Agent.

When any Liquidity Provider Bonds are remarketed, the Trustee shall not release 2023F Subordinated Bonds so remarketed to the Remarketing Agent until the Trustee has received confirmation that the Liquidity Facility has been reinstated.

#### **Section 102.06. Book-Entry Tenders.**

(a) Notwithstanding any other provision of this Article CII to the contrary, all tenders for purchase during any period in which the 2023F Subordinated Bonds are registered in the name of any Securities Depository or its nominee shall be subject to the terms and conditions set forth in the Representations Letter and to any regulations promulgated by the Securities Depository. During any period that the 2023F Subordinated Bonds are registered in the name of DTC or its nominee, the tender option rights of holders of 2023F Subordinated Bonds may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of 2023F Subordinated Bonds by giving notice of its election to tender 2023F Subordinated Bonds or portions thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender 2023F Subordinated Bonds directly to the Trustee. Procedures under which a Beneficial Owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Director Participant of DTC, to exercise a tender option right in respect of 2023F Subordinated Bonds or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. During any period that the 2023F Subordinated Bonds are registered in the name of DTC or its nominee, delivery of 2023F Subordinated Bonds required to be tendered for purchase shall be effected by the transfer by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Trustee of a beneficial ownership interest in such 2023F Subordinated Bonds.

(b) Notwithstanding anything expressed or implied herein to the contrary, during any period that a Book-Entry System for the 2023F Subordinated Bonds is maintained by the District:

(i) there shall be no requirement of physical delivery to or by the Trustee or the Remarketing Agent of:

(1) any 2023F Subordinated Bonds subject to mandatory or optional purchase as a condition to the payment of the Purchase Price therefor;

(2) any 2023F Subordinated Bonds that have become Liquidity Provider Bonds; or

(3) any remarketing proceeds of such 2023F Subordinated Bonds or Liquidity Provider Bonds; and

(ii) except as provided in (iii) below, neither the Trustee nor the Paying Agent shall have any responsibility for paying the Purchase Price of any tendered 2023F Subordinated Bond or for remitting remarketing proceeds to any Person; and

(iii) the Trustee's sole responsibilities in connection with the purchase and remarketing of a tendered 2023F Subordinated Bond shall be to:

(1) draw upon the Liquidity Facility to pay the Purchase Price of 2023F Subordinated Bond in the manner provided herein and to remit the amount so drawn to or upon the order of the Securities Depository for the benefit of the tendering Beneficial Owners; and

(2) remit any proceeds derived from the remarketing of a Liquidity Provider Bond and any unused proceeds from a drawing on the Liquidity Facility to the Liquidity Provider.

**Section 102.07. No Book-Entry System.** During any period that the 2023F Subordinated Bonds shall not be in a Book-Entry System, the following procedures shall be followed:

(a) 2023F Subordinated Bonds shall be delivered (with all necessary endorsements) at or before 12:00 noon on the Purchase Date at the office of the Paying Agent in New York, New York; provided, however, that payment of the Purchase Price shall be made pursuant to this Section only if the 2023F Subordinated Bond so delivered to the Paying Agent conforms in all respects to the description thereof in the notice described in this Section. Payment of the Purchase Price with respect to purchases under this Section shall be made to the Holders of tendered 2023F Subordinated Bonds by wire transfer in immediately available funds by the Paying Agent by 3:00 p.m. on the Purchase Date.

(b) If a 2023F Subordinated Bond to be purchased pursuant to this Article CII is not delivered by the Holder to the Paying Agent by 12:00 noon on the date in which such 2023F Subordinated Bond is to be purchased, the Paying Agent shall hold any funds received for the purchase of those 2023F Subordinated Bonds in trust in a separate account and shall pay such funds to the former Holders of the 2023F Subordinated Bonds upon presentation of the 2023F Subordinated Bonds. Such undelivered 2023F Subordinated Bonds shall cease to accrue interest as to the former Holders on such purchase date and moneys representing the Purchase Price shall be available against delivery of those 2023F Subordinated Bonds at the Principal Office of the Paying Agent; provided, however, that any funds which shall be so held by the Paying Agent and which remain unclaimed by the former Holder of a 2023F Subordinated Bond not presented for purchase for a period of two years after delivery of such funds to the Paying Agent, shall, to the extent permitted by law, upon request in writing by the District and the furnishing of security or indemnity to the Paying Agent's satisfaction, be paid to the District free of any trust or lien and thereafter the former Holder of such 2023F Subordinated Bond shall look only to the District and

then only to the extent of the amounts so received by the District without any interest thereon and the Paying Agent shall have no further responsibility with respect to such moneys or payment of the Purchase Price of such 2023F Subordinated Bonds. The Paying Agent shall authenticate a replacement 2023F Subordinated Bond for any undelivered 2023F Subordinated Bond which may then be remarketed by the Remarketing Agent.

(c) The Paying Agent shall hold all 2023F Subordinated Bonds properly tendered to it for purchase hereunder as agent and bailee of, and in escrow for the benefit of, the respective Holders of the 2023F Subordinated Bonds which shall have so tendered such 2023F Subordinated Bonds until moneys representing the Purchase Price of such 2023F Subordinated Bonds shall have been delivered to or for the account of or to the order of such Holders.

**Section 102.08. Credit Enhancement and Liquidity Facility.**

(a) While a Credit Enhancement is in effect with respect to the 2023F Subordinated Bonds, the Trustee shall, on the Business Day preceding each Interest Payment Date and Principal Payment Date draw on the Credit Enhancement in accordance with the terms thereof so as to receive thereunder with respect to the 2023F Subordinated Bonds secured by the Credit Enhancement by 1:00 p.m. on said Interest Payment Date and Principal Payment Date, an amount, in immediately available funds, equal to the amount of interest and principal payable on such 2023F Subordinated Bonds on such Interest Payment Date and Principal Payment Date. The proceeds of such draws shall be deposited in a separate account in the Subordinated Bond Interest and Principal Fund and shall be applied to pay principal of and interest on such 2023F Subordinated Bonds prior to the application of any other funds held by the Trustee therefor. Amounts held in such account shall be held uninvested and separate and apart from all other funds and accounts. Such accounts shall at all times be Eligible Accounts.

(b) If a Liquidity Facility is in effect with respect to the 2023F Subordinated Bonds, on each date on which a 2023F Subordinated Bond is to be purchased, the Trustee, by demand given by Electronic Means by 12:15 p.m., shall draw on the Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:45 p.m. on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2023F Subordinated Bonds on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The Trustee shall deposit said proceeds in the Liquidity Facility Purchase Account established for the 2023F Subordinated Bonds pursuant to Section 102.09(b) hereof.

(c) Notwithstanding the foregoing paragraphs of this Section, if the Credit Provider and the Liquidity Provider are the same entity, the Trustee shall not draw on the Credit Enhancement with respect to any payments due or made in connection with Liquidity Provider Bonds. In no event shall the Trustee draw on the Credit Enhancement or Liquidity Facility with respect to any payments made or made in connection with 2023F Subordinated Bonds not covered by the Credit Enhancement or Liquidity Facility or 2023F Subordinated Bonds owned by the District.

(d) The District may provide an Alternate Credit Enhancement or Alternate Liquidity Facility on any day on which 2023F Subordinated Bonds to be secured by such

Alternate Credit Enhancement or Alternate Liquidity Facility are subject to redemption at par and not later than the fifth (5th) Business Day prior to the Expiration Date of the Credit Enhancement or Liquidity Facility then in effect and supporting such 2023F Subordinated Bonds. The District shall give the Notice Parties written notice of the proposed substitution of an Alternate Credit Enhancement or Alternate Liquidity Facility no less than two (2) Business Days prior to the date on which the Trustee is required to provide notice of the proposed substitution to the Holders of the 2023F Subordinated Bonds. The Trustee shall give notice of such Substitution Date in accordance with Section 102.02. On or before the Substitution Date there shall be delivered to the Trustee (i) the Alternate Credit Enhancement or the Alternate Liquidity Facility in substitution for the Credit Enhancement or Liquidity Facility then in effect, (ii) a Favorable Opinion of Bond Counsel, (iii) a written Opinion of Counsel for the provider of the Alternate Credit Enhancement or Alternate Liquidity Facility, as applicable, to the effect that such Alternate Credit Enhancement or Alternate Liquidity Facility is a valid, legal and binding obligation of the provider thereof, and (iv) unless waived by such entity, written evidence satisfactory to the Credit Provider and the Liquidity Provider of the provision for purchase from the Liquidity Provider of all Liquidity Provider Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due to the Credit Provider and the Liquidity Provider under the applicable Reimbursement Agreement or Liquidity Facility on or before the effective date of such Alternate Credit Enhancement or Alternate Liquidity Facility. Upon the satisfaction of the conditions described in the preceding sentence, the Trustee shall accept such Alternate Credit Enhancement or Alternate Liquidity Facility on the close of business on the Substitution Date and shall surrender the Credit Enhancement or Liquidity Facility then in effect to the provider thereof on the Substitution Date; provided, however, that the Trustee shall not surrender the Credit Enhancement or Liquidity Facility then in effect unless and until the Trustee has received all amounts drawn thereunder. If any condition to the substitution is not satisfied, the substitution shall not occur but the 2023F Subordinated Bonds shall remain subject to mandatory purchase on the proposed Substitution Date.

(e) In the event of an extension of the Expiration Date, the District shall give to the Notice Parties, a written notice of the new Expiration Date at least fifteen (15) days prior to the fifth Business Day prior to the Expiration Date in effect prior to such extension.

(f) The references to Credit Enhancement and Liquidity Facility and Credit Provider and Liquidity Provider shall be disregarded during any period during which a Credit Enhancement or Liquidity Facility, as applicable, is not in effect.

(g) The Trustee shall not have any lien on or security interest in any amounts drawn under a Credit Enhancement or a Liquidity Facility or any amounts on deposit in the account described in Section 102.08(a) above in which proceeds of draws on a Credit Enhancement are deposited or a Liquidity Facility Purchase Account.

(h) If at any time during the term of a Credit Enhancement and/or Liquidity Facility any successor Trustee shall be appointed and qualified under the Subordinate Master Resolution, the resigning or removed Trustee shall request that the Credit Provider and/or Liquidity Provider, as applicable, transfer such Credit Enhancement and/or Liquidity Facility to the successor Trustee and such resignation or removal of the Trustee shall not be effective until the Credit Enhancement and/or Liquidity Facility has been duly transferred (including the

payment of any required transfer fee) to such successor Trustee. If the resigning or removed Trustee fails to make this request, the successor Trustee shall do so before accepting appointment.

(i) The Trustee may accept, hold and draw upon a Credit Enhancement and/or a Liquidity Facility issued by itself or by any of its corporate affiliates to provide security and a source of payment for the 2023F Subordinated Bonds. The Trustee covenants that it shall at all times maintain adequate controls to manage any potential conflict of interest. Notwithstanding any other provision herein to the contrary, while the Credit Provider and/or Liquidity Provider is the Trustee or an affiliate of the Trustee and such Credit Provider and/or Liquidity Provider has not failed to honor a properly presented draw on the Credit Enhancement and/or Liquidity Facility, the Trustee shall have no discretion with respect to the acceleration of the 2023F Subordinated Bonds and shall do so only upon the written direction of such Credit Provider and/or Liquidity Provider and as otherwise permitted by the Subordinate Master Resolution. The Trustee shall immediately tender its resignation and take prompt steps to have a successor trustee appointed satisfying the requirements of the Subordinate Master Resolution if such affiliated Credit Provider and/or Liquidity Provider shall fail at any time to honor a properly presented and conforming draw on the Credit Enhancement and/or Liquidity Facility.

**Section 102.09. Purchase Fund.** There is hereby established and there shall be maintained with the Trustee a separate fund to be known as the “Purchase Fund.” The Trustee shall further establish separate accounts within the Purchase Fund to be known as the “Liquidity Facility Purchase Account”, the “Remarketing Proceeds Account” and the “District Purchase Account”. At any time at which there is a Liquidity Facility in effect with respect to the 2023F Subordinated Bonds, the Purchase Fund shall be required to be an Eligible Account.

(a) Remarketing Proceeds Account. Upon receipt of the proceeds of a remarketing of a 2023F Subordinated Bond on the date such 2023F Subordinated Bond is to be purchased, the Trustee shall deposit such proceeds in the Remarketing Proceeds Account for application to the Purchase Price of such 2023F Subordinated Bond. Notwithstanding the foregoing, upon the receipt of the proceeds of a remarketing of Liquidity Provider Bonds, the Trustee shall immediately pay such proceeds to the Liquidity Provider to the extent of any amount owing to the Liquidity Provider.

(b) Liquidity Facility Purchase Account. Upon receipt of the immediately available funds pursuant to Section 102.08(b), the Trustee shall deposit such money in the Liquidity Facility Purchase Account for application to the Purchase Price of the 2023F Subordinated Bonds to the extent that the moneys on deposit in the Remarketing Proceeds Account shall not be sufficient. Any amounts deposited in the Liquidity Facility Purchase Account and not needed with respect to the Purchase Price of any 2023F Subordinated Bonds shall be immediately returned to the Liquidity Provider.

(c) District Purchase Account. Upon receipt of funds from the District pursuant to Section 102.04, the Trustee shall deposit such funds in the District Purchase Account for application to the Purchase Price of the 2023F Subordinated Bonds. Any amounts deposited in the District Purchase Account and not needed with respect to the Purchase Price for any 2023F Subordinated Bonds shall be immediately returned to the District.

(d) Investment. Amounts held in the Liquidity Facility Purchase Account, the Remarketing Proceeds Account and the District Purchase Account by the Trustee shall be held uninvested and separate and apart from all other funds and accounts.

**Section 102.10. Inadequate Funds for Tenders.**

(a) If moneys sufficient to pay the Purchase Price of all Tendered Bonds to be purchased on any Purchase Date are not available (1) no purchase shall be consummated of Tendered Bonds on such Purchase Date; (2) all Tendered Bonds shall be returned to the Holders thereof; and (3) all remarketing proceeds with respect to the 2023F Subordinated Bonds shall be returned to the Remarketing Agent for return to the Persons providing such moneys. Thereafter, the Trustee shall continue to take all such action available to it to obtain remarketing proceeds with respect to all Tendered Bonds from the Remarketing Agent and sufficient other funds from the Liquidity Provider, if any, or, subject to Section 102.04, the District to effect a subsequent successful remarketing or purchase of any Tendered Bonds.

(b) All Tendered Bonds (other than Liquidity Provider Bonds and 2023F Subordinated Bonds in the Direct Purchase Index Mode) shall bear interest at the Maximum Rate (or such lower interest rate or rates specified in the Sales Certificate for the initial Interest Rate Mode or in writing by the District prior to the first day of any subsequent Interest Rate Mode, Index Rate Period or Term Rate Period) during the period of time from and including the applicable Purchase Date to (but not including) the date that all such Tendered Bonds are successfully remarketed, redeemed, purchased or paid (the "Delayed Remarketing Period").

(c) The District may direct the conversion of the Tendered Bonds to a different Interest Rate Mode, Index Rate Period or Term Rate Period during the Delayed Remarketing Period in accordance with Section 100.11 hereof; provided that the District shall not be required to comply with the notice requirements described in Section 100.11.

(d) Subject to the terms of the Remarketing Agreement, if any, the Remarketing Agent shall continue to use its best efforts to remarket all of the Tendered Bonds at rates up to and including the Maximum Rate.

(e) During the Delayed Remarketing Period, the Trustee may, upon direction of the District, apply amounts on deposit in the Redemption Fund to the redemption of such Tendered Bonds, as a whole or in part on any Business Day during the Delayed Remarketing Period, at a redemption price equal to the principal amount thereof, together with interest accrued thereon to the date fixed for redemption, without premium. Notwithstanding Section 101.08 to the contrary, the Trustee shall give five Business Days' notice of such redemption to the Holders of the 2023F Subordinated Bonds to be redeemed.

(f) During the Delayed Remarketing Period, interest on such Tendered Bonds (other than 2023F Subordinated Bonds in the Direct Purchase Index Mode) shall be paid to the Holders thereof (i) on the first Business Day of each calendar month occurring during the Delayed Remarketing Period and (ii) on the last day of the Delayed Remarketing Period.



## ARTICLE CIII

### REMARKETING AGENT

#### **Section 103.01. Appointment of Remarketing Agent.**

(a) The Remarketing Agent shall be appointed pursuant to the Remarketing Agreement to remarket 2023F Subordinated Bonds pursuant to this Seventeenth Supplemental Resolution and perform the other duties of the Remarketing Agent described hereunder, and to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the District and the Trustee at all reasonable times. The Remarketing Agent shall act as such under the Remarketing Agreement.

(b) The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Seventeenth Supplemental Resolution as set forth in the Remarketing Agreement. The Remarketing Agent may suspend its remarketing efforts as set forth in the Remarketing Agreement. The Remarketing Agent may be removed at any time, at the direction of the District as set forth in the Remarketing Agreement. Any successor Remarketing Agent shall be selected by the District, and shall be a member of the Financial Industry Regulatory Authority, or its successors, shall have a capitalization of at least fifteen million dollars (\$15,000,000), shall be authorized by law to perform all the duties set forth in this Seventeenth Supplemental Resolution and shall be acceptable to the Credit Provider and Liquidity Provider. The District's delivery to the Trustee of a certificate setting forth the effective date of the appointment of a successor Remarketing Agent and the name of such successor shall be conclusive evidence that (i) if applicable, the predecessor Remarketing Agent has been removed in accordance with the provisions of this Seventeenth Supplemental Resolution and (ii) such successor has been appointed and is qualified to act as Remarketing Agent under the terms of this Seventeenth Supplemental Resolution.

(c) If the Remarketing Agent consolidates with, merges or converts into, or transfers all or substantially all of its assets (or, in the case of a bank, national banking association or trust company, its corporate assets) to, another corporation, the resulting, surviving or transferee corporation without any further act shall be the successor Remarketing Agent.

## ARTICLE CIV

### MISCELLANEOUS

#### **Section 104.01. 2023F Subordinated Sinking Fund Account; Payments of Interest, Principal and Redemption Price and Defeasance While Credit Enhancement in Effect.**

(a) An account is hereby established within the Subordinated Bonds Interest and Principal Fund to be designated the "Series 2023F Sinking Fund Account." The Treasurer shall deposit in the Series 2023F Sinking Fund Account the mandatory sinking fund account payments in the amounts, on the mandatory sinking fund account payment dates, set forth in

Section 101.05(a) and shall transfer such amounts to the Trustee on such date for application as provided in Section 104.01(b).

(b) On each mandatory sinking fund account payment date established for the 2023F Subordinated Bonds, the Trustee shall apply the mandatory sinking fund account payment required on that date to the redemption (or payment at maturity, as the case may be) of the 2023F Subordinated Bonds for which the mandatory sinking fund account payment has been made, upon the notice and in the manner provided in Section 101.08; provided that, at any time prior to giving such notice of such redemption, the Trustee shall, upon direction of the District, apply such moneys to the purchase of such 2023F Subordinated Bonds at public or private sale, as and when and at such prices (including brokerage and other charges, but excluding accrued interest) as the District may direct, except that the purchase price (excluding accrued interest) shall not exceed the par amount of such 2023F Subordinated Bonds. If, during the twelve-month period immediately preceding said mandatory sinking fund account payment date, the Trustee has purchased 2023F Subordinated Bonds with moneys in the Series 2023F Sinking Fund Account, or, during said period and prior to giving said notice of redemption, the District has deposited 2023F Subordinated Bonds with the Trustee, such 2023F Subordinated Bonds so purchased or deposited or redeemed shall be applied, to the extent of the full principal amount thereof, to reduce said mandatory sinking fund account payment. All 2023F Subordinated Bonds purchased or deposited pursuant to this subsection shall be cancelled and destroyed by the Trustee. All 2023F Subordinated Bonds purchased from the Series 2023F Sinking Fund Account or deposited by the District with the Trustee shall be allocated first to the next succeeding mandatory sinking fund account payment, then to the remaining mandatory sinking fund account payments as selected by the District.

(c) Any moneys remaining in the Series 2023F Sinking Fund Account after all 2023F Subordinated Bonds have been retired shall be returned to the District for any lawful District use.

(d) Notwithstanding the foregoing provisions of this Section 104.01 or Section 5.02 or any other provision of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023F Subordinated Bonds, the principal and Redemption Price of, and interest on, the 2023F Subordinated Bonds shall be paid solely (1) first, from moneys obtained from a drawing on the Credit Enhancement pursuant to Section 102.08(a) and (2) second, in the event moneys are not available pursuant to clause (1) for such purpose for any reason, from Available Moneys and moneys on deposit in the Series 2023F Sinking Fund Account shall be withdrawn by the Trustee and used solely for the purpose of reimbursing the Credit Provider for drawings under the Credit Enhancement. To the extent the Credit Provider honors a drawing under the Credit Enhancement for the purpose of paying the principal or Redemption Price of, or interest on, the 2023F Subordinated Bonds, the District shall receive a credit against its obligation to make deposits into the Subordinated Bonds Interest and Principal Fund and shall not be required to transfer funds to the Trustee in the amount of such drawing.

(e) Notwithstanding the provisions of Article X of the Subordinate Master Resolution, unless a Credit Provider Failure has occurred and is continuing, if Credit Enhancement is in effect with respect to the 2023F Subordinated Bonds, 2023F Subordinated

Bonds shall not be deemed defeased or otherwise paid or satisfied unless such 2023F Subordinated Bonds are defeased with (1) moneys obtained from a drawing on the Credit Enhancement pursuant to Section 102.08(a), (2) Available Moneys or (3) Defeasance Securities acquired with moneys described in (1) or (2). Any Defeasance Securities used to defease 2023F Subordinated Bonds for which Credit Enhancement is in effect shall be not callable by the issuer thereof prior to maturity and shall mature no later than the earlier of (x) the first day upon which such 2023F Subordinated Bonds may be tendered or (y) the first day upon which such 2023F Subordinated Bonds may be redeemed. For purpose of Article X of the Subordinate Master Resolution, interest on the 2023F Subordinated Bonds shall be calculated based on an assumed interest rate equal to the Maximum Rate for periods for which the actual interest rate on the 2023F Subordinated Bonds cannot be determined.

**Section 104.02. Form and Execution of 2023F Subordinated Bonds.** The 2023F Subordinated Bonds, and the certificate of authentication and registration to be executed thereon, shall be in substantially the form set forth as Exhibit A to this Seventeenth Supplemental Resolution.

The 2023F Subordinated Bonds shall be executed in the name and on behalf of the District with the manual or facsimile signature of the President or Vice President of its Board of Directors. The 2023F Subordinated Bonds shall then be delivered to the Trustee for authentication by it. In case any officer who shall have signed any of the 2023F Subordinated Bonds shall cease to be such officer of the District before the 2023F Subordinated Bonds so signed shall have been authenticated or delivered by the Trustee or issued by the District, such 2023F Subordinated Bonds may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the District as though those who signed the same had continued to be such officer of the District, and also any 2023F Subordinated Bond may be signed on behalf of the District by such person as at the actual date of execution of such 2023F Subordinated Bond shall be the proper officer of the District although at the nominal date of such 2023F Subordinated Bond any such person shall not have been such officer of the District.

Only such of the 2023F Subordinated Bonds as shall bear thereon a certificate of authentication substantially in the form set forth in Exhibit A to this Seventeenth Supplemental Resolution, manually executed by an authorized signatory of the Trustee, shall be valid or obligatory for any purpose or entitled to the benefits of the Subordinate Master Resolution, and such certificate of the Trustee shall be conclusive evidence that the 2023F Subordinated Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of the Subordinate Master Resolution.

**Section 104.03. Issuance of 2023F Subordinated Bonds.** At any time after the adoption of this Seventeenth Supplemental Resolution, the District may execute and deliver the 2023F Subordinated Bonds in the aggregate principal amount set forth in the Sales Certificate. The Trustee shall authenticate and deliver the 2023F Subordinated Bonds upon written order of the District. The proceeds of the sale of the 2023F Subordinated Bonds shall be deposited and applied as set forth in the Sales Certificate.

**Section 104.04. Use of Depository.** Notwithstanding any provision of the Subordinate Master Resolution or this Seventeenth Supplemental Resolution to the contrary:

(a) The 2023F Subordinated Bonds shall be initially issued as provided in Section 100.02; provided, that 2023F Subordinated Bonds in the Direct Purchase Index Mode shall be issued in definitive certificated form registered in the name of the Holder thereof or as otherwise directed by the Holder. 2023F Subordinated Bonds in any other Interest Rate Mode shall be registered in the name of Cede & Co. or as otherwise directed by the Securities Depository and registered ownership thereof, or any portion thereof, may not thereafter be transferred except:

(i) To any successor of DTC or its nominee, or to any substitute depository designated pursuant to clause (ii) of this subsection (a) (“substitute depository”); provided that any successor of DTC or substitute depository shall be qualified under any applicable laws to provide the service proposed to be provided by it;

(ii) To any substitute depository not objected to by the Trustee, upon (1) the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or (2) a determination by the District that DTC or its successor (or any substitute depository or its successor) is no longer able to carry out its functions as depository; provided that any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it; or

(iii) To any person as provided below, upon (1) the resignation of DTC or its successor (or substitute depository or its successor) from its functions as depository; provided that no substitute depository which is not objected to by the Trustee can be obtained or (2) a determination by the District that it is in the best interests of the District to remove DTC or its successor (or any substitute depository or its successor) from its functions as depository.

(b) In the case of any transfer pursuant to clause (i) or clause (ii) of subsection 104.04(a) hereof, upon receipt of all outstanding 2023F Subordinated Bonds by the Trustee, together with a Certificate of the District to the Trustee, a single new 2023F Subordinated Bond shall be executed and delivered for each maturity of 2023F Subordinated Bonds then outstanding registered in the name of such successor or such substitute depository, or their nominees, as the case may be, all as specified in such Certificate of the District. In the case of any transfer pursuant to clause (iii) of subsection 104.04(a) hereof, upon receipt of all outstanding 2023F Subordinated Bonds by the Trustee together with a Certificate of the District to the Trustee, new 2023F Subordinated Bonds shall be executed and delivered in such denominations and registered in the names of such persons as are requested in such a Certificate of the District, subject to the limitations of Section 104.04(a) hereof, provided the Trustee shall not be required to deliver such new 2023F Subordinated Bonds within a period less than 60 days from the date of receipt of such a Certificate of the District. Subsequent to any transfer pursuant to clause (iii) of subsection 104.04(a) hereof, the 2023F Subordinated Bonds shall be transferred as provided in Article II of the Subordinate Master Resolution.

(c) In the case of partial redemption or an advance refunding of the 2023F Subordinated Bonds evidencing all or a portion of the principal maturing in a particular year, DTC shall make an appropriate notation on the 2023F Subordinated Bonds indicating the date and amounts of such reduction in principal. The Trustee shall incur no liability for the failure or any error by DTC in making such notation and the records of the Trustee shall be determinative of the outstanding principal amount of 2023F Subordinated Bonds.

(d) The District and the Trustee shall be entitled to treat the person in whose name any 2023F Subordinated Bond is registered as the Bondholder thereof for all purposes of the Subordinate Master Resolution and any applicable laws, notwithstanding any notice to the contrary received by the Trustee or the District; and the District and the Trustee shall have no responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with, any Beneficial Owners of the 2023F Subordinated Bonds. Neither the District nor the Trustee will have any responsibility or obligations, legal or otherwise, to the Beneficial Owners or to any other party including DTC or its successor (or substitute depository or its successor), except for the Holder of any 2023F Subordinated Bond.

(e) During any period that the Outstanding 2023F Subordinated Bonds are registered in the name of Cede & Co. or its registered assigns, the District and the Trustee (to the extent funds are provided to it by the District) shall cooperate with Cede & Co., as sole registered Bondholder, and its registered assigns, in effecting payment of the principal of and redemption premium, if any, and interest on the 2023F Subordinated Bonds by arranging for payment in such manner that funds for such payments are properly identified and are made immediately available on the date they are due.

#### **Section 104.05. Tax Covenants.**

(a) The District shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that interest paid on the 2023F Subordinated Bonds (or any of them) will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being excluded from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the District agrees to comply with the provisions of the 2023 Tax Certificate. This covenant shall survive payment in full or defeasance of the 2023F Subordinated Bonds.

(b) Without limiting the generality of the foregoing, the District agrees that there shall be paid from time to time all amounts required to be rebated to the United States of America pursuant to Section 148(f) of the Internal Revenue Code of 1986 (the "Code") and any temporary, proposed or final United States Treasury Regulations as may be applicable to the 2023F Subordinated Bonds from time to time (the "Rebate Requirement"). The District specifically covenants to pay or cause to be paid the Rebate Requirement as provided in the 2023 Tax Certificate to the United States of America from any Net Subordinate Revenues lawfully available to the District. This covenant shall survive payment in full or defeasance of the 2023F Subordinated Bonds. Capitalized terms in this Section not otherwise defined in the Subordinate Master Resolution or this Seventeenth Supplemental Resolution shall have the meanings ascribed to them in the 2023 Tax Certificate.

(c) The District shall establish, maintain and hold in trust a fund separate from any other fund established and maintained hereunder designated the Rebate Fund. The District shall cause to be deposited in the Rebate Fund the Rebate Requirement as provided in the 2023 Tax Certificate. Subject to the provisions of this Section, moneys held in the Rebate Fund are hereby pledged to secure payments to the United States government, and the District and the Bondholders shall have no rights in or claim to such moneys.

(d) In accordance with the 2023 Tax Certificate, the District shall remit part or all of the balance held in the Rebate Fund to the United States government as so directed.

(e) Notwithstanding any provision of this Section, if the District shall obtain an opinion of counsel of recognized national standing in the field of obligations the interest on which is excluded from gross income for purposes of federal income taxation to the effect that any specified action required under this Section is no longer required, or to the effect that some different action is required, to maintain the exclusion from gross income of the interest on the 2023F Subordinated Bonds under Section 103 of the Code, the District may rely conclusively on such opinion in complying with the provisions hereof, and the agreements and covenants hereunder shall be deemed to be modified to that extent without the necessity of an amendment of the Subordinate Master Resolution or this Seventeenth Supplemental Resolution or the consent at any time of the Bondholders.

#### **Section 104.06. Rights of Credit Provider.**

(a) Unless a Credit Provider Failure has occurred and is continuing, the Credit Provider shall be deemed the sole Holder of the 2023F Subordinated Bonds for the purpose of directing the Trustee with respect to the exercise of remedies and the declaration or waiver of Events of Default pursuant to Article IX of the Subordinate Resolution.

(b) Unless a Credit Provider Failure has occurred and is continuing, the Subordinate Master Resolution and this Seventeenth Supplemental Resolution shall not be amended without the written consent of the Credit Provider.

(c) Unless a Credit Provider Failure has occurred and is continuing, the District shall not appoint a successor Remarketing Agent or Trustee without the written consent of the Credit Provider.

#### **Section 104.07. Limitations on Rights of Trustee.**

(a) Proceeds of drawings on the Credit Enhancement and the Liquidity Facility and moneys on deposit in the Purchase Fund shall be used solely for the purposes set forth herein, and the Trustee shall have no lien on such proceeds or money, nor shall such proceeds or moneys be used for, the payment of the fees and/or expenses of the Trustee.

(b) The Trustee shall draw on the Credit Enhancement and the Liquidity Facility at the times and in the manner provided herein and therein and shall have no right to seek or obtain indemnification from the District, the Holders or any other party as a condition of making any such drawing.

**Section 104.08. Terms of 2023F Subordinated Bonds Subject to the Subordinate Master Resolution.**

(a) Except as in this Seventeenth Supplemental Resolution expressly provided, every term and condition contained in the Subordinate Master Resolution shall apply to this Seventeenth Supplemental Resolution and to the 2023F Subordinated Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this Seventeenth Supplemental Resolution.

(b) This Seventeenth Supplemental Resolution and all the terms and provisions herein contained shall form part of the Subordinate Master Resolution as fully and with the same effect as if all such terms and provisions had been set forth in the Subordinate Master Resolution. The Subordinate Master Resolution is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

**Section 104.09. Resolution of Trust to Remain in Effect.** Save and except as supplemented by this Seventeenth Supplemental Resolution, the Subordinate Master Resolution shall remain in full force and effect.

**Section 104.10. Notice to Rating Agencies.** (a) The District shall provide or cause to be provided prompt notice of the following events to the Rating Agencies, if any:

(1) the expiration, termination, extension or substitution of any Credit Enhancement or Liquidity Facility relating to the 2023F Subordinated Bonds;

(2) any optional redemption (as a whole or in part), mandatory purchase or acceleration of the 2023F Subordinated Bonds;

(3) any Conversion of the 2023F Subordinated Bonds;

(4) any amendment, modification or supplement of or to the Subordinate Master Resolution or any Credit Enhancement or Liquidity Facility relating to the 2023F Subordinated Bonds (which notice shall be provided or caused to be provided at least ten days prior to the effective date thereof);

(5) any change in the party instructed to draw on any Credit Enhancement or Liquidity Facility relating to the 2023F Subordinated Bonds;

(6) any removal or resignation of the Trustee or the Remarketing Agent; or

(7) any legal defeasance of the 2023F Subordinated Bonds.

(b) The District and the Trustee shall provide or cause to be provided to the Rating Agencies any information reasonably requested by such Rating Agency to maintain its rating, if any, on the 2023F Subordinated Bonds.

**Section 104.11. Continuing Disclosure.** The District hereby covenants and agrees that it will comply with and carry out all of the provisions of any Continuing Disclosure Agreement executed in connection with the 2023F Subordinated Bonds. Notwithstanding any other provision of the Subordinate Master Resolution or this Seventeenth Supplemental Resolution, failure of the District to comply with any such Continuing Disclosure Agreement shall not be considered an Event of Default; however, the Trustee shall, at the written request of any Participating Underwriter (as defined in any such Continuing Disclosure Agreement) or the Holders of at least 25% aggregate principal amount of Outstanding 2023F Subordinated Bonds upon receipt of indemnity satisfactory to the Trustee or any Holder of 2023F Subordinated Bonds or Beneficial Owner may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District to comply with its obligations under this Section. For purposes of this Section, “Beneficial Owner” means any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023F Subordinated Bonds (including persons holding 2023F Subordinated Bonds through nominees, depositories or other intermediaries).

**Section 104.12. Designation of Credit Provider and Liquidity Provider Reimbursement Obligations as Parity Subordinated Debt; Authorization and Issuance of Revolving Notes.** For the avoidance of doubt, the District hereby designates as Parity Subordinated Debt, secured by the pledge of Net Subordinated Revenues made by the District pursuant to Section 5.01 of the Subordinate Master Resolution on the same basis as the Subordinated Bonds and all other Parity Subordinated Debt as provided in the Subordinate Master Resolution, any and all obligations of the District pursuant to any Credit Enhancement, Liquidity Facility, or Reimbursement Agreement to reimburse each Credit Provider or Liquidity Provider for drawings or other advances on or pursuant to the related Credit Enhancement or Liquidity Facility, including, without limitation, any accrued interest on such drawings or advances, all as set forth in the related Credit Enhancement, Liquidity Facility, or Reimbursement Agreement (collectively, the “Reimbursement Obligations”). In order to more fully evidence the Reimbursement Obligations as Parity Subordinated Debt, the Board hereby authorizes the issuance from time to time of one or more revenue bonds pursuant to the Act in substantially the form of and with the terms stated in the form of the revolving note set forth as Exhibit B to this Seventeenth Supplemental Resolution (each a “Revolving Note”), but the delivery of such Revolving Note shall not be required to secure such Reimbursement Obligations as Parity Subordinated Debt. At the time of each delivery of a Credit Enhancement or Liquidity Facility pursuant to the terms of this Seventeenth Supplemental Resolution, the District may deliver a Revolving Note to the related Credit Provider or Liquidity Provider with a stated amount equal to the Available Amount under such Credit Enhancement or Liquidity Facility and with all blanks and brackets filled in as appropriate and with such other changes as may be necessary or appropriate to conform to the terms of such Credit Enhancement, Liquidity Facility, or Reimbursement Agreement.





**EXHIBIT A**

**FORM OF 2023F SUBORDINATED BOND**

[TO BE CONFORMED TO SALES CERTIFICATE]

No. R-\_\_\_\_\_ \$ \_\_\_\_\_

**SACRAMENTO MUNICIPAL UTILITY DISTRICT  
SUBORDINATED ELECTRIC REVENUE REFUNDING BOND  
2023 SERIES F**

<u>Maturity</u>	<u>Interest Per Annum</u>	<u>Date</u>	<u>CUSIP</u>
August 15, 20__	Variable	_____, 2023	

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Net Subordinated Revenues hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above, the principal sum specified above together with interest thereon from \_\_\_\_\_, 2023, until the principal hereof shall have been paid, at the interest rates per annum determined as set forth below, payable on each Interest Payment Date, as defined below. The principal of and premium, if any, and interest on the 2023F Subordinated Bonds, as defined below, shall be payable in lawful money of the United States of America. Interest on the 2023F Subordinated Bonds shall be paid on each Interest Payment Date, as defined below, by the Paying Agent during a Daily Mode, Weekly Mode, Term Rate Mode, Index Mode or Fixed Rate Mode, by check mailed on the date on which due to the Holders of the 2023F Subordinated Bonds at the close of business on the Record Date for the 2023F Subordinated Bonds in respect of such Interest Payment Date at the registered addresses of the Holders of the 2023F Subordinated Bonds as shall appear on the registration books of the Trustee. In the case of (i) 2023F Subordinated Bonds in a Direct Purchase Index Mode or Flexible Mode or (ii) any Holder of 2023F Subordinated Bonds in any Interest Rate Mode other than a Direct Purchase Index Mode or Flexible Mode in an aggregate principal amount in excess of \$1,000,000 as shown on the registration books of the Trustee who, prior to the Record Date for the 2023F Subordinated Bonds next preceding any Interest Payment Date, shall have provided the Paying Agent with written wire transfer instructions, interest payable on such 2023F Subordinated Bonds shall be paid on each Interest Payment Date in accordance with the wire transfer instructions provided by the Holder of such 2023F Subordinated Bond; provided, however, that during any Flexible Rate Period, except for 2023F Subordinated Bonds registered in the name of the Securities Depository

(or its nominee), interest on any such 2023F Subordinated Bond shall be payable only upon surrender of such 2023F Subordinated Bond at the office of the Paying Agent. The principal of and premium, if any, on each 2023F Subordinated Bond shall be payable on the Principal Payment Date of such 2023F Subordinated Bond upon surrender thereof at the office of the Paying Agent, subject to the terms of the Seventeenth Supplemental Resolution, as defined below.

This Bond is one of a duly authorized issue of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds (hereinafter called the “Subordinated Bonds”) designated as Subordinated Electric Revenue Refunding Bonds, 2023 Series F (the “2023F Subordinated Bonds”). The Subordinated Bonds are not limited in aggregate principal amount, except as otherwise provided in the Subordinate Resolution hereinafter mentioned, and consist or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Subordinate Resolution provided, all issued and to be issued pursuant to the provisions of the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6, Division 6, of the California Public Utilities Code and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (hereinafter called the “Act”). This 2023F Subordinated Bond is issued pursuant to Resolution No. 85-11-1 of the District, adopted November 7, 1985, providing for the issuance of the Subordinated Bonds, as amended and restated by Resolution No. 01-06-10 of the District, adopted on June 21, 2001 (as amended and restated, the “Subordinate Master Resolution”), and as supplemented and amended by resolutions to date, including by a Seventeenth Supplemental Resolution, adopted May 18, 2023, authorizing the issuance of the 2023F Subordinated Bonds (said resolution as amended, restated and supplemented and the Seventeenth Supplemental Resolution being hereinafter collectively called the “Subordinate Resolution”). Reference is hereby made to the Subordinate Resolution and the Act for a description of the terms on which the Subordinated Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Revenues, as that term is defined in the Subordinate Resolution, and the rights of the registered owners of the Subordinated Bonds; and all the terms of the Subordinate Resolution and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this 2023F Subordinated Bond, and to all the provisions thereof the registered owner of this 2023F Subordinated Bond, by its acceptance hereof, consents and agrees. Additional bonds may be issued on a parity with the Subordinated Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Subordinate Resolution. Capitalized terms used, but not defined herein shall have the meaning given such terms in the Subordinate Resolution.

The Subordinated Bonds and the interest thereon, together with the Parity Subordinated Debt (as defined in the Subordinate Resolution) heretofore or hereafter issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the Net Subordinated Revenues derived by the District from the Electric System (as those terms are defined in the Subordinate Resolution). The District covenants and warrants that for the payment of the Subordinated Bonds, and interest thereon, there have been created and will be maintained by the District special funds into which there shall be deposited from Net Subordinated Revenues available for that purpose sums sufficient to pay the principal of, and interest on, all of the Subordinated Bonds, as such principal and interest become due, and as an

irrevocable charge the District has allocated Net Subordinated Revenues to such payment, all in accordance with the Subordinate Resolution.

The Subordinated Bonds, including the 2023F Subordinated Bonds, are expressly subordinated in right of payment to the prior payment in full of all Parity Bonds, as that term is defined in Resolution No. 6649 of the District, adopted on January 7, 1971 (the “Senior Bond Resolution”), including the District’s Electric Revenue Bonds. The holder of this 2023F Subordinated Bond, by acceptance hereof, authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this paragraph and in the Subordinate Resolution and appoints the Trustee its attorney-in-fact for any and all such purposes.

The Subordinated Bonds are special obligations of the District, and are payable, both as to principal and interest, out of the Net Subordinated Revenues pertaining to the Electric System, and not out of any other fund or moneys of the District. No holder of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The term of the 2023F Subordinated Bonds will be divided into consecutive Interest Periods during each of which the 2023F Subordinated Bonds shall bear interest at a Flexible Rate or Flexible Rates, a Daily Rate, a Weekly Rate, a Direct Purchase Index Rate, a Term Rate, an Index Rate or a Fixed Rate or Fixed Rates. The 2023F Subordinated Bonds shall initially bear interest at a Term Rate for an initial Term Rate Period ending on [\_\_\_\_\_, 20\_\_]. The Interest Rate Mode, Term Rate Period, Index Rate Period and Direct Purchase Index Rate Period for the 2023F Subordinated Bonds thereafter may be changed from time to time as provided in the Subordinate Resolution. As hereinafter described, the 2023F Subordinated Bonds are subject to mandatory purchase on any Conversion Date.

Interest on the 2023F Subordinated Bonds is to be paid on: (i) with respect to Flexible Rate Bonds, each Mandatory Purchase Date applicable thereto; (ii) with respect to 2023F Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Index Mode, the first Business Day of each month; (iii) with respect to 2023F Subordinated Bonds in a Term Rate Mode or Fixed Rate Mode, each February 15 and August 15 (beginning with the first such day specified (a) in the Sales Certificate in connection with the initial issuance of the 2023F Subordinated Bonds or (b) in writing by the District in connection with the Conversion Date to such Term Rate Mode or Fixed Rate Mode, as applicable); (iv) (without duplication as to any Interest Payment Date listed above) any Mandatory Purchase Date; (v) (without duplication as to any Interest Payment Date listed above) each Maturity Date; and (vi) with respect to any Liquidity Provider Bonds, as provided in the applicable Reimbursement Agreement or Liquidity Facility (each an “Interest Payment Date”).

The interest rate on the 2023F Subordinated Bonds shall be determined as follows:

Determination of Flexible Rates and Interest Periods During Flexible Mode. An Interest Period for the Flexible Rate Bonds shall be of such duration of from one to 270 calendar days, ending on either a day which immediately precedes a Business Day or the day immediately preceding the Maturity Date, as the Remarketing Agent shall determine in accordance with the

provisions of this Section. A Flexible Rate Bond may have an Interest Period, and bear interest at a Flexible Rate, different than another Flexible Rate Bond. In making the determinations with respect to Interest Periods, subject to limitations imposed by the second preceding sentence and in Section 100.04 of the Seventeenth Supplemental Resolution, on each Rate Determination Date for a Flexible Rate Bond, the Remarketing Agent shall select for such 2023F Subordinated Bond the Interest Period which would result in the Remarketing Agent being able to remarket such 2023F Subordinated Bond at par in the secondary market at the lowest average interest cost for all 2023F Subordinated Bonds; provided, however, that if the Remarketing Agent has received notice from the District that such 2023F Subordinated Bonds are to be changed from the Flexible Mode to any other Interest Rate Mode, the Remarketing Agent shall select Interest Periods which do not extend beyond the proposed Conversion Date.

Except while the 2023F Subordinated Bonds are registered in a Book-Entry System, in order to receive payment of the Purchase Price the Holder of any Flexible Rate Bond must present such Flexible Rate Bond to the Trustee, by 12:00 noon on the Rate Determination Date, in which case the Trustee shall pay the Purchase Price to such Holder by 3:00 p.m. on the same day.

By 1:00 p.m. on each Rate Determination Date, the Remarketing Agent, with respect to each Flexible Rate Bond which is subject to adjustment on such date, shall determine the Flexible Rate(s) for the Interest Periods then selected for such Flexible Rate Bond and shall give notice by Electronic Means to the Paying Agent and the District of the Interest Period, the Purchase Date(s) and the Flexible Rate(s). The Remarketing Agent shall make the Flexible Rate and Interest Period available after 2:00 p.m. on each Rate Determination Date by telephone or Electronic Means to the Trustee or any other Paying Agent without request, and to any Beneficial Owner or Notice Party requesting such information.

Determination of Interest Rates During the Daily Mode and the Weekly Mode. The interest rate for 2023F Subordinated Bonds in the Daily Mode or Weekly Mode shall be the rate of interest per annum determined by the Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023F Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during the then current Interest Accrual Period.

During the Daily Mode, the Remarketing Agent shall establish the Daily Rate by 10:00 a.m. on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. The Remarketing Agent shall make the Daily Rate available no less frequently than once per week by Electronic Means to each Notice Party requesting such rate.

During the Weekly Mode, the Remarketing Agent shall establish the Weekly Rate by 4:00 p.m. on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Remarketing Agent shall make the Weekly Rate available after 5:00 p.m. on the Business Day following the Rate Determination Date by Electronic Means to each Notice Party requesting such rate.

Term Rates. The Term Rate shall be determined by the Remarketing Agent not later than 4:00 p.m. on the Rate Determination Date. The Term Rate shall be the minimum rate which, in the sole judgment of the Remarketing Agent, would result in a sale of such 2023F Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date for the Interest Period selected by the District in writing delivered to the Remarketing Agent before such Rate Determination Date. No Interest Period in the Term Rate Mode may extend beyond the Maturity Date. The Remarketing Agent shall make the Term Rate available by telephone or Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Term Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means.

Fixed Rates. The Remarketing Agent shall determine the Fixed Rate for 2023F Subordinated Bonds being converted to the Fixed Rate Mode in the manner and at the times as follows: not later than 4:00 p.m. on the applicable Rate Determination Date, the Remarketing Agent shall determine the Fixed Rate (or Fixed Rates, if such 2023F Subordinated Bonds will have Serial Maturity Dates in accordance with Section 100.11(b)(v) of the Seventeenth Supplemental Resolution). Except as set forth in Section 100.11(b)(v) of the Seventeenth Supplemental Resolution, the Fixed Rate shall be the minimum interest rate which, in the sole judgment of the Remarketing Agent, will result in a sale of such 2023F Subordinated Bonds at a price equal to the principal amount thereof on the Rate Determination Date. The Remarketing Agent shall make the Fixed Rate available by telephone or by Electronic Means after 5:00 p.m. on the Rate Determination Date to any Notice Party requesting such Fixed Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such Fixed Rate by Electronic Means. Subject to Section 100.11(b)(v) of the Seventeenth Supplemental Resolution, the Fixed Rate so established shall remain in effect until the Maturity Date of such 2023F Subordinated Bonds.

Alternate Rates. The following provisions shall apply in the event (i) the Remarketing Agent fails or is unable to determine the interest rate or Interest Period for 2023F Subordinated Bonds (other than 2023F Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode), (ii) the method by which the Remarketing Agent determines the interest rate or Interest Period with respect to 2023F Subordinated Bonds in any Interest Rate Mode other than the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode shall be held to be unenforceable by a court of law of competent jurisdiction or (iii) other than with respect to 2023F Subordinated Bonds in the Direct Purchase Index Mode, the Index Mode or the Term Rate Mode, if the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement. These provisions shall continue to apply until such time as the Remarketing Agent again makes such determinations. In the case of clause (ii) above, the Remarketing Agent shall again make such determination at such time as there is delivered to the Remarketing Agent and the District an opinion of Bond Counsel to the effect that there are no longer any legal prohibitions against such determinations. The following shall be the methods by which the interest rates and, in the case of the Flexible Rate Mode, the Interest Periods, shall be determined for 2023F Subordinated Bonds as to which any of the events described in clauses (i), (ii) or (iii) shall be applicable. Such methods shall be applicable from and after the date any of the events described in clauses (i), (ii) or (iii) first become applicable to such 2023F Subordinated Bonds until such time as the events described in clauses (i), (ii) or (iii) are no longer applicable to such 2023F Subordinated Bonds.

For Flexible Rate Bonds, the next Interest Period shall be from, and including, the first day following the last day of the current Interest Period for such Flexible Rate Bonds to, but excluding, the next succeeding Business Day and thereafter shall commence on each Business Day and extend to, but exclude, the next succeeding Business Day. For each such Interest Period, the interest rate for such 2023F Subordinated Bonds shall be the applicable Alternate Rate in effect on the Business Day that begins an Interest Period.

For 2023F Subordinated Bonds in the Daily Mode or the Weekly Mode, such 2023F Subordinated Bonds shall bear interest during each subsequent Interest Period at the Alternate Rate in effect on the first day of such Interest Period.

Direct Purchase Index Rates.

(a) During each Direct Purchase Index Rate Period, the 2023F Subordinated Bonds shall, subject to subparagraph (b) below, bear interest at the Direct Purchase Index Rate. The Calculation Agent shall determine the Direct Purchase Index Rate on each Direct Purchase Index Rate Determination Date occurring during any Direct Purchase Index Rate Period. The Direct Purchase Index Rate shall be the sum of (i) the product of the Direct Purchase Index multiplied by the Applicable Factor, plus (ii) the Applicable Spread. Each Direct Purchase Index Rate shall be effective, and interest shall accrue on the 2023F Subordinated Bonds at such Direct Purchase Index Rate each day during the applicable Direct Purchase Index Rate Effective Period. On or before any Conversion Date upon which a Direct Purchase Index Rate Period will begin, the District shall designate the Direct Purchase Index to be in effect during such Direct Purchase Index Rate Period. The Applicable Factor and Applicable Spread for a Direct Purchase Index Rate Period shall be determined by the Market Agent such that the applicable Direct Purchase Index Rate shall be the interest rate per annum (based upon tax exempt obligations comparable, in the judgment of the Market Agent, to the 2023F Subordinated Bonds and known to the Market Agent to have been priced or traded under the prevailing market conditions) to be the minimum interest rate at which a Person will agree to purchase the 2023F Subordinated Bonds on the Conversion Date at a price (without regard to accrued interest) equal to the principal amount thereof. Unless otherwise specified in the Continuing Covenant Agreement applicable to a Direct Purchase Index Rate Period, the Direct Purchase Index Rate shall be rounded to the nearest fifth decimal place. Promptly following the determination of the Direct Purchase Index Rate, the Calculation Agent shall give notice thereof to the District, the Trustee and the Paying Agent. If the Direct Purchase Index Rate is not determined by the Calculation Agent on the Direct Purchase Index Rate Determination Date, the rate of interest born on such 2023F Subordinated Bonds bearing interest at a Direct Purchase Index Rate shall be the rate in effect on the immediately preceding Direct Purchase Index Rate Reset Date until the Calculation Agent next determines the Direct Purchase Index Rate as required hereunder.

(b) Adjustments to Direct Purchase Index Rates.

(i) Taxable Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 102.02(b) thereof, but subject to Section 100.04(c) and Section 100.09(b)(ii) and (iii) thereof, from and after any Taxable Date, the interest rate on 2023F Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the Taxable Rate.

(ii) Default Rate. Notwithstanding anything in the Subordinate Resolution to the contrary, including, without limitation, Section 102.02(b) thereof, but subject to Section 100.04(c) and Section 100.09(b)(iii) thereof, from and after the effective date of any “Event of Default” under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution and during the continuance thereof, the interest rate for 2023F Subordinated Bonds in a Direct Purchase Index Mode shall be established at a rate at all times equal to the greater of (A) the Default Rate and (B) the interest rate that otherwise would be applicable to the 2023F Subordinated Bonds but for the provisions of this paragraph, payable on demand to the Bank. Interest shall accrue and be paid on both defaulted interest and defaulted principal.

(iii) Excess Interest. Notwithstanding anything in the Subordinate Resolution to the contrary, if during a Direct Purchase Index Mode the rate of interest on the 2023F Subordinated Bonds exceeds the Maximum Rate for such 2023F Subordinated Bonds, then (A) such 2023F Subordinated Bonds shall bear interest at the Maximum Rate and (B) interest on such 2023F Subordinated Bonds calculated at the rate equal to the difference between (1) the rate of interest for such 2023F Subordinated Bonds as otherwise calculated pursuant to the above provisions and (2) the Maximum Rate (the “Excess Interest”) shall be deferred until such date as the rate of interest borne by such 2023F Subordinated Bonds as otherwise calculated pursuant to the above provisions is below the Maximum Rate, at which time Excess Interest shall be payable with respect to such 2023F Subordinated Bonds. Payments of deferred Excess Interest shall no longer be due and payable upon the earlier to occur of the date on which such 2023F Subordinated Bonds are redeemed or tendered for purchase in accordance with the Seventeenth Supplemental Resolution and the redemption price or purchase price, as applicable, is paid in full or the principal of and interest on such 2023F Subordinated Bonds is otherwise paid in full.

(iv) Amortization Period. Notwithstanding anything in the Subordinate Resolution to the contrary, but subject to Section 100.04(c) and Section 100.09(b)(i), (ii) and (iii) thereof, during any Amortization Period, the 2023F Subordinated Bonds shall bear interest at the Bank Rate.

Index Rates. During each Index Rate Period, the 2023F Subordinated Bonds shall bear interest at the Index Rate. The Calculation Agent shall determine the Index Rate for each maturity of the 2023F Subordinated Bonds on each Index Rate Determination Date occurring during any Index Rate Period. The Index Rate for each maturity of the 2023F Subordinated Bonds shall be the sum of (i) the product of the Index multiplied by the Index Percentage, plus (ii) the Index Spread for such maturity of the 2023F Subordinated Bonds. Each Index Rate shall be effective, and interest shall accrue on the 2023F Subordinated Bonds at such Index Rate each day during the applicable Index Rate Effective Period. If the 2023F Subordinated Bonds are initially issued in the Index Mode, the District shall specify the Index, Index Percentage, Index Spreads and Call Protection Date for the Index Rate Period commencing on the date of issuance of the 2023F Subordinated Bonds and the length of the Index Rate Period commencing on the date of issuance of the 2023F Subordinated Bonds in the Sales Certificate. On or before any Conversion Date upon which an Index Rate Period will begin, the District shall specify the length of such Index Rate Period and designate the Index and Call Protection Date to be in effect



during such Index Rate Period and the Remarketing Agent shall determine the Index Percentage and Index Spread that would result in a sale of the 2023F Subordinated Bonds at a price (without regard to accrued interest) equal to principal amount thereof on the Conversion Date for such Index Rate Period. Each Index, Index Percentage and Index Spread shall be in effect through the last day of the applicable Index Rate Period and shall be applied by the Calculation Agent in determining the Index Rate on each Index Rate Determination Date during such Index Rate Period. All percentages resulting from the calculation of the Index Rate shall be rounded, if necessary, to the nearest ten-thousandth of a percentage point with five hundred thousandths of a percentage point rounded upward. All dollar amounts used in or resulting from the calculation of the Index Rate shall be rounded to the nearest cent with one-half cent being rounded upward. The Calculation Agent shall make each Index Rate available by telephone or Electronic Means after 5:00 p.m. on the applicable Index Rate Determination Date to any Notice Party requesting such Index Rate. Upon request of any Notice Party, the Paying Agent shall give notice of such rate by Electronic Means. If the Index Rate is not determined by the Calculation Agent on the applicable Index Rate Determination Date, the rate of interest born on such 2023F Subordinated Bonds bearing interest at an Index Rate shall be the rate in effect on the immediately preceding Index Rate Reset Date until the Calculation Agent next determines the Index Rate as required hereunder.

Optional Tenders of 2023F Subordinated Bonds in the Daily Mode or the Weekly Mode. Subject to Section 102.06, the Beneficial Owners of 2023F Subordinated Bonds in a Daily Mode or a Weekly Mode may elect to have their 2023F Subordinated Bonds (or portions of those 2023F Subordinated Bonds, provided that no 2023F Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price, upon delivery of a Tender Notice to the Trustee by the Tender Notice Deadline. Immediately upon receipt of a Tender Notice, the Trustee shall notify the Remarketing Agent and provide the Remarketing Agent with a copy of such Tender Notice.

Mandatory Purchase on Mandatory Purchase Date; Amortization Period During Direct Purchase Index Mode. The 2023F Subordinated Bonds shall be subject to mandatory purchase on each Mandatory Purchase Date. The Trustee shall give notice of such mandatory purchase by mail to the Holders of the 2023F Subordinated Bonds subject to mandatory purchase no less than ten (10) days prior to the Mandatory Purchase Date described in clauses (iii), (iv), (v), (viii) and (x) of the definition of Mandatory Purchase Date and no less than 3 days prior to the Mandatory Purchase Date described in clauses (vi) and (vii) of the definition of Mandatory Purchase Date (provided that in the instance of a Mandatory Purchase Date resulting from clause (iii) of the definition of Bank Purchase Date, no such notice shall be required). No notice shall be given of the Mandatory Purchase Date at the end of each Interest Period for Flexible Rate Bonds. Any notice shall state the Mandatory Purchase Date, the Purchase Price, and that interest on 2023F Subordinated Bonds subject to mandatory purchase shall cease to accrue from and after the Mandatory Purchase Date. The failure to mail such notice with respect to any 2023F Subordinated Bond shall not affect the validity of the mandatory purchase of any other 2023F Subordinated Bond with respect to which notice was so mailed. Any notice mailed will be conclusively presumed to have been given, whether or not actually received by any Holder or Beneficial Owner. The Trustee shall also give a copy of such notice to the Rating Agencies.

The term “Mandatory Purchase Date” means: (i) with respect to a Flexible Rate Bond, the first Business Day following the last day of each Flexible Rate Period with respect to such Flexible Rate Bond, (ii) with respect to 2023F Subordinated Bonds in the Term Rate Mode, the first Business Day following the last day of each Term Rate Period applicable to such 2023F Subordinated Bonds, (iii) with respect to any 2023F Subordinated Bonds, any Conversion Date applicable to such 2023F Subordinated Bond (except for any Conversion Date in respect of a conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode) or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date specified in Section 100.11 not failed to occur (except for any such date in respect of a proposed conversion from the Daily Mode to the Weekly Mode or from the Weekly Mode to the Daily Mode), (iv) with respect to any 2023F Subordinated Bonds, any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (v) with respect to any 2023F Subordinated Bonds, the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility supporting such 2023F Subordinated Bonds, (vi) with respect to any 2023F Subordinated Bonds, the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility, which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023F Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee’s receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023F Subordinated Bonds and in no event later than the Business Day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (vii) with respect to any 2023F Subordinated Bonds, the date specified by the Trustee following receipt of written notice by the Trustee from the Credit Provider that the Credit Enhancement will not be reinstated following a drawing to pay interest on the 2023F Subordinated Bonds (other than interest on 2023F Subordinated Bonds no longer Outstanding after such drawing) and directing the Trustee to cause a mandatory tender of the 2023F Subordinated Bonds which date shall be a Business Day not more than five days after the Trustee’s receipt of such notice, (viii) with respect to 2023F Subordinated Bonds in the Daily Mode or Weekly Mode, any Business Day specified by the District with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee’s receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023F Subordinated Bonds, (ix) with respect to 2023F Subordinated Bonds in the Index Mode, the first Business Day following the last day of each Index Rate Period applicable to such 2023F Subordinated Bonds, and (x) with respect to 2023F Subordinated Bonds in the Direct Purchase Index Mode, each Bank Purchase Date; provided that, in the event that the Bank (acting in its sole and absolute discretion) for the then existing Direct Purchase Index Rate Period agrees in writing to a new Direct Purchase Index Rate Period, the provisions of this clause (x) shall apply and be interpreted by substituting the Bank Purchase Date for the new Direct Purchase Index Rate Period for the then-current Bank Purchase Date.

Notwithstanding the above paragraphs and anything to the contrary in the Seventeenth Supplemental Resolution, in the event the 2023F Subordinated Bonds in the Direct Purchase Index Mode are not purchased or remarketed on a Bank Purchase Date and the conditions precedent to any Amortization Period set forth in the Continuing Covenant Agreement, if any, are satisfied (and if no such conditions precedent are set forth in the Continuing Covenant Agreement, then on the condition that no Event of Default under and as defined in the

Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), then the 2023F Subordinated Bonds shall be subject to special mandatory redemption on the following terms: (i) the 2023F Subordinated Bonds shall bear interest at the Bank Rate, unless an Event of Default under and as defined in the Continuing Covenant Agreement or the Subordinate Master Resolution has occurred and is continuing), in which case the 2023F Subordinated Bonds shall bear interest at the Default Rate, (ii) interest on the 2023F Subordinated Bonds shall be payable on each Amortization Interest Payment Date, and (iii) the principal of the 2023F Subordinated Bonds shall be payable on each Amortization Principal Payment Date as provided in the Continuing Covenant Agreement. Notwithstanding anything herein to the contrary, during the Amortization Period, the 2023F Subordinated Bonds may be subject to redemption or purchase at the sole option of the District at any time without notice as and to the extent provided in the Continuing Covenant Agreement.

Optional Redemption of Flexible Rate Bonds. 2023F Subordinated Bonds in the Flexible Mode are not subject to optional redemption prior to their respective Purchase Dates. 2023F Subordinated Bonds in the Flexible Mode shall be subject to redemption at the option of the District in whole or in part on their respective Purchase Dates at a Redemption Price equal to the principal amount thereof.

Optional Redemption of 2023F Subordinated Bonds in the Daily Mode or the Weekly Mode. 2023F Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023F Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any Business Day, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Optional Redemption of 2023F Subordinated Bonds in the Term Rate Mode, Index Mode or Fixed Rate Mode.

2023F Subordinated Bonds in the Term Rate Mode or the Index Mode shall be subject to redemption, in whole or in part (provided that no 2023F Subordinated Bonds shall remain Outstanding in other than Authorized Denominations), on any date on or after the Call Protection Date for each Term Rate Period or Index Rate Period applicable to the 2023F Subordinated Bonds in the Term Rate Mode or Index Mode, at the option of the District at a Redemption Price equal to the principal amount, or portions thereof, of the 2023F Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

2023F Subordinated Bonds in the Term Rate Mode or Fixed Rate Mode with a Term Rate Period or Fixed Rate Period of greater than or equal to ten years are subject to redemption in whole or in part on any date on or after the tenth anniversary of the commencement of the Term Rate Period or Fixed Rate Period (and if in part, in such order of maturity as the District shall specify and within a maturity by lot in any manner which the Trustee deems fair) at a Redemption Price equal to the principal amount, or portions thereof, of the 2023F Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

The District, in connection with a change to a Long-Term Mode, may waive or otherwise alter its rights to direct the redemption of any such 2023F Subordinated Bonds so changed to a

Long-Term Mode; provided that notice describing the waiver or alteration shall be submitted to the Trustee, together with a Favorable Opinion of Bond Counsel, addressed to it.

Unless a Credit Provider Failure has occurred and is continuing, if a Credit Enhancement is then in effect and the Redemption Price includes any premium, the right of the District to direct an optional redemption of 2023F Subordinated Bonds in a Long-Term Mode is subject to the condition that the Trustee has received, prior to the date on which notice of redemption is required to be given to Owners, either Available Moneys or written confirmation from the Credit Provider that it can draw under the Credit Enhancement on the proposed redemption date in an aggregate amount sufficient to cover the principal of and premium and interest due on the Redemption Date.

Optional and Mandatory Redemption of 2023F Subordinated Bonds in the Direct Purchase Index Mode.

Subject to any limitations, conditions or requirements set forth in the applicable Continuing Covenant Agreement, 2023F Subordinated Bonds in the Direct Purchase Index Mode are subject to optional redemption by the District, in whole or in part (provided that no 2023F Subordinated Bonds shall remain Outstanding in other than Authorized Denominations) on any date, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

2023F Subordinated Bonds in the Direct Purchase Index Mode are subject to mandatory redemption on the dates, in the amounts and in the manner set forth in the applicable Continuing Covenant Agreement, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the Redemption Date.

Mandatory Sinking Fund Account Redemption of 2023F Subordinated Bonds. The 2023F Subordinated Bonds [maturing on August 15, 20[\_\_\_],] shall be subject to redemption prior to maturity from mandatory sinking fund account payments for such 2023F Subordinated Bonds on August 15 of each year on and after August 15, 20\_\_, at a Redemption Price equal to the principal amount of such 2023F Subordinated Bonds, or portions thereof, to be redeemed, plus accrued interest, if any, to the Redemption Date, without premium. The following shall be the mandatory sinking fund account payments for the 2023F Subordinated Bonds [maturing on August 15, 20[\_\_\_]]. Such mandatory sinking fund account payments shall be due on August 15 of the years set forth in the following table in the respective amounts set forth opposite such years in said table:

Year	Amount	Year	Amount
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\* Payment at Maturity

Notice of Redemption. Notice of redemption shall be mailed by first-class mail by the Trustee, not less than twenty (20) days (ten (10) days in the case of 2023F Subordinated Bonds in the Daily Mode, Weekly Mode, Direct Purchase Index Mode or Flexible Mode) nor more than sixty (60) days prior to the redemption date, to the Holder of any 2023F Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023F Subordinated Bonds; provided that no notice of redemption shall be required for mandatory redemptions of the 2023F Subordinated Bonds in the Direct Purchase Index Mode. Each notice of redemption shall state the redemption date, the place of redemption and the principal amount of the 2023F Subordinated Bonds to be redeemed, and shall also state that the interest on the 2023F Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023F Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the redemption date to pay the Redemption Price of the 2023F Subordinated Bonds to be redeemed. Any notice of optional redemption may be rescinded by written notice given to the Trustee by the District no later than two Business Days prior to the date specified for redemption. Notwithstanding the foregoing, notice of redemption shall not be required for 2023F Subordinated Bonds redeemed on a Mandatory Purchase Date.

This 2023F Subordinated Bond is transferable by the registered owner hereof, in person or by the attorney of such owner duly authorized in writing, at the principal office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Subordinate Resolution, and upon surrender and cancellation of this 2023F Subordinated Bond. Upon such transfer a new fully registered Bond or Subordinated Bonds without coupons, of authorized denomination or denominations, for the same aggregate principal amount and maturity will be issued to the transferee in exchange herefor.

The District and the Trustee may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District and the Trustee shall not be affected by any notice to the contrary.

To the extent this 2023F Subordinated Bond constitutes a Liquidity Facility Bond, the terms and conditions of the Seventeenth Supplemental Resolution with respect to Liquidity Facility Bonds shall control this 2023F Subordinated Bond.

The rights and obligations of the District and of the holders and registered owners of the Subordinated Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Subordinate Resolution, provided that no such modification or amendment shall (i) extend the fixed maturity of any Subordinated Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon, or reduce the amount of any premium payable upon the redemption thereof, without the consent of the holder of each Subordinated Bond so affected, or (ii) reduce the percentage of Subordinated Bonds required for the affirmative vote or written consent to an amendment or modification, without the consent of the holders of all the Subordinated Bonds then outstanding, or (iii) without its written consent thereto, modify any of the rights or obligations of the Trustee.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this 2023F Subordinated Bond, and in the issuing of this 2023F Subordinated Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this 2023F Subordinated Bond, together with all other indebtedness of the District pertaining to the Electric System, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Subordinated Bonds permitted to be issued under the Subordinate Resolution.

This 2023F Subordinated Bond shall not be entitled to any benefit under the Subordinate Resolution, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee. To the extent of any conflict or inconsistency between any provisions contained in this 2023F Subordinated Bond and the Subordinate Resolution, the provisions of the Subordinate Resolution shall control.

IN WITNESS WHEREOF, SACRAMENTO MUNICIPAL UTILITY DISTRICT has caused this 2023F Subordinated Bond to be executed in its name and on its behalf by the facsimile signature of its President of its Board of Directors and by the facsimile signature of its Treasurer and countersigned by the facsimile signature of its Secretary, and the seal of the District to be reproduced hereon, by facsimile and this 2023F Subordinated Bond to be dated as of the date first written above.

SACRAMENTO MUNICIPAL UTILITY  
DISTRICT

By \_\_\_\_\_  
President of the Board of Directors

By \_\_\_\_\_  
Treasurer of the District

(SEAL)

Countersigned:

\_\_\_\_\_  
Secretary of the District

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This is one of the Subordinated Bonds described in the within-mentioned Subordinate Resolution and registered on the date set forth below.

Dated: \_\_\_\_\_, 2023

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Trustee

By \_\_\_\_\_  
Authorized Officer



## ASSIGNMENT

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ whose taxpayer identification number is \_\_\_\_\_ the within-mentioned Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within Registered Bond in every particular, without alteration or enlargement or any change whatsoever.

Dated:

Signature Guaranteed by:

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NOTE: Signature must be guaranteed by an eligible guarantor institution

## EXHIBIT B

### FORM OF REVOLVING NOTE

#### SACRAMENTO MUNICIPAL UTILITY DISTRICT SUBORDINATED ELECTRIC REVENUE REFUNDING BONDS 2023 SERIES F

[Delivery Date] \$ \_\_\_\_\_

The Sacramento Municipal Utility District (the “District”), for value received, hereby promises to pay to the order of [Bank] (the “Bank”), pursuant to that certain \_\_\_\_\_ dated as of \_\_\_\_\_ (the “Agreement”), between the District and the Bank, at the office of the Bank at \_\_\_\_\_, the aggregate unpaid principal amount of all Reimbursement Obligations (as defined in the Agreement) pursuant to the Agreement on the dates and in the amounts provided for in the Agreement.

The District promises to pay interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. All payments of principal and interest shall be made in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts in immediately available funds. All capitalized terms used herein and not otherwise defined herein shall have the meanings specified in the Agreement.

This Revolving Note is a Revolving Note as referred to in Section 104.12 of Resolution No. 01-06-10 of the District adopted June 21, 2001, amending and restating Resolution No. 85-11-1 of the District adopted November 7, 1985, as amended and supplemented, including as supplemented by Resolution No. \_\_\_\_\_ of the District adopted May 18, 2023 (the “Seventeenth Supplemental Resolution”) (collectively, the “Subordinate Master Resolution”). This Revolving Note evidences the Reimbursement Obligations owed to the Bank by the District pursuant to the Agreement which have been designated by the District as, and constitute, Parity Subordinated Debt under and as defined in the Subordinate Master Resolution and, as such Parity Subordinated Debt, is entitled to the benefits afforded Parity Subordinated Debt and the holders thereof pursuant to the Subordinate Master Resolution and is secured by a lien on the Net Subordinated Revenues as more fully set forth in and subject to the terms of the Subordinate Master Resolution. As provided in the Agreement, the Reimbursement Obligations and this Revolving Note are subject to prepayment, in whole or in part, in accordance with the terms of the Agreement.

The Bank agrees, by acceptance of this Revolving Note, that it will make a notation on the schedule attached hereto of all Reimbursement Obligations evidenced hereby and all principal payments and prepayments made hereunder and of the date to which interest hereon has been paid, all as provided in the Agreement; *provided, however*, that the failure to make any such notation or any error in such notation shall not limit or otherwise affect the obligation of the District hereunder with respect to payments of principal of and interest on this Revolving Note.

This Revolving Note is authorized by the District to be issued to provide for the payment of the principal of and interest on the unpaid principal amount of all Reimbursement Obligations owed to the Bank under the Agreement on the dates and at the rate or rates provided for in the Agreement. This Revolving Note is issued under and pursuant to and in full compliance with the Subordinate Master Resolution and the Seventeenth Supplemental Resolution.

It is hereby certified that all conditions, acts and things essential to the validity of this Revolving Note exist, have happened and have been done and that every requirement of law affecting the issuance hereof has been duly complied with.

IN WITNESS WHEREOF, SMUD, has caused this Revolving Note to be executed by an authorized officer of SMUD and this Revolving Note to be dated as of date set forth above.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE FOR REVOLVING NOTE**  
**DATED \_\_\_\_\_**  
**BY SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**PAYABLE TO [BANK]**

<u>Date</u>	<u>Amount of Drawing or Advance Made</u>	<u>Amount of Principal Paid</u>	<u>Date to Which Interest Paid</u>	<u>Due Date</u>	<u>Notation Made by</u>
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**DRAFT**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE CONTRACTS OF PURCHASE, OFFICIAL STATEMENTS, CONTINUING DISCLOSURE AGREEMENTS, STANDBY BOND PURCHASE AGREEMENTS, FEE AGREEMENTS, REMARKETING AGREEMENTS, DISTRIBUTION OF OFFICIAL STATEMENTS, AND CERTAIN OTHER ACTIONS RELATING TO THE ISSUANCE AND SALE OF ONE OR MORE SERIES OR SUBSERIES OF THE DISTRICT'S ELECTRIC REVENUE BONDS AND/OR SUBORDINATED ELECTRIC REVENUE BONDS, THE REFUNDING OF ALL OR A PORTION OF ONE OR MORE SERIES OF THE DISTRICT'S ELECTRIC REVENUE BONDS AND/OR SUBORDINATED ELECTRIC REVENUE BONDS, THE TERMINATION OF ONE OR MORE INTEREST RATE SWAP AGREEMENTS AND CERTAIN OTHER MATTERS RELATING THERETO**

**RESOLUTION NO. \_\_\_\_\_ OF  
THE BOARD OF DIRECTORS OF  
SACRAMENTO MUNICIPAL UTILITY DISTRICT  
AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE  
CONTRACTS OF PURCHASE, OFFICIAL STATEMENTS, CONTINUING  
DISCLOSURE AGREEMENTS, STANDBY BOND PURCHASE AGREEMENTS, FEE  
AGREEMENTS, REMARKETING AGREEMENTS, DISTRIBUTION OF OFFICIAL  
STATEMENTS, AND CERTAIN OTHER ACTIONS RELATING TO THE ISSUANCE  
AND SALE OF ONE OR MORE SERIES OR SUBSERIES OF THE DISTRICT'S  
ELECTRIC REVENUE BONDS AND/OR SUBORDINATED ELECTRIC REVENUE  
BONDS, THE REFUNDING OF ALL OR A PORTION OF ONE OR MORE SERIES OF  
THE DISTRICT'S ELECTRIC REVENUE BONDS AND/OR SUBORDINATED  
ELECTRIC REVENUE BONDS, THE TERMINATION OF ONE OR MORE INTEREST  
RATE SWAP AGREEMENTS AND CERTAIN OTHER MATTERS RELATING  
THERE TO**

BE IT RESOLVED, by the Board of Directors of the Sacramento Municipal Utility District (the "District"), as follows:

Section 1. Sale of Bonds. One or more series or subseries of the District's Electric Revenue Bonds and/or Subordinated Electric Revenue Bonds (collectively, the "Bonds"), are hereby authorized to be sold to the underwriters thereof in one or more negotiated sales at the prices and otherwise upon the terms and conditions determined on the sale dates thereof by the Chief Executive Officer and General Manager, any Member of the Executive Committee, the Treasurer, the Secretary or the Chief Financial Officer or the designee of any such officer (each an "Authorized Officer"), as specified in one or more Sales Certificates relating to the Bonds (the "Sales Certificates") authorized under the supplemental resolutions authorizing the issuance of the Bonds adopted by the Board of Directors of the District on the date hereof.

Section 2. Contracts of Purchase. The forms of Contracts of Purchase with respect to the Bonds (the "Contracts of Purchase") between the District and the underwriters named therein (the "Underwriters"), in the forms submitted to this meeting are hereby approved. Any Authorized Officer, acting alone, is authorized and directed to execute and deliver one or more Contracts of Purchase in substantially such forms for the Bonds or any series or subseries thereof on behalf of the District, subject to such additions thereto and changes therein as any Authorized Officer shall approve after consultation with the District's counsel (such approval to be conclusively evidenced by the execution of such Contracts of Purchase).

Section 3. Official Statements. The Official Statements of the District relating to the Bonds (the "Official Statements") in substantially the forms submitted to this meeting are hereby approved. Any Authorized Officer, acting alone, is authorized and directed to execute and deliver the Official Statements relating to the Bonds in substantially such forms on behalf of the District, subject to such additions thereto and changes therein as any Authorized Officer shall approve after consultation with the District's counsel and subject to such further

changes as may be consistent with the Sales Certificates (such approval to be conclusively evidenced by the execution of such Official Statements). The Underwriters are authorized to distribute the Official Statements in preliminary form to persons who may be interested in the purchase of the Bonds and the Official Statements in final form to purchasers of the Bonds.

Section 4. Continuing Disclosure Agreements. The forms of Continuing Disclosure Agreements relating to the Bonds between the District and U.S. Bank Trust Company, National Association, as dissemination agent (the “Continuing Disclosure Agreements”) in the forms attached to the Official Statements submitted to this meeting are hereby approved. Any Authorized Officer, acting alone, is authorized and directed to execute and deliver the Continuing Disclosure Agreements in substantially such forms on behalf of the District, subject to such additions thereto and changes therein as any Authorized Officer shall approve after consultation with the District’s counsel (such approval to be conclusively evidenced by the execution of such Continuing Disclosure Agreements).

Section 5. Bond Insurance. Any Authorized Officer, acting alone, is hereby authorized to do any and all things and to negotiate, execute, deliver, and perform any and all agreements and documents which they deem necessary or advisable in order to procure bond insurance for all or any portion of the Bonds including without limitation one or more commitments for a bond insurance policy and one or more insurance agreements; provided that such insurance and such agreements and documents are determined by any Authorized Officer to be reasonable under the circumstances and to be consistent with the provisions and intent of this resolution. The power to make such determination is hereby delegated to each Authorized Officer and shall be conclusively evidenced by the execution and delivery of the insurance agreements and insurance commitments. Any actions heretofore taken by any Authorized Officer in furtherance of this Section are hereby ratified, confirmed and approved.

Section 6. Termination of Interest Rate Swap Agreements. The District previously entered into interest rate swap agreements (the “Interest Rate Swaps”) to hedge potential interest rate exposure relating to the refunding of its Electric Revenue Bonds anticipated to be refunded by the Bonds (the “Refunded Bonds”). Any Authorized Officer, acting alone, is hereby authorized to do any and all things and to negotiate, execute, deliver, and perform any and all agreements and documents which they deem necessary or advisable in order to terminate all or a portion of one or more of the Interest Rate Swaps in connection with the issuance of the Bonds and the refunding of the Refunded Bonds. In the event that one or more of the Interest Rate Swaps is terminated on the condition that the issuance of the applicable Bonds has occurred (or will occur simultaneously with the settlement of such Interest Rate Swap termination) and/or the applicable Refunded Bonds have been refunded (or will be refunded simultaneously with the settlement of such Interest Rate Swap termination) and such issuance and/or refunding does not occur, then any Authorized Officer, acting alone, is hereby authorized to do any and all things and to negotiate, execute, deliver, and perform any and all agreements and documents which they deem necessary or advisable in order to reinstate all or a portion of the applicable terminated Interest Rate Swap; this authorization shall include, but not be limited to, adjusting any fixed rate specified in, and making other changes to the terms of, the applicable Interest Rate Swap in connection with the reinstatement of all or a portion of the applicable terminated Interest Rate Swap.

In the event that all or a portion of the applicable Interest Rate Swap is reinstated and/or adjusted as described above, the Board of Directors of the District hereby finds and determines, pursuant to Section 5922 of the California Government Code, that due consideration has been given for the creditworthiness of the counterparty to such Interest Rate Swap, including any related guarantee of, or other credit support for, the obligations of such counterparty, if applicable, and that such Interest Rate Swap is designed to reduce the amount or duration of rate, spread or similar risk or result in a lower cost of borrowing when used in combination with the issuance of the applicable Bonds, the applicable Refunded Bonds, and/or one or more series of other revenue bonds to be issued by the District in the future for the purpose of refunding all or a portion of the applicable Refunded Bonds. To the extent that any Interest Rate Swap so reinstated and/or adjusted as described above is inconsistent or in conflict with the District's Resolution No. 99-12-14, adopted on December 16, 1999 (the "Swap Policy") or any other swap policies of the District, the inconsistent or conflicting provisions of the Swap Policy or such other swap policies of the District are hereby waived and shall not be applicable to any Interest Rate Swap reinstated and/or adjusted as described above.

Section 7. Credit Facilities and/or Liquidity Facilities. The form of one or more Standby Bond Purchase Agreements relating to one or more series or subseries of the Bonds (the "Standby Bond Purchase Agreements") between the District and one or more liquidity facility providers to be named therein (the "Liquidity Facility Providers"), in the form submitted to this meeting is hereby approved. The form of one or more Fee Agreements relating to the Standby Bond Purchase Agreements (the "Fee Agreements") between the District and the Liquidity Facility Providers named therein, in the form submitted to this meeting is hereby approved. Any Authorized Officer, acting alone, is authorized and directed to execute and deliver one or more Standby Bond Purchase Agreements and one or more Fee Agreements in substantially such forms on behalf of the District, subject to such additions thereto and changes therein as any Authorized Officer shall approve after consultation with the District's counsel (such approval to be conclusively evidenced by the execution of such Standby Bond Purchase Agreements and Fee Agreements). Additionally, any Authorized Officer, acting alone, is hereby authorized to do any and all things and to negotiate, execute, deliver, and perform any and all agreements and documents which they deem necessary or advisable in order to procure such other letter of credit, insurance policy, line of credit, surety bond, standby purchase agreement or other security instrument or liquidity instrument providing for or securing the payment of the principal of and interest on all or any portion of the Bonds and/or providing for the payment of the purchase price of tendered Bonds, including without limitation one or more reimbursement agreements, standby purchase agreements, or other credit or liquidity provider agreements and any term sheets, fee letters or fee agreements therefor; provided that such credit facilities and/or liquidity facilities and such agreements and documents are determined by any Authorized Officer to be reasonable under the circumstances and to be consistent with the provisions and intent of this resolution. The power to make such determination is hereby delegated to each Authorized Officer and shall be conclusively evidenced by the execution and delivery of such agreements, term sheets, fee letters and/or fee agreements. Any actions heretofore taken by any Authorized Officer in furtherance of this Section are hereby ratified, confirmed and approved.

Section 8. Remarketing Agents and Remarketing Agreements. The form of one or more Remarketing Agreements relating to one or more series or subseries of the Bonds



(the “Remarketing Agreements”), in the form submitted to this meeting is hereby approved. Any Authorized Officer, acting alone, is authorized and directed to execute and deliver one or more Remarketing Agreements in substantially such form on behalf of the District, subject to such additions thereto and changes therein as any Authorized Officer shall approve after consultation with the District’s counsel (such approval to be conclusively evidenced by the execution of the Remarketing Agreements). Additionally, any Authorized Officer, acting alone, is hereby authorized to do any and all things and to negotiate, execute, deliver, and perform any and all agreements and documents which they deem necessary or advisable in order to appoint one or more remarketing agents for all or any portion of the Bonds, including without limitation one or more remarketing agreements; provided that such agreements and documents are determined by any Authorized Officer to be reasonable under the circumstances and to be consistent with the provisions and intent of this resolution. The power to make such determination is hereby delegated to each Authorized Officer and shall be conclusively evidenced by the execution and delivery of such agreements. Any actions heretofore taken by any Authorized Officer in furtherance of this Section are hereby ratified, confirmed and approved.

Section 9. Other Related Actions. The Authorized Officers and other officers of the District are hereby authorized and directed to do any and all things and to negotiate, execute, deliver and perform any and all agreements and documents (including one or more escrow agreements for the purpose of refunding outstanding bonds) which they deem necessary or advisable in order to consummate the issuance, sale and delivery of the Bonds, to provide for credit enhancement of, or liquidity for, the Bonds, and to effectuate the purposes of this resolution and the transactions contemplated by this resolution, the supplemental resolutions authorizing the issuance of the Bonds, the Sales Certificates, and the documents approved hereby, including any subsequent amendments, directions, waivers or consents entered into or given in accordance with such documents, and that any actions heretofore taken and any agreements and documents heretofore executed and delivered by the officers of the District to consummate the issuance, sale and delivery of the Bonds, to provide for credit enhancement of, or liquidity for, the Bonds, and to effect the purpose of these resolutions and the transactions contemplated thereby are hereby ratified and confirmed.

**[\$[PAR] ELECTRIC REVENUE REFUNDING BONDS,  
2023 SERIES K**

**CONTRACT OF PURCHASE  
[Form of Contract of Purchase (Senior Bonds)]**

**DRAFT**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**[\$[PAR] Electric Revenue Refunding Bonds, 2023 Series K**

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**CONTRACT OF PURCHASE**

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[SALE DATE]

Honorable Board of Directors  
Sacramento Municipal Utility District  
6201 S Street  
Sacramento, California 95817-1899

Dear Directors:

The undersigned Barclays Capital Inc., [UNDERWRITING GROUP TO COME] (herein collectively called the “Underwriters”), acting for and on behalf of themselves, offer to enter into this Contract of Purchase (the “Contract of Purchase”) with the Sacramento Municipal Utility District (the “District”) which, upon the District’s acceptance, will be binding upon the District and upon the Underwriters. Barclays Capital Inc., has been duly authorized to execute this Contract of Purchase and to act hereunder by and based on representations made to it under an Agreement Among Underwriters dated \_\_\_\_\_, 2023 on behalf of the Underwriters as the Senior Managing Underwriter (the “Senior Underwriter”). This offer is made subject to the District’s acceptance on or before 5:00 p.m., Sacramento time, on the date hereof, and if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the District at any time prior to the acceptance hereof by the District.

**1. Purchase, Sale and Delivery of the Bonds.** (a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements herein set forth, the Underwriters, jointly and severally, hereby agree to purchase from the District, and the District hereby agrees to sell to the Underwriters, all (but not less than all) of the \$[PAR] aggregate principal amount of the Sacramento Municipal Utility District Electric Revenue Refunding Bonds, 2023 Series K (the “Bonds”), dated [CLOSING DATE], bearing interest (payable on the dates set forth in the Official Statement (as hereinafter defined) of the District relating to the Bonds) in each year until maturity or earlier redemption at the rates per annum and maturing on the dates and in the amounts set forth in the Official Statement. The purchase price for the Bonds shall be \$[PURCHASE PRICE] (consisting of the principal amount of the Bonds of \$[PAR] plus [net] original issue premium of \$[OIP] and minus an Underwriters’ discount of \$ [UWD]).

(b) The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable as provided in, Resolution No. 6649, adopted by the Board of Directors of the District on January 7, 1971 (the “Master Resolution”), as heretofore amended and supplemented, including the amendments and supplements thereto made by Resolution No. [RESO NO.], adopted by the Board of Directors on [May 18, 2023] (the “Sixty-Sixth Supplemental Resolution”). The Master Resolution, as supplemented and amended as described in this Contract of Purchase, is herein called the “Resolution.” The Bonds are authorized to be issued pursuant to applicable California law, including the Municipal Utility District Act (Sections 12850 to 12860 of the Public Utilities Code), the Revenue Bond Law of 1941 (Government Code Section 54300 *et seq.*), Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (section 53580 *et seq.*) and the Resolution. The Bonds will be special obligations of the District payable exclusively from, and are secured by a pledge (effected in the manner and to the extent provided in the Resolution) of, the Net Revenues (as defined in the Resolution). The Bonds shall be payable and shall be subject to redemption as provided in the Resolution.

(c) The Bonds are being issued to (i) refund the Refunded Bonds (as defined in the Official Statement), and (ii) pay certain costs associated with the issuance of the Bonds. [In connection with the refunding of the Refunded Bonds, the District expects to terminate an interest rate swap agreement that was executed in [ ] to hedge potential interest rate exposure relating to the future refunding of the Refunded Bonds. The District expects that it will receive a termination payment for the termination of the interest rate swap agreement.] A portion of the proceeds of the Bonds, together with other available funds, will be deposited in an escrow fund established pursuant to an escrow agreement (the “Escrow Agreement”) between the District and the Trustee, in its capacity as Escrow Agent (in such capacity, the “Escrow Agent”).

(d) The District has heretofore delivered to the Underwriters copies of the Preliminary Official Statement dated [POS DATE] relating to the Bonds (the “Preliminary Official Statement”) in connection with the public offering of the Bonds. The Preliminary Official Statement was deemed final by the District as of the date thereof in accordance with paragraph (b)(1) of Rule 15c2-12 of the Securities and Exchange Commission (“Rule 15c2-12”), except for the information not required to be included therein under Rule 15c2-12.

(e) The District shall prepare and deliver to the Underwriters, as promptly as practicable, but in any event not later than two business days prior to the Closing Date (as defined below) or seven business days from the date hereof, a final official statement, with such changes and amendments as may be agreed to by the Underwriters, in such quantities as the Underwriters may reasonably request in order to comply with paragraph (b)(4) of Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board (“MSRB”) (such official statement, including the cover page and Appendices thereto, as the same may be supplemented or amended pursuant to paragraph (i) of Section 2 hereof, is herein referred to as the “Official Statement”). In addition, the District will provide, subject to customary disclaimers regarding the transmission of electronic copies, an electronic copy of the final Official Statement to the Underwriters in the currently required designated electronic format stated in MSRB Rule G-32 and the EMMA Dataport Manual (as defined below). The parties agree that the format in which the Preliminary Official Statement was delivered meets such electronic format requirements.

(f) Within one (1) business day after receipt of the Official Statement from the District, but by no later than the Closing Date, the Underwriters shall, at their own expense submit the Official Statement to EMMA (as defined below). The Underwriters will comply with the provisions of MSRB Rule G-32, including without limitation the submission of Form G-32 and the Official Statement and notify the District of the date on which the Official Statement has been filed with EMMA.

“EMMA” means the MSRB’s Electronic Municipal Market Access system, or any other electronic municipal securities information access system designated by the MSRB for collecting and disseminating primary offering documents and information.

“EMMA Dataport Manual” means the document(s) designated as such published by the MSRB from time to time setting forth the processes and procedures with respect to submissions to be made to the primary market disclosure service of EMMA by underwriters under Rule G-32(b).

(g) The District hereby ratifies, confirms and approves the use and distribution by the Underwriters prior to the date hereof of the Preliminary Official Statement and hereby authorizes the Underwriters to use and distribute the Official Statement, the Resolution, and this Contract of Purchase, and all information contained in each, and all other documents, certificates and statements furnished by the District to the Underwriters in connection with the transactions contemplated by this Contract of Purchase, in connection with the offer and sale of the Bonds.

The District will covenant pursuant to a Continuing Disclosure Agreement dated as of the date of the issuance of the Bonds (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association (the “Trustee”), to provide annual reports and certain notices as described in Appendix F of the Official Statement.

(h) The District agrees and acknowledges that: (i) the Underwriters are not acting as municipal advisors within the meaning of Section 15B of the Securities Exchange Act, as amended, (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm’s length commercial transaction between the District and the Underwriters and the Underwriters have financial and other interests that differ from those of the District; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to the District and have not assumed any advisory or fiduciary responsibility to the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the District on other matters); (iv) the only contractual obligations the Underwriters have to the District with respect to the transaction contemplated hereby expressly are set forth in this Contract of Purchase; and (v) the District has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

(i) At 8:00 A.M., Sacramento time, on [CLOSING DATE] or at such earlier or later time or date as shall be agreed upon by the Underwriters and the District (such time and date being herein referred to as the “Closing Date”), the District will deliver the Bonds to The Depository Trust Company, New York, New York (“DTC”), for the account of the Underwriters, duly executed by the District, and the other documents herein mentioned; and the Underwriters

will (i) accept such delivery and pay the purchase price of the Bonds as set forth in paragraph (a) of this Section by wire transfer in San Francisco, California to the order of the District. Delivery of the documents herein mentioned shall be made at the offices of Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, California 95814, or such other place as shall have been mutually agreed upon by the District and the Underwriters, except that the Bonds shall be delivered at the offices of DTC in New York, New York or at such other place and in such manner as shall have been mutually agreed upon by the District and the Underwriters.

The Bonds shall be issued initially in fully registered book-entry eligible form (which may be typewritten) in the form of a single registered bond for each maturity of the Bonds, shall bear CUSIP numbers and shall be registered in the name of Cede & Co., as nominee of DTC.

**2. Representations, Warranties and Agreements of the District.** The District hereby represents, warrants to and agrees with the Underwriters that:

(a) The District is a political subdivision of the State of California duly organized and validly existing pursuant to the Municipal Utility District Act as contained in Public Utilities Code Section 11501 *et seq.* (the “Act”) and has, and at the Closing Date will have, full legal right, power and authority (i) to enter into this Contract of Purchase, the Escrow Agreement, and the Undertaking, (ii) to adopt the Resolution, (iii) to pledge the Net Revenues as set forth in the Resolution, (iv) to issue, sell and deliver the Bonds to the Underwriters pursuant to the Resolution as provided herein, (v) to acquire, construct, operate, maintain, improve and finance and refinance its Electric System (as defined in the Resolution) and conduct the business thereof as set forth in and contemplated by the Preliminary Official Statement and the Official Statement, and (vi) to carry out, give effect to and consummate the transactions contemplated by this Contract of Purchase, the Escrow Agreement, the Undertaking, the Resolution, and the Preliminary Official Statement and the Official Statement;

(b) The District has complied, and will at the Closing Date be in compliance, in all material respects, with the Act, the Resolution, and with the obligations in connection with the issuance of the Bonds on its part contained in the Resolution, the Escrow Agreement, the Bonds, the Act, the Undertaking and this Contract of Purchase;

(c) The District has duly and validly adopted the Resolution, has duly authorized and approved the execution and delivery of the Bonds, this Contract of Purchase, the Escrow Agreement, the Undertaking and the Official Statement and has duly authorized and approved the performance by the District of its obligations contained in, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by, each of said documents and, at the Closing Date, the Bonds will have been validly issued and delivered, the Resolution, the Escrow Agreement, the Undertaking and this Contract of Purchase will constitute the valid, legal and binding obligations of the District enforceable in accordance with their respective terms (subject to the effect of, and restrictions and limitations imposed by or resulting from, (i) bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws affecting creditors’ rights, and (ii) judicial discretion) and the Resolution will be in full force and effect;

(d) The District is not in breach of or in default under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either or any applicable court or administrative decree or order, or any loan agreement, bond, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District is otherwise subject or bound which in any material way, directly or indirectly, affects the issuance of the Bonds or the validity thereof, the validity or adoption of the Resolution or the execution and delivery of the Bonds, this Contract of Purchase, the Escrow Agreement, the Undertaking or the other instruments contemplated by any of such documents to which the District is a party, and the adoption of the Resolution and compliance with the provisions of each will not, as of the date hereof and as of the Closing Date, conflict with or constitute a breach of or default in any material way under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States, or of any department, division, agency or instrumentality of either or any applicable court or administrative judgment, decree or order, or any loan agreement, bond, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District or any of the property or assets of the Electric System (as defined in the Resolution) are otherwise subject or bound, and no event which would have a material and adverse effect upon the financial condition of the District has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the District under any of the foregoing;

(e) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the Bonds under the Resolution, the Escrow Agreement, the Undertaking and this Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the “Blue Sky” or other securities laws of any state in connection with the offering and sale of the Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, this Contract of Purchase, the Escrow Agreement, the Undertaking, the Bonds or the Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained;

(f) The Bonds, when issued and delivered in accordance with the Resolution and this Contract of Purchase and paid for by the Underwriters on the Closing Date as provided herein, will be validly issued and outstanding special obligations of the District enforceable against the District in accordance with their terms and entitled to all the benefits and security of the Resolution; and, upon the issuance and delivery of the Bonds, the Resolution will provide, for the benefit of the holders from time to time of the Bonds, a legally valid and binding pledge of and lien on Net Revenues pledged under the Resolution, as provided in and contemplated by the Resolution;

(g) The Preliminary Official Statement, as of its date and as of the date hereof, did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) At the time of the District's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (i) of Section 2 hereof) at all times subsequent to the date of delivery thereof up to and including the Closing Date, the Official Statement will be true, correct, complete and final in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) If, after the date of this Contract of Purchase and until 25 days after the end of the "underwriting period" (as defined in Rule 15c2-12), any event shall occur that might cause the Official Statement to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the District hereby covenants and agrees, to the extent it has knowledge of such event, to notify the Underwriters (and for the purposes of this clause to provide the Underwriters with such information as they may from time to time reasonably request), and, if in the opinion of the Underwriters and their counsel such event requires the preparation and publication of a supplement or amendment to the Official Statement, at its expense to supplement or amend the Official Statement in a form and manner approved by the Underwriters and furnish to the Underwriters a reasonable number of copies of such supplement or amendment. For purposes of this Contract of Purchase, the District may assume that the end of the "underwriting period" has occurred on the Closing Date unless the District is otherwise notified by the Underwriters on or prior to the Closing Date. If the Underwriters notify the District that the Closing Date is not the end of the "underwriting period", then the Underwriters shall further notify the District of the date that is the end of the "underwriting period" (as defined in Rule 15c2-12);

(j) If the Official Statement is supplemented or amended pursuant to paragraph (i) of Section 2 of this Contract of Purchase, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the "underwriting period", the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which made, not misleading;

(k) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened (i) in any way affecting the corporate existence of the District or the titles of its officers to their respective offices, (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of any of the Bonds, the application of the proceeds thereof in accordance with the Resolution, or the collection or application of Revenues (as defined in the Resolution) or the collection or application of the Net Revenues pledged to pay the principal of and interest on the Bonds under the Resolution or in any way contesting or affecting the validity or enforceability



of any of the Bonds, the Escrow Agreement, the Resolution, the Undertaking, this Contract of Purchase or any action of the District contemplated by any of said documents, (iii) which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the powers of the District or its authority with respect to the Bonds, the adoption of the Resolution, or the execution and delivery of the Undertaking, the Escrow Agreement, or this Contract of Purchase, or any action of the District contemplated by any of said documents, and (v) which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor;

(l) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request (i) to qualify the Bonds for offer and sale under the “Blue Sky” or other securities laws and regulations of such states and other jurisdictions of the United States as the Senior Underwriter may designate, and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided that in connection therewith the District shall not be required to execute or file a general or special consent to service of process or qualify to do business in any jurisdiction and will advise the Senior Underwriter promptly of receipt by the District of any written notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or written notification of the initiation or threat of any proceeding for that purpose;

(m) The audited financial statements of the District for the years ending December 31, 2022 and December 31, 2021 heretofore delivered to the Underwriters and incorporated by reference in the Preliminary Official Statement and the Official Statement as Appendix B fairly present the financial position of the District as of the dates indicated and such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis;

(n) Between the date hereof and the Closing Date, the District will not, without the prior written consent of the Senior Underwriter, offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as disclosed in the Preliminary Official Statement or the Official Statement or as otherwise disclosed to the Senior Underwriter;

(o) The Bonds, the Escrow Agreement, the Resolution and the Undertaking conform to the descriptions thereof contained in the Preliminary Official Statement and the Official Statement;

(p) The District has the legal authority to apply and will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Resolution and as described in the Preliminary Official Statement and the Official

Statement, including for payment of District expenses incurred in connection with the negotiation, marketing, issuance and delivery of the Bonds to the extent required by Section 7 (Expenses), and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds;

(q) Any certificate signed by any official of the District, and delivered to the Underwriters, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(r) Except as disclosed in the Preliminary Official Statement and the Official Statement, during the last five years the District has complied in all material respects with all previous undertakings required by Rule 15c2-12.

**3. Conditions to the Obligations of the Underwriters.** The obligations of the Underwriters to accept delivery of and pay for the Bonds on the Closing Date shall be subject to the performance by the District of its obligations to be performed hereunder at or prior to the Closing Date and to the fulfillment of the following conditions:

(a) The representations, warranties and covenants of the District contained herein shall be true, complete and correct on the date hereof and as of the Closing Date as if made on the Closing Date;

(b) At the Closing Date, the Resolution shall have been duly adopted and shall be in full force and effect, and shall not have been repealed, amended, modified or supplemented, except as may have been agreed to in writing by the Underwriters, and there shall have been taken in connection therewith, with the issuance of the Bonds and with the transactions contemplated thereby and by this Contract of Purchase, all such actions as, in the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel (“Bond Counsel”), shall be necessary and appropriate;

(c) At the Closing Date, the Official Statement shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriters;

(d) At or prior to the Closing Date, the Underwriters shall have received copies of the following documents, in each case satisfactory in form and substance to the Underwriters:

(1) The Official Statement executed on behalf of the District by its Chief Executive Officer and General Manager, any Member of its Executive Committee, its Treasurer, its Secretary or its Chief Financial Officer (each an “Authorized Representative”);

(2) The Undertaking executed on behalf of the District by an Authorized Representative;

(3) The Sixty-Sixth Supplemental Resolution, with only such supplements or amendments thereto as may have been agreed to by the Underwriters and certified by an authorized officer of the District under its seal as having been duly adopted by the District and as being in full force and effect, and the Resolution, certified by an authorized officer

of the District as being in full force and effect, with such supplements and amendments thereto adopted after the date hereof as may have been agreed to by the Underwriters;

(4) An opinion or opinions relating to the Bonds, dated the Closing Date and addressed to the District, of Bond Counsel, in substantially the form included in the Official Statement as Appendix E, together with a letter or letters of such Bond Counsel, dated the Closing Date and addressed to the Underwriters, to the effect that the foregoing opinion or opinions addressed to the District may be relied upon by the Underwriters to the same extent as if such opinion or opinions were addressed to them;

(5) An opinion or opinions, dated the Closing Date and addressed to the Senior Underwriter, of Bond Counsel, in substantially the form attached hereto as Exhibit E;

(6) An opinion, dated the Closing Date and addressed to the Senior Underwriter, of General Counsel to the District, in substantially the form attached hereto as Exhibit C;

(7) An opinion, dated the Closing Date and addressed to the Underwriters, of Nixon Peabody LLP, as counsel for the Underwriters (“Underwriters’ Counsel”), to the effect that (i) the Bonds are exempt from the registration requirements of the Securities Act of 1933, as amended, and the Resolution is exempt from qualification under the Trust Indenture Act of 1939, as amended; (ii) the Undertaking complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule applicable to the primary offering of the Bonds; and (iii) based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel to the Underwriters and without having undertaken to determine independently, or assuming any responsibility for, the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement, they do not believe that (A) the Preliminary Official Statement, as of its date and as of the date of the Contract of Purchase, and (B) the Official Statement as of its date and as of the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except for the information relating to Cede & Co., DTC or the operation of the book-entry system, the Appendices to the Official Statement, except Appendices D, and F, and summaries thereof and references thereto, and other financial, accounting and statistical data included therein, as to all of which no view need be expressed); and (iii) with respect to such matters as the Underwriters may reasonably require;

(8) A certificate, dated the Closing Date, signed by an Authorized Representative of the District in substantially the form attached hereto as Exhibit D (but in lieu of or in conjunction with such certificate the Underwriters may, in its sole discretion, accept certificates or opinions of General Counsel to the District, or of other counsel acceptable to the Underwriters, that in the opinion of such counsel the issues raised in any pending or threatened litigation referred to in such certificate are without substance or that the contentions of all plaintiffs therein are without merit);

- (9) The Escrow Agreement, executed by the District and the Escrow Agent;
- (10) An acceptance of and agreement to the provisions of the Sixty-Sixth Supplemental Resolution executed by the Trustee under the Resolution in form and substance acceptable to the Underwriters;
- (11) A tax certificate related to the Bonds in substance and form satisfactory to Bond Counsel;
- (12) Ratings of the Bonds from S&P Global Ratings (“S&P”) of not less than “[AA (stable outlook)]” and from Fitch Ratings, Inc. (“Fitch”) of not less than “[AA (stable outlook)]”;
- (13) A report of [\_\_\_\_], as verification agent (the “Verification Agent”) with respect to the sufficiency of amounts deposited pursuant to the Escrow Agreement and an opinion of Bond Counsel respecting the defeasance of the Refunded Bonds;
- (14) An opinion of counsel to the Trustee/Escrow Agent, dated the Closing Date, addressed to the Underwriters, to the effect that (i) the Trustee/Escrow Agent is a national banking association duly organized and validly existing under the laws of the United States of America having full power and being qualified to enter into, accept and agree to the provisions of the Resolution and to enter into and perform the Undertaking and the Escrow Agreement, (ii) the Undertaking and the Escrow Agreement have been duly authorized, executed and delivered by the Trustee/Escrow Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the valid and binding obligation of the Trustee/Escrow Agent enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors’ rights generally, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases, and to enter into and perform the Undertaking and the Escrow Agreement, (iii) all approvals, consents and orders of any governmental authority or agency having jurisdiction in this matter that would constitute a condition precedent to the performance by the Trustee/Escrow Agent of its duties and obligations under the Resolution, the Escrow Agreement, and the Undertaking have been obtained and are in full force and effect, and (iv) the acceptance of the duties and obligations of the Trustee/Escrow Agent under the Resolution, the Escrow Agreement, and the Undertaking and the consummation of the transactions on the part of the Trustee/Escrow Agent contemplated therein, and the compliance by the Trustee/Escrow Agent, as applicable, with the terms, conditions and provisions of such document do not contravene any provisions of applicable law or regulation or any order or decree, writ or injunction or the Articles of Association or Bylaws of the Trustee/Escrow Agent, and, to the best knowledge of such counsel, will not require the consent under or result in a breach of or a default under, any resolution, agreement or other instrument to which the Trustee/Escrow Agent is a party or by which it may be bound;
- (15) A copy of the Blanket Letter of Representations to DTC relating to the Bonds signed by DTC and the District; and

(16) Such additional legal opinions, certificates, instruments and other documents as the Underwriters may reasonably request to evidence the truth and accuracy and completeness, as of the date hereof and as of the Closing Date, of the District's representations and warranties contained herein and of the statements and information contained in the Preliminary Official Statement or the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing Date of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the Resolution and the Preliminary Official Statement or the Official Statement.

If any of the conditions to the obligations of the Underwriters contained in this Section or elsewhere in this Contract of Purchase with respect to the Bonds shall not have been satisfied when and as required herein, all obligations of the Underwriters hereunder with respect to the Bonds may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District.

**4. Offering.** The obligations of the District to sell and to deliver the Bonds on the Closing Date to the Underwriters shall be subject to the following conditions:

(a) The entire \$[PAR] aggregate principal amount of the Bonds shall be purchased, accepted and paid for by the Underwriters on the Closing Date; and

(b) The District shall receive an Issue Price Certificate of the Senior Underwriter substantially in the form attached hereto as Exhibit F with respect to the Bonds.

#### **5. Issue Price of the Bonds.**

(a) The Senior Underwriter, on behalf of the Underwriters, agrees to assist the District in establishing the issue price of the Bonds and shall execute and deliver to the District at Closing an "issue price" or similar certificate substantially in the form attached hereto as Exhibit F, together with the supporting pricing wires or equivalent communications, with modifications to such certificate as may be deemed appropriate or necessary, in the reasonable judgment of the Senior Underwriter, the District and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) [Except for the maturities set forth in Schedule A attached hereto,] the District will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test).

(c) [The Senior Underwriter confirms that the Underwriters have offered the Bonds to the public on or before the date of this Contract of Purchase at the offering price or prices (the "initial offering price"), or at the corresponding yield or yields, set forth in the final Official Statement. Schedule A sets forth, as of the date of this Contract of Purchase, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the District and the Senior Underwriter, on behalf of the Underwriters, agree that (i) the Senior Underwriter will retain all unsold Bonds of each maturity for which the 10% test has not been satisfied and not allocate any

such Bonds to any other Underwriter and (ii) the restrictions set forth in the next sentence shall apply, which will allow the District to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Senior Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) the close of the fifth (5th) business day after the sale date; or

(2) the date on which the Underwriters have sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Senior Underwriter shall promptly advise the District or the District’s municipal advisor when the Underwriters have sold 10% of that maturity of the Bonds to the public at [a price] that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

The District acknowledges that, in making the representation set forth in this subsection, the Senior Underwriter will rely on (i) the agreement of each Underwriter to comply with the hold-the-offering-price rule, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter is a party to a retail distribution agreement that was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, as set forth in the retail distribution agreement and the related pricing wires. The District further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement regarding the hold the offering price rule and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement to comply with its agreement regarding the hold-the-offering-price rule as applicable to the Bonds.]

(d) [The Senior Underwriter confirms that:

(1) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the Senior Underwriter is a party) relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A)(ii) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Senior Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (ii) comply with the hold-the-offering-price rule, if applicable, in each case if and for

so long as directed by the Senior Underwriter and as set forth in the related pricing wires, (B) promptly notify the Representative of any sales of the Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) and (C) acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Representative shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public; and

(2) any agreement among underwriters relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Senior Underwriter or the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Senior Underwriter or the Underwriter and as set forth in the related pricing wires.]

(e) The Underwriters acknowledge that sales of any Bonds to any person that is a related party to an Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(3) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Contract of Purchase by all parties.

6. **Termination.** The Underwriters shall have the right to terminate their obligations under this Contract of Purchase to purchase, accept delivery of and to pay for the Bonds, if,

(a) between the date hereof and the Closing Date, the market price or marketability, or the ability of the Underwriters to enforce contracts for the sale, at the initial offering prices set forth in the Official Statement, of the Bonds have been materially adversely affected, in the judgment of the Underwriters, (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and pay for the Bonds), by reason of any of the following:

(1) (x) any legislation which is (A) enacted by Congress, (B) favorably reported for passage to either House of the Congress of the United States by any Committee of such House to which such legislation has been referred for consideration, or (C) recommended to the Congress for passage by the President of the United States or the Treasury Department, but only, however, if the occurrence of any of the foregoing events is generally accepted by the municipal bond market as potentially affecting the federal tax status of the District, its property or income or the interest on its bonds or notes (including the Bonds), (y) any decision rendered by a court established under Article III of the Constitution of the United States or the Tax Court of the United States, or (z) a final order, ruling, regulation or official statement issued or made by or on behalf of the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the holders of the Bonds, or upon such revenues or other income of the general character expected to be received by the District; provided, however, that the enactment of legislation which only diminishes the value of, as opposed to eliminating the exclusion from gross income for federal income tax purposes will not give the Underwriters the right to terminate their obligations hereunder;

(2) Legislation enacted (or resolution passed) by the Congress or a final order, ruling, regulation or official statement is issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or are not exempt from qualification under, or other requirements of, the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of the Bonds or obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, otherwise is or would be in violation of the federal securities laws as amended and then in effect;



(3) Any new material outbreak or escalation of hostilities having a material effect on the financial markets of the United States or the declaration by the United States of a national emergency or war or the occurrence of any other local, national or international calamity, crisis or event relating to the effective operation of the government of or the financial community in the United States or an escalation thereof, including, without limitation, a downgrade of the sovereign debt rating of the United States by any major credit rating agency or payment default on United States Treasury obligations;

(4) the declaration of a general banking moratorium by federal, New York or California authorities, or the general suspension of trading on the New York Stock Exchange or any other national securities exchange, or any material disruption in commercial banking or securities settlement or payment services or clearing services;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Bonds or obligations of the general character of the Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the net capital requirements of, the Underwriters;

(6) the adoption of any amendment to the federal or California Constitution, decision by any federal or California court, or enactment by any federal or California legislative body materially adversely affecting (i) the District or the right of the District to receive or to pledge any of the Net Revenues, or (ii) the validity or enforceability of this Contract of Purchase, the Bonds or the Resolution;

(7) the adoption of any amendment to the California Constitution, decision by any California court, or enactment by any California legislative body adversely affecting the exemption of state or local income tax upon such interest as would be received by the holders of the Bonds, or

(8) (i) a downgrading or suspension of any rating (without regard to credit enhancement) by Moody's, S&P, or Fitch of any debt securities issued by the District, or (ii) there shall have been any official statement as to a possible downgrading (such as being placed on "credit watch" or "negative outlook" or any similar qualification) of any rating by Moody's, S&P or Fitch of any debt securities issued by the District, including the Bonds.

(b) an event occurs, or information becomes known, which, in the judgment of the Underwriters, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

7. **Expenses.** (a) Except as set forth in paragraph (b) of this Section, the Underwriters shall be under no obligation to pay, and the District shall pay, or cause to be paid, all expenses incident to the performance of the District's obligations hereunder including, but not limited to, the cost of word processing and reproducing, executing and delivering the Bonds to the Underwriters; the cost of preparation, printing (and/or word processing and reproducing), distribution and delivery of the Resolution; the cost of printing and distributing copies of the Preliminary Official Statement and the Official Statement in sufficient quantities for distribution in connection with the sale of the Bonds (including resales in the secondary market); the fees and disbursements of Bond Counsel; the fees and disbursements of Public Financial Management, Inc. for its services as Municipal Advisor to the District; the fees and disbursements of any other engineers, accountants, and any other experts or consultants retained in connection with the issuance of the Bonds; the fees and disbursements of the Trustee/Escrow Agent and Verification Agent; fees charged by the rating agencies for rating the Bonds; any advertising expenses; filing fees; CUSIP charges; or fees and expenses of any credit enhancement; expenses incurred by the Underwriters on behalf of the District relating to food, transportation or lodging for District staff members attending the bond pricing are to be reimbursed by the District through proceeds of the Bonds or available funds of the District (the District's obligations in regard to these expenses survive if delivery of the Bonds fails due to one of the conditions set forth in Section 3 hereof or this Contract of Purchase is terminated pursuant to Section 6 hereof) and any other expenses not specifically enumerated in paragraph (b) of this Section incurred in connection with the issuance of the Bonds.

(b) The District shall be under no obligation to pay, and the Underwriters shall pay (from the expense component of the underwriting discount), the cost of preparation of the Agreement Among Underwriters and the letter of instructions relating thereto and this Contract of Purchase; the cost of wiring funds for the payment of the purchase prices of the Bonds; the fees and expenses of DTC incurred with respect to depositing the Bonds therewith; expenses to qualify the Bonds for sale under any "Blue Sky" laws; fees to the California Debt and Investment Advisory Commission; and all other expenses incurred by the Underwriters in connection with its public offering and distribution of the Bonds not specifically enumerated in paragraph (a) of this Section, including the fees and disbursements of Underwriters' Counsel. Notwithstanding that the fees to the California Debt and Investment Advisory Commission are solely the legal obligation of the Underwriters, the District agrees to reimburse the Underwriters for such fees.

8. **Notices.** Any notice or other communication to be given to the District under this Contract of Purchase may be given by delivering the same in writing to Sacramento Municipal Utility District, at 6201 S Street, Sacramento, California 95817-1899; and any notice or other communication to be given to the Underwriters under this Contract of Purchase may be given by delivering the same in writing to Barclays Capital Inc., 10250 Constellation Blvd, Suite 750, Los Angeles, CA 90067, Attention: Christopher D. Roberts, Director.

9. **Parties in Interest.** This Contract of Purchase is made solely for the benefit of the District and the Underwriters (including successors or assigns of any Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. The term "successors and assigns" as used in this Section shall not include any purchaser of the Bonds, as such purchaser, from any of the several Underwriters.

**10. Survival of Representations and Warranties.** The representations and warranties of the District, set forth in or made pursuant to this Contract of Purchase, shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the closing or termination of this Contract of Purchase and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Bonds.

**11. Counterparts.** This Contract of Purchase may be executed in several counterparts, which together shall constitute one and the same instrument.

**12. California Law Governs; Venue.** The validity, interpretation and performance of this Contract of Purchase shall be governed by the laws of the State of California. Any action or proceeding to enforce or interpret this Contract of Purchase shall be brought, commenced or prosecuted in the County of Sacramento, California.

[remainder of page intentionally left blank]

13. **Entire Agreement.** This Contract of Purchase when accepted by you in writing as heretofore specified shall constitute the entire agreement between us.

14. **Effectiveness.** This Contract of Purchase shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by an authorized officer of the District and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

BARCLAYS CAPITAL INC.  
[UNDERWRITING GROUP TO COME]

BY: BARCLAYS CAPITAL INC., as Senior  
Underwriter

---

Christopher D. Roberts  
Director

Accepted: [SALE DATE]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Russell Mills  
Treasurer

[Signature page to Contract of Purchase]

**Exhibit A**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$(PAR) Electric Revenue Refunding Bonds, 2023 Series K**

<b><u>Maturity</u></b> <b><u>(August 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>
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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**Exhibit B to the Contract of Purchase  
(Official Statement)**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**Exhibit C to the Contract of Purchase  
(Opinion of General Counsel to the  
Sacramento Municipal Utility District)**

[CLOSING DATE]

Barclays Capital Inc.  
10250 Constellation Blvd, Suite 750  
Los Angeles, CA 90067

Re: Sacramento Municipal Utility District  
\$[PAR] Electric Revenue Refunding Bonds, 2023 Series K

Ladies and Gentlemen:

This opinion is being delivered pursuant to Paragraph 3(d)(6) of the Contract of Purchase (the “Contract of Purchase”), dated [SALE DATE], between Barclays Capital Inc., as Senior Managing Underwriter named therein (the “Senior Underwriter”), and the Sacramento Municipal Utility District (the “District”) relating to the above-captioned bonds (the “Bonds”).

As counsel to the District, I have reviewed (i) Resolution No. 6649 of the District, adopted on January 7, 1971, as amended and supplemented to date, including as amended and supplemented by Resolution No. [RESO NO.], adopted on [May 18, 2023] (as so amended and supplemented, the “Resolution”); (ii) the Continuing Disclosure Agreement, dated the date hereof (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association, as trustee (in such capacity, the “Trustee”); (iii) the Preliminary Official Statement of the District, dated [POS DATE] (the “Preliminary Official Statement”); (iv) the Official Statement of the District, dated [SALE DATE] (the “Official Statement”) (v) the escrow agreement, dated the date hereof (the “Escrow Agreement”), between the District and U.S. Bank Trust Company, National Association, as escrow agent (in such capacity, the “Escrow Agent”), and (vi) such other documents, opinions and matters to the extent I deemed necessary to provide the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. I have assumed the genuineness of all documents and signatures presented to me (whether as originals or as copies) and the due and legal execution and delivery by, and validity against, any parties other than the District. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents referred to in the second paragraph hereof. I have further assumed compliance with all covenants and agreements contained in such documents.

I call attention to the fact that the rights and obligations under the Resolution, the Escrow Agreement, the Undertaking, and the Contract of Purchase may be subject to bankruptcy,

insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained therein.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, I am of the opinion that:

1. The District is a political subdivision of the State of California duly organized and validly existing under the Act, as amended, and has full legal right, power and authority to execute and deliver (or adopt, as the case may be), and to perform its obligations under, the Resolution, the Escrow Agreement, the Undertaking and the Contract of Purchase.

2. The Contract of Purchase, the Escrow Agreement, and the Undertaking have been duly authorized, executed and delivered by the District, and, assuming due authorization, execution and delivery by each of the parties thereto other than the District, constitute the legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms.

3. The District is not in breach of or default under any existing constitutional provision, applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject which would have a material adverse effect on the financial condition or operations of the District, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument which would have a material adverse effect on the financial condition or operations of the District; and the execution and delivery of the Bonds, the Escrow Agreement, the Undertaking and the Contract of Purchase and the adoption of the Resolution, and compliance with any existing constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject will not, as of the date hereof, conflict with or constitute a breach of or default under any such instrument which would have a material adverse effect on the financial condition or operations of the District, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the District or under the terms of any such law, regulation or instrument, except as expressly provided by the Bonds and the Resolution.

4. The statements contained in the Preliminary Official Statement and the Official Statement which purport to describe certain provisions of the Bonds, the Escrow Agreement, the Undertaking, and the Resolution present a fair and accurate summary of such provisions for the purpose of use in the Preliminary Official Statement and the Official Statement.



5. Except as described or referred to in the Preliminary Official Statement and the Official Statement, as of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of my knowledge, threatened against the District affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the collection of the Revenues (as defined in the Resolution) or the Net Revenues (as defined in the Resolution) pledged or to be pledged to pay the principal of and interest on the Bonds or contesting or affecting as to the District the validity or enforceability of the Act, the Bonds, the Resolution, the Escrow Agreement, the Contract of Purchase or the Undertaking, or contesting the tax exempt status of interest on the Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the Bonds, the adoption of the Resolution, or the execution and delivery by the District of the Contract of Purchase, the Escrow Agreement, or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act or the authorization, execution, delivery or performance by the District of the Bonds, the Resolution, the Escrow Agreement, the Undertaking, or the Contract of Purchase.

6. Based upon my review of the Preliminary Official Statement and the Official Statement as General Counsel to the District and without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement (except as specifically set forth in paragraph 4 hereof), I have no reason to believe that the statements contained in the Preliminary Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, the Appendices (except Appendix A) to the Preliminary Official Statement, and other financial and statistical data included therein, as to all of which I express no view) as of its date and as of the date of the Contract of Purchase contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and the Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, the Appendices (except Appendix A) to the Official Statement, and other financial and statistical data included therein, as to all of which I express no view) (A) as of the date of the Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or (B) as of the date hereof contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

For purposes of the opinions expressed herein, I have assumed that an agreement or other document is “material” to the District if it involves amounts in excess of \$10,000,000 and that a matter would result in a “material adverse change” to the District if the financial consequences involved would exceed \$10,000,000.

I understand that you are relying upon the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel, with respect to the validity of the Bonds and the exclusion of interest on the Bonds from gross income for federal income tax purposes and the Bonds for purposes of State of California income taxation and, accordingly, render no opinion with respect thereto.

Very truly yours,

## **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

### **Exhibit D to the Contract of Purchase**

#### **CERTIFICATE**

The Sacramento Municipal Utility District (the “District”), hereby certifies that:

(1) The representations and warranties of the District (excluding those representations and warranties contained in Section 2(e) and Section 2(k) of the hereinafter defined Contract of Purchase) contained in the Contract of Purchase, dated [SALE DATE], between the District and the Underwriters named therein (the “Contract of Purchase”) with respect to the sale by the District of \$[PAR] aggregate principal amount of its Electric Revenue Refunding Bonds, 2023 Series K (the “Bonds”), are true and correct on and as of the Closing Date as if made on the Closing Date.

(2) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the Bonds under the Resolution, the Escrow Agreement, the Undertaking, and the Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the “Blue Sky” or other securities laws of any state in connection with the offering and sale of the Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, the Contract of Purchase, the Escrow Agreement, the Undertaking, the Bonds or the Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained.

(3) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the best of knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened against the District, in any way affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of any of the Bonds or the collection of the Revenues (as defined in the Resolution) or the Net Revenues (as defined in the Resolution) pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting as to the District the validity or enforceability of the Act, the Bonds, the Resolution, the

Contract of Purchase, the Escrow Agreement, the Undertaking, or any action of the District contemplated by any of said documents, or contesting the tax exempt status of interest on the Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution system, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the Bonds, the adoption of the Resolution, or the execution and delivery by the District of the Contract of Purchase, the Escrow Agreement or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act of the authorization, execution, delivery or performance by the District of the Bonds, the Resolution, the Escrow Agreement, the Undertaking, or the Contract of Purchase, or any action of the District contemplated by any of said documents, or which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor.

(4) No event affecting the District has occurred (with respect to the Preliminary Official Statement, from its date to the date of the Contract of Purchase, and with respect to the Official Statement, since the date of the Official Statement) which should have been or should be disclosed in the Preliminary Official Statement or the Official Statement so that the Preliminary Official Statement or the Official Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and which has not been disclosed in a supplement or amendment to the Preliminary Official Statement or the Official Statement.

(5) The District has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof pursuant to the Contract of Purchase with respect to the issuance of the Bonds.

(6) All capitalized terms employed herein which are not otherwise defined shall have the same meanings as in the Contract of Purchase.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_

Name:

Title:

Dated: [CLOSING DATE]

**Exhibit E to the Contract of Purchase  
(Supplemental Opinion of Bond Counsel)**

[Under Review]

[CLOSING DATE]

Barclays Capital Inc.  
10250 Constellation Blvd, Suite 750  
Los Angeles, CA 90067

Sacramento Municipal Utility District  
Electric Revenue Refunding Bonds, 2023 Series K  
(Supplemental Opinion)

Ladies and Gentlemen:

This letter is addressed to you, as Senior Underwriter, pursuant to Section 3(d)(5) of the Contract of Purchase, dated [SALE DATE] (the “Purchase Contract”), between you and the other underwriters named therein and the Sacramento Municipal Utility District (“SMUD”), providing for the purchase of \$[PAR] aggregate principal amount of Sacramento Municipal Utility District Electric Revenue Refunding Bonds, 2023 Series K (the “Bonds”). The Bonds are being issued pursuant to Resolution No. 6649 of the Board of Directors of SMUD, adopted January 7, 1971, as supplemented and amended by later resolutions of said Board of Directors (as so supplemented and amended, the “Resolution”), including Resolution No. RESO NO.], adopted on [May 18, 2023]. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution or, if not defined in the Resolution, in the Purchase Contract.

In connection with our role as Bond Counsel to SMUD, we have reviewed the Purchase Contract; the Resolution; the Tax Certificate, dated the date hereof (the “Tax Certificate”), executed by SMUD; certain portions of the posted preliminary official statement of SMUD, dated [POS DATE] with respect to the Bonds (the “Preliminary Official Statement”) and of the posted official statement of SMUD, dated [SALE DATE], with respect to the Bonds (the “Official Statement”); opinions of counsel to SMUD and the Trustee; certificates of SMUD, the Trustee and others; and such other documents, opinions and matters to the extent we deemed necessary to render the opinions and conclusions set forth herein.

The opinions and conclusions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions or conclusions may be affected by actions taken or omitted or events occurring after the original delivery of the Bonds on the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the original delivery of the Bonds on the date hereof. We have assumed the genuineness of all documents and signatures provided to us and the due and legal execution and delivery thereof by, and validity against, any parties other than

SMUD. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. We have further assumed compliance with all covenants and agreements contained in such documents. In addition, we call attention to the fact that the rights and obligations under the Bonds, the Resolution, the Tax Certificate and the Purchase Contract and their enforceability may be subject to bankruptcy, insolvency, reorganization, receivership, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinions with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Resolution or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions and conclusions:

1. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

2. The Purchase Contract has been duly executed and delivered by, and constitutes a valid and binding obligation of, SMUD.

3. The statements contained in the Preliminary Official Statement and the Official Statement under the captions [“THE 2023 SERIES K BONDS” (excluding information relating to book-entry or The Depository Trust Company), “SECURITY FOR THE BONDS” and “TAX MATTERS” and in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION,”] **[To be updated when POS is available]** excluding any material that may be treated as included under such captions by cross-reference or reference to other documents or sources, insofar as such statements expressly summarize certain provisions of the Resolution or set out the content of our final legal opinion as Bond Counsel to SMUD concerning the validity of the Bonds and certain other matters, dated the date hereof and addressed to SMUD, are accurate in all material respects.

4. We are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or (except as explicitly stated in paragraph 3 above) in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. In our capacity as Bond Counsel to SMUD in connection with issuance of the Bonds, we participated in conferences with your representatives, your counsel, representatives of SMUD, its counsel, accountants, and others, during which the contents of the Preliminary Official Statement or the Official Statement and related matters were discussed. Based on our

participation in the above-mentioned conferences (which, with respect to the Preliminary Official Statement, did not extend beyond the date of the Purchase Contract, and with respect to the Official Statement, did not extend beyond its date), and in reliance thereon, on oral and written statements and representations of SMUD and others and on the records, documents, certificates, opinions and matters herein mentioned, subject to the limitations on our role as Bond Counsel to SMUD, we advise you as a matter of fact and not opinion that (a) no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Preliminary Official Statement which caused us to believe as of the date of the Purchase Contract, based on the documents, drafts and facts in existence and reviewed as of that date, that the Preliminary Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except any information marked as preliminary or subject to change, any information permitted to be omitted by Securities and Exchange Commission Rule 15c2-12 or otherwise left blank and any other differences with the information in the Official Statement), and (b) no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Official Statement which caused us to believe as of the date of the Official Statement and as of the date hereof that the Official Statement contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, we expressly exclude from the scope of this paragraph and express no opinion or conclusion, with respect to both the Preliminary Official Statement and the Official Statement, about any CUSIP numbers, financial, accounting, statistical or economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, any statements about compliance with prior continuing disclosure undertakings, any management discussion and analysis, any information about Cede & Co., The Depository Trust Company or book-entry, ratings, rating agencies, financial advisors, swap advisors, underwriters, underwriting and the information contained in Appendices B and C included or referred to therein or omitted therefrom. No responsibility is undertaken or conclusion expressed with respect to any other disclosure document, materials or activity, or as to any information from another document or source referred to by or incorporated by reference in the Preliminary Official Statement or the Official Statement.

This letter is furnished by us as Bond Counsel to SMUD. No attorney-client relationship has existed or exists between our firm and you in connection with the Bonds or by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you as Senior Underwriter of the Bonds, is solely for your benefit as such Senior Underwriter in connection with the original delivery of the Bonds on the date hereof, and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by owners of Bonds or by any other party to whom it is not specifically addressed.

Very truly yours,

## Exhibit F to the Contract of Purchase

### (Form of Issue Price Certificate Of The Senior Underwriter Regarding Offering Prices)

#### SACRAMENTO MUNICIPAL UTILITY DISTRICT

#### \$[PAR] Electric Revenue Refunding Bonds, 2023 Series K

The undersigned, on behalf of Barclays Capital Inc., as representative (the “Representative”) of itself, [UNDERWRITING GROUP TO COME] (together, the “Underwriting Group”), hereby certifies, on its own behalf and on behalf of the other members of the Underwriting Group on the basis of representations and warranties set forth in the agreement among underwriters, as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. ***Sale of the [General Rule Maturities][Bonds].*** As of the date of this Certificate, for each Maturity of the [General Rule Maturities][Bonds], the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***[Initial Offering Price of the Hold-the-Offering-Price-Maturities.***

(a) The Underwriting Group offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this Certificate as Schedule B.

(b) As set forth in the Bond Purchase Agreement for the Bonds, the Representative has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) unsold Bonds of the Hold-the-Offering-Price Maturities shall be retained by the Representative and not allocated to any of the other Underwriters. Pursuant to such agreement, the Representative has not offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period. ]

3. ***Defined Terms.***

(a) [General Rule Maturities means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.” ]

(b) [Hold-the-Offering-Price Maturities means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

(c) [Holding Period means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriters have sold at least 10% of such Hold-



the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.]

(d) *Issuer* means Sacramento Municipal Utility District.

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party (as such terms are defined below) to an Underwriter.

(g) A purchaser of any of the Bonds is a *Related Party* to any Underwriter if the Underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(h) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [SALE DATE].

(i) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only, and as it relates to the actions of the other Underwriters, such representations are made to the best of the Representative's knowledge based on the Representative's records. Nothing in this certificate represents the Representative's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

Dated: [CLOSING DATE]

Barclays Capital Inc.,  
as representative of the Underwriting Group

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Schedule A

Sale Prices

\$[PAR] Electric Revenue Refunding Bonds, 2023 Series K

<u>Maturity</u> <u>(August 15)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>Hold-the-</u> <u>Price</u> <u>Maturities</u>	<u>General</u> <u>Rule</u> <u>Maturities</u>
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**Schedule B**

**Pricing Wire or Equivalent Communication**

- ☐ Not applicable, because there are no Hold-the-Offering-Price Maturities
- ☐ Attached

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$(PAR) SUBORDINATED ELECTRIC REVENUE REFUNDING  
BONDS, 2023 SERIES K**

**CONTRACT OF PURCHASE  
[Form of Contract of Purchase  
(2023 Subordinated Bonds, Series C)]**

**DRAFT**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**\$(PAR) Subordinated Electric Revenue Refunding Bonds, 2023 Series C**

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**CONTRACT OF PURCHASE**

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[SALE DATE]

Honorable Board of Directors  
Sacramento Municipal Utility District  
6201 S Street  
Sacramento, California 95817-1899

Dear Directors:

The undersigned Barclays Capital Inc. (the “Underwriter”) offers to enter into this Contract of Purchase (the “Contract of Purchase”) with the Sacramento Municipal Utility District (the “District”) which, upon the District’s acceptance, will be binding upon the District and upon the Underwriter. This offer is made subject to the District’s acceptance on or before 5:00 p.m., Sacramento time, on the date hereof, and if not so accepted, will be subject to withdrawal by the Underwriter upon notice delivered to the District at any time prior to the acceptance hereof by the District.

**1. Purchase, Sale and Delivery of the Bonds.** Subject to the terms and conditions and in reliance upon the representations, warranties and agreements herein set forth, the Underwriter hereby agrees to purchase from the District, and the District hereby agrees to sell to the Underwriter, all (but not less than all) of the \$(PAR) aggregate principal amount of the Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “Bonds”), dated [CLOSING DATE], bearing interest (payable on the dates set forth in the Official Statement (as hereinafter defined) of the District relating to the Bonds) in each year until maturity or earlier redemption at the variable rates per annum determined in the manner set forth in the Official Statement. The purchase price for the Bonds shall be \$(PAR).

(b) The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable as provided in, Subordinate Resolution No. 85-11-1, adopted by the Board of Directors of the District on November 7, 1985 Subordinate Resolution (the “Subordinate Master Resolution”), as amended and restated pursuant to Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001, as amended and

supplemented, including the amendments and supplements thereto made by Fourteenth Subordinate Resolution No. [23-05-\_\_\_], adopted by the Board of Directors on [May 18, 2023] (the “Fourteenth Supplemental Subordinate Resolution”). The Subordinate Master Resolution, as restated, supplemented and amended as described in this Contract of Purchase, is herein called the “Subordinate Resolution.” The Bonds are authorized to be issued pursuant to applicable California law, including the Municipal Utility District Act (Sections 12850 to 12860 of the Public Utilities Code), Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (Section 53580 *et seq.*) and the Subordinate Resolution. The Bonds will be special obligations of the District payable exclusively from, and are secured by a pledge (effected in the manner and to the extent provided in the Subordinate Resolution) of, the Net Subordinated Revenues (as defined in the Subordinate Resolution). The Bonds shall be payable and shall be subject to redemption as provided in the Subordinate Resolution.

(c) The Bonds are being issued to [(i) refund the Refunded Bonds (as defined in the Official Statement) and (ii) pay certain costs associated with the issuance of the Bonds]. A portion of the proceeds of the Bonds, together with other available funds, will be deposited in an escrow fund established pursuant to an escrow agreement (the “Escrow Agreement”) between the District and the Trustee, in its capacity as Escrow Agent (in such capacity, the “Escrow Agent”).

(d) The District has heretofore delivered to the Underwriter copies of the Preliminary Official Statement dated [POS DATE] relating to the Bonds (the “Preliminary Official Statement”) in connection with the public offering of the Bonds. The Preliminary Official Statement was deemed final by the District as of the date thereof in accordance with paragraph (b)(1) of Rule 15c2-12 of the Securities and Exchange Commission (“Rule 15c2-12”), except for the information not required to be included therein under Rule 15c2-12.

(e) The District shall prepare and deliver to the Underwriter, as promptly as practicable, but in any event not later than two business days prior to the Closing Date (as defined below) or seven business days from the date hereof, a final official statement, with such changes and amendments as may be agreed to by the Underwriter, in such quantities as the Underwriter may reasonably request in order to comply with paragraph (b)(4) of Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board (“MSRB”) (such official statement, including the cover page and Appendices thereto, as the same may be supplemented or amended pursuant to paragraph (i) of Section 2 hereof, is herein referred to as the “Official Statement”). In addition, the District will provide, subject to customary disclaimers regarding the transmission of electronic copies, an electronic copy of the final Official Statement to the Underwriter in the currently required designated electronic format stated in MSRB Rule G-32 and the EMMA Dataport Manual (as defined below). The parties agree that the format in which the Preliminary Official Statement was delivered meets such electronic format requirements.

(f) Within one (1) business day after receipt of the Official Statement from the District, but by no later than the Closing Date, the Underwriter shall, at its own expense submit the Official Statement to EMMA (as defined below). The Underwriter will comply with the provisions of MSRB Rule G-32, including without limitation the submission of Form G-32 and the Official Statement and notify the District of the date on which the Official Statement has been filed with EMMA.

“EMMA” means the MSRB’s Electronic Municipal Market Access system, or any other electronic municipal securities information access system designated by the MSRB for collecting and disseminating primary offering documents and information.

“EMMA Dataport Manual” means the document(s) designated as such published by the MSRB from time to time setting forth the processes and procedures with respect to submissions to be made to the primary market disclosure service of EMMA by underwriter under Rule G-32(b).

(g) The District hereby ratifies, confirms and approves the use and distribution by the Underwriter prior to the date hereof of the Preliminary Official Statement and hereby authorizes the Underwriter to use and distribute the Official Statement, the Subordinate Resolution, and this Contract of Purchase, and all information contained in each, and all other documents, certificates and statements furnished by the District to the Underwriter in connection with the transactions contemplated by this Contract of Purchase, in connection with the offer and sale of the Bonds.

The District will covenant pursuant to a Continuing Disclosure Agreement dated as of the date of the issuance of the Bonds (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association (the “Trustee”), to provide annual reports and certain notices as described in Appendix G of the Official Statement.

(h) The District agrees and acknowledges that: (i) the Underwriter is not acting as a municipal advisor within the meaning of Section 15B of the Securities Exchange Act, as amended, (ii) the primary role of the Underwriter, as an underwriter, is to purchase securities, for resale to investors, in an arm’s length commercial transaction between the District and the Underwriter and the Underwriter has financial and other interests that differ from those of the District; (iii) the Underwriter is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the District and has not assumed any advisory or fiduciary responsibility to the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or are currently providing other services to the District on other matters); (iv) the only contractual obligations the Underwriter has to the District with respect to the transaction contemplated hereby expressly are set forth in this Contract of Purchase; and (v) the District has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

(i) At 8:00 A.M., Sacramento time, on [CLOSING DATE] or at such earlier or later time or date as shall be agreed upon by the Underwriter and the District (such time and date being herein referred to as the “Closing Date”), the District will deliver the Bonds to The Depository Trust Company, New York, New York (“DTC”), for the account of the Underwriter, duly executed by the District, and the other documents herein mentioned; and the Underwriter will accept such delivery and pay the purchase price of the Bonds as set forth in paragraph (a) of this Section by wire transfer in San Francisco, California to the order of the District. Delivery of the documents herein mentioned shall be made at the offices of Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, California 95814, or such other place as shall have been mutually agreed upon by the District and the Underwriter, except that the Bonds shall be delivered



at the offices of DTC in New York, New York or at such other place and in such manner as shall have been mutually agreed upon by the District and the Underwriter.

The Bonds shall be issued initially in fully registered book-entry eligible form (which may be typewritten) in the form of a single registered bond for each maturity of the Bonds, shall bear CUSIP numbers and shall be registered in the name of Cede & Co., as nominee of DTC.

**2. Representations, Warranties and Agreements of the District.** The District hereby represents, warrants to and agrees with the Underwriter that:

(a) The District is a political subdivision of the State of California duly organized and validly existing pursuant to the Municipal Utility District Act as contained in Public Utilities Code Section 11501 *et seq.* (the “Act”) and has, and at the Closing Date will have, full legal right, power and authority (i) to enter into this Contract of Purchase, the Escrow Agreement, the Standby Bond Purchase Agreement between the District and TD Bank, N.A. (the “Bank”) dated as of [\_\_\_\_], 2023 (the “Initial Liquidity Facility”) and a Remarketing Agreement between the District and Barclays Capital Inc., as Remarketing Agent (in such capacity, the “Remarketing Agent”) dated as of [\_\_\_\_], 2023 (the “Remarketing Agreement”), and the Undertaking; (ii) to adopt the Subordinate Resolution; (iii) to pledge the Net Subordinated Revenues as set forth in the Subordinate Resolution; (iv) to issue, sell and deliver the Bonds to the Underwriter pursuant to the Subordinate Resolution as provided herein; (v) to acquire, construct, operate, maintain, improve and finance and refinance its Electric System (as defined in the Subordinate Resolution) and conduct the business thereof as set forth in and contemplated by the Preliminary Official Statement and the Official Statement; and (vi) to carry out, give effect to and consummate the transactions contemplated by this Contract of Purchase, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, the Undertaking, the Subordinate Resolution, and the Preliminary Official Statement and the Official Statement;

(b) The District has complied, and will at the Closing Date be in compliance, in all material respects, with the Act, the Subordinate Resolution, and with the obligations in connection with the issuance of the Bonds on its part contained in the Subordinate Resolution, the Initial Liquidity Facility, the Remarketing Agreement, the Escrow Agreement, the Bonds, the Act, the Undertaking and this Contract of Purchase;

(c) The District has duly and validly adopted the Subordinate Resolution, has duly authorized and approved the execution and delivery of the Bonds, this Contract of Purchase, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, the Undertaking and the Official Statement and has duly authorized and approved the performance by the District of its obligations contained in, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by, each of said documents and, at the Closing Date, the Bonds will have been validly issued and delivered, the Subordinate Resolution, the Initial Liquidity Facility, the Escrow Agreement, the Remarketing Agreement, the Undertaking and this Contract of Purchase will constitute the valid, legal and binding obligations of the District enforceable in accordance with their respective terms (subject to the effect of, and restrictions and limitations imposed by or resulting from, (i) bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws affecting creditors’ rights, and (ii) judicial discretion) and the Subordinate Resolution will be in full force and effect;

(d) The District is not in breach of or in default under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either or any applicable court or administrative decree or order, or any loan agreement, bond, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District is otherwise subject or bound which in any material way, directly or indirectly, affects the issuance of the Bonds or the validity thereof, the validity or adoption of the Subordinate Resolution or the execution and delivery of the Bonds, this Contract of Purchase, the Initial Liquidity Facility, the Remarketing Agreement, the Escrow Agreement, the Undertaking or the other instruments contemplated by any of such documents to which the District is a party, and the adoption of the Subordinate Resolution and compliance with the provisions of each will not, as of the date hereof and as of the Closing Date, conflict with or constitute a breach of or default in any material way under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States, or of any department, division, agency or instrumentality of either or any applicable court or administrative judgment, decree or order, or any loan agreement, bond, note, ordinance, Subordinate Resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District or any of the property or assets of the Electric System (as defined in the Subordinate Resolution) are otherwise subject or bound, and no event which would have a material and adverse effect upon the financial condition of the District has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the District under any of the foregoing;

(e) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the Bonds under the Subordinate Resolution, the Undertaking, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, and this Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the “Blue Sky” or other securities laws of any state in connection with the offering and sale of the Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, this Contract of Purchase, the Initial Liquidity Facility, the Remarketing Agreement, the Undertaking, the Bonds or the Subordinate Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained;

(f) The Bonds, when issued and delivered in accordance with the Subordinate Resolution and this Contract of Purchase and paid for by the Underwriter on the Closing Date as provided herein, will be validly issued and outstanding special obligations of the District enforceable against the District in accordance with their terms and entitled to all the benefits and

security of the Subordinate Resolution; and, upon the issuance and delivery of the Bonds, the Subordinate Resolution will provide, for the benefit of the holders from time to time of the Bonds, a legally valid and binding pledge of and lien on Net Subordinated Revenues pledged under the Subordinate Resolution, as provided in and contemplated by the Subordinate Resolution;

(g) The Preliminary Official Statement, as of its date and as of the date hereof, did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) At the time of the District's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (i) of Section 2 hereof) at all times subsequent to the date of delivery thereof up to and including the Closing Date, the Official Statement will be true, correct, complete and final in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) If, after the date of this Contract of Purchase and until 25 days after the end of the "underwriting period" (as defined in Rule 15c2-12), any event shall occur that might cause the Official Statement to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the District hereby covenants and agrees, to the extent it has knowledge of such event, to notify the Underwriter (and for the purposes of this clause to provide the Underwriter with such information as they may from time to time reasonably request), and, if in the opinion of the Underwriter and its counsel such event requires the preparation and publication of a supplement or amendment to the Official Statement, at its expense to supplement or amend the Official Statement in a form and manner approved by the Underwriter and furnish to the Underwriter a reasonable number of copies of such supplement or amendment. For purposes of this Contract of Purchase, the District may assume that the end of the "underwriting period" has occurred on the Closing Date unless the District is otherwise notified by the Underwriter on or prior to the Closing Date. If the Underwriter notifies the District that the Closing Date is not the end of the "underwriting period", then the Underwriter shall further notify the District of the date that is the end of the "underwriting period" (as defined in Rule 15c2-12);

(j) If the Official Statement is supplemented or amended pursuant to paragraph (i) of Section 2 of this Contract of Purchase, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the "underwriting period", the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which made, not misleading;

(k) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened (i) in any way affecting the corporate existence of the District or the titles

of its officers to their respective offices, (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of any of the Bonds, the application of the proceeds thereof in accordance with the Subordinate Resolution, or the collection or application of Revenues (as defined in the Subordinate Resolution) or the collection or application of the Net Subordinated Revenues pledged to pay the principal of and interest on the Bonds under the Subordinate Resolution or in any way contesting or affecting the validity or enforceability of any of the Bonds, the Initial Liquidity Facility, the Escrow Agreement, the Remarketing Agreement, the Subordinate Resolution, the Undertaking, this Contract of Purchase or any action of the District contemplated by any of said documents, (iii) which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the powers of the District or its authority with respect to the Bonds, the adoption of the Subordinate Resolution, or the execution and delivery of the Undertaking, the Initial Liquidity Facility, the Escrow Agreement, the Remarketing Agreement, or this Contract of Purchase, or any action of the District contemplated by any of said documents, and (v) which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor;

(l) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request (i) to qualify the Bonds for offer and sale under the “Blue Sky” or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate, and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided that in connection therewith the District shall not be required to execute or file a general or special consent to service of process or qualify to do business in any jurisdiction and will advise the Underwriter promptly of receipt by the District of any written notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or written notification of the initiation or threat of any proceeding for that purpose;

(m) The audited financial statements of the District for the years ending December 31, 2022 and December 31, 2021 heretofore delivered to the Underwriter and incorporated by reference in the Preliminary Official Statement and the Official Statement as Appendix B fairly present the financial position of the District as of the dates indicated and such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis;

(n) Between the date hereof and the Closing Date, the District will not, without the prior written consent of the Underwriter, offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as disclosed in the Preliminary Official Statement or the Official Statement or as otherwise disclosed to the Underwriter

(o) The Bonds, the Escrow Agreement, the Initial Liquidity Facility, the Subordinate Resolution, the Remarketing Agreement, and the Undertaking conform to the descriptions thereof contained in the Preliminary Official Statement and the Official Statement;

(p) The District has the legal authority to apply and will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Subordinate Resolution and as described in the Preliminary Official Statement and the Official Statement, including for payment of District expenses incurred in connection with the negotiation, marketing, issuance and delivery of the Bonds to the extent required by Section 7 (Expenses), and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds;

(q) Any certificate signed by any official of the District, and delivered to the Underwriter, shall be deemed a representation and warranty by the District to the Underwriter as to the statements made therein; and

(r) Except as disclosed in the Preliminary Official Statement and the Official Statement, during the last five years the District has complied in all material respects with all previous undertakings required by Rule 15c2-12.

**3. Conditions to the Obligations of the Underwriter.** The obligations of the Underwriter to accept delivery of and pay for the Bonds on the Closing Date shall be subject to the performance by the District of its obligations to be performed hereunder at or prior to the Closing Date and to the fulfillment of the following conditions:

(a) The representations, warranties and covenants of the District contained herein shall be true, complete and correct on the date hereof and as of the Closing Date as if made on the Closing Date;

(b) At the Closing Date, the Subordinate Resolution shall have been duly adopted and shall be in full force and effect, and shall not have been repealed, amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter, and there shall have been taken in connection therewith, with the issuance of the Bonds and with the transactions contemplated thereby and by this Contract of Purchase, all such actions as, in the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel (“Bond Counsel”), shall be necessary and appropriate;

(c) At the Closing Date, the Official Statement shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter;

(d) At or prior to the Closing Date, the Underwriter shall have received copies of the following documents, in each case satisfactory in form and substance to the Underwriter:

(1) The Official Statement executed on behalf of the District by its Chief Executive Officer and General Manager, any Member of its Executive Committee, its Treasurer, its Secretary or its Chief Financial Officer (each an “Authorized Representative”);

(2) The Undertaking executed on behalf of the District by an Authorized Representative;

(3) The Fourteenth Supplemental Subordinate Resolution, with only such supplements or amendments thereto as may have been agreed to by the Underwriter and certified by an authorized officer of the District under its seal as having been duly adopted by the District and as being in full force and effect, and the Subordinate Resolution, certified by an authorized officer of the District as being in full force and effect, with such supplements and amendments thereto adopted after the date hereof as may have been agreed to by the Underwriter;

(4) An opinion or opinions relating to the Bonds, dated the Closing Date and addressed to the District, of Bond Counsel, in substantially the form included in the Official Statement as Appendix F, together with a letter or letters of such Bond Counsel, dated the Closing Date and addressed to the Underwriter, to the effect that the foregoing opinion or opinions addressed to the District may be relied upon by the Underwriter to the same extent as if such opinion or opinions were addressed to them;

(5) An opinion or opinions, dated the Closing Date and addressed to the Underwriter of Bond Counsel, in substantially the form attached hereto as Exhibit E;

(6) An opinion, dated the Closing Date and addressed to the Underwriter, of General Counsel to the District, in substantially the form attached hereto as Exhibit C;

(7) An opinion, dated the Closing Date and addressed to the Underwriter, of Nixon Peabody LLP, as counsel for the Underwriter (“Underwriter’s Counsel”), to the effect that (i) the Bonds are exempt from the registration requirements of the Securities Act of 1933, as amended, and the Subordinate Resolution is exempt from qualification under the Trust Indenture Act of 1939, as amended; (ii) the Undertaking complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule applicable to the primary offering of the Bonds; and (iii) based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel to the Underwriter and without having undertaken to determine independently, or assuming any responsibility for, the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement, they do not believe that (A) the Preliminary Official Statement, as of its date and as of the date of the Contract of Purchase, and (B) the Official Statement as of its date and as of the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except for the information relating to Cede & Co., DTC or the operation of the book-entry system, the Appendices to the Official Statement, except Appendices C, and F, and summaries thereof and references thereto, and other financial, accounting and statistical data included therein, as to all of which no view need be expressed); and (iii) with respect to such matters as the Underwriter may reasonably require;

(8) A certificate, dated the Closing Date, signed by an Authorized Representative of the District in substantially the form attached hereto as Exhibit D (but in lieu of or in conjunction with such certificate the Underwriter may, in its sole discretion, accept certificates or opinions of General Counsel to the District, or of other counsel acceptable to the Underwriter, that in the opinion of such counsel the issues raised in any pending or threatened litigation referred to in such certificate are without substance or that the contentions of all plaintiffs therein are without merit);

(9) An acceptance of and agreement to the provisions of the Fourteenth Supplemental Subordinate Resolution executed by the Trustee under the Subordinate Resolution in form and substance acceptable to the Underwriter;

(10) A tax certificate related to the Bonds in substance and form satisfactory to Bond Counsel;

(11) Ratings of the Bonds from S&P Global Ratings (“S&P”) of not less than “[AA (stable outlook)]” and from Fitch Ratings, Inc. (“Fitch”) of not less than “[AA (stable outlook)]”;

(12) The Escrow Agreement, executed by the District and the Escrow Agent;

(13) A report of [\_\_\_\_\_], as verification agent (the “Verification Agent”) with respect to the sufficiency of amounts deposited pursuant to the Escrow Agreement and an opinion of Bond Counsel respecting the defeasance of the Refunded Bonds;

(14) An opinion of counsel to the Trustee/Escrow Agent, dated the Closing Date, addressed to the Underwriter and the Bank, to the effect that (i) the Trustee/Escrow Agent is a national banking association duly organized and validly existing under the laws of the United States of America having full power and being qualified to enter into, accept and agree to the provisions of the Subordinate Resolution and to enter into and perform the Undertaking, (ii) the Undertaking has been duly authorized, executed and delivered by the Trustee/Escrow Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the valid and binding obligation of the Trustee/Escrow Agent enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors’ rights generally, to the application of equitable principles and to the exercise of judicial discretion in appropriate cases, and to enter into and perform the Undertaking, (iii) all approvals, consents and orders of any governmental authority or agency having jurisdiction in this matter that would constitute a condition precedent to the performance by the Trustee/Escrow Agent of its duties and obligations under the Subordinate Resolution and the Undertaking have been obtained and are in full force and effect, and (iv) the acceptance of the duties and obligations of the Trustee/Escrow Agent under the Subordinate Resolution and the Undertaking and the consummation of the transactions on the part of the Trustee/Escrow Agent contemplated therein, and the compliance by the Trustee/Escrow Agent, as applicable, with the terms, conditions and provisions of such

document do not contravene any provisions of applicable law or regulation or any order or decree, writ or injunction or the Articles of Association or Bylaws of the Trustee/Escrow Agent, and, to the best knowledge of such counsel, will not require the consent under or result in a breach of or a default under, any Subordinate Resolution, agreement or other instrument to which the Trustee/Escrow Agent is a party or by which it may be bound;

(15) An executed copy of the Initial Liquidity Facility;

(16) Opinion of Chapman and Cutler LLP, counsel to the Bank, with respect to the Initial Liquidity Facility;

(17) A certificate of an authorized officer of the Bank as to the accuracy of the information in Appendix H of the Official Statement;

(18) An executed copy of the Remarketing Agreement;

(19) A copy of the Blanket Letter of Representations to DTC relating to the Bonds signed by DTC and the District; and

(20) Such additional legal opinions, certificates, instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy and completeness, as of the date hereof and as of the Closing Date, of the District's representations and warranties contained herein and of the statements and information contained in the Preliminary Official Statement or the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing Date of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the Subordinate Resolution and the Preliminary Official Statement or the Official Statement.

If any of the conditions to the obligations of the Underwriter contained in this Section or elsewhere in this Contract of Purchase with respect to the Bonds shall not have been satisfied when and as required herein, all obligations of the Underwriter hereunder with respect to the Bonds may be terminated by the Underwriter at, or at any time prior to, the Closing Date by written notice to the District.

**4. Offering.** The obligations of the District to sell and to deliver the Bonds on the Closing Date to the Underwriter shall be subject to the following conditions:

(a) The entire \$[PAR] aggregate principal amount of the Bonds shall be purchased, accepted and paid for by the Underwriter on the Closing Date; and

(b) The District shall receive an Issue Price Certificate of the Underwriter substantially in the form attached hereto as Exhibit F with respect to the Bonds.

**5. Issue Price of the Bonds.** The Underwriter agrees to assist the District in establishing the issue price of the Bonds and shall execute and deliver to the District at Closing an "issue price" or similar certificate substantially in the form attached hereto as Exhibit F, together with the supporting pricing wires or equivalent communications, with modifications to such



certificate as may be deemed appropriate or necessary, in the reasonable judgment of the Underwriter, the District and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) [Except for the maturities set forth in Schedule A attached hereto,] the District will treat the first price at which 10% of each maturity of the Bonds (the “10% test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test).

(c) [The Underwriter confirms that it has offered the Bonds to the public on or before the date of this Contract of Purchase at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in the final Official Statement. Schedule A sets forth, as of the date of this Contract of Purchase, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the District and the Underwriter agrees that (i) the Underwriter will retain all unsold Bonds of each maturity for which the 10% test has not been satisfied and (ii) the restrictions set forth in the next sentence shall apply, which will allow the District to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) the close of the fifth (5th) business day after the sale date; or

(2) the date on which the Underwriter has sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Underwriter shall promptly advise the District or the District’s municipal advisor when the Underwriter has sold 10% of that maturity of the Bonds to the public at [a price] that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.]

(d) [The Underwriter confirms that:

(1) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the underwriter is a party) relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A)(ii) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (ii) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the related pricing wires, (B)

promptly notify the Underwriter of any sales of the Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) and (C) acknowledge that, unless otherwise advised by the dealer or broker-dealer, each order submitted by the dealer or broker-dealer is a sale to the public; and

(2) any agreement among underwriters relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating the Underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the related pricing wires.]

(e) The Underwriter acknowledges that sales of any Bonds to any person that is a related party to the Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(3) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Contract of Purchase by all parties.

**6. Termination.** The Underwriter shall have the right to terminate their obligations under this Contract of Purchase to purchase, accept delivery of and to pay for the Bonds, if,

(a) between the date hereof and the Closing Date, the market price or marketability, or the ability of the Underwriter to enforce contracts for the sale, at the initial offering prices set forth in the Official Statement, of the Bonds have been materially adversely affected, in the judgment of the Underwriter, (evidenced by a written notice to the District terminating the obligation of the Underwriter to accept delivery of and pay for the Bonds), by reason of any of the following:

(1) (x) any legislation which is (A) enacted by Congress, (B) favorably reported for passage to either House of the Congress of the United States by any Committee of such House to which such legislation has been referred for consideration, or (C) recommended to the Congress for passage by the President of the United States or the Treasury Department, but only, however, if the occurrence of any of the foregoing events is generally accepted by the municipal bond market as potentially affecting the federal tax status of the District, its property or income or the interest on its bonds or notes (including the Bonds), (y) any decision rendered by a court established under Article III of the Constitution of the United States or the Tax Court of the United States, or (z) a final order, ruling, regulation or official statement issued or made by or on behalf of the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the holders of the Bonds, or upon such revenues or other income of the general character expected to be received by the District; provided, however, that the enactment of legislation which only diminishes the value of, as opposed to eliminating the exclusion from gross income for federal income tax purposes will not give the Underwriter the right to terminate their obligations hereunder;

(2) Legislation enacted (or resolution passed) by the Congress or a final order, ruling, regulation or official statement is issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or are not exempt from qualification under, or other requirements of, the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of the Bonds or obligations of the general character of the Bonds, including any or all underlying arrangements, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, otherwise is or would be in violation of the federal securities laws as amended and then in effect;

(3) Any new material outbreak or escalation of hostilities having a material effect on the financial markets of the United States or the declaration by the United States of a national emergency or war or the occurrence of any other local, national or international calamity, crisis or event relating to the effective operation of the

government of or the financial community in the United States or an escalation thereof, including, without limitation, a downgrade of the sovereign debt rating of the United States by any major credit rating agency or payment default on United States Treasury obligations;

(4) the declaration of a general banking moratorium by federal, New York or California authorities, or the general suspension of trading on the New York Stock Exchange or any other national securities exchange, or any material disruption in commercial banking or securities settlement, or payment services or clearing services;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Bonds or obligations of the general character of the Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the net capital requirements of, the Underwriter;

(6) the adoption of any amendment to the federal or California Constitution, decision by any federal or California court, or enactment by any federal or California legislative body materially adversely affecting (i) the District or the right of the District to receive or to pledge any of the Net Subordinated Revenues, or (ii) the validity or enforceability of this Contract of Purchase, the Bonds or the Subordinate Resolution;

(7) the adoption of any amendment to the California Constitution, decision by any California court, or enactment by any California legislative body adversely affecting the exemption of state or local income tax upon such interest as would be received by the holders of the Bonds, or

(8) (i) a downgrading or suspension of any rating (without regard to credit enhancement) by Moody's, S&P, or Fitch of any debt securities issued by the District, or (ii) there shall have been any official statement as to a possible downgrading (such as being placed on "credit watch" or "negative outlook" or any similar qualification) of any rating by Moody's, S&P or Fitch of any debt securities issued by the District, including the Bonds.

(b) an event occurs, or information becomes known, which, in the judgment of the Underwriter, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

**7. Expenses.** (a) Except as set forth in paragraph (b) of this Section, the Underwriter shall be under no obligation to pay, and the District shall pay, or cause to be paid, all expenses incident to the performance of the District's obligations hereunder including, but not limited to, the cost of word processing and reproducing, executing and delivering the Bonds to the Underwriter; the cost of preparation, printing (and/or word processing and reproducing),

distribution and delivery of the Subordinate Resolution; the cost of printing and distributing copies of the Preliminary Official Statement and the Official Statement in sufficient quantities for distribution in connection with the sale of the Bonds (including resales in the secondary market); the fees and disbursements of Bond Counsel; the fees and disbursements of Public Financial Management, Inc. for its services as Municipal Advisor to the District; the fees and disbursements of any other engineers, accountants, and any other experts or consultants retained in connection with the issuance of the Bonds; the fees and disbursements of the Trustee/Escrow Agent and Verification Agent; fees charged by the rating agencies for rating the Bonds; any advertising expenses; filing fees; CUSIP charges; or fees and expenses of any credit enhancement; expenses incurred by the Underwriter on behalf of the District relating to food, transportation or lodging for District staff members attending the bond pricing are to be reimbursed by the District through proceeds of the Bonds or available funds of the District (the District's obligations in regard to these expenses survive if delivery of the Bonds fails due to one of the conditions set forth in Section 3 hereof or this Contract of Purchase is terminated pursuant to Section 6 hereof) and any other expenses not specifically enumerated in paragraph (b) of this Section incurred in connection with the issuance of the Bonds.

(b) The District shall be under no obligation to pay, and the Underwriter shall pay (from the expense component of the underwriting discount), the cost of preparation of this Contract of Purchase; the cost of wiring funds for the payment of the purchase prices of the Bonds; the fees and expenses of DTC incurred with respect to depositing the Bonds therewith; expenses to qualify the Bonds for sale under any "Blue Sky" laws; fees to the California Debt and Investment Advisory Commission; and all other expenses incurred by the Underwriter in connection with its public offering and distribution of the Bonds not specifically enumerated in paragraph (a) of this Section, including the fees and disbursements of Underwriter's Counsel. Notwithstanding that the fees to the California Debt and Investment Advisory Commission are solely the legal obligation of the Underwriter, the District agrees to reimburse the Underwriter for such fees.

8. **Notices.** Any notice or other communication to be given to the District under this Contract of Purchase may be given by delivering the same in writing to Sacramento Municipal Utility District, at 6201 S Street, Sacramento, California 95817-1899; and any notice or other communication to be given to the Underwriters under this Contract of Purchase may be given by delivering the same in writing to Barclays Capital Inc., 10250 Constellation Blvd, Suite 750, Los Angeles, CA 90067, Attention: Christopher D. Roberts, Director.

9. **Parties in Interest.** This Contract of Purchase is made solely for the benefit of the District and the Underwriter (including successors or assigns of the Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. The term "successors and assigns" as used in this Section shall not include any purchaser of the Bonds, as such purchaser, from the Underwriter.

10. **Survival of Representations and Warranties.** The representations and warranties of the District, set forth in or made pursuant to this Contract of Purchase, shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the closing or termination of this Contract of Purchase and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriter and regardless of delivery of and payment for the Bonds.

11. **Counterparts.** This Contract of Purchase may be executed in several counterparts, which together shall constitute one and the same instrument.

12. **California Law Governs; Venue.** The validity, interpretation and performance of this Contract of Purchase shall be governed by the laws of the State of California. Any action or proceeding to enforce or interpret this Contract of Purchase shall be brought, commenced or prosecuted in the County of Sacramento, California.

[remainder of page intentionally left blank]

13. **Entire Agreement.** This Contract of Purchase when accepted by you in writing as heretofore specified shall constitute the entire agreement between us.

14. **Effectiveness.** This Contract of Purchase shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by an authorized officer of the District and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

BARCLAYS CAPITAL INC.

---

Christopher D. Roberts  
Director

Accepted: [SALE DATE]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Russell Mills  
Treasurer

[Signature page to Contract of Purchase]

**Exhibit A**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$[PAR] Subordinated Electric Revenue Refunding Bonds, 2023 Series C**

<b>Initial Mode</b>	<b>First day of Initial Period</b>	<b><u>Last day of</u> <u>Initial</u> <u>Period</u></b>	<b>Initial Interest <u>Rate</u></b>	<b><u>First</u> <u>Interest</u> <u>Payment</u> <u>Date</u></b>	<b><u>Maturity</u></b>
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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**Exhibit B to the Contract of Purchase  
(Official Statement)**

# **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

## **Exhibit C to the Contract of Purchase (Opinion of General Counsel to the Sacramento Municipal Utility District)**

[CLOSING DATE]

Barclays Capital Inc.  
10250 Constellation Blvd, Suite 750  
Los Angeles, CA 90067

Re: Sacramento Municipal Utility District  
\$[PAR] Subordinated Electric Revenue Refunding Bonds, 2023 Series C

Ladies and Gentlemen:

This opinion is being delivered pursuant to Paragraph 3(d)(6) of the Contract of Purchase (the “Contract of Purchase”), dated [SALE DATE], between Barclays Capital Inc., as Underwriter named therein (the “Underwriter”), and the Sacramento Municipal Utility District (the “District”) relating to the above-captioned bonds (the “Bonds”).

As counsel to the District, I have reviewed (i) Subordinate Resolution No. 85-11-1 of the District, adopted on November 7, 1985 (the “Subordinate Master Resolution”), as amended and restated pursuant to Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001, as amended and supplemented, including the amendments and supplements thereto made by Subordinate Resolution No. [23-05-\_\_\_], adopted on [May 18, 2023] (as so amended and supplemented, the “Subordinate Resolution”); (ii) the Continuing Disclosure Agreement, dated the date hereof (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association, as trustee (in such capacity, the “Trustee”); (iii) the Preliminary Official Statement of the District, dated [POS DATE] (the “Preliminary Official Statement”); (iv) the Official Statement of the District, dated [SALE DATE] (the “Official Statement”) (v) the Standby Bond Purchase Agreement, dated as of [\_\_\_], 2023 (the “Initial Liquidity Facility”), between the District and TD Bank, N.A. (the “Bank”); (vi) the Remarketing Agreement, between the District and Barclays Capital Inc., as remarketing agent, dated [\_\_\_], 2023 (the “Remarketing Agreement”); (vii) the escrow agreement, dated the date hereof (the “Escrow Agreement”), between the District and U.S. Bank Trust Company, National Association, as escrow agent (in such capacity, the “Escrow Agent”), and (viii) such other documents, opinions and matters to the extent I deemed necessary to provide the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. I have assumed the genuineness of all documents and signatures presented to me (whether as originals or as copies) and the due and legal execution and delivery by, and validity against, any parties other than the District. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the

documents referred to in the second paragraph hereof. I have further assumed compliance with all covenants and agreements contained in such documents.

I call attention to the fact that the rights and obligations under the Subordinate Resolution, the Initial Liquidity Facility, the Escrow Agreement, the Remarketing Agreement, the Undertaking, and the Contract of Purchase may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained therein.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, I am of the opinion that:

1. The District is a political subdivision of the State of California duly organized and validly existing under the Act, as amended, and has full legal right, power and authority to execute and deliver (or adopt, as the case may be), and to perform its obligations under, the Subordinate Resolution, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, the Undertaking and the Contract of Purchase.

2. The Contract of Purchase, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, and the Undertaking have each been duly authorized, executed and delivered by the District, and, assuming due authorization, execution and delivery by each of the parties thereto other than the District, constitute the legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms.

3. The District is not in breach of or default under any existing constitutional provision, applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject which would have a material adverse effect on the financial condition or operations of the District, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument which would have a material adverse effect on the financial condition or operations of the District; and the execution and delivery of the Bonds, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, the Undertaking and the Contract of Purchase and the adoption of the Subordinate Resolution, and compliance with any existing constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject will not, as of the date hereof, conflict with or constitute a breach of or default under any such instrument which would have a material adverse effect on the financial condition or operations of the District, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of

the District or under the terms of any such law, regulation or instrument, except as expressly provided by the Bonds and the Subordinate Resolution.

4. The statements contained in the Preliminary Official Statement and Official Statement which purport to describe certain provisions of the Bonds, the Initial Liquidity Facility, the Remarketing Agreement, the Undertaking, the Escrow Agreement, and the Subordinate Resolution present a fair and accurate summary of such provisions for the purpose of use in the Preliminary Official Statement and the Official Statement.

5. Except as described or referred to in the Preliminary Official Statement and the Official Statement, as of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of my knowledge, threatened against the District affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the collection of the Revenues (as defined in the Subordinate Resolution) or the Net Subordinated Revenues (as defined in the Subordinate Resolution) pledged or to be pledged to pay the principal of and interest on the Bonds or contesting or affecting as to the District the validity or enforceability of the Act, the Bonds, the Subordinate Resolution, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, the Contract of Purchase or the Undertaking, or contesting the tax exempt status of interest on the Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the Bonds, the adoption of the Subordinate Resolution, or the execution and delivery by the District of the Contract of Purchase, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act or the authorization, execution, delivery or performance by the District of the Bonds, the Subordinate Resolution, the Initial Liquidity Facility, the Escrow Agreement, the Remarketing Agreement, the Undertaking, or the Contract of Purchase.

6. Based upon my review of the Preliminary Official Statement and the Official Statement as General Counsel to the District and without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement (except as specifically set forth in paragraph 4 hereof), I have no reason to believe that the statements contained in the Preliminary Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, and the Bank, and the Appendices (except Appendices A) to the Preliminary Official Statement, and other financial and statistical data included therein, as to all of which I express no view) as of its date and as of the date of the Contract of Purchase contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and the Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, the Bank and the Appendices (except Appendix A) to the Official Statement, and other financial and

statistical data included therein, as to all of which I express no view) (A) as of the date of the Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or (B) as of the date hereof contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

For purposes of the opinions expressed herein, I have assumed that an agreement or other document is “material” to the District if it involves amounts in excess of \$10,000,000 and that a matter would result in a “material adverse change” to the District if the financial consequences involved would exceed \$10,000,000.

I understand that you are relying upon the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel, with respect to the validity of the Bonds and the exclusion of interest on the Bonds from gross income for federal income tax purposes and the Bonds for purposes of State of California income taxation and, accordingly, render no opinion with respect thereto.

Very truly yours,

## **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

### **Exhibit D to the Contract of Purchase**

#### **CERTIFICATE**

The Sacramento Municipal Utility District (the “District”), hereby certifies that:

(1) The representations and warranties of the District (excluding those representations and warranties contained in Section 2(e) and Section 2(k) of the hereinafter defined Contract of Purchase) contained in the Contract of Purchase, dated [SALE DATE], between the District and the Underwriter named therein (the “Contract of Purchase”) with respect to the sale by the District of \$[PAR] aggregate principal amount of its Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “Bonds”), are true and correct on and as of the Closing Date as if made on the Closing Date.

(2) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the Bonds under the Subordinate Resolution, the Initial Liquidity Facility, the Remarketing Agreement, the Escrow Agreement, the Undertaking, and the Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the “Blue Sky” or other securities laws of any state in connection with the offering and sale of the Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, the Contract of Purchase, the Initial Liquidity Facility, the Escrow Agreement, the Remarketing Agreement, the Undertaking, the Bonds or the Subordinate Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained.

(3) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the best of knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened against the District, in any way affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of any of the Bonds or the collection of the Revenues (as defined in the Subordinate Resolution) or the Net Subordinated Revenues (as defined

in the Subordinate Resolution) pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting as to the District the validity or enforceability of the Act, the Bonds, the Subordinate Resolution, the Contract of Purchase, the Initial Liquidity Facility, the Remarketing Agreement, the Escrow Agreement, the Undertaking, or any action of the District contemplated by any of said documents, or contesting the tax exempt status of interest on the Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution system, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the Bonds, the adoption of the Subordinate Resolution, or the execution and delivery by the District of the Contract of Purchase, the Escrow Agreement, the Initial Liquidity Facility, the Remarketing Agreement, or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act of the authorization, execution, delivery or performance by the District of the Bonds, the Subordinate Resolution, the Initial Liquidity Facility, the Escrow Agreement, the Remarketing Agreement, the Undertaking, or the Contract of Purchase, or any action of the District contemplated by any of said documents, or which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor.

(4) No event affecting the District has occurred (with respect to the Preliminary Official Statement, from its date to the date of the Contract of Purchase, and with respect to the Official Statement, since the date of the Official Statement) which should have been or should be disclosed in the Preliminary Official Statement or the Official Statement so that the Preliminary Official Statement or the Official Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and which has not been disclosed in a supplement or amendment to the Preliminary Official Statement or the Official Statement.

(5) The District has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof pursuant to the Contract of Purchase with respect to the issuance of the Bonds.

(6) All capitalized terms employed herein which are not otherwise defined shall have the same meanings as in the Contract of Purchase.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Name:  
Title:

Dated: [CLOSING DATE]

**Exhibit E to the Contract of Purchase  
(Supplemental Opinion of Bond Counsel)**

[TO BE UPDATED BY BOND COUNSEL]

[CLOSING DATE]

Barclays Capital Inc.  
10250 Constellation Blvd, Suite 750  
Los Angeles, CA 90067

Sacramento Municipal Utility District  
Subordinated Electric Revenue Refunding Bonds, 2023 Series C  
(Supplemental Opinion)

Ladies and Gentlemen:

This letter is addressed to you, as Underwriter, pursuant to Section 3(d)(5) of the Contract of Purchase, dated [SALE DATE] (the “Purchase Contract”), between you and the Sacramento Municipal Utility District (“SMUD”), providing for the purchase of \$[PAR] aggregate principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “Bonds”). The Bonds are being issued pursuant to Subordinate Resolution No. 85-11-1 of the Board of Directors of SMUD, adopted November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001, as supplemented and amended by later Subordinate Resolutions of said Board of Directors (as so supplemented and amended, the “Subordinate Resolution”), including Subordinate Resolution No. [23-05-\_\_\_], adopted on [May 18, 2023]. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Subordinate Resolution or, if not defined in the Subordinate Resolution, in the Purchase Contract.

In connection with our role as Bond Counsel to SMUD, we have reviewed the Purchase Contract; the Subordinate Resolution; the Tax Certificate, dated the date hereof (the “Tax Certificate”), executed by SMUD; certain portions of the posted preliminary official statement of SMUD, dated [POS DATE] with respect to the Bonds (the “Preliminary Official Statement”) and of the posted official statement of SMUD, dated [SALE DATE], with respect to the Bonds (the “Official Statement”); opinions of counsel to SMUD and the Trustee; certificates of SMUD, the Trustee and others; and such other documents, opinions and matters to the extent we deemed necessary to render the opinions and conclusions set forth herein.

The opinions and conclusions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions or conclusions may be affected by actions taken or omitted or events occurring after the original delivery of the Bonds on the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the original delivery of the Bonds on the



date hereof. We have assumed the genuineness of all documents and signatures provided to us and the due and legal execution and delivery thereof by, and validity against, any parties other than SMUD. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. We have further assumed compliance with all covenants and agreements contained in such documents. In addition, we call attention to the fact that the rights and obligations under the Bonds, the Subordinate Resolution, the Tax Certificate and the Purchase Contract and their enforceability may be subject to bankruptcy, insolvency, reorganization, receivership, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinions with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Subordinate Resolution or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions and conclusions:

1. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Subordinate Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

2. The Purchase Contract has been duly executed and delivered by, and constitutes a valid and binding obligation of, SMUD.

3. The statements contained in the Preliminary Official Statement and the Official Statement under the captions ["THE SUBORDINATED 2023 SERIES C BONDS" (excluding information relating to book-entry or The Depository Trust Company), "SECURITY FOR THE BONDS" and "TAX MATTERS" and in APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION," and APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION"] [**To be updated when POS is available**] excluding any material that may be treated as included under such captions by cross-reference or reference to other documents or sources, insofar as such statements expressly summarize certain provisions of the Subordinate Resolution or set out the content of our final legal opinion as Bond Counsel to SMUD concerning the validity of the Bonds and certain other matters, dated the date hereof and addressed to SMUD, are accurate in all material respects.

4. We are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or (except as explicitly stated in paragraph 3 above) in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. In our capacity as Bond Counsel to SMUD in connection with issuance of

the Bonds, we participated in conferences with your representatives, your counsel, representatives of SMUD, its counsel, accountants, and others, during which the contents of the Preliminary Official Statement or the Official Statement and related matters were discussed. Based on our participation in the above-mentioned conferences (which, with respect to the Preliminary Official Statement, did not extend beyond the date of the Purchase Contract, and with respect to the Official Statement, did not extend beyond its date), and in reliance thereon, on oral and written statements and representations of SMUD and others and on the records, documents, certificates, opinions and matters herein mentioned, subject to the limitations on our role as Bond Counsel to SMUD, we advise you as a matter of fact and not opinion that (a) no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Preliminary Official Statement which caused us to believe as of its date and as of the date of the Purchase Contract, based on the documents, drafts and facts in existence and reviewed as of that date, that the Preliminary Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except any information marked as preliminary or subject to change, any information permitted to be omitted by Securities and Exchange Commission Rule 15c2-12 or otherwise left blank and any other differences with the information in the Official Statement), and (b) no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Official Statement which caused us to believe as of the date of the Official Statement and as of the date hereof that the Official Statement contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, we expressly exclude from the scope of this paragraph and express no opinion or conclusion, with respect to both the Preliminary Official Statement and the Official Statement, about any CUSIP numbers, financial, accounting, statistical or economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, any statements about compliance with prior continuing disclosure undertakings, any management discussion and analysis, any information about Cede & Co., The Depository Trust Company or book-entry, the Initial Liquidity Facility, or the Bank, information under the caption "THE INITIAL LIQUIDITY FACILITY," ratings, rating agencies, financial advisors, swap advisors, underwriters, underwriting and the information contained in Appendices B and C included or referred to therein or omitted therefrom. No responsibility is undertaken or conclusion expressed with respect to any other disclosure document, materials or activity, or as to any information from another document or source referred to by or incorporated by reference in the Preliminary Official Statement or the Official Statement.

This letter is furnished by us as Bond Counsel to SMUD. No attorney-client relationship has existed or exists between our firm and you in connection with the Bonds or by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you as Underwriter of the Bonds, is solely for your benefit as such Underwriter in connection with the original delivery of the Bonds on the date hereof, and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person.

This letter is not intended to, and may not, be relied upon by owners of Bonds or by any other party to whom it is not specifically addressed.

Very truly yours,

## Exhibit F to the Contract of Purchase

### (Form of Issue Price Certificate Of The Underwriter Regarding Offering Prices)

#### SACRAMENTO MUNICIPAL UTILITY DISTRICT

#### \$[PAR] Subordinated Electric Revenue Refunding Bonds, 2023 Series C

The undersigned, on behalf of Barclays Capital Inc. (the “Underwriter”) hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. ***Sale of the [General Rule Maturities][Bonds]***. As of the date of this Certificate, for each Maturity of the [General Rule Maturities][Bonds], the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***[Initial Offering Price of the Hold-the-Offering-Price-Maturities]***.

(a) The Underwriter offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this Certificate as Schedule B.

(b) As set forth in the Bond Purchase Agreement for the Bonds, the Underwriter has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) unsold Bonds of the Hold-the-Offering-Price Maturities shall be retained by the Underwriter. Pursuant to such agreement, the Underwriter has not offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period. ]

3. ***Defined Terms.***

(a) [General Rule Maturities means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.” ]

(b) [Hold-the-Offering-Price Maturities means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

(c) [Holding Period means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriter has sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.]

(d) *Issuer* means Sacramento Municipal Utility District.

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party (as such terms are defined below) to the Underwriter.

(g) A purchaser of any of the Bonds is a *Related Party* to the Underwriter if the Underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(h) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [SALE DATE].

(i) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Underwriter's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

Dated: [CLOSING DATE]

Barclays Capital Inc.,

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Schedule A

Sale Prices

\$[PAR] Subordinated Electric Revenue Refunding Bonds, 2023 Series C

Initial Mode	First day of Initial Period	Last Day of Initial Period	<u>Initial Interest Rate</u>	<u>First Interest Payment Date</u>	<u>Maturity</u>	<u>Hold-the- Price Maturities</u>	<u>General Rule Maturities</u>
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**Schedule B**

**Pricing Wire or Equivalent Communication**

\_\_\_ Not applicable, because there are no Hold-the-Offering-Price Maturities

\_\_\_ Attached



**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$(SERIES D PAR) SUBORDINATED ELECTRIC  
REVENUE BONDS, [2023 SERIES D]**

**AND**

**\$(SERIES E PAR) SUBORDINATED ELECTRIC  
REVENUE BONDS, [2023 SERIES E]**

**CONTRACT OF PURCHASE  
[Form of Contract of Purchase, 2023  
Subordinated Bonds, Series D and Series E ]]**

**DRAFT**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**\$[SERIES D PAR] Subordinated Electric Revenue Bonds, [2023 Series D]**  
**and**  
**\$[SERIES E PAR] Subordinated Electric Revenue Bonds, [2023 Series E]**

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**CONTRACT OF PURCHASE**

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[SALE DATE]

Honorable Board of Directors  
Sacramento Municipal Utility District  
6201 S Street  
Sacramento, California 95817-1899

Dear Directors:

The undersigned BofA Securities, Inc. and [UNDERWRITING GROUP TO COME] (herein collectively referred to as the “Underwriters”), acting for and on behalf of themselves, offer to enter into this Contract of Purchase (the “Contract of Purchase”) with the Sacramento Municipal Utility District (the “District”) which, upon the District’s acceptance, will be binding upon the District and upon the Underwriters. BofA Securities, Inc., has been duly authorized to execute this Contract of Purchase and to act hereunder by and based on representations made to it under an Agreement Among Underwriters dated \_\_\_\_\_, 2023 on behalf of the Underwriters as the Senior Managing Underwriter (the “Senior Underwriter”). This offer is made subject to the District’s acceptance on or before 5:00 p.m., Sacramento time, on the date hereof, and if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the District at any time prior to the acceptance hereof by the District.

**1. Purchase, Sale and Delivery of the [2023 Series D/E] Bonds.** Subject to the terms and conditions and in reliance upon the representations, warranties and agreements herein set forth, the Underwriters, jointly and severally, hereby agree to purchase from the District, and the District hereby agrees to sell to the Underwriters, all (but not less than all) of the \$[SERIES D PAR] aggregate principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds, [2023 Series D] (the “[2023 Series D] Bonds”), and the \$[SERIES E PAR] aggregate principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds, [2023 Series E] (the “[2023 Series E] Bonds” and, together with the [2023 Series D Bonds] the “[2023 Series D/E] Bonds”), each dated [CLOSING DATE], and each bearing

interest payable on the dates as set forth in the Official Statement (as hereinafter defined) of the District relating to the [2023 Series D/E] Bonds in each year until maturity or earlier redemption at the rates per annum and maturing on the dates and in the amounts set forth in the Official Statement. The purchase price for the [2023 Series D] Bonds shall be \$[SERIES D PURCHASE PRICE] (consisting of the principal amount of the [2023 Series D] Bonds of \$[SERIES D PAR] plus [net] original issue premium of \$[SERIES D OIP]) and minus an Underwriter's discount of \$[SERIES D UWD]. The purchase price for the [2023 Series E] Bonds shall be \$[SERIES E PURCHASE PRICE] (consisting of the principal amount of the [SERIES E] Bonds of \$[SERIES E PAR] plus [net] original issue premium of \$[SERIES E OIP]) and minus an Underwriter's discount of \$[SERIES E UWD].

(b) The [2023 Series D/E] Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable as provided in, Resolution No. 85-11-1, adopted by the Board of Directors of the District on November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001 (the "Subordinate Master Resolution"), as heretofore amended and supplemented, including the amendments and supplements thereto made by Resolutions Nos. [RESO Nos.] respectively, adopted by the Board of Directors on [May 18, 2023] (the "[Fifteenth and Sixteenth] Supplemental Resolutions"). The Subordinate Master Resolution, as supplemented and amended as described in this Contract of Purchase, is herein called the "Subordinate Resolution." The [2023 Series D/E] Bonds are authorized to be issued pursuant to applicable California law, including the Municipal Utility District Act (Sections 12850 to 12860 of the Public Utilities Code), the Revenue Bond Law of 1941 (Government Code Section 54300 *et seq.*), Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (Section 53580 *et seq.*) and the Subordinate Resolution. The [2023 Series D/E] Bonds will be special obligations of the District payable exclusively from, and are secured by a pledge (effected in the manner and to the extent provided in the Subordinate Resolution) of, the Net Subordinated Revenues (as defined in the Subordinate Resolution). The [2023 Series D/E] Bonds shall be payable and shall be subject to redemption as provided in the Subordinate Resolution.

(c) [A portion of the proceeds of the [2023 Series D/E] Bonds will be used to finance and refinance certain improvements and additions to SMUD's Electric System, including through the refunding of SMUD's commercial paper notes and pay certain costs associated with the issuance of the 2023 Subordinated Bonds.].

(d) The District has heretofore delivered to the Underwriters copies of the Preliminary Official Statement dated [POS DATE], relating to the [2023 Series D/E] Bonds (the "Preliminary Official Statement") in connection with the public offering of the [2023 Series D/E] Bonds. The Preliminary Official Statement was deemed final by the District as of the date thereof in accordance with paragraph (b)(1) of Rule 15c2-12 of the Securities and Exchange Commission ("Rule 15c2-12"), except for the information not required to be included therein under Rule 15c2-12.

(e) The District shall prepare and deliver to the Underwriters, as promptly as practicable, but in any event not later than two business days prior to the Closing Date (as defined below) or seven business days from the date hereof, a final official statement, with such

changes and amendments as may be agreed to by the Underwriters, in such quantities as the Underwriters may reasonably request in order to comply with paragraph (b)(4) of Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board (“MSRB”) (such official statement, including the cover page and Appendices thereto, as the same may be supplemented or amended pursuant to paragraph (i) of Section 2 hereof, is herein referred to as the “Official Statement”). In addition, the District will provide, subject to customary disclaimers regarding the transmission of electronic copies, an electronic copy of the final Official Statement to the Underwriters in the currently required designated electronic format stated in MSRB Rule G-32 and the EMMA Dataport Manual (as defined below). The parties agree that the format in which the Preliminary Official Statement was delivered meets such electronic format requirements.

(f) Within one (1) business day after receipt of the Official Statement from the District, but by no later than the Closing Date, the Underwriters shall, at their own expense submit the Official Statement to EMMA (as defined below). The Underwriters will comply with the provisions of MSRB Rule G-32, including without limitation the submission of Form G-32 and the Official Statement and notify the District of the date on which the Official Statement has been filed with EMMA.

“EMMA” means the MSRB’s Electronic Municipal Market Access system, or any other electronic municipal securities information access system designated by the MSRB for collecting and disseminating primary offering documents and information.

“EMMA Dataport Manual” means the document(s) designated as such published by the MSRB from time to time setting forth the processes and procedures with respect to submissions to be made to the primary market disclosure service of EMMA by underwriters under Rule G-32(b).

(g) The District hereby ratifies, confirms and approves the use and distribution by the Underwriters prior to the date hereof of the Preliminary Official Statement and hereby authorizes the Underwriters to use and distribute the Official Statement, the Subordinate Resolution and this Contract of Purchase, and all information contained in each, and all other documents, certificates and statements furnished by the District to the Underwriters in connection with the transactions contemplated by this Contract of Purchase, in connection with the offer and sale of the [2023 Series D/E] Bonds.

The District will covenant pursuant to a Continuing Disclosure Agreement dated as of the date of the issuance of the [2023 Series D/E] Bonds (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association (the “Trustee”), to provide annual reports and certain notices as described in Appendix [G] of the Official Statement.

(h) The District acknowledges and agrees that: (i) the Underwriters are not acting as municipal advisors within the meaning of Section 15B of the Securities Exchange Act, as amended, (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm’s length commercial transaction between the District and the Underwriters and the Underwriters have financial and other interests that differ from those of the District; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to the District and have not assumed any advisory or

fiduciary responsibility to the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the District on other matters); (iv) the only contractual obligations the Underwriters, as underwriters, have to the District with respect to the transaction contemplated hereby expressly are set forth in this Contract of Purchase; and (v) the District has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

(i) At 8:00 A.M., Sacramento time, on [CLOSING DATE] or at such earlier or later time or date as shall be agreed upon by the Underwriters and the District (such time and date being herein referred to as the “Closing Date”), the District will deliver the [2023 Series D/E] Bonds to The Depository Trust Company, New York, New York (“DTC”), for the account of the Underwriters, duly executed by the District, and the other documents herein mentioned; and the Underwriters will (i) accept such delivery and pay the purchase price of the [2023 Series D/E] Bonds as set forth in paragraph (a) of this Section by wire transfer in San Francisco, California to the order of the District. Delivery of the documents herein mentioned shall be made at the offices of Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, California 95814, or such other place as shall have been mutually agreed upon by the District and the Underwriters, except that the [2023 Series D/E] Bonds shall be delivered at the offices of DTC in New York, New York or at such other place and in such manner as shall have been mutually agreed upon by the District and the Underwriters.

The [2023 Series D/E] Bonds shall be issued initially in fully registered book-entry eligible form (which may be typewritten) in the form of a single registered bond for each maturity of the [2023 Series D/E] Bonds, shall bear CUSIP numbers and shall be registered in the name of Cede & Co., as nominee of DTC.

**2. Representations, Warranties and Agreements of the District.** The District hereby represents, warrants to and agrees with the Underwriters that:

(a) The District is a political subdivision of the State of California duly organized and validly existing pursuant to the Municipal Utility District Act as contained in Public Utilities Code Section 11501 *et seq.* (the “Act”) and has, and at the Closing Date will have, full legal right, power and authority (i) to enter into this Contract of Purchase and the Undertaking, (ii) to adopt the Subordinate Resolution, (iii) to pledge the Net Subordinated Revenues as set forth in the Subordinate Resolution, (iv) to issue, sell and deliver the [2023 Series D/E] Bonds to the Underwriters pursuant to the Subordinate Resolution as provided herein, (v) to acquire, construct, operate, maintain, improve and finance its Electric System (as defined in the Subordinate Resolution) and conduct the business thereof as set forth in and contemplated by the Preliminary Official Statement and the Official Statement, and (vi) to carry out, give effect to and consummate the transactions contemplated by this Contract of Purchase, the Undertaking, the Subordinate Resolution and the Preliminary Official Statement and the Official Statement;

(b) The District has complied, and will at the Closing Date be in compliance, in all material respects, with the Act, the Subordinate Resolution, and with the obligations in connection with the issuance of the [2023 Series D/E] Bonds on its part contained in the

Subordinate Resolution, the [2023 Series D/E] Bonds, the Act, the Undertaking and this Contract of Purchase;

(c) The District has duly and validly adopted the Subordinate Resolution, has duly authorized and approved the execution and delivery of the [2023 Series D/E] Bonds, this Contract of Purchase, the Undertaking and the Official Statement and has duly authorized and approved the performance by the District of its obligations contained in, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by, each of said documents and, at the Closing Date, the [2023 Series D/E] Bonds will have been validly issued and delivered, the Subordinate Resolution, the Undertaking and this Contract of Purchase will constitute the valid, legal and binding obligations of the District enforceable in accordance with their respective terms (subject to the effect of, and restrictions and limitations imposed by or resulting from, (i) bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws affecting creditors' rights, and (ii) judicial discretion) and the Subordinate Resolution will be in full force and effect;

(d) The District is not in breach of or in default under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either or any applicable court or administrative decree or order, or any loan agreement, bond, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District is otherwise subject or bound which in any material way, directly or indirectly, affects the issuance of the [2023 Series D/E] Bonds or the validity thereof, the validity or adoption of the Subordinate Resolution or the execution and delivery of the [2023 Series D/E] Bonds, this Contract of Purchase, the Undertaking or the other instruments contemplated by any of such documents to which the District is a party, and the adoption of the Subordinate Resolution and compliance with the provisions of each will not, as of the date hereof and as of the Closing Date, conflict with or constitute a breach of or default in any material way under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States, or of any department, division, agency or instrumentality of either or any applicable court or administrative judgment, decree or order, or any loan agreement, bond, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District or any of the property or assets of the Electric System (as defined in the Subordinate Resolution) are otherwise subject or bound, and no event which would have a material and adverse effect upon the financial condition of the District has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the District under any of the foregoing;

(e) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the [2023 Series D/E] Bonds under the Subordinate Resolution, the Undertaking and this Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the "Blue Sky" or other securities laws of any state in connection with the

offering and sale of the [2023 Series D/E] Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, this Contract of Purchase, the Undertaking, the [2023 Series D/E] Bonds or the Subordinate Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained;

(f) The [2023 Series D/E] Bonds, when issued and delivered in accordance with the Subordinate Resolution and this Contract of Purchase and paid for by the Underwriters on the Closing Date as provided herein, will be validly issued and outstanding special obligations of the District enforceable against the District in accordance with their terms and entitled to all the benefits and security of the Subordinate Resolution; and, upon the issuance and delivery of the [2023 Series D/E] Bonds, the Subordinate Resolution will provide, for the benefit of the holders from time to time of the [2023 Series D/E] Bonds, a legally valid and binding pledge of and lien on Net Subordinated Revenues pledged under the Subordinate Resolution, as provided in and contemplated by the Subordinate Resolution;

(g) The Preliminary Official Statement, as of its date and as of the date hereof, did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) At the time of the District's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (i) of Section 2 hereof) at all times subsequent to the date of delivery thereof up to and including the Closing Date, the Official Statement will be true, correct, complete and final in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) If, after the date of this Contract of Purchase and until 25 days after the end of the "underwriting period" (as defined in Rule 15c2-12), any event shall occur that might cause the Official Statement to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the District hereby covenants and agrees, to the extent it has knowledge of such event, to notify the Underwriters (and for the purposes of this clause to provide the Underwriters with such information as they may from time to time reasonably request), and, if in the opinion of the Underwriters and their counsel such event requires the preparation and publication of a supplement or amendment to the Official Statement, at its expense to supplement or amend the Official Statement in a form and manner approved by the Underwriters and furnish to the Underwriters a reasonable number of copies of such supplement or amendment. For purposes of this Contract of Purchase, the District may assume that the end of

the “underwriting period” has occurred on the Closing Date unless the District is otherwise notified by the Underwriters on or prior to the Closing Date. If the Underwriters notify the District that the Closing Date is not the end of the “underwriting period”, then the Underwriters shall further notify the District of the date that is the end of the “underwriting period” (as defined in Rule 15c2-12);

(j) If the Official Statement is supplemented or amended pursuant to paragraph (i) of Section 2 of this Contract of Purchase, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the “underwriting period”, the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which made, not misleading.

(k) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened (i) in any way affecting the corporate existence of the District or the titles of its officers to their respective offices, (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of any of the [2023 Series D/E] Bonds, the application of the proceeds thereof in accordance with the Subordinate Resolution, or the collection or application of Revenues (as defined in the Subordinate Resolution) or the collection or application of the Net Subordinated Revenues pledged to pay the principal of and interest on the [2023 Series D/E] Bonds under the Subordinate Resolution or in any way contesting or affecting the validity or enforceability of any of the [2023 Series D/E] Bonds, the Subordinate Resolution, the Undertaking, this Contract of Purchase or any action of the District contemplated by any of said documents, (iii) which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the powers of the District or its authority with respect to the [2023 Series D/E] Bonds, the adoption of the Subordinate Resolution, or the execution and delivery of the Undertaking or this Contract of Purchase, or any action of the District contemplated by any of said documents, and (v) which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the [2023 Series D/E] Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor;

(l) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request (i) to qualify the [2023 Series D/E] Bonds for offer and sale under the “Blue Sky” or other securities laws and regulations of such states and other jurisdictions of the United States as the Senior Underwriter may designate, and (ii) to determine the eligibility of the [2023 Series D/E] Bonds for investment under the laws of such states and other jurisdictions and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the [2023 Series D/E] Bonds; provided that in connection therewith the District shall not be required to execute or file a general or special consent to service of process or qualify to do business in



any jurisdiction and will advise the Senior Underwriter promptly of receipt by the District of any written notification with respect to the suspension of the qualification of the [2023 Series D/E] Bonds for sale in any jurisdiction or written notification of the initiation or threat of any proceeding for that purpose;

(m) The audited financial statements of the District for the years ending December 31, 2022 and December 31, 2021 heretofore delivered to the Underwriters and incorporated by reference in the Preliminary Official Statement and the Official Statement as Appendix B fairly present the financial position of the District as of the dates indicated and such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis;

(n) Between the date hereof and the Closing Date, the District will not, without the prior written consent of the Senior Underwriter, offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as disclosed in the Preliminary Official Statement or the Official Statement or as otherwise disclosed to the Senior Underwriter;

(o) The [2023 Series D/E] Bonds, the Subordinate Resolution and the Undertaking conform to the descriptions thereof contained in the Preliminary Official Statement and the Official Statement;

(p) The District has the legal authority to apply and will apply, or cause to be applied, the proceeds from the sale of the [2023 Series D/E] Bonds as provided in and subject to all of the terms and provisions of the Subordinate Resolution and as described in the Preliminary Official Statement and the Official Statement, including for payment of District expenses incurred in connection with the negotiation, marketing, issuance and delivery of the Bonds to the extent required by Section 7 (Expenses), and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the [2023 Series D/E] Bonds;

(q) Any certificate signed by any official of the District, and delivered to the Underwriters, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(r) Except as disclosed in the Preliminary Official Statement and the Official Statement, during the last five years the District has complied in all material respects with all previous undertakings required by Rule 15c2-12.

**3. Conditions to the Obligations of the Underwriters.** The obligations of the Underwriters to accept delivery of and pay for the [2023 Series D/E] Bonds on the Closing Date shall be subject to the performance by the District of its obligations to be performed hereunder at or prior to the Closing Date and to the fulfillment of the following conditions:

(a) The representations, warranties and covenants of the District contained herein shall be true, complete and correct on the date hereof and as of the Closing Date as if made on the Closing Date;

(b) At the Closing Date, the Subordinate Resolution shall have been duly adopted and shall be in full force and effect, and shall not have been repealed, amended, modified or supplemented, except as may have been agreed to in writing by the Underwriters, and there shall have been taken in connection therewith, with the issuance of the [2023 Series D/E] Bonds and with the transactions contemplated thereby and by this Contract of Purchase, all such actions as, in the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel (“Bond Counsel”), shall be necessary and appropriate;

(c) At the Closing Date, the Official Statement shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriters;

(d) At or prior to the Closing Date, the Underwriters shall have received copies of the following documents, in each case satisfactory in form and substance to the Underwriters:

(1) The Official Statement executed on behalf of the District by its Chief Executive Officer and General Manager, any Member of its Executive Committee, its Treasurer, its Secretary or its Chief Financial Officer (each an “Authorized Representative”);

(2) The Undertaking executed on behalf of the District by an Authorized Representative;

(3) The [Fifteenth and Sixteenth] Supplemental Resolutions, with only such supplements or amendments thereto as may have been agreed to by the Underwriters and certified by an authorized officer of the District under its seal as having been duly adopted by the District and as being in full force and effect, and the Subordinate Resolution, certified by an authorized officer of the District as being in full force and effect, with such supplements and amendments thereto adopted after the date hereof as may have been agreed to by the Underwriters;

(4) An opinion or opinions relating to the [2023 Series D/E] Bonds, dated the Closing Date and addressed to the District, of Bond Counsel, in substantially the form included in the Official Statement as Appendix F, together with a letter or letters of such Bond Counsel, dated the Closing Date and addressed to the Underwriters, to the effect that the foregoing opinion or opinions addressed to the District may be relied upon by the Underwriters to the same extent as if such opinion or opinions were addressed to them;

(5) An opinion or opinions, dated the Closing Date and addressed to the Senior Underwriter, of Bond Counsel, in substantially the form attached hereto as Exhibit E;

(6) An opinion, dated the Closing Date and addressed to the Senior Underwriter, of General Counsel to the District, in substantially the form attached hereto as Exhibit C;

(7) An opinion, dated the Closing Date and addressed to the Underwriters, of Nixon Peabody LLP, as counsel for the Underwriters (“Underwriters’ Counsel”), to the effect that (i) the [2023 Series D/E] Bonds are exempt from the registration requirements of the Securities Act of 1933, as amended, and the Subordinate Resolution is exempt from qualification under the Trust Indenture Act of 1939, as amended; (ii) the Continuing Disclosure Agreement complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule applicable to the primary offering of the Bonds; and (iii) based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel to the Underwriters and without having undertaken to determine independently, or assuming any responsibility for, the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement, they do not believe that (A) the Preliminary Official Statement, as of its date and as of the date of the Contract of Purchase, and (B) the Official Statement as of its date and as of the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except for the information relating to Cede & Co., DTC or the operation of the book-entry system, the Appendices to the Official Statement, except Appendices [C] and [E], and summaries thereof and references thereto, and other financial, accounting and statistical data included therein, as to all of which no view need be expressed); and (iii) with respect to such matters as the Underwriters may reasonably require;

(8) A certificate, dated the Closing Date, signed by an Authorized Representative of the District in substantially the form attached hereto as Exhibit D (but in lieu of or in conjunction with such certificate the Underwriters may, in its sole discretion, accept certificates or opinions of General Counsel to the District, or of other counsel acceptable to the Underwriters, that in the opinion of such counsel the issues raised in any pending or threatened litigation referred to in such certificate are without substance or that the contentions of all plaintiffs therein are without merit);

(9) [Reserved]

(10) An acceptance of and agreement to the provisions of the [Fifteenth and Sixteenth] Supplemental Resolutions executed by the Trustee under the Subordinate Master Resolution in form and substance acceptable to the Underwriters;

(11) A tax certificate related to the [2023 Series D/E] Bonds in substance and form satisfactory to Bond Counsel;

(12) Ratings of the [2023 Series D/E] Bonds from S&P Global Ratings (“S&P”) of not less than “[AA-]” and from Fitch Ratings, Inc. (“Fitch”) of not less than “[AA];”

(13) [Reserved];

(14) An opinion of counsel to the Trustee, dated the Closing Date, addressed to the Underwriters, to the effect that (i) the Trustee is a national banking association duly organized and validly existing under the laws of the United States of America having full power and being qualified to enter into, accept and agree to the provisions of the Subordinate Resolution and to enter into and perform the Undertaking, (ii) the Undertaking has been duly authorized, executed and delivered by the Trustee and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the valid and binding obligation of the Trustee enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors' rights generally, to the application of equitable principals and to the exercise of judicial discretion in appropriate cases, and to enter into and perform the Undertaking, (iii) all approvals, consents and orders of any governmental authority or agency having jurisdiction in this matter that would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the Subordinate Resolution and the Undertaking have been obtained and are in full force and effect, and (iv) the acceptance of the duties and obligations of the Trustee under the Subordinate Resolution, and the Undertaking and the consummation of the transactions on the part of the Trustee contemplated therein, and the compliance by the Trustee, as applicable, with the terms, conditions and provisions of such document do not contravene any provisions of applicable law or regulation or any order or decree, writ or injunction or the Articles of Association or Bylaws of the Trustee, and, to the best knowledge of such counsel, will not require the consent under or result in a breach of or a default under, any resolution, agreement or other instrument to which the Trustee is a party or by which it may be bound;

(15) A copy of the Blanket Letter of Representations to DTC relating to the [2023 Series D/E] Bonds signed by DTC and the District; and

(16) Such additional legal opinions, certificates, instruments and other documents as the Underwriters may reasonably request to evidence the truth and accuracy and completeness, as of the date hereof and as of the Closing Date, of the District's representations and warranties contained herein and of the statements and information contained in the Preliminary Official Statement or the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing Date of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the Subordinate Resolution and the Preliminary Official Statement or the Official Statement.

If any of the conditions to the obligations of the Underwriters contained in this Section or elsewhere in this Contract of Purchase with respect to the [2023 Series D/E] Bonds shall not have been satisfied when and as required herein, all obligations of the Underwriters hereunder with respect to the [2023 Series D/E] Bonds may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District.

4. **Offering.** The obligations of the District to sell and to deliver the [2023 Series D/E] Bonds on the Closing Date to the Underwriters shall be subject to the following conditions:

(a) The entire \$[PAR] aggregate principal amount of the [2023 Series D/E] Bonds shall be purchased, accepted and paid for by the Underwriters on the Closing Date; and

(b) The District shall receive an Issue Price Certificate of the Senior Underwriter substantially in the form attached hereto as Exhibit F with respect to the Bonds.

**5. Issue Price of the [2023 Series D/E] Bonds.** The Senior Underwriter, on behalf of the Underwriters, agrees to assist the District in establishing the issue price of the [2023 Series D/E] Bonds and shall execute and deliver to the District at Closing an “issue price” or similar certificate substantially in the form attached hereto as Exhibit F, together with the supporting pricing wires or equivalent communications, with modifications to such certificate as may be deemed appropriate or necessary, in the reasonable judgment of the Senior Underwriter, the District and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the [2023 Series D/E] Bonds.

(b) [Except for the maturities set forth in Schedule A attached hereto,] the District will treat the first price at which 10% of each maturity of the [2023 Series D/E] Bonds (the “10% test”) is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test).

(c) [The Senior Underwriter confirms that the Underwriters have offered the [2023 Series D/E] Bonds to the public on or before the date of this Contract of Purchase at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in the final Official Statement. Schedule A sets forth, as of the date of this Contract of Purchase, the maturities, if any, of the [2023 Series D/E] Bonds for which the 10% test has not been satisfied and for which the District and the Senior Underwriter, on behalf of the Underwriters, agree that (i) the Senior Underwriter will retain all unsold [2023 Series D/E] Bonds of each maturity for which the 10% test has not been satisfied and not allocate any such [2023 Series D/E] Bonds to any other Underwriter and (ii) the restrictions set forth in the next sentence shall apply, which will allow the District to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the [2023 Series D/E] Bonds, the Senior Underwriter will neither offer nor sell unsold [2023 Series D/E] Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) the close of the fifth (5th) business day after the sale date; or

(2) the date on which the Underwriters have sold at least 10% of that maturity of the [2023 Series D/E] Bonds to the public at a price that is no higher than the initial offering price to the public.

The Senior Underwriter shall promptly advise the District or the District’s municipal advisor when the Underwriters have sold 10% of that maturity of the [2023 Series

D/E] Bonds to the public at [a price] that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

The District acknowledges that, in making the representation set forth in this subsection, the Senior Underwriter will rely on (i) the agreement of each Underwriter to comply with the hold-the-offering-price rule, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the [2023 Series D/E] Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter is a party to a retail distribution agreement that was employed in connection with the initial sale of the [2023 Series D/E] Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, as set forth in the retail distribution agreement and the related pricing wires. The District further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement regarding the hold the offering price rule and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement to comply with its agreement regarding the hold-the-offering-price rule as applicable to the [2023 Series D/E] Bonds.]

(d) [The Senior Underwriter confirms that:

(1) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the Senior Underwriter is a party) relating to the initial sale of the [2023 Series D/E] Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A)(i) report the prices at which it sells to the public the unsold [2023 Series D/E] Bonds of each maturity allotted to it until it is notified by the Senior Underwriter that either the 10% test has been satisfied as to the [2023 Series D/E] Bonds of that maturity or all [2023 Series D/E] Bonds of that maturity have been sold to the public and (ii) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Senior Underwriter and as set forth in the related pricing wires, (B) promptly notify the Senior Underwriter of any sales of the [2023 Series D/E] Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the [2023 Series D/E] Bonds to the public (each such term being used as defined below) and (C) acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Senior Underwriter shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public; and

(2) any agreement among underwriters relating to the initial sale of the [2023 Series D/E] Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the [2023 Series D/E] Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells

to the public the unsold Bonds of each maturity allotted to it until it is notified by the Senior Underwriter or the Underwriter that either the 10% test has been satisfied as to the [2023 Series D/E] Bonds of that maturity or all [2023 Series D/E] Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Senior Underwriter or the Underwriter and as set forth in the related pricing wires.

(e) The Underwriters acknowledge that sales of any [2023 Series D/E] Bonds to any person that is a related party to an Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the [2023 Series D/E] Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the [2023 Series D/E] Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the [2023 Series D/E] Bonds to the public),

(3) a purchaser of any of the [2023 Series D/E] Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Contract of Purchase by all parties.

**6. Termination.** The Underwriters shall have the right to terminate their obligations under this Contract of Purchase to purchase, accept delivery of and to pay for the [2023 Series D/E] Bonds, if,

(a) between the date hereof and the Closing Date, the market price or marketability, or the ability of the Underwriters to enforce contracts for the sale, at the initial offering prices set forth in the Official Statement, of the [2023 Series D/E] Bonds have been materially adversely affected, in the judgment of the Underwriters, (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and pay for the [2023 Series D/E] Bonds), by reason of any of the following:

(1) (x) any legislation which is (A) enacted by Congress, (B) favorably reported for passage to either House of the Congress of the United States by any Committee of such House to which such legislation has been referred for consideration, or (C) recommended to the Congress for passage by the President of the United States or the Treasury Department, but only, however, if the occurrence of any of the foregoing events is generally accepted by the municipal bond market as potentially affecting the federal tax status of the District, its property or income or the interest on its bonds or notes (including the [2023 Series D/E] Bonds), (y) any decision rendered by a court established under Article III of the Constitution of the United States or the Tax Court of the United States, or (z) a final order, ruling, regulation or official statement issued or made by or on behalf of the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the holders of the [2023 Series D/E] Bonds, or upon such revenues or other income of the general character expected to be received by the District, provided, however, that the enactment of legislation which only diminishes the value of, as opposed to eliminating the exclusion from gross income for federal income tax purposes will not give the Underwriters the right to terminate their obligations hereunder.

(2) Legislation enacted (or resolution passed) by the Congress or a final order, ruling, regulation or official statement is issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the [2023 Series D/E] Bonds are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or are not exempt from qualification under, or other requirements of, the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of the [2023 Series D/E] Bonds or obligations of the general character of the [2023 Series D/E] Bonds, including any or all underlying arrangements, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, otherwise is or would be in violation of the federal securities laws as amended and then in effect;

(3) Any new material outbreak or escalation of hostilities having a material effect on the financial markets of the United States or the declaration by the United States of a national emergency or war or the occurrence of any other local, national or international calamity, crisis or event relating to the effective operation of the government of or the financial community in the United States, including, without limitation, a downgrade of the sovereign debt rating of the United States or an escalation thereof by any major credit rating agency or payment default on United States Treasury obligations;

(4) the declaration of a general banking moratorium by federal, New York or California authorities, or the general suspension of trading on the New York Stock Exchange or any other national securities exchange, or any material disruption in commercial banking or securities settlement, payment services, or clearing services;



(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the [2023 Series D/E] Bonds or obligations of the general character of the [2023 Series D/E] Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the net capital requirements of, the Underwriters;

(6) the adoption of any amendment to the federal or California Constitution, decision by any federal or California court, or enactment by any federal or California legislative body materially adversely affecting (i) the District or the right of the District to receive or to pledge any of the Net Subordinated Revenues, or (ii) the validity or enforceability of this Contract of Purchase, the [2023 Series D/E] Bonds or the Subordinate Resolution;

(7) the adoption of any amendment to the California Constitution, decision by any California court, or enactment by any California legislative body adversely affecting the exemption of state or local income tax upon such interest as would be received by the holders of the [2023 Series D/E] Bonds, or

(8) (i) a downgrading or suspension of any rating (without regard to credit enhancement) by Moody's, S&P, or Fitch of any debt securities issued by the District, or (ii) there shall have been any official statement as to a possible downgrading (such as being placed on "credit watch" or "negative outlook" or any similar qualification) of any rating by Moody's, S&P or Fitch of any debt securities issued by the District, including the [2023 Series D/E] Bonds.

(b) an event occurs, or information becomes known, which, in the judgment of the Underwriters, makes untrue in any material respect any statement or information contained in the Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

**7. Expenses.** (a) Except as set forth in paragraph (b) of this Section, the Underwriters shall be under no obligation to pay, and the District shall pay, or cause to be paid, all expenses incident to the performance of the District's obligations hereunder including, but not limited to, the cost of word processing and reproducing, executing and delivering the [2023 Series D/E] Bonds to the Underwriters; the cost of preparation, printing (and/or word processing and reproducing), distribution and delivery of the Subordinate Resolution; the cost of printing and distributing copies of the Preliminary Official Statement and the Official Statement in sufficient quantities for distribution in connection with the sale of the [2023 Series D/E] Bonds (including resales in the secondary market); the fees and disbursements of Bond Counsel; the fees and disbursements of Public Financial Management, Inc. for its services as Financial Advisor to the District; the fees and disbursements of any other engineers, accountants, and any other experts or consultants retained in connection with the issuance of the [2023 Series D/E] Bonds; the fees and disbursements of the Trustee; fees charged by the rating agencies for rating the [2023 Series D/E] Bonds; any advertising expenses; filing fees; CUSIP charges; or fees and

expenses of any credit enhancement; expenses incurred by the Underwriters on behalf of the District relating to food, transportation or lodging for District staff members attending the bond pricing are to be reimbursed by the District through proceeds of the [2023 Series D/E] Bonds or available funds of the District (the District's obligations in regard to these expenses survive if delivery of the [2023 Series D/E] Bonds fails due to one of the conditions set forth in Section 3 hereof or this Contract of Purchase is terminated pursuant to Section 6 hereof) and any other expenses not specifically enumerated in paragraph (b) of this Section incurred in connection with the issuance of the [2023 Series D/E] Bonds.

(b) The District shall be under no obligation to pay, and the Underwriters shall pay (from the expense component of the underwriting discount), the cost of preparation of the Agreement Among Underwriters and the letter of instructions relating thereto and this Contract of Purchase; the cost of wiring funds for the payment of the purchase price of the [2023 Series D/E] Bonds; the fees and expenses of DTC incurred with respect to depositing the [2023 Series D/E] Bonds therewith; expenses to qualify the [2023 Series D/E] Bonds for sale under any "Blue Sky" laws; fees to the California Debt and Investment Advisory Commission; and all other expenses incurred by the Underwriters in connection with its public offering and distribution of the [2023 Series D/E] Bonds not specifically enumerated in paragraph (a) of this Section, including the fees and disbursements of Underwriters' Counsel [and fees of Lumesis for a continuing disclosure undertaking compliance review]. Notwithstanding that the fees to the California Debt and Investment Advisory Commission are solely the legal obligation of the Underwriters, the District agrees to reimburse the Underwriters for such fees.

8. **Notices.** Any notice or other communication to be given to the District under this Contract of Purchase may be given by delivering the same in writing to Sacramento Municipal Utility District, at 6201 S Street, Sacramento, California 95817-1899; and any notice or other communication to be given to the Underwriters under this Contract of Purchase may be given by delivering the same in writing to BofA Securities, Inc., 315 Montgomery St, 1<sup>st</sup> Floor, San Francisco, CA 94104, Attention: [Bradford M. Walker].

9. **Parties in Interest.** This Contract of Purchase is made solely for the benefit of the District and the Underwriters (including successors or assigns of any Underwriter) and no other person shall acquire or have any right hereunder or by virtue hereof. The term "successors and assigns" as used in this Section shall not include any purchaser of the [2023 Series D/E] Bonds, as such purchaser, from any of the several Underwriters.

10. **Survival of Representations and Warranties.** The representations and warranties of the District, set forth in or made pursuant to this Contract of Purchase, shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the closing or termination of this Contract of Purchase and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the [2023 Series D/E] Bonds.

11. **Counterparts.** This Contract of Purchase may be executed in several counterparts, which together shall constitute one and the same instrument.

**12. California Law Governs; Venue.** The validity, interpretation and performance of this Contract of Purchase shall be governed by the laws of the State of California. Any action or proceeding to enforce or interpret this Contract of Purchase shall be brought, commenced or prosecuted in the County of Sacramento, California.

**13. Entire Agreement.** This Contract of Purchase when accepted by you in writing as heretofore specified shall constitute the entire agreement between us.

[remainder of page intentionally left blank]

14. **Effectiveness.** This Contract of Purchase shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by an authorized officer of the District and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

BOFA SECURITIES, INC., [UNDERWRITING  
GROUP TO COME]

BY: BOFA SECURITIES, INC., as Senior  
Underwriter

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[Bradford M. Walker]  
[Director]

Accepted: [SALE DATE]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Russell Mills  
Treasurer

[Signature page to Series [2023D/E] Bonds Contract of Purchase]

**Exhibit A**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$(SERIES D PAR) Subordinated Electric Revenue Bonds, [2023 Series D]**

<b><u>Maturity</u></b> <b><u>(August 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>End of Initial</u></b> <b><u>Term Rate Period</u></b>	<b><u>Mandatory</u></b> <b><u>Tender Date</u></b>	<b><u>Initial</u></b> <b><u>Term Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>
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**\$(SERIES E PAR) Subordinated Electric Revenue Bonds, [2023 Series E]**

<b><u>Maturity</u></b> <b><u>(August 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>End of Initial</u></b> <b><u>Term Rate Period</u></b>	<b><u>Mandatory</u></b> <b><u>Tender Date</u></b>	<b><u>Initial</u></b> <b><u>Term Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>
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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**Exhibit B to the Contract of Purchase  
(Official Statement)**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**Exhibit C to the Contract of Purchase  
(Opinion of General Counsel to the  
Sacramento Municipal Utility District)**

[CLOSING DATE]

BofA Securities, Inc.  
315 Montgomery St, 1st Floor,  
San Francisco, CA 94104

Re: Sacramento Municipal Utility District  
\$[SERIES D PAR] Subordinated Electric Revenue Bonds, [2023 Series  
D], and \$[SERIES E PAR] Subordinated Electric Revenue Bonds, [2023  
Series E]

Ladies and Gentlemen:

This opinion is being delivered pursuant to Paragraph 3(d)(6) of the Contract of Purchase (the “Contract of Purchase”), dated [SALE DATE] between BofA Securities, Inc., as Senior Managing Underwriter named therein (the “Senior Underwriter”), and the Sacramento Municipal Utility District (the “District”) relating to the above-captioned bonds (together, the “[2023 Series D/E] Bonds”).

As counsel to the District, I have reviewed (i) Resolution No. 85-11-1 of the District, adopted on November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001, as amended and supplemented to date, including as amended and supplemented by Resolutions Nos. [RESO NOs.] respectively, adopted on [May 18, 2023] (as so amended and supplemented, the “Subordinate Resolution”); (ii) the Continuing Disclosure Agreement, dated the date hereof (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association, as trustee (in such capacity, the “Trustee”); (iii) the Preliminary Official Statement of the District, dated [POS DATE] (the “Preliminary Official Statement”); (iv) the Official Statement of the District, dated [SALE DATE] (the “Official Statement”) and (v) such other documents, opinions and matters to the extent I deemed necessary to provide the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. I have assumed the genuineness of all documents and signatures presented to me (whether as originals or as copies) and the due and legal execution and delivery by, and validity against, any parties other than the District. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents referred to in the second paragraph hereof. I have further assumed compliance with all covenants and agreements contained in such documents.

I call attention to the fact that the rights and obligations under the Subordinate Resolution, the Undertaking and the Contract of Purchase may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained therein.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, I am of the opinion that:

1. The District is a political subdivision of the State of California duly organized and validly existing under the Act, as amended, and has full legal right, power and authority to execute and deliver (or adopt, as the case may be), and to perform its obligations under, the Subordinate Resolution, the Undertaking and the Contract of Purchase.

2. The Contract of Purchase and the Undertaking have been duly authorized, executed and delivered by the District, and, assuming due authorization, execution and delivery by each of the parties thereto other than the District, constitute the legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms.

3. The District is not in breach of or default under any existing constitutional provision, applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject which would have a material adverse effect on the financial condition or operations of the District, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument which would have a material adverse effect on the financial condition or operations of the District; and the execution and delivery of the [2023 Series D/E] Bonds, the Undertaking and the Contract of Purchase and the adoption of the Subordinate Resolution, and compliance with any existing constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject will not, as of the date hereof, conflict with or constitute a breach of or default under any such instrument which would have a material adverse effect on the financial condition or operations of the District, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the District or under the terms of any such law, regulation or instrument, except as expressly provided by the [2023 Series D/E] Bonds and the Subordinate Resolution.

4. The statements contained in the Preliminary Official Statement and the Official Statement which purport to describe certain provisions of the Bonds, Undertaking and the



Subordinate Resolution present a fair and accurate summary of such provisions for the purpose of use in the Official Statement.

5. Except as described or referred to in the Preliminary Official Statement and the Official Statement, as of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of my knowledge, threatened against the District affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the [2023 Series D/E] Bonds or the collection of the Revenues (as defined in the Subordinate Resolution) or the Net Subordinated Revenues (as defined in the Subordinate Resolution) pledged or to be pledged to pay the principal of and interest on the [2023 Series D/E] Bonds or contesting or affecting as to the District the validity or enforceability of the Act, the [2023 Series D/E] Bonds, the Subordinate Resolution, the Contract of Purchase or the Undertaking, or contesting the tax exempt status of interest on the [2023 Series D/E] Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the [2023 Series D/E] Bonds, the adoption of the Subordinate Resolution, or the execution and delivery by the District of the Contract of Purchase or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act or the authorization, execution, delivery or performance by the District of the [2023 Series D/E] Bonds, the Subordinate Resolution, the Undertaking or the Contract of Purchase.

6. Based upon my review of the Preliminary Official Statement and the Official Statement as General Counsel to the District and without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement (except as specifically set forth in paragraph 4 hereof), I have no reason to believe that the statements contained in the Preliminary Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, the Appendices (except Appendix A) to the Preliminary Official Statement, and other financial and statistical data included therein, as to all of which I express no view) as of its date and as of the date of the Contract of Purchase contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and the Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, the Appendices (except Appendix A) to the Official Statement, and other financial and statistical data included therein, as to all of which I express no view) (A) as of the date of the Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or (B) as of the date hereof contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

For purposes of the opinions expressed herein, I have assumed that an agreement or other document is “material” to the District if it involves amounts in excess of \$10,000,000 and that a matter would result in a “material adverse change” to the District if the financial consequences involved would exceed \$10,000,000.

I understand that you are relying upon the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel, with respect to the validity of the [2023 Series D/E] Bonds and the exclusion of interest on the [2023 Series D/E] Bonds from gross income for federal income tax purposes and the [2023 Series D/E] Bonds for purposes of State of California income taxation and, accordingly, render no opinion with respect thereto.

Very truly yours,

## **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

### **Exhibit D to the Contract of Purchase**

#### **CERTIFICATE**

The Sacramento Municipal Utility District (the “District”), hereby certifies that:

(1) The representations and warranties of the District (excluding those representations and warranties contained in Section 2(e) and Section 2(k) of the hereinafter defined Contract of Purchase) contained in the Contract of Purchase, dated [SALE DATE], between the District and the Underwriters named therein (the “Contract of Purchase”) with respect to the sale by the District of \$[SERIES D PAR] principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds, 2023 Series D (the “[2023 Series D] Bonds”), and the \$[SERIES E PAR] principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds, 2023 Series E (the “[2023 Series E] Bonds”) and, together with the [2023 Series D Bonds, and the 2023 Series E Bonds], the “[2023 Series D/E Bonds]”), are true and correct on and as of the Closing Date as if made on the Closing Date.

(2) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the [2023 Series D/E] Bonds under the Subordinate Resolution, the Undertaking and the Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the “Blue Sky” or other securities laws of any state in connection with the offering and sale of the [2023 Series D/E] Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, the Contract of Purchase, the Undertaking, the [2023 Series D/E] Bonds or the Subordinate Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained.

(3) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the best of knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened against the District, in any way affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to

prohibit, restrain or enjoin the sale, issuance or delivery of any of the [2023 Series D/E] Bonds or the collection of the Revenues (as defined in the Subordinate Resolution) or the Net Subordinated Revenues (as defined in the Subordinate Resolution) pledged or to be pledged to pay the principal of and interest on the [2023 Series D/E] Bonds, or in any way contesting or affecting as to the District the validity or enforceability of the Act, the [2023 Series D/E] Bonds, the Subordinate Resolution, the Contract of Purchase, the Undertaking, or any action of the District contemplated by any of said documents, or contesting the tax exempt status of interest on the [2023 Series D/E] Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution system, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the [2023 Series D/E] Bonds, the adoption of the Subordinate Resolution, or the execution and delivery by the District of the Contract of Purchase or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act of the authorization, execution, delivery or performance by the District of the [2023 Series D/E] Bonds, the Subordinate Resolution, the Undertaking, or the Contract of Purchase, or any action of the District contemplated by any of said documents, or which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the [2023 Series D/E] Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor.

(4) No event affecting the District has occurred (with respect to the Preliminary Official Statement, from its date to the date of the Contract of Purchase, and with respect to the Official Statement, since the date of the Official Statement) which should have been or should be disclosed in the Preliminary Official Statement or the Official Statement so that the Preliminary Official Statement or the Official Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and which has not been disclosed in a supplement or amendment to the Preliminary Official Statement or the Official Statement.

(5) The District has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof pursuant to the Contract of Purchase with respect to the issuance of the [2023 Series D/E] Bonds.

(6) All capitalized terms employed herein which are not otherwise defined shall have the same meanings as in the Contract of Purchase.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Name:  
Title:

Dated: [CLOSING DATE]

**Exhibit E to the Contract of Purchase  
(Supplemental Opinion of Bond Counsel)**

[Under Review]

[CLOSING DATE]

BofA Securities, Inc.  
315 Montgomery St, 1st Floor,  
San Francisco, CA 94104

Re: Sacramento Municipal Utility District Subordinated Electric Revenue Bonds,  
[2023 Series D] and [2023 Series E]

(Supplemental Opinion)

Ladies and Gentlemen:

This letter is addressed to you, as Senior Underwriter, pursuant to Section 3(d)(5) of the Contract of Purchase, dated [SALE DATE] (the “Purchase Contract”), between you and the other underwriters named therein and the Sacramento Municipal Utility District (“SMUD”), providing for the purchase of \$[TOTAL PAR] principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Bonds, [2023 Series D and 2023 Series E] (collectively, the “2023 Subordinated Bonds”). The 2023 Subordinated Bonds are being issued pursuant to Resolution No. 85-11-1 of the Board of Directors of SMUD, adopted November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted June 21, 2001, as supplemented and amended by later resolutions of said Board of Directors (as so supplemented and amended, the “Resolution”), including Resolution No. [RESO NO.], adopted [May 18, 2023] (the “Fifteenth Supplemental Resolution”) and Resolution No. [RESO NO.], adopted [May 18, 2023] (the “Sixteenth Supplemental Resolution”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution or, if not defined in the Resolution, in the Purchase Contract.

In connection with our role as Bond Counsel to SMUD, we have reviewed the Purchase Contract; the Resolution; the Subordinate Master Resolution; the Tax Certificate, dated the date hereof (the “Tax Certificate”), executed by SMUD; certain portions of the preliminary official statement of SMUD, dated [POS DATE], with respect to the 2023 Subordinated Bonds (the “Preliminary Official Statement”) and of the official statement of SMUD, dated [SALE DATE], with respect to the 2023 Subordinated Bonds (the “Official Statement”); opinions of counsel to SMUD and the Trustee; certificates of SMUD, the Trustee and others; and such other documents, opinions and matters to the extent we deemed necessary to provide the opinions and conclusions set forth herein.

The opinions and conclusions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such

authorities. Such opinions or conclusions may be affected by actions taken or omitted or events occurring after the original delivery of the 2023 Subordinated Bonds on the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the original delivery of the 2023 Subordinated Bonds on date hereof. We have assumed the genuineness of all documents and signatures provided to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than SMUD. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. We have further assumed compliance with all covenants and agreements contained in such documents. In addition, we call attention to the fact that the rights and obligations under the 2023 Subordinated Bonds, the Resolution, the Tax Certificate and the Purchase Contract and their enforceability may be subject to bankruptcy, insolvency, reorganization, receivership, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinions with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Resolution or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions and conclusions:

1. The 2023 Subordinated Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

2. The Purchase Contract has been duly executed and delivered by, and constitutes a valid and binding obligation of, SMUD.

3. The statements contained in the Preliminary Official Statement and the Official Statement under the captions "THE 2023 SUBORDINATED BONDS" (except information relating to book-entry or The Depository Trust Company), "SECURITY FOR THE SUBORDINATED BONDS" and "TAX MATTERS" and in APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION," and APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION" excluding any material that may be treated as included under such captions by cross-reference or reference to other documents or sources, insofar as such statements expressly summarize certain provisions of the Resolution, the Subordinate Master Resolution, the Senior Bond Resolution and the form and content of our final legal opinion as Bond Counsel to SMUD concerning the validity of the 2023 Subordinated Bonds and certain other matters, dated the date hereof and addressed to SMUD, are accurate in all material respects.

4. We are not passing upon and do not assume any responsibility for the accuracy (except as explicitly stated in paragraph 3 above), completeness or fairness of any of the statements contained in the Preliminary Official Statement or in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. We do not assume any responsibility for any electronic version of the Preliminary Official Statement or the Official Statement, and assume that any such version is identical in all respects to the printed version. In our capacity as Bond Counsel to SMUD in connection with issuance of the 2023 Subordinated Bonds, we participated in conferences with your representatives, your counsel, representatives of SMUD, its counsel, accountants, and others, during which the contents of the Preliminary Official Statement or the Official Statement and related matters were discussed. Based on our participation in the above-mentioned conferences (which did not extend beyond the date of the Official Statement), and in reliance thereon, on oral and written statements and representations of SMUD and others and on the records, documents, certificates, opinions and matters herein mentioned, subject to the limitations on our role as Bond Counsel to SMUD, we advise you as a matter of fact and not opinion that (a) as of [SALE DATE], no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Preliminary Official Statement which caused us to believe as of that date that the Preliminary Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (b) as of the date of the Official Statement and as of the date hereof, no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Official Statement which caused us to believe as of the date of the Official Statement and as of the date hereof that the Official Statement contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, we expressly exclude from the scope of this paragraph and express no view or opinion about (i) any difference in information contained in the Preliminary Official Statement compared to what is contained in the Official Statement, whether or not related to pricing or sale of the 2023 Subordinated Bonds, and whether any such difference is material and should have been included in the Preliminary Official Statement, and (ii) with respect to both the Preliminary Official Statement and the Official Statement, any CUSIP numbers, financial, accounting, statistical or economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, any statements about compliance with prior continuing disclosure undertakings, any information about Cede & Co., The Depository Trust Company or book-entry, ratings, rating agencies, underwriters, underwriting and the information contained in Appendices B and C included or referred to therein or omitted therefrom. No responsibility is undertaken or view expressed with respect to any other disclosure document, materials or activity, or as to any information from another document or source referred to by or incorporated by reference in the Preliminary Official Statement or the Official Statement.

This letter is furnished by us as Bond Counsel to SMUD. No attorney-client relationship has existed or exists between our firm and you in connection with the 2023 Subordinated Bonds or by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you as Senior Underwriter of the 2023 Subordinated Bonds, is solely for your



benefit as such Senior Underwriter in connection with the original delivery of the 2023 Subordinated Bonds on the date hereof, and is not to be used, circulated, quoted or otherwise referred to or relied upon for any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by owners of 2023 Subordinated Bonds or by any other party to whom it is not specifically addressed.

Very truly yours,

## Exhibit F to the Contract of Purchase

### (Form of Issue Price Certificate Of The Senior Underwriter Regarding Offering Prices)

#### Sacramento Municipal Utility District Subordinated Electric Revenue Bonds, [2023 Series D] and [2023 Series E]

The undersigned, on behalf of BofA Securities, Inc., as representative (the “Representative”) of itself [UNDERWRITING GROUP TO COME] (together, the “Underwriting Group”), hereby certifies, on its own behalf and on behalf of the other members of the Underwriting Group on the basis of representations and warranties set forth in the agreement among underwriters, as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. ***Sale of the [General Rule Maturities][Bonds].*** As of the date of this Certificate, for each Maturity of the [General Rule Maturities][Bonds], the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***[Initial Offering Price of the Hold-the-Offering-Price-Maturities.***

(a) The Underwriting Group offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this Certificate as Schedule B.

(b) As set forth in the Bond Purchase Agreement for the Bonds, the Representative has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) unsold Bonds of the Hold-the-Offering-Price Maturities shall be retained by the Representative and not allocated to any of the other Underwriters. Pursuant to such agreement, the Representative has not offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.]

### 3. ***Defined Terms.***

(a) [*General Rule Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.”]

(b) [*Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

(c) [*Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriters have sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.]

(d) *Issuer* means Sacramento Municipal Utility District.

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party (as such terms are defined below) to an Underwriter.

(g) A purchaser of any of the Bonds is a *Related Party* to any Underwriter if the Underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(h) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [SALE DATE].

(i) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only, and as it relates to the actions of the other Underwriters, such representations are made to the best of the Representative's knowledge based on the Representative's records. Nothing in this certificate represents the Representative's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

Dated: [CLOSING DATE]

BofA Securities, Inc., as representative of the Underwriting Group

By: \_\_\_\_\_

Name: \_\_\_\_\_

**Schedule A**

**Sale Prices**

**\$(SERIES D PAR) Subordinated Electric Revenue Bonds, [2023 Series D]**

<b><u>Maturity</u></b> <b><u>(August 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>	<b><u>Hold-the-Price</u></b> <b><u>Maturities</u></b>	<b><u>General Rule</u></b> <b><u>Maturities</u></b>
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**\$(SERIES E PAR) Subordinated Electric Revenue Bonds, [2023 Series E]**

<b><u>Maturity</u></b> <b><u>(August 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>	<b><u>Hold-the-Price</u></b> <b><u>Maturities</u></b>	<b><u>General Rule</u></b> <b><u>Maturities</u></b>
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## **Schedule B**

### **Pricing Wire or Equivalent Communication**

☐ Not applicable, because there are no Hold-the-Offering-Price Maturities

☐ Attached

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$(PAR) SUBORDINATED ELECTRIC  
REVENUE REFUNDING BONDS,  
[2023 SERIES F]**

**CONTRACT OF PURCHASE**

**[Form of Contract of Purchase  
(2023 Subordinated Bonds, Series F)]**

**DRAFT**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$(PAR) Subordinated Electric Revenue Refunding Bonds, [2023 Series A]**

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**CONTRACT OF PURCHASE**

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[SALE DATE]

Honorable Board of Directors  
Sacramento Municipal Utility District  
6201 S Street  
Sacramento, California 95817-1899

Dear Directors:

The undersigned Barclays Capital Inc., and [UNDERWRITING GROUP TO COME] (herein collectively referred to as the “Underwriters”), acting for and on behalf of themselves, offer to enter into this Contract of Purchase (the “Contract of Purchase”) with the Sacramento Municipal Utility District (the “District”) which, upon the District’s acceptance, will be binding upon the District and upon the Underwriters. Barclays Capital Inc., has been duly authorized to execute this Contract of Purchase and to act hereunder by and based on representations made to it under an Agreement Among Underwriters dated \_\_\_\_\_, 2023 on behalf of the Underwriters as the Senior Managing Underwriter (the “Senior Underwriter”). This offer is made subject to the District’s acceptance on or before 5:00 p.m., Sacramento time, on the date hereof, and if not so accepted, will be subject to withdrawal by the Underwriters upon notice delivered to the District at any time prior to the acceptance hereof by the District.

**1. Purchase, Sale and Delivery of the Bonds.** Subject to the terms and conditions and in reliance upon the representations, warranties and agreements herein set forth, the Underwriters, jointly and severally, hereby agree to purchase from the District, and the District hereby agrees to sell to the Underwriters, all (but not less than all) of the \$(PAR) aggregate principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, [2023 Series A] (the “Bonds”) dated [CLOSING DATE], bearing interest payable as set forth in the Official Statement (as hereinafter defined) of the District relating to the Bonds in each year until maturity or earlier redemption at the initial rate and maturing on the dates and in the amounts set forth in the Official Statement. The purchase price for the Bonds shall be \$(PURCHASE PRICE) (consisting of the principal amount of the Bonds of \$(PAR) plus [net] original issue premium of \$(OIP)) and minus an Underwriter’s discount of \$(UWD).



(b) The Bonds shall be substantially in the form described in, shall be issued and secured under the provisions of, and shall be payable as provided in, Resolution No. 85-11-1, adopted by the Board of Directors of the District on November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001 (the “Subordinate Master Resolution”), as heretofore amended and supplemented, including the amendments and supplements thereto made by Resolution No. [RESO NO.], adopted by the Board of Directors on [May 18, 2023] (the “[Sixteenth] Supplemental Resolution”). The Subordinate Master Resolution, as supplemented and amended as described in this Contract of Purchase, is herein called the “Subordinate Resolution.” The Bonds are authorized to be issued pursuant to applicable California law, including the Municipal Utility District Act (Sections 12850 to 12860 of the Public Utilities Code), the Revenue Bond Law of 1941 (Government Code Section 54300 *et seq.*), Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (Section 53580 *et seq.*) and the Subordinate Resolution. The Bonds will be special obligations of the District payable exclusively from, and are secured by a pledge (effected in the manner and to the extent provided in the Subordinate Resolution) of, the Net Subordinated Revenues (as defined in the Subordinate Resolution). The Bonds shall be payable and shall be subject to redemption as provided in the Subordinate Resolution.

(c) [The Bonds are being issued to (i) refund the Refunded Bonds (as defined in the Official Statement), and (ii) pay certain costs associated with the issuance of the Bonds.] [A portion of the proceeds of the Bonds, together with other available funds, will be deposited in an escrow fund established pursuant to an escrow agreement (the “Escrow Agreement”) between the District and the Trustee, in its capacity as Escrow Agent (in such capacity, the “Escrow Agent”).]

(d) The District has heretofore delivered to the Underwriters copies of the Preliminary Official Statement dated [POS DATE], relating to the Bonds (the “Preliminary Official Statement”) in connection with the public offering of the Bonds. The Preliminary Official Statement was deemed final by the District as of the date thereof in accordance with paragraph (b)(1) of Rule 15c2-12 of the Securities and Exchange Commission (“Rule 15c2-12”), except for the information not required to be included therein under Rule 15c2-12.

(e) The District shall prepare and deliver to the Underwriters, as promptly as practicable, but in any event not later than two business days prior to the Closing Date (as defined below) or seven business days from the date hereof, a final official statement, with such changes and amendments as may be agreed to by the Underwriters, in such quantities as the Underwriters may reasonably request in order to comply with paragraph (b)(4) of Rule 15c2-12 and the rules of the Municipal Securities Rulemaking Board (“MSRB”) (such official statement, including the cover page and Appendices thereto, as the same may be supplemented or amended pursuant to paragraph (i) of Section 2 hereof, is herein referred to as the “Official Statement”). In addition, the District will provide, subject to customary disclaimers regarding the transmission of electronic copies, an electronic copy of the final Official Statement to the Underwriters in the currently required designated electronic format stated in MSRB Rule G-32 and the EMMA Dataport Manual (as defined below). The parties agree that the format in which the Preliminary Official Statement was delivered meets such electronic format requirements.

(f) Within one (1) business day after receipt of the Official Statement from the District, but by no later than the Closing Date, the Underwriters shall, at their own expense submit

the Official Statement to EMMA (as defined below). The Underwriters will comply with the provisions of MSRB Rule G-32, including without limitation the submission of Form G-32 and the Official Statement and notify the District of the date on which the Official Statement has been filed with EMMA.

“EMMA” means the MSRB’s Electronic Municipal Market Access system, or any other electronic municipal securities information access system designated by the MSRB for collecting and disseminating primary offering documents and information.

“EMMA Dataport Manual” means the document(s) designated as such published by the MSRB from time to time setting forth the processes and procedures with respect to submissions to be made to the primary market disclosure service of EMMA by underwriters under Rule G-32(b).

(g) The District hereby ratifies, confirms and approves the use and distribution by the Underwriters prior to the date hereof of the Preliminary Official Statement and hereby authorizes the Underwriters to use and distribute the Official Statement, the Subordinate Resolution and this Contract of Purchase, and all information contained in each, and all other documents, certificates and statements furnished by the District to the Underwriters in connection with the transactions contemplated by this Contract of Purchase, in connection with the offer and sale of the Bonds.

The District will covenant pursuant to a Continuing Disclosure Agreement dated as of the date of the issuance of the Bonds (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association (the “Trustee”), to provide annual reports and certain notices as described in Appendix [G] of the Official Statement.

(h) The District agrees and acknowledges that: (i) the Underwriters are not acting as municipal advisors within the meaning of Section 15B of the Securities Exchange Act, as amended, (ii) the primary role of the Underwriters, as underwriters, is to purchase securities, for resale to investors, in an arm’s length commercial transaction between the District and the Underwriters and the Underwriters have financial and other interests that differ from those of the District; (iii) the Underwriters are acting solely as principals and are not acting as municipal advisors, financial advisors or fiduciaries to the District and have not assumed any advisory or fiduciary responsibility to the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriters have provided other services or are currently providing other services to the District on other matters); (iv) the only contractual obligations the Underwriters have to the District with respect to the transaction contemplated hereby expressly are set forth in this Contract of Purchase; and (v) the District has consulted its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

(i) At 8:00 A.M., Sacramento time, on [CLOSING DATE] or at such earlier or later time or date as shall be agreed upon by the Underwriters and the District (such time and date being herein referred to as the “Closing Date”), the District will deliver the Bonds to The Depository Trust Company, New York, New York (“DTC”), for the account of the Underwriters, duly executed by the District, and the other documents herein mentioned; and the Underwriters will (i) accept such delivery and pay the purchase price of the Bonds as set forth in paragraph (a)

of this Section by wire transfer in San Francisco, California to the order of the District. Delivery of the documents herein mentioned shall be made at the offices of Orrick, Herrington & Sutcliffe LLP, 400 Capitol Mall, Suite 3000, Sacramento, California 95814, or such other place as shall have been mutually agreed upon by the District and the Underwriters, except that the Bonds shall be delivered at the offices of DTC in New York, New York or at such other place and in such manner as shall have been mutually agreed upon by the District and the Underwriters.

The Bonds shall be issued initially in fully registered book-entry eligible form (which may be typewritten) in the form of a single registered bond for each maturity of the Bonds, shall bear CUSIP numbers and shall be registered in the name of Cede & Co., as nominee of DTC.

**2. Representations, Warranties and Agreements of the District.** The District hereby represents, warrants to and agrees with the Underwriters that:

(a) The District is a political subdivision of the State of California duly organized and validly existing pursuant to the Municipal Utility District Act as contained in Public Utilities Code Section 11501 *et seq.* (the “Act”) and has, and at the Closing Date will have, full legal right, power and authority (i) to enter into this Contract of Purchase, [the Escrow Agreement,] and the Undertaking, (ii) to adopt the Subordinate Resolution, (iii) to pledge the Net Subordinated Revenues as set forth in the Subordinate Resolution, (iv) to issue, sell and deliver the Bonds to the Underwriters pursuant to the Subordinate Resolution as provided herein, (v) to acquire, construct, operate, maintain, improve and finance and refinance its Electric System (as defined in the Subordinate Resolution) and conduct the business thereof as set forth in and contemplated by the Preliminary Official Statement and the Official Statement, and (vi) to carry out, give effect to and consummate the transactions contemplated by this Contract of Purchase, [the Escrow Agreement,] the Undertaking, the Subordinate Resolution and the Preliminary Official Statement and the Official Statement;

(b) The District has complied, and will at the Closing Date be in compliance, in all material respects, with the Act, the Subordinate Resolution, and with the obligations in connection with the issuance of the Bonds on its part contained in the Subordinate Resolution, the Bonds, the Act, [the Escrow Agreement,] the Undertaking and this Contract of Purchase;

(c) The District has duly and validly adopted the Subordinate Resolution, has duly authorized and approved the execution and delivery of the Bonds, this Contract of Purchase, [the Escrow Agreement,] the Undertaking and the Official Statement and has duly authorized and approved the performance by the District of its obligations contained in, and the taking of any and all action as may be necessary to carry out, give effect to and consummate the transactions contemplated by, each of said documents and, at the Closing Date, the Bonds will have been validly issued and delivered, the Subordinate Resolution, [the Escrow Agreement,] the Undertaking and this Contract of Purchase will constitute the valid, legal and binding obligations of the District enforceable in accordance with their respective terms (subject to the effect of, and restrictions and limitations imposed by or resulting from, (i) bankruptcy, insolvency, debt adjustment, moratorium, reorganization or other similar laws affecting creditors’ rights, and (ii) judicial discretion) and the Subordinate Resolution will be in full force and effect;

(d) The District is not in breach of or in default under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States of America, or of any department, division, agency or instrumentality of either or any applicable court or administrative decree or order, or any loan agreement, bond, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District is otherwise subject or bound which in any material way, directly or indirectly, affects the issuance of the Bonds or the validity thereof, the validity or adoption of the Subordinate Resolution or the execution and delivery of the Bonds, this Contract of Purchase, [the Escrow Agreement,] the Undertaking or the other instruments contemplated by any of such documents to which the District is a party, and the adoption of the Subordinate Resolution and compliance with the provisions of each will not, as of the date hereof and as of the Closing Date, conflict with or constitute a breach of or default in any material way under any existing constitutional provision, applicable law or administrative rule or regulation of the State of California, the United States, or of any department, division, agency or instrumentality of either or any applicable court or administrative judgment, decree or order, or any loan agreement, bond, note, ordinance, resolution, indenture, contract, agreement or other instrument to which the District is a party or to which the District or any of the property or assets of the Electric System (as defined in the Subordinate Resolution) are otherwise subject or bound, and no event which would have a material and adverse effect upon the financial condition of the District has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the District under any of the foregoing;

(e) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the Bonds under the Subordinate Resolution, the Undertaking and this Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the “Blue Sky” or other securities laws of any state in connection with the offering and sale of the Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, this Contract of Purchase, [the Escrow Agreement,] the Undertaking, the Bonds or the Subordinate Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained;

(f) The Bonds, when issued and delivered in accordance with the Subordinate Resolution and this Contract of Purchase and paid for by the Underwriters on the Closing Date as provided herein, will be validly issued and outstanding special obligations of the District enforceable against the District in accordance with their terms and entitled to all the benefits and security of the Subordinate Resolution; and, upon the issuance and delivery of the Bonds, the Subordinate Resolution will provide, for the benefit of the holders from time to time of the Bonds,

a legally valid and binding pledge of and lien on Net Subordinated Revenues pledged under the Subordinate Resolution, as provided in and contemplated by the Subordinate Resolution;

(g) The Preliminary Official Statement, as of its date and as of the date hereof, did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(h) At the time of the District's acceptance hereof and (unless the Official Statement is amended or supplemented pursuant to paragraph (i) of Section 2 hereof) at all times subsequent to the date of delivery thereof up to and including the Closing Date, the Official Statement will be true, correct, complete and final in all material respects and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(i) If, after the date of this Contract of Purchase and until 25 days after the end of the "underwriting period" (as defined in Rule 15c2-12), any event shall occur that might cause the Official Statement to contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, the District hereby covenants and agrees, to the extent it has knowledge of such event, to notify the Underwriters (and for the purposes of this clause to provide the Underwriters with such information as they may from time to time reasonably request), and, if in the opinion of the Underwriters and their counsel such event requires the preparation and publication of a supplement or amendment to the Official Statement, at its expense to supplement or amend the Official Statement in a form and manner approved by the Underwriters and furnish to the Underwriters a reasonable number of copies of such supplement or amendment. For purposes of this Contract of Purchase, the District may assume that the end of the "underwriting period" has occurred on the Closing Date unless the District is otherwise notified by the Underwriters on or prior to the Closing Date. If the Underwriters notify the District that the Closing Date is not the end of the "underwriting period", then the Underwriters shall further notify the District of the date that is the end of the "underwriting period" (as defined in Rule 15c2-12);

(j) If the Official Statement is supplemented or amended pursuant to paragraph (i) of Section 2 of this Contract of Purchase, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such paragraph) at all times subsequent thereto during the "underwriting period", the Official Statement as so supplemented or amended will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which made, not misleading.

(k) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened (i) in any way affecting the corporate existence of the District or the titles of its officers to their respective offices, (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of any of the Bonds, the application of the proceeds thereof in accordance

with the Subordinate Resolution, or the collection or application of Revenues (as defined in the Subordinate Resolution) or the collection or application of the Net Subordinated Revenues pledged to pay the principal of and interest on the Bonds under the Subordinate Resolution or in any way contesting or affecting the validity or enforceability of any of the Bonds, the Subordinate Resolution, the Undertaking, [the Escrow Agreement,] this Contract of Purchase or any action of the District contemplated by any of said documents, (iii) which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, (iv) contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the powers of the District or its authority with respect to the Bonds, the adoption of the Subordinate Resolution, or the execution and delivery of the Undertaking, [the Escrow Agreement,] or this Contract of Purchase, or any action of the District contemplated by any of said documents, and (v) which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor;

(l) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request (i) to qualify the Bonds for offer and sale under the “Blue Sky” or other securities laws and regulations of such states and other jurisdictions of the United States as the Senior Underwriter may designate, and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided that in connection therewith the District shall not be required to execute or file a general or special consent to service of process or qualify to do business in any jurisdiction and will advise the Senior Underwriter promptly of receipt by the District of any written notification with respect to the suspension of the qualification of the Bonds for sale in any jurisdiction or written notification of the initiation or threat of any proceeding for that purpose;

(m) The audited financial statements of the District for the years ending December 31, 2022 and December 31, 2021 heretofore delivered to the Underwriters and incorporated by reference in the Preliminary Official Statement and the Official Statement as Appendix B fairly present the financial position of the District as of the dates indicated and such financial statements have been prepared in conformity with generally accepted accounting principles applied on a consistent basis;

(n) Between the date hereof and the Closing Date, the District will not, without the prior written consent of the Senior Underwriter, offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as disclosed in the Preliminary Official Statement or the Official Statement or as otherwise disclosed to the Senior Underwriter;

(o) The Bonds, the Subordinate Resolution, [the Escrow Agreement,] and the Undertaking conform to the descriptions thereof contained in the Preliminary Official Statement and the Official Statement;

(p) The District has the legal authority to apply and will apply, or cause to be applied, the proceeds from the sale of the Bonds as provided in and subject to all of the terms and provisions of the Subordinate Resolution and as described in the Preliminary Official Statement and the Official Statement, including for payment of District expenses incurred in connection with the negotiation, marketing, issuance and delivery of the Bonds to the extent required by Section 7 (Expenses), and will not take or omit to take any action which action or omission will adversely affect the exclusion from gross income for federal income tax purposes of the interest on the Bonds;

(q) Any certificate signed by any official of the District, and delivered to the Underwriters, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(r) Except as disclosed in the Preliminary Official Statement and the Official Statement, during the last five years the District has complied in all material respects with all previous undertakings required by Rule 15c2-12.

**3. Conditions to the Obligations of the Underwriters.** The obligations of the Underwriters to accept delivery of and pay for the Bonds on the Closing Date shall be subject to the performance by the District of its obligations to be performed hereunder at or prior to the Closing Date and to the fulfillment of the following conditions:

(a) The representations, warranties and covenants of the District contained herein shall be true, complete and correct on the date hereof and as of the Closing Date as if made on the Closing Date;

(b) At the Closing Date, the Subordinate Resolution shall have been duly adopted and shall be in full force and effect, and shall not have been repealed, amended, modified or supplemented, except as may have been agreed to in writing by the Underwriters, and there shall have been taken in connection therewith, with the issuance of the Bonds and with the transactions contemplated thereby and by this Contract of Purchase, all such actions as, in the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel ("Bond Counsel"), shall be necessary and appropriate;

(c) At the Closing Date, the Official Statement shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriters;

(d) At or prior to the Closing Date, the Underwriters shall have received copies of the following documents, in each case satisfactory in form and substance to the Underwriters:

(1) The Official Statement executed on behalf of the District by its Chief Executive Officer and General Manager, any Member of its Executive Committee, its Treasurer, its Secretary or its Chief Financial Officer (each an "Authorized Representative");

(2) The Undertaking executed on behalf of the District by an Authorized Representative;

(3) The [Sixteenth] Supplemental Resolution, with only such supplements or amendments thereto as may have been agreed to by the Underwriters and certified by an authorized officer of the District under its seal as having been duly adopted by the District and as being in full force and effect, and the Subordinate Resolution, certified by an authorized officer of the District as being in full force and effect, with such supplements and amendments thereto adopted after the date hereof as may have been agreed to by the Underwriters;

(4) An opinion or opinions relating to the Bonds, dated the Closing Date and addressed to the District, of Bond Counsel, in substantially the form included in the Official Statement as Appendix [F], together with a letter or letters of such Bond Counsel, dated the Closing Date and addressed to the Underwriters, to the effect that the foregoing opinion or opinions addressed to the District may be relied upon by the Underwriters to the same extent as if such opinion or opinions were addressed to them;

(5) An opinion or opinions, dated the Closing Date and addressed to the Senior Underwriter, of Bond Counsel, in substantially the form attached hereto as Exhibit E;

(6) An opinion, dated the Closing Date and addressed to the Senior Underwriter, of General Counsel to the District, in substantially the form attached hereto as Exhibit C;

(7) An opinion, dated the Closing Date and addressed to the Underwriters, of Nixon Peabody LLP, as counsel for the Underwriters (“Underwriters’ Counsel”), to the effect that (i) the Bonds are exempt from the registration requirements of the Securities Act of 1933, as amended, and the Subordinate Resolution is exempt from qualification under the Trust Indenture Act of 1939, as amended; (ii) the Undertaking complies as to form in all material respects with the requirements of paragraph (b)(5) of the Rule applicable to the primary offering of the Bonds; and (iii) based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel to the Underwriters and without having undertaken to determine independently, or assuming any responsibility for, the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement, they do not believe that (A) the Preliminary Official Statement, as of its date and as of the date of the Contract of Purchase, and (B) the Official Statement as of its date and as of the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (except for the information relating to Cede & Co., DTC or the operation of the book-entry system, the Appendices to the Official Statement, except Appendices [C] and [E], and summaries thereof and references thereto, and other financial, accounting and statistical data included therein, as to all of which no view need be expressed); and (iii) with respect to such matters as the Underwriters may reasonably require;

(8) A certificate, dated the Closing Date, signed by an Authorized Representative of the District in substantially the form attached hereto as Exhibit D (but in



lieu of or in conjunction with such certificate the Underwriters may, in its sole discretion, accept certificates or opinions of General Counsel to the District, or of other counsel acceptable to the Underwriters, that in the opinion of such counsel the issues raised in any pending or threatened litigation referred to in such certificate are without substance or that the contentions of all plaintiffs therein are without merit);

(9) [the Escrow Agreement, executed by the District and the Escrow Agent;]

(10) An acceptance of and agreement to the provisions of the [Sixteenth] Supplemental Resolution executed by the Trustee under the Subordinate Master Resolution in form and substance acceptable to the Underwriters;

(11) A tax certificate related to the Bonds in substance and form satisfactory to Bond Counsel;

(12) Ratings of the Bonds from S&P Global Ratings (“S&P”) of not less than “[AA-]” and from Fitch Ratings, Inc. (“Fitch”) of not less than “[AA];”

(13) [A report of [\_\_\_\_\_], as verification agent (the “Verification Agent”) with respect to the sufficiency of amounts deposited pursuant to the Escrow Agreement and an opinion of Bond Counsel respecting the defeasance of the Refunded Bonds;]

(14) An opinion of counsel to the Trustee, dated the Closing Date, addressed to the Underwriters, to the effect that (i) the Trustee[/Escrow Agent] is a national banking association duly organized and validly existing under the laws of the United States of America having full power and being qualified to enter into, accept and agree to the provisions of the Subordinate Resolution and to enter into and perform the Undertaking and [the Escrow Agreement,] (ii) the Undertaking [and the Escrow Agreement have] been duly authorized, executed and delivered by the Trustee[/Escrow Agent] and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the valid and binding obligation of the Trustee[/Escrow Agent] enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting creditors’ rights generally, to the application of equitable principals and to the exercise of judicial discretion in appropriate cases, and to enter into and perform the Undertaking [and the Escrow Agreement,] (iii) all approvals, consents and orders of any governmental authority or agency having jurisdiction in this matter that would constitute a condition precedent to the performance by the Trustee[/Escrow Agent] of its duties and obligations under the Subordinate Resolution, [the Escrow Agreement,] and the Undertaking have been obtained and are in full force and effect, and (iv) the acceptance of the duties and obligations of the Trustee[/Escrow Agent] under the Subordinate Resolution, [the Escrow Agreement,] and the Undertaking and the consummation of the transactions on the part of the Trustee[/Escrow Agent] contemplated therein, and the compliance by the Trustee[/Escrow Agent], as applicable, with the terms, conditions and provisions of such document do not contravene any provisions of applicable law or regulation or any order or decree, writ or injunction or the Articles of Association or Bylaws of the Trustee[/Escrow

Agent], and, to the best knowledge of such counsel, will not require the consent under or result in a breach of or a default under, any resolution, agreement or other instrument to which the Trustee[/Escrow Agent] is a party or by which it may be bound;

(15) A copy of the Blanket Letter of Representations to DTC relating to the Bonds signed by DTC and the District; and

(16) Such additional legal opinions, certificates, instruments and other documents as the Underwriters may reasonably request to evidence the truth and accuracy and completeness, as of the date hereof and as of the Closing Date, of the District's representations and warranties contained herein and of the statements and information contained in the Preliminary Official Statement or the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing Date of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the Subordinate Resolution and the Preliminary Official Statement or the Official Statement.

If any of the conditions to the obligations of the Underwriters contained in this Section or elsewhere in this Contract of Purchase with respect to the Bonds shall not have been satisfied when and as required herein, all obligations of the Underwriters hereunder with respect to the Bonds may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District.

4. **Offering.** The obligations of the District to sell and to deliver the Bonds on the Closing Date to the Underwriters shall be subject to the following conditions:

(a) The entire \$[PAR] aggregate principal amount of the Bonds shall be purchased, accepted and paid for by the Underwriters on the Closing Date; and

(b) The District shall receive an Issue Price Certificate of the Senior Underwriter substantially in the form attached hereto as Exhibit F with respect to the Bonds.

#### 5. **Issue Price of the Bonds.**

(a) The Senior Underwriter, on behalf of the Underwriters, agrees to assist the District in establishing the issue price of the Bonds and shall execute and deliver to the District at Closing an "issue price" or similar certificate substantially in the form attached hereto as Exhibit F, together with the supporting pricing wires or equivalent communications, with modifications to such certificate as may be deemed appropriate or necessary, in the reasonable judgment of the Senior Underwriter, the District and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Bonds.

(b) [Except for the maturities set forth in Schedule A attached hereto,] the District will treat the first price at which 10% of each maturity of the Bonds (the "10% test") is sold to the public as the issue price of that maturity (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% test).

(c) [The Senior Underwriter confirms that the Underwriters have offered the Bonds to the public on or before the date of this Contract of Purchase at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in the final Official Statement. Schedule A sets forth, as of the date of this Contract of Purchase, the maturities, if any, of the Bonds for which the 10% test has not been satisfied and for which the District and the Senior Underwriter, on behalf of the Underwriters, agree that (i) the Senior Underwriter will retain all unsold Bonds of each maturity for which the 10% test has not been satisfied and not allocate any such Bonds to any other Underwriter and (ii) the restrictions set forth in the next sentence shall apply, which will allow the District to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Bonds, the Senior Underwriter will neither offer nor sell unsold Bonds of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

(1) the close of the fifth (5th) business day after the sale date; or

(2) the date on which the Underwriters have sold at least 10% of that maturity of the Bonds to the public at a price that is no higher than the initial offering price to the public.

The Senior Underwriter shall promptly advise the District or the District’s municipal advisor when the Underwriters have sold 10% of that maturity of the Bonds to the public at [a price] that is no higher than the initial offering price to the public, if that occurs prior to the close of the fifth (5th) business day after the sale date.

The District acknowledges that, in making the representation set forth in this subsection, the Senior Underwriter will rely on (i) the agreement of each Underwriter to comply with the hold-the-offering-price rule, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Bonds to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter is a party to a retail distribution agreement that was employed in connection with the initial sale of the Bonds to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, as set forth in the retail distribution agreement and the related pricing wires. The District further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement regarding the hold the offering price rule and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement to comply with its agreement regarding the hold-the-offering-price rule as applicable to the Bonds.]

(d) [The Senior Underwriter confirms that:

(1) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the Senior Underwriter is a party) relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter,

each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to (A)(i) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Senior Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (ii) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Senior Underwriter and as set forth in the related pricing wires, (B) promptly notify the Senior Underwriter of any sales of the Bonds that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Bonds to the public (each such term being used as defined below) and (C) acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Senior Underwriter shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public; and

(2) any agreement among underwriters relating to the initial sale of the Bonds to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the Bonds to the public to require each broker-dealer that is a party to such retail distribution agreement to (A) report the prices at which it sells to the public the unsold Bonds of each maturity allotted to it until it is notified by the Senior Underwriter or the Underwriter that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the public and (B) comply with the hold-the-offering-price rule, if applicable, in each case if and for so long as directed by the Senior Underwriter or the Underwriter and as set forth in the related pricing wires.

(e) The Underwriters acknowledge that sales of any Bonds to any person that is a related party to an Underwriter shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

(1) “public” means any person other than an underwriter or a related party,

(2) “underwriter” means (A) any person that agrees pursuant to a written contract with the District (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Bonds to the public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the public),

(3) a purchaser of any of the Bonds is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of

the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

(4) “sale date” means the date of execution of this Contract of Purchase by all parties.

**6. Termination.** The Underwriters shall have the right to terminate their obligations under this Contract of Purchase to purchase, accept delivery of and to pay for the Bonds, if,

(a) between the date hereof and the Closing Date, the market price or marketability, or the ability of the Underwriters to enforce contracts for the sale, at the initial offering prices set forth in the Official Statement, of the Bonds have been materially adversely affected, in the judgment of the Underwriters, (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and pay for the Bonds), by reason of any of the following:

(1) (x) any legislation which is (A) enacted by Congress, (B) favorably reported for passage to either House of the Congress of the United States by any Committee of such House to which such legislation has been referred for consideration, or (C) recommended to the Congress for passage by the President of the United States or the Treasury Department, but only, however, if the occurrence of any of the foregoing events is generally accepted by the municipal bond market as potentially affecting the federal tax status of the District, its property or income or the interest on its bonds or notes (including the Bonds), (y) any decision rendered by a court established under Article III of the Constitution of the United States or the Tax Court of the United States, or (z) a final order, ruling, regulation or official statement issued or made by or on behalf of the Treasury Department of the United States or the Internal Revenue Service with the purpose or effect, directly or indirectly, of imposing federal income taxation upon such interest as would be received by the holders of the Bonds, or upon such revenues or other income of the general character expected to be received by the District, provided, however, that the enactment of legislation which only diminishes the value of, as opposed to eliminating the exclusion from gross income for federal income tax purposes will not give the Underwriters the right to terminate their obligations hereunder.

(2) Legislation enacted (or resolution passed) by the Congress or a final order, ruling, regulation or official statement is issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Bonds are not exempt from registration under or other requirements of the Securities Act of 1933, as amended, or are not exempt from qualification under, or other requirements of, the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of the Bonds or obligations of the general character of the Bonds, including any or all underlying arrangements, as

contemplated hereby or by the Preliminary Official Statement or the Official Statement, otherwise is or would be in violation of the federal securities laws as amended and then in effect;

(3) Any new material outbreak or escalation of hostilities having a material effect on the financial markets of the United States or the declaration by the United States of a national emergency or war or the occurrence of any other local, national or international calamity, crisis or event relating to the effective operation of the government of or the financial community in the United States, including, without limitation, a downgrade of the sovereign debt rating of the United States or an escalation thereof by any major credit rating agency or payment default on United States Treasury obligations;

(4) the declaration of a general banking moratorium by federal, New York or California authorities, or the general suspension of trading on the New York Stock Exchange or any other national securities exchange, or any material disruption in commercial banking or securities settlement, or payment services or clearing services;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Bonds or obligations of the general character of the Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the net capital requirements of, the Underwriters;

(6) the adoption of any amendment to the federal or California Constitution, decision by any federal or California court, or enactment by any federal or California legislative body materially adversely affecting (i) the District or the right of the District to receive or to pledge any of the Net Subordinated Revenues, or (ii) the validity or enforceability of this Contract of Purchase, the Bonds or the Subordinate Resolution;

(7) the adoption of any amendment to the California Constitution, decision by any California court, or enactment by any California legislative body adversely affecting the exemption of state or local income tax upon such interest as would be received by the holders of the Bonds, or

(8) (i) a downgrading or suspension of any rating (without regard to credit enhancement) by Moody's, S&P, or Fitch of any debt securities issued by the District, or (ii) there shall have been any official statement as to a possible downgrading (such as being placed on "credit watch" or "negative outlook" or any similar qualification) of any rating by Moody's, S&P or Fitch of any debt securities issued by the District, including the Bonds.

(b) an event occurs, or information becomes known, which, in the judgment of the Underwriters, makes untrue in any material respect any statement or information contained in the

Official Statement, or has the effect that the Official Statement contains any untrue statement of material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

7. **Expenses.** (a) Except as set forth in paragraph (b) of this Section, the Underwriters shall be under no obligation to pay, and the District shall pay, or cause to be paid, all expenses incident to the performance of the District's obligations hereunder including, but not limited to, the cost of word processing and reproducing, executing and delivering the Bonds to the Underwriters; the cost of preparation, printing (and/or word processing and reproducing), distribution and delivery of the Subordinate Resolution; the cost of printing and distributing copies of the Preliminary Official Statement and the Official Statement in sufficient quantities for distribution in connection with the sale of the Bonds (including resales in the secondary market); the fees and disbursements of Bond Counsel; the fees and disbursements of Public Financial Management, Inc. for its services as Municipal Advisor to the District; the fees and disbursements of any other engineers, accountants, and any other experts or consultants retained in connection with the issuance of the Bonds; the fees and disbursements of the Trustee[/Escrow Agent and Verification Agent]; fees charged by the rating agencies for rating the Bonds; any advertising expenses; filing fees; CUSIP charges; or fees and expenses of any credit enhancement; expenses incurred by the Underwriters on behalf of the District relating to food, transportation or lodging for District staff members attending the bond pricing are to be reimbursed by the District through proceeds of the Bonds or available funds of the District (the District's obligations in regard to these expenses survive if delivery of the Bonds fails due to one of the conditions set forth in Section 3 hereof or this Contract of Purchase is terminated pursuant to Section 6 hereof) and any other expenses not specifically enumerated in paragraph (b) of this Section incurred in connection with the issuance of the Bonds.

(b) The District shall be under no obligation to pay, and the Underwriters shall pay (from the expense component of the underwriting discount), the cost of preparation of the Agreement Among Underwriters and the letter of instructions relating thereto and this Contract of Purchase; the cost of wiring funds for the payment of the purchase price of the Bonds; the fees and expenses of DTC incurred with respect to depositing the Bonds therewith; expenses to qualify the Bonds for sale under any "Blue Sky" laws; fees to the California Debt and Investment Advisory Commission; and all other expenses incurred by the Underwriters in connection with its public offering and distribution of the Bonds not specifically enumerated in paragraph (a) of this Section, including the fees and disbursements of Underwriters' Counsel. Notwithstanding that the fees to the California Debt and Investment Advisory Commission are solely the legal obligation of the Underwriters, the District agrees to reimburse the Underwriters for such fees.

8. **Notices.** Any notice or other communication to be given to the District under this Contract of Purchase may be given by delivering the same in writing to Sacramento Municipal Utility District, at 6201 S Street, Sacramento, California 95817-1899; and any notice or other communication to be given to the Underwriters under this Contract of Purchase may be given by delivering the same in writing to Barclays Capital Inc., 10250 Constellation Blvd, Suite 750, Los Angeles, CA 90067, Attention: Christopher D. Roberts, Director.

9. **Parties in Interest.** This Contract of Purchase is made solely for the benefit of the District and the Underwriters (including successors or assigns of any Underwriter) and no other

person shall acquire or have any right hereunder or by virtue hereof. The term “successors and assigns” as used in this Section shall not include any purchaser of the Bonds, as such purchaser, from any of the several Underwriters.

**10. Survival of Representations and Warranties.** The representations and warranties of the District, set forth in or made pursuant to this Contract of Purchase, shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the closing or termination of this Contract of Purchase and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Bonds.

**11. Counterparts.** This Contract of Purchase may be executed in several counterparts, which together shall constitute one and the same instrument.

**12. California Law Governs; Venue.** The validity, interpretation and performance of this Contract of Purchase shall be governed by the laws of the State of California. Any action or proceeding to enforce or interpret this Contract of Purchase shall be brought, commenced or prosecuted in the County of Sacramento, California.

**13. Entire Agreement.** This Contract of Purchase when accepted by you in writing as heretofore specified shall constitute the entire agreement between us.

[remainder of page intentionally left blank]



14. **Effectiveness.** This Contract of Purchase shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by an authorized officer of the District and shall be valid and enforceable as of the time of such acceptance.

Very truly yours,

BARCLAYS CAPITAL INC., [UNDERWRITING  
GROUP TO COME]

BY: BARCLAYS CAPITAL INC., as Senior  
Underwriter

---

Christopher D. Roberts  
Director

Accepted: [SALE DATE]

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Russell Mills  
Treasurer

[Signature page to Contract of Purchase]

**Exhibit A**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$[PAR] Subordinated Electric Revenue Refunding Bonds, [2023 Series A]**

<b><u>Maturity</u></b> <b><u>(August 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>End of Initial</u></b> <b><u>Term Rate Period</u></b>	<b><u>Mandatory</u></b> <b><u>Tender Date</u></b>	<b><u>Initial</u></b> <b><u>Term Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>
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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**Exhibit B to the Contract of Purchase  
(Official Statement)**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**Exhibit C to the Contract of Purchase  
(Opinion of General Counsel to the  
Sacramento Municipal Utility District)**

[CLOSING DATE]

Barclays Capital Inc.  
10250 Constellation Blvd, Suite 750  
Los Angeles, CA 90067

Re: Sacramento Municipal Utility District  
\$[PAR] Subordinated Electric Revenue Refunding Bonds, [2023 Series A]

Ladies and Gentlemen:

This opinion is being delivered pursuant to Paragraph 3(d)(6) of the Contract of Purchase (the “Contract of Purchase”), dated [SALE DATE] between Barclays Capital Inc., as Senior Managing Underwriter named therein (the “Senior Underwriter”), and the Sacramento Municipal Utility District (the “District”) relating to the above-captioned bonds (the “Bonds”).

As counsel to the District, I have reviewed (i) Resolution No. 85-11-1 of the District, adopted on November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001, as amended and supplemented to date, including as amended and supplemented by Resolution No. [RESO NO.], adopted on [May 18, 2023] (as so amended and supplemented, the “Subordinate Resolution”); (ii) the Continuing Disclosure Agreement, dated the date hereof (the “Undertaking”), between the District and U.S. Bank Trust Company, National Association, as trustee (in such capacity, the “Trustee”); (iii) the Preliminary Official Statement of the District, dated [POS DATE] (the “Preliminary Official Statement”); (iv) the Official Statement of the District, dated [SALE DATE] (the “Official Statement”); [(v) the Escrow Agreement, dated the date hereof (the “Escrow Agreement”), between the District and U.S. Bank Trust Company, National Association, as escrow agent (in such capacity, the “Escrow Agent”);] and (vi) such other documents, opinions and matters to the extent I deemed necessary to provide the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. I have assumed the genuineness of all documents and signatures presented to me (whether as originals or as copies) and the due and legal execution and delivery by, and validity against, any parties other than the District. I have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents referred to in the second paragraph hereof. I have further assumed compliance with all covenants and agreements contained in such documents.

I call attention to the fact that the rights and obligations under the Subordinate Resolution, [the Escrow Agreement,] the Undertaking and the Contract of Purchase may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. I express no opinion with respect to any indemnification, contribution, choice of law, choice of forum or waiver provisions contained therein.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, I am of the opinion that:

1. The District is a political subdivision of the State of California duly organized and validly existing under the Act, as amended, and has full legal right, power and authority to execute and deliver (or adopt, as the case may be), and to perform its obligations under, the Subordinate Resolution, [the Escrow Agreement,] the Undertaking and the Contract of Purchase.

2. The Contract of Purchase, [the Escrow Agreement,] and the Undertaking have been duly authorized, executed and delivered by the District, and, assuming due authorization, execution and delivery by each of the parties thereto other than the District, constitute the legal, valid and binding obligations of the District, enforceable against the District in accordance with their respective terms.

3. The District is not in breach of or default under any existing constitutional provision, applicable law or administrative regulation of the State of California or the United States or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject which would have a material adverse effect on the financial condition or operations of the District, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute a default or event of default under any such instrument which would have a material adverse effect on the financial condition or operations of the District; and the execution and delivery of the Bonds, [the Escrow Agreement,] the Undertaking and the Contract of Purchase and the adoption of the Subordinate Resolution, and compliance with any existing constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument known to me after reasonable inquiry to which the District is a party or to which the District or any of its property or assets is otherwise subject will not, as of the date hereof, conflict with or constitute a breach of or default under any such instrument which would have a material adverse effect on the financial condition or operations of the District, nor will any such execution, delivery, adoption or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the District or under the terms of any such law, regulation or instrument, except as expressly provided by the Bonds and the Subordinate Resolution.

4. The statements contained in the Preliminary Official Statement and the Official Statement which purport to describe certain provisions of the Bonds, the Undertaking, [the Escrow

Agreement,] and the Subordinate Resolution present a fair and accurate summary of such provisions for the purpose of use in the Preliminary Official Statement and the Official Statement.

5. Except as described or referred to in the Preliminary Official Statement and the Official Statement, as of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best of my knowledge, threatened against the District affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the collection of the Revenues (as defined in the Subordinate Resolution) or the Net Subordinated Revenues (as defined in the Subordinate Resolution) pledged or to be pledged to pay the principal of and interest on the Bonds or contesting or affecting as to the District the validity or enforceability of the Act, the Bonds, the Subordinate Resolution, [the Escrow Agreement,] the Contract of Purchase or the Undertaking, or contesting the tax exempt status of interest on the Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution facilities, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the Bonds, the adoption of the Subordinate Resolution, or the execution and delivery by the District of the Contract of Purchase, [the Escrow Agreement,] or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act or the authorization, execution, delivery or performance by the District of the Bonds, the Subordinate Resolution, [the Escrow Agreement,] the Undertaking or the Contract of Purchase.

6. Based upon my review of the Preliminary Official Statement and the Official Statement as General Counsel to the District and without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement and the Official Statement (except as specifically set forth in paragraph 4 hereof), I have no reason to believe that the statements contained in the Preliminary Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, the Appendices (except Appendix A) to the Preliminary Official Statement, and other financial and statistical data included therein, as to all of which I express no view) as of its date and as of the date of the Contract of Purchase contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading and the Official Statement (except for information relating Cede & Co., DTC or the operation of the book-entry system, the Appendices (except Appendix A) to the Official Statement, and other financial and statistical data included therein, as to all of which I express no view) (A) as of the date of the Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading or (B) as of the date hereof contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

For purposes of the opinions expressed herein, I have assumed that an agreement or other document is “material” to the District if it involves amounts in excess of \$10,000,000 and that a matter would result in a “material adverse change” to the District if the financial consequences involved would exceed \$10,000,000.

I understand that you are relying upon the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel, with respect to the validity of the Bonds and the exclusion of interest on the Bonds from gross income for federal income tax purposes and the Bonds for purposes of State of California income taxation and, accordingly, render no opinion with respect thereto.

Very truly yours,

## **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

### **Exhibit D to the Contract of Purchase**

#### **CERTIFICATE**

The Sacramento Municipal Utility District (the “District”), hereby certifies that:

(1) The representations and warranties of the District (excluding those representations and warranties contained in Section 2(e) and Section 2(k) of the hereinafter defined Contract of Purchase) contained in the Contract of Purchase, dated [SALE DATE], between the District and the Underwriters named therein (the “Contract of Purchase”) with respect to the sale by the District of \$[PAR] principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, [2023 Series A] (the “Bonds”), are true and correct on and as of the Closing Date as if made on the Closing Date.

(2) All approvals, consents, authorizations, licenses and permits, elections and orders of or filings or registrations with any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to, or the absence of which would materially adversely affect, the due performance by the District of its obligations in connection with the issuance of the Bonds under the Subordinate Resolution, [the Escrow Agreement,] the Undertaking and the Contract of Purchase have been duly obtained or made and are in full force and effect, except for such approvals, consents and orders as may be required under the “Blue Sky” or other securities laws of any state in connection with the offering and sale of the Bonds; and, except as disclosed in the Preliminary Official Statement and the Official Statement, all authorizations, approvals, licenses, permits, consents and orders of any governmental authority, board, agency or commission having jurisdiction in the matters which are required for the due authorization of, which would constitute a condition precedent to, or the absence of which would materially adversely affect the due performance by the District of its respective obligations under, the Contract of Purchase, [the Escrow Agreement,] the Undertaking, the Bonds or the Subordinate Resolution, or which are necessary to permit the District to carry out the transactions contemplated by the Preliminary Official Statement and the Official Statement to acquire, construct, operate, maintain, improve and finance the Electric System have been duly obtained or, where required for future performance, are expected to be obtained.

(3) Except as disclosed in the Preliminary Official Statement and the Official Statement, no litigation, action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, government agency, regulatory agency, public board or body, is pending or, to the best of knowledge of the officer of the District executing this Contract of Purchase after due investigation, threatened against the District, in any way affecting the corporate existence of the District or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of any of the Bonds or the collection of the Revenues (as defined in the Subordinate Resolution) or the Net Subordinated Revenues (as defined in the Subordinate Resolution) pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way contesting or affecting as to the District the validity or enforceability



of the Act, the Bonds, the Subordinate Resolution, the Contract of Purchase, [the Escrow Agreement,] the Undertaking, or any action of the District contemplated by any of said documents, or contesting the tax exempt status of interest on the Bonds, or which may result in any material adverse change relating to the District, other than routine litigation of the type which normally accompanies its operation of its generation, transmission and distribution system, or contesting the completeness or accuracy of the Preliminary Official Statement or the Official Statement or any supplement or amendment thereto, or contesting the powers of the District or any authority for the issuance of the Bonds, the adoption of the Subordinate Resolution, or the execution and delivery by the District of the Contract of Purchase, [the Escrow Agreement,] or the Undertaking, nor, to the best of my knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Act of the authorization, execution, delivery or performance by the District of the Bonds, the Subordinate Resolution, the Undertaking, [the Escrow Agreement,] or the Contract of Purchase, or any action of the District contemplated by any of said documents, or which would adversely affect the exclusion from gross income for federal income tax purposes of interest paid on the Bonds, nor to the knowledge of the officer of the District executing this Contract of Purchase is there any basis therefor.

(4) No event affecting the District has occurred (with respect to the Preliminary Official Statement, from its date to the date of the Contract of Purchase, and with respect to the Official Statement, since the date of the Official Statement) which should have been or should be disclosed in the Preliminary Official Statement or the Official Statement so that the Preliminary Official Statement or the Official Statement did not and does not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and which has not been disclosed in a supplement or amendment to the Preliminary Official Statement or the Official Statement.

(5) The District has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof pursuant to the Contract of Purchase with respect to the issuance of the Bonds.

(6) All capitalized terms employed herein which are not otherwise defined shall have the same meanings as in the Contract of Purchase.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_

Name:

Title:

Dated: [CLOSING DATE]

**Exhibit E to the Contract of Purchase  
(Supplemental Opinion of Bond Counsel)**

[Under Review]

[CLOSING DATE]

Barclays Capital Inc.  
10250 Constellation Blvd, Suite 750  
Los Angeles, CA 90067

Re: Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds,  
[2023 Series A]

(Supplemental Opinion)

Ladies and Gentlemen:

This letter is addressed to you, as Senior Underwriter, pursuant to Section 3(d)(5) of the Contract of Purchase, dated [SALE DATE] (the “Purchase Contract”), between you and the other underwriters named therein and the Sacramento Municipal Utility District (“SMUD”), providing for the purchase of \$[PAR] principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, [2023 Series A] (the “2023 Subordinated Bonds”). The 2023 Subordinated Bonds are being issued pursuant to Resolution No. 85-11-1 of the Board of Directors of SMUD, adopted November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted June 21, 2001, as supplemented and amended by later resolutions of said Board of Directors (as so supplemented and amended, the “Resolution”), including Resolution No. [RESO NO.], adopted [May 18, 2023] (the “[Sixteenth] Supplemental Resolution”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution or, if not defined in the Resolution, in the Purchase Contract.

In connection with our role as Bond Counsel to SMUD, we have reviewed the Purchase Contract; the Resolution; the Subordinate Master Resolution; the Tax Certificate, dated the date hereof (the “Tax Certificate”), executed by SMUD; certain portions of the preliminary official statement of SMUD, dated [POS DATE], with respect to the 2023 Subordinated Bonds (the “Preliminary Official Statement”) and of the official statement of SMUD, dated [SALE DATE], with respect to the 2023 Subordinated Bonds (the “Official Statement”); opinions of counsel to SMUD and the Trustee; certificates of SMUD, the Trustee and others; and such other documents, opinions and matters to the extent we deemed necessary to provide the opinions and conclusions set forth herein.

The opinions and conclusions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions or conclusions may be affected by actions taken or omitted or events occurring after the original delivery of the 2023 Subordinated Bonds on the date hereof. We have

not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the original delivery of the 2023 Subordinated Bonds on date hereof. We have assumed the genuineness of all documents and signatures provided to us (whether as originals or as copies) and the due and legal execution and delivery thereof by, and validity against, any parties other than SMUD. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. We have further assumed compliance with all covenants and agreements contained in such documents. In addition, we call attention to the fact that the rights and obligations under the 2023 Subordinated Bonds, the Resolution, the Tax Certificate and the Purchase Contract and their enforceability may be subject to bankruptcy, insolvency, reorganization, receivership, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinions with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Resolution or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions and conclusions:

1. The 2023 Subordinated Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Resolution is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

2. The Purchase Contract has been duly executed and delivered by, and constitutes a valid and binding obligation of, SMUD.

3. The statements contained in the Preliminary Official Statement and the Official Statement under the captions ["THE 2023 SUBORDINATED BONDS" (except information relating to book-entry or The Depository Trust Company), "SECURITY FOR THE 2023 SUBORDINATED BONDS" and "TAX MATTERS" and in APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION," and APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION"] **[To be updated when POS is available]** excluding any material that may be treated as included under such captions by cross-reference or reference to other documents or sources, insofar as such statements expressly summarize certain provisions of the Resolution, the Subordinate Master Resolution and the form and content of our final legal opinion as Bond Counsel to SMUD concerning the validity of the 2023 Subordinated Bonds and certain other matters, dated the date hereof and addressed to SMUD, are accurate in all material respects.

4. We are not passing upon and do not assume any responsibility for the accuracy (except as explicitly stated in paragraph 3 above), completeness or fairness of any of the statements contained in the Preliminary Official Statement or in the Official Statement and make no representation that we have independently verified the accuracy, completeness or fairness of any such statements. We do not assume any responsibility for any electronic version of the Preliminary Official Statement or the Official Statement, and assume that any such version is identical in all respects to the printed version. In our capacity as Bond Counsel to SMUD in connection with issuance of the 2023 Subordinated Bonds, we participated in conferences with your representatives, your counsel, representatives of SMUD, its counsel, accountants, and others, during which the contents of the Preliminary Official Statement or the Official Statement and related matters were discussed. Based on our participation in the above-mentioned conferences (which did not extend beyond the date of the Official Statement), and in reliance thereon, on oral and written statements and representations of SMUD and others and on the records, documents, certificates, opinions and matters herein mentioned, subject to the limitations on our role as Bond Counsel to SMUD, we advise you as a matter of fact and not opinion that (a) as of [SALE DATE], no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Preliminary Official Statement which caused us to believe as of that date that the Preliminary Official Statement contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and (b) as of the date of the Official Statement and as of the date hereof, no facts had come to the attention of the attorneys in our firm rendering legal services with respect to the Official Statement which caused us to believe as of the date of the Official Statement and as of the date hereof that the Official Statement contained or contains any untrue statement of a material fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, we expressly exclude from the scope of this paragraph and express no view or opinion about (i) any difference in information contained in the Preliminary Official Statement compared to what is contained in the Official Statement, whether or not related to pricing or sale of the 2023 Subordinated Bonds, and whether any such difference is material and should have been included in the Preliminary Official Statement, and (ii) with respect to both the Preliminary Official Statement and the Official Statement, any CUSIP numbers, financial, accounting, statistical or economic, engineering or demographic data or forecasts, numbers, charts, tables, graphs, estimates, projections, assumptions or expressions of opinion, any statements about compliance with prior continuing disclosure undertakings, any information about Cede & Co., The Depository Trust Company or book-entry, ratings, rating agencies, underwriters, underwriting and the information contained in Appendices B and C included or referred to therein or omitted therefrom. No responsibility is undertaken or view expressed with respect to any other disclosure document, materials or activity, or as to any information from another document or source referred to by or incorporated by reference in the Preliminary Official Statement or the Official Statement.

This letter is furnished by us as Bond Counsel to SMUD. No attorney-client relationship has existed or exists between our firm and you in connection with the 2023 Subordinated Bonds or by virtue of this letter. We disclaim any obligation to update this letter. This letter is delivered to you as Senior Underwriter of the 2023 Subordinated Bonds, is solely for your benefit as such Senior Underwriter in connection with the original delivery of the 2023 Subordinated Bonds on the date hereof, and is not to be used, circulated, quoted or otherwise referred to or relied upon for

any other purpose or by any other person. This letter is not intended to, and may not, be relied upon by owners of 2023 Subordinated Bonds or by any other party to whom it is not specifically addressed.

Very truly yours,

## Exhibit F to the Contract of Purchase

### (Form of Issue Price Certificate Of The Senior Underwriter Regarding Offering Prices)

#### Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, [2023 Series A]

The undersigned, on behalf of Barclays Capital Inc., as representative (the “Representative”) of itself [UNDERWRITING GROUP TO COME] (together, the “Underwriting Group”), hereby certifies, on its own behalf and on behalf of the other members of the Underwriting Group on the basis of representations and warranties set forth in the agreement among underwriters, as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Bonds”).

1. ***Sale of the [General Rule Maturities][Bonds].*** As of the date of this Certificate, for each Maturity of the [General Rule Maturities][Bonds], the first price at which at least 10% of such Maturity was sold to the Public is the respective price listed in Schedule A.

2. ***[Initial Offering Price of the Hold-the-Offering-Price-Maturities.***

(a) The Underwriting Group offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Bonds is attached to this Certificate as Schedule B.

(b) As set forth in the Bond Purchase Agreement for the Bonds, the Representative has agreed in writing that, (i) for each Maturity of the Hold-the-Offering-Price Maturities, it would neither offer nor sell any of the unsold Bonds of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (ii) unsold Bonds of the Hold-the-Offering-Price Maturities shall be retained by the Representative and not allocated to any of the other Underwriters. Pursuant to such agreement, the Representative has not offered or sold any unsold Bonds of any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Bonds during the Holding Period.]

### 3. ***Defined Terms.***

(a) [*General Rule Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “General Rule Maturities.”]

(b) [*Hold-the-Offering-Price Maturities* means those Maturities of the Bonds listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

(c) [*Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date, or (ii) the date on which the Underwriters have sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.]

(d) *Issuer* means Sacramento Municipal Utility District.

(e) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party (as such terms are defined below) to an Underwriter.

(g) A purchaser of any of the Bonds is a *Related Party* to any Underwriter if the Underwriter and the purchaser are subject, directly or indirectly, to (i) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(h) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Bonds. The Sale Date of the Bonds is [SALE DATE].

(i) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only, and as it relates to the actions of the other Underwriters, such representations are made to the best of the Representative's knowledge based on the Representative's records. Nothing in this certificate represents the Representative's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Tax Certificate and with respect to compliance with the federal income tax rules affecting the Bonds, and by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to the Issuer, in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Bonds.

Dated: [CLOSING DATE]

Barclays Capital Inc., as representative of the Underwriting Group

By: \_\_\_\_\_

Name: \_\_\_\_\_



**Schedule A**

**Sale Prices**

**\$[PAR] Subordinated Electric Revenue Refunding Bonds, [2023 Series A]**

<b><u>Maturity</u></b> <b><u>(August 15)</u></b>	<b><u>Principal</u></b> <b><u>Amount</u></b>	<b><u>Interest</u></b> <b><u>Rate</u></b>	<b><u>Yield</u></b>	<b><u>Price</u></b>	<b><u>Hold-the-Price</u></b> <b><u>Maturities</u></b>	<b><u>General Rule</u></b> <b><u>Maturities</u></b>
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**Schedule B**

**Pricing Wire or Equivalent Communication**

\_\_\_ Not applicable, because there are no Hold-the-Offering-Price Maturities

\_\_\_ Attached

# SACRAMENTO MUNICIPAL UTILITY DISTRICT

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PRELIMINARY OFFICIAL STATEMENT DATED [\_\_\_\_], 2023

NEW ISSUE - FULL BOOK-ENTRY

Ratings: See "RATINGS" herein

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD, based upon an analysis of existing laws, regulations, rulings and court decisions and, assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2023 Series K Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the 2023 Series K Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the 2023 Series K Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023 Series K Bonds. See "TAX MATTERS."*



**[\$[PRINCIPAL AMOUNT]\*  
ELECTRIC REVENUE REFUNDING BONDS, 2023 SERIES K**

**Dated: Date of Delivery**

**Due: August 15, as shown on the inside cover**

The Electric Revenue Refunding Bonds, 2023 Series K (the "2023 Series K Bonds") will be issued pursuant to the provisions of Resolution No. 6649 of the Sacramento Municipal Utility District ("SMUD"), as amended and supplemented, and will be payable from the Net Revenues of the Electric System of SMUD, as described herein. The 2023 Series K Bonds are being issued to (i) refund SMUD's Electric Revenue Refunding Bonds, 2013 Series B (the "2013B Refunded Bonds"), and (ii) pay certain costs associated with the issuance of the 2023 Series K Bonds. See "PLAN OF FINANCE."

The 2023 Series K Bonds will mature in the years and amounts as shown on the inside cover. Interest on the 2023 Series K Bonds will accrue at the rates set forth on the inside cover and be payable on [August] 15, 20[23], and semiannually thereafter on each February 15 and August 15.

[The 2023 Series K Bonds are not subject to redemption prior to maturity.][tbc]

The 2023 Series K Bonds will be issued in fully registered form and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("DTC"). DTC will act as securities depository (the "Securities Depository") for the 2023 Series K Bonds. Individual purchases of interests in the 2023 Series K Bonds may be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof. Purchasers of such interests will not receive certificates representing their interests in the 2023 Series K Bonds. Principal and interest are payable directly to the Securities Depository by U.S. Bank Trust Company, National Association, Trustee and Paying Agent. Upon receipt of payments of principal and interest, the Securities Depository will in turn remit such principal and interest to the Securities Depository's Direct Participants (as such term is herein defined) for subsequent disbursement to the purchasers of interests in the 2023 Series K Bonds, as described herein. See APPENDIX C – "BOOK-ENTRY SYSTEM."

*The principal of and interest on the 2023 Series K Bonds, together with the debt service on other Parity Bonds (as defined herein), are payable exclusively from and secured by a pledge of the Net Revenues of the Electric System of SMUD. Neither the credit nor the taxing power of SMUD or the State of California is pledged to the payment of the 2023 Series K Bonds.*

The information presented on this cover page is for general reference only and is qualified in its entirety by reference to the entire Official Statement and the documents summarized and described herein.

The 2023 Series K Bonds are offered when, as and if issued and received by the Underwriters, subject to the approval of the validity of the 2023 Series K Bonds and certain other legal matters by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD. Certain legal matters will be passed on for the Underwriters by their counsel, Nixon Peabody LLP, San Francisco, California. It is expected that the 2023 Series K Bonds will be available for delivery through the facilities of DTC on or about [\_\_\_\_\_], 2023\*.

**Barclays**

**BofA Securities**

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_], 2023

\* Preliminary, subject to change.

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**Sacramento, California**  
**\$[PRINCIPAL AMOUNT]\***  
**ELECTRIC REVENUE REFUNDING BONDS, 2023 SERIES K**

**MATURITY SCHEDULE\***

<b>Due (August 15)</b>	<b>Amount</b>	<b>Interest Rate</b>	<b>Yield</b>	<b>CUSIP<sup>†</sup></b>
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\* Preliminary, subject to change.

<sup>†</sup> CUSIP<sup>®</sup> is a registered trademark of the American Bankers Association. CUSIP<sup>®</sup> data herein is provided by CUSIP Global Services (CGS), which is managed on behalf of the American Bankers Association by FactSet Research Systems Inc. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP<sup>®</sup> numbers have been assigned by an independent company not affiliated with SMUD or the Underwriters and are included solely for the convenience of the registered owners of the applicable 2023 Series K Bonds. Neither SMUD nor the Underwriters are responsible for the selection or uses of these CUSIP<sup>®</sup> numbers, and no representation is made as to their correctness on the applicable 2023 Series K Bonds or as included herein. The CUSIP<sup>®</sup> number for a specific maturity is subject to being changed after the execution and delivery of the 2023 Series K Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the 2023 Series K Bonds.

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
*Sacramento, California*

**BOARD OF DIRECTORS**

Heidi Sanborn, President  
Rosanna Herber, Vice President  
Brandon Rose  
Nancy Bui-Thompson  
Gregg Fishman  
Rob Kerth  
Dave Tamayo

**OFFICERS AND EXECUTIVES**

Paul Lau, Chief Executive Officer and General Manager  
Frankie McDermott, Chief Operating Officer  
Jennifer Davidson, Chief Financial Officer  
Brandy Bolden, Chief Customer Officer  
Suresh Kotha, Chief Information Officer  
Jose Bodipo-Memba, Chief Diversity Officer  
Scott Martin, Chief Strategy Officer  
Laura Lewis, Chief Legal and Government Affairs Officer and General Counsel  
Lora Anguay, Chief Zero Carbon Officer  
Farres Everly, Director, Communications, Marketing and Community Relations  
Russell Mills, Treasurer  
Lisa Limcaco, Controller

**SPECIAL SERVICES**

ORRICK, HERRINGTON & SUTCLIFFE LLP  
Bond Counsel

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION  
Trustee and Paying Agent

BAKER TILLY VIRCHOW KRAUSE, LLP, Madison, Wisconsin  
Independent Accountants

PFM FINANCIAL ADVISORS LLC, Philadelphia, Pennsylvania  
Municipal Advisor

EVERCREST ADVISORS, LLC  
Swap Advisor

□  
Verification Agent

No dealer, broker, salesperson or other person has been authorized by SMUD or the Underwriters to give any information or to make any representations with respect to the 2023 Series K Bonds other than those contained in this Official Statement and, if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell nor the solicitation of an offer to buy, nor shall there be any sale of the 2023 Series K Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from SMUD and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of, the Underwriters. The information and expressions of opinion stated herein are subject to change without notice. The delivery of this Official Statement shall not, under any circumstances, create any implication that there has been no change in the affairs of SMUD since the date hereof. The Underwriters have provided the following sentence for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with and as part of their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The 2023 Series K Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption from the registration requirements contained in such Act. The 2023 Series K Bonds have not been registered or qualified under the securities laws of any state.

IN CONNECTION WITH THE OFFERING OF THE 2023 SERIES K BONDS THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICES OF SUCH BONDS AT LEVELS ABOVE THOSE THAT MIGHT OTHERWISE PREVAIL ON THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE 2023 SERIES K BONDS TO CERTAIN DEALERS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES SET FORTH ON THE INSIDE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

#### **CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT**

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements.” Such statements generally are identifiable by the terminology used, such as “plan,” “expect,” “estimate,” “budget” or other similar words.

The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. SMUD does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access website. SMUD maintains a website. However, the information presented therein is not part of this Official Statement and should not be relied upon in making investment decisions with respect to the 2023 Series K Bonds. The references to internet websites in this Official Statement are shown for reference and convenience only; unless explicitly stated to the contrary, the information contained within the websites is not incorporated herein by reference and does not constitute part of this Official Statement.



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**OFFICIAL STATEMENT**  
**Relating to**  
**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**\$(PRINCIPAL AMOUNT)\***  
**ELECTRIC REVENUE REFUNDING BONDS, 2023 SERIES K**  
**INTRODUCTION**

This Official Statement, including the cover page and Appendices attached hereto, describes the Sacramento Municipal Utility District (“SMUD”), a political subdivision of the State of California (the “State”), and its \$(PRINCIPAL AMOUNT)\* Electric Revenue Refunding Bonds, 2023 Series K (the “2023 Series K Bonds”), in connection with the sale by SMUD of the 2023 Series K Bonds. The 2023 Series K Bonds are being issued to (i) refund SMUD’s Electric Revenue Refunding Bonds, 2013 Series B (the “2013B Refunded Bonds”), and (ii) pay certain costs associated with the issuance of the 2023 Series K Bonds. See “PLAN OF FINANCE.”

The 2023 Series K Bonds are part of an Electric Revenue Bond authorization of SMUD and are issued pursuant to Resolution No. 6649 (the “Master Resolution”) adopted in 1971, as amended and supplemented, and applicable California law, including Article 6a of Chapter 6 of the Municipal Utility District Act (Public Utilities Code Sections 12850 to 12860) (the “Act”), the Revenue Bond Law of 1941 (Government Code Section 54300 *et seq.*) and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (Government Code Section 53580 *et seq.*). The issuance of the 2023 Series K Bonds was authorized on May 18, 2023, by the Board of Directors of SMUD by a Sixty-Sixth Supplemental Resolution (the “Sixty-Sixth Supplemental Resolution”) supplemental to the Master Resolution. The Master Resolution and all supplemental resolutions, including the Sixty-Sixth Supplemental Resolution, are collectively referred to herein as the “Resolution.” See APPENDIX D — “SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION.”

***The purchasers of the 2023 Series K Bonds, by virtue of their purchase of the 2023 Series K Bonds, will consent to certain amendments to the Resolution. See “SECURITY FOR THE BONDS – Consent to Amendments to the Resolution.”***

The 2023 Series K Bonds and other bonds issued on a parity therewith pursuant to the Resolution are collectively referred to herein as the “Bonds.” The Bonds, together with other Parity Bonds, are payable solely from the Net Revenues of the Electric System. See “SECURITY FOR THE BONDS.” As of May 1, 2023, Bonds in the aggregate principal amount of \$1,841,715,000 were outstanding under the Resolution. Immediately following the issuance of the 2023 Series K Bonds and the refunding of the 2013B Refunded Bonds, Bonds in the aggregate principal amount of \$[\_\_\_\_\_] will be outstanding under the Resolution.

Although the Resolution establishes an “Electric Revenue Bond Reserve Fund” (the “Reserve Fund”), the Reserve Fund does *not* secure and will *not* be available to pay debt service on the 2023 Series K Bonds. The Reserve Fund secures all Bonds issued prior to January 1, 2004 that are currently outstanding (and not otherwise deemed to be paid and discharged under the Resolution) and may secure additional Bonds issued in the future.

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\* Preliminary, subject to change.

U.S. Bank Trust Company, National Association serves as trustee and paying agent under the Resolution (the “Trustee”).

The issuance of the 2023 Series K Bonds and the refunding of the 2013B Refunded Bonds is a component of a plan of finance (the “Plan of Finance”) that includes the issuance of SMUD’s Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023C Subordinated Bonds”) to refund SMUD’s Electric Revenue Refunding Bonds, 2013 Series A (the “2013A Refunded Bonds”), the issuance of SMUD’s Subordinated Electric Revenue Bonds, 2023 Series D and 2023 Series E (the “2023D Subordinated Bonds” and “2023E Subordinated Bonds,” respectively), to finance and refinance certain improvements and additions to SMUD’s Electric System, including through the refunding of SMUD’s commercial paper notes, and the issuance of SMUD’s Subordinated Electric Revenue Refunding Bonds, 2023 Series F (the “2023F Subordinated Bonds”) to refund SMUD’s Subordinated Electric Revenue Bonds, 2019 Series A (the “2019A Subordinated Refunded Bonds”). The issuance of the 2023 Series K Bonds to refund the 2013B Refunded Bonds is not contingent upon the implementation of the other components of the Plan of Finance, and SMUD is not obligated to implement any of the components of the Plan of Finance. Upon the issuance of the 2023 Series K Bonds and the refunding of the 2013B Refunded Bonds, Senior Bonds in the aggregate principal amount of \$[ ]\* will be outstanding. If the Plan of Finance is implemented in whole, upon completion of the Plan of Finance, Senior Bonds in the aggregate principal amount of approximately \$[ ]\* and Subordinated Bonds in the aggregate principal amount of approximately \$[ ]\* are expected to be outstanding. See “PLAN OF FINANCE.”

From time to time, SMUD issues Subordinated Electric Revenue Bonds (the “Subordinated Bonds”) pursuant to Resolution No. 85-11-1 of SMUD, adopted on November 7, 1985, as amended and supplemented (the “Subordinate Resolution”). As of May 1, 2023, Subordinated Bonds (including the 2019A Subordinated Refunded Bonds) in the aggregate principal amount of \$200,000,000 were outstanding. The Subordinated Bonds are payable solely from the Net Subordinated Revenues of the Electric System and are subordinate in right of payment to the prior payment of principal of and interest on the Bonds (including the 2023 Series K Bonds). SMUD expects to refund all of the 2019A Subordinated Refunded Bonds, currently outstanding in the principal amount of \$100,000,000 with proceeds of the 2023F Subordinated Bonds. See “PLAN OF FINANCE.”

SMUD also issues commercial paper notes (the “Notes”) from time to time. As of May 1, 2023, Notes in the principal amount of \$200,000,000 were outstanding. Currently, Notes in the aggregate principal amount of \$300,000,000 may be outstanding at any one time, but SMUD reserves the right to increase or decrease the aggregate principal amount of the Notes that may be outstanding at any one time in the future. The Notes are secured by letters of credit issued by commercial banks. The Notes (and SMUD’s obligations to repay drawings under the letters of credit) are payable solely from available revenues of SMUD’s Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Bonds (including the 2023 Series K Bonds) and the Subordinated Bonds. Drawings under the letters of credit, to the extent not repaid immediately from the proceeds of commercial paper or other available SMUD funds, are repayable with interest over a period of five years. The letters of credit currently expire in February and August of 2025. SMUD expects to pay all \$200,000,000 of outstanding principal amount of the Notes with the proceeds of the 2023D Subordinated Bonds and the 2023E Subordinated Bonds. See “PLAN OF FINANCE.”

SMUD has also previously issued its taxable and tax-exempt revolving notes pursuant to a revolving credit agreement with a commercial bank (collectively, the “Revolving Credit Facility”). As of

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\* Preliminary, subject to change.

May 1, 2023, no principal was outstanding under the Revolving Credit Facility. Currently, the aggregate principal amount that can be outstanding under the Revolving Credit Facility at any one time is limited to \$100,000,000. However, SMUD reserves the right to increase or decrease the aggregate principal amount that can be outstanding at any one time under the Revolving Credit Facility in the future. SMUD's payment obligations under the Revolving Credit Facility are payable solely from available revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Bonds (including the 2023 Series K Bonds) and the Subordinated Bonds. The current term of the Revolving Credit Facility expires in February 2026.

SMUD is responsible for the acquisition, generation, transmission and distribution of electric power to its service area, which includes most of Sacramento County and small portions of Placer and Yolo counties. For the year ended December 31, 2022, SMUD served a population of approximately 1.5 million with a total annual retail load of approximately 10,622 million kilowatt hours ("kWh"). SMUD owns and operates an electric system which, as of March 31, 2023, included generating facilities owned and operated by SMUD with an aggregate generating capacity of approximately 783 megawatts ("MW"), local gas-fired plants owned and operated by a joint powers authority and managed by SMUD with an aggregate generating capacity of approximately 1,081 MW, over which SMUD has exclusive control of dispatch, and purchased power with an aggregate generating capacity of approximately 1,314 MW and transmission and distribution facilities. SMUD's power requirements exceed its generating capacity and thus SMUD has agreements with others (including the Local Gas-Fired Plants as defined in APPENDIX A) for the purchase of a portion of its power requirements. See APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – POWER SUPPLY AND TRANSMISSION – Power Supply Resources." Continuing development of SMUD's business strategy in response to changing environmental and regulatory requirements has had, and is expected to continue to have, a major effect on SMUD's power supply planning. See APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – BUSINESS STRATEGY."

Pursuant to a Continuing Disclosure Agreement, dated the date of issuance of the 2023 Series K Bonds (the "Continuing Disclosure Agreement") between SMUD and the Trustee, SMUD will covenant for the benefit for the holders of the 2023 Series K Bonds and owners of beneficial interest in the 2023 Series K Bonds to provide certain financial information and operating data and to provide certain notices. See "CONTINUING DISCLOSURE UNDERTAKING" and APPENDIX F – "FORM OF CONTINUING DISCLOSURE AGREEMENT."

The information presented in this Introduction is qualified in its entirety by reference to this entire Official Statement and the documents summarized or described herein. This Official Statement, including the Appendices, summarizes the terms of the 2023 Series K Bonds, the Resolution and certain agreements, contracts and other arrangements, some of which currently exist and others of which may exist in the future. The summaries of and references to all documents, statutes, regulations and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each such document, statute, regulation or instrument.

Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in APPENDIX D – "SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION – Certain Definitions" or in the Resolution.

## **PLAN OF FINANCE**

The proceeds of the 2023 Series K Bonds will be used to (i) refund 2013B Refunded Bonds, outstanding in the principal amount of \$75,680,000, and (ii) pay certain costs associated with the issuance

of the 2023 Series K Bonds. The issuance of the 2023 Series K Bonds to refund the 2013B Refunded Bonds is a component of the Plan of Finance, as further described below. The issuance of the 2023 Series K Bonds to refund the 2013B Senior Bonds is not contingent upon the implementation of the other components of the Plan of Finance, and SMUD is not obligated to implement any of the components of the Plan of Finance.

### **Refunding of 2013B Refunded Bonds**

A portion of the proceeds of the 2023 Series K Bonds, together with other available funds, will be deposited in trust in an escrow fund (the “2013B Escrow Fund”) established under an escrow agreement between SMUD and the Trustee. The moneys so deposited will be invested in direct obligations of the United States of America (the “Federal Securities”), the interest on and principal of which will be sufficient to pay the interest on the 2013B Refunded Bonds due on August 15, 2023 (the “2013B Redemption Date”) and to redeem the 2013B Refunded Bonds on the 2013B Redemption Date. Upon deposit, all liability of SMUD with respect to the 2013B Refunded Bonds (except for the obligation of SMUD to pay the interest on and redemption price of the 2013B Refunded Bonds from moneys on deposit in the 2013B Escrow Fund) will cease. The holders of the 2013B Refunded Bonds will be entitled to payment from SMUD solely from moneys or Federal Securities on deposit in the 2013B Escrow Fund, and the 2013B Refunded Bonds will no longer be outstanding under the Resolution. The Federal Securities and moneys in the 2013B Escrow Fund will not secure the 2023 Series K Bonds and will not be available to pay the principal of or interest on the 2023 Series K Bonds.

In connection with the refunding of the 2013B Refunded Bonds, SMUD expects to terminate a forward starting interest rate swap agreement that was executed in June 2020 to hedge potential interest rate exposure relating to the future refunding of the 2013B Refunded Bonds. SMUD expects that it will receive a termination payment for the termination of the interest rate swap agreement. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Interest Rate Swap Agreements.*”

### **Issuance of 2023C Subordinated Bonds and Refunding of 2013A Refunded Bonds**

[Concurrently with the issuance of the 2023 Series K Bonds], SMUD expects to issue approximately \$132,020,000 in principal amount of the 2023C Subordinated Bonds. The 2023C Subordinated Bonds are expected to be issued as variable rate demand bonds bearing interest at daily rates, and supported by a liquidity facility in the form of a standby bond purchase agreement with TD Bank, N.A. The proceeds of the 2023C Subordinated Bonds are expected to be used to refund the 2013A Refunded Bonds. A portion of the proceeds of the 2023K Senior Bonds, together with other available funds, will be deposited in trust in an escrow fund (the “2013A Escrow Fund”) established under an escrow agreement between SMUD and the Trustee, in an amount sufficient to pay the interest on the 2013A Refunded Bonds due on August 15, 2023 (the “2013A Redemption Date”) and to redeem the 2013A Refunded Bonds on the 2013A Redemption Date. The moneys so deposited will be invested in direct obligations of the United States of America. The moneys and securities in the 2013A Escrow Fund will not secure the 2023 Series K Bonds and will not be available to pay the principal of or interest on the 2023 Series K Bonds.

In June 2020, SMUD had entered into a forward starting interest rate swap agreement to hedge potential interest rate exposure relating to the future refunding of the 2013A Refunded Bonds. The swap will become effective on July 12, 2023. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Interest Rate Swap Agreements.*”

## Issuance of 2023D Subordinated Bonds and 2023E Subordinated Bonds

[Concurrently with the issuance of the 2023C Subordinated Bonds], SMUD expects to issue the 2023D Subordinated Bonds and the 2023E Subordinated Bonds in the approximate principal amounts of \$[\_\_\_\_\_] and \$[\_\_\_\_\_] , respectively. The proceeds of the 2023D Subordinated Bonds and the 2023E Subordinated Bonds are expected to be used to finance and refinance certain improvements and additions to SMUD’s Electric System, including through the refunding of Notes in the outstanding principal amount of \$200,000,000\*. The 2023D Subordinated Bonds and the 2023E Subordinated Bonds are each expected to be issued in a term rate mode, bearing fixed rates during the initial term rate periods of [ ] years and [ ] years, respectively.

## Issuance of 2023F Subordinated Bonds and Refunding of 2019A Refunded Subordinated Bonds

[Concurrently with the issuance of the 2023C Subordinated Bonds,] SMUD also expects to issue the 2023F Subordinated Bonds in the principal amount of \$100,000,000\* to redeem the 2019A Refunded Subordinated Bonds on the date of delivery of the 2023F Subordinated Bonds. The 2023F Subordinated Bonds are expected to be issued in a term rate mode, bearing a fixed rate during the initial term rate period of [five] years.

## ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the 2023 Series K Bonds are as follows:

### Sources of Funds:

Principal Amount	\$
[Net] Original Issue [Premium/Discount]	
Interest Fund Release	
Interest Rate Swap Termination Payment	
SMUD Contribution	
Total Sources of Funds	<u>\$</u>

### Uses of Funds:

Deposit to 2013B Escrow Fund for 2013B Refunded Bonds	\$
Costs of Issuance (including Underwriters’ Discount)	
Total Uses of Funds	<u>\$</u>

## THE 2023 SERIES K BONDS

The 2023 Series K Bonds will mature in the years and amounts and bear interest at the rates set forth on the inside cover page hereof. Interest on the 2023 Series K Bonds will accrue from the date of delivery of the 2023 Series K Bonds, and will be payable on [August] 15, 20[23], and semiannually thereafter on each February 15 and August 15 (each, an “Interest Payment Date”) to the owners thereof as of the first day of the month (whether or not such day is a Business Day) in which an Interest Payment Date occurs (each, a “Record Date”).

The 2023 Series K Bonds will be issued in fully registered form and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New

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\* Preliminary, subject to change.



## Consent to Amendments to the Resolution

The purchasers of the 2023 Series K Bonds, by virtue of their purchase of the 2023 Series K Bonds, will consent to certain amendments to the Resolution (the “Proposed Amendments”). Such amendments are described in ***bold italic*** font herein under “SECURITY FOR THE BONDS – Rates and Charges” and “– Limitations on Additional Obligations Payable from Revenues” and in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION – Certain Definitions” and “– Reserve Fund for Certain Bonds.” The written consents to the Proposed Amendments of the holders and registered owners of at least 60% of the Bonds outstanding have been filed with SMUD or the Trustee, as required by the Resolution. However, while certain Bonds remain outstanding, SMUD must also obtain the written consents of certain bond insurers to implement the Proposed Amendments. SMUD expects to implement the Proposed Amendments when the written consents of such bond insurers are obtained or when the Bonds insured by such bond insurers are no longer outstanding. The final maturity date of the insured Bonds is July 1, 2024.

## Allocation of Revenues

After making an allocation of Revenues to Maintenance and Operation Costs and to Energy Payments not included in Maintenance and Operation Costs, the Treasurer of SMUD is required (subject to the last paragraph of this section) to set aside, on an equal priority with sums set aside for all other Parity Bonds, Net Revenues as follows:

**First:** To the Electric Revenue Bond Interest Fund, in approximately equal monthly installments on or before the first day of each month, an amount equal to at least one-fifth (1/5) of the aggregate amount of interest becoming due on the Bonds on the next succeeding semiannual interest payment date, until an amount sufficient to meet said interest payment is accumulated.

**Second:** To the Electric Revenue Bond Redemption Fund, to be set aside in the Principal Account and Sinking Fund, respectively, in approximately equal monthly installments on or before the first day of each month, an amount equal to at least one-tenth (1/10) of the aggregate amount of principal becoming due on serial Bonds and the aggregate minimum sinking fund payments required to be made with respect to term Bonds during the next ensuing 12 months, until an amount sufficient to meet the principal and sinking fund requirements on all Bonds outstanding is accumulated in said accounts, respectively.

**Third:** To the Electric Revenue Bond Reserve Fund, such amounts as any supplemental resolution authorizing the issuance of a series of Bonds may require to build up and maintain said fund.

If interest on Bonds of a series or maturity is payable more frequently than semiannually, the Treasurer of SMUD shall set aside out of Net Revenues in the Interest Fund such amounts as may be required to pay interest on the Bonds of such series or maturity on each interest payment date at least one month prior to such interest payment date. Allocation to the Electric Revenue Bond Redemption Fund and Electric Revenue Bond Reserve Fund shall be made as set forth above.

All remaining Revenues, after making the foregoing allocations, will be available to SMUD for all lawful SMUD purposes.



From time to time, SMUD may deposit in the Rate Stabilization Fund from such remaining Revenues such amounts as SMUD shall determine, provided that deposits in the Rate Stabilization Fund from remaining Revenues in any fiscal year may be made until (but not after) the date 120 days after the end of such fiscal year. SMUD may withdraw amounts from the Rate Stabilization Fund only for inclusion in Revenues for any fiscal year, such withdrawals to be made until (but not after) 120 days after the end of such fiscal year. All interest or other earnings upon deposits in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as Revenues. No deposit of Revenues to the Rate Stabilization Fund may be made to the extent such Revenues were included in any certificate submitted in connection with the issuance of additional bonds and withdrawal of the Revenues from the Revenues employed in rendering said certificate would have caused noncompliance with the additional bond provisions or to the extent withdrawals of the Revenues for any fiscal year would have reduced the debt service ratio for such fiscal year to or below 1.40:1.00. See APPENDIX A – “RATES AND CUSTOMER BASE – Rates and Charges” for a description of the balance in the Rate Stabilization Fund.

With respect to Bonds of a series issued on or after October 1, 2003 (including the 2023 Series K Bonds), notwithstanding the foregoing, so long as the Bonds of such series or maturity are outstanding, the supplemental resolution authorizing the issuance of such series shall require the Treasurer, out of Net Revenues received by SMUD, to set aside in the Interest Fund and the Principal Account, respectively, such amounts as may be required so that an amount equal to the amount of principal and/or interest becoming due and payable on the Bonds of such series or maturity on each interest payment date and principal payment date is on deposit in the Interest Fund and the Principal Account, respectively, at such time on or prior to such interest payment date or principal payment date as shall be specified in the supplemental resolution authorizing such Bonds.

### **Rates and Charges**

SMUD has covenanted in the Resolution to establish and at all times maintain and collect rates and charges for the sale or use of electric energy generated, transmitted, distributed or furnished by SMUD which, together with certain items of other income permitted under the Resolution, will yield Revenues at least sufficient, with respect to the ensuing 12 months, to pay and provide for all sums required for Maintenance and Operation Costs and Energy Payments not included in Maintenance and Operation Costs and, in addition, to provide an aggregate sum equal to at least 1.20 times the total amount required for the payment of principal and interest, together with any sinking fund or reserve fund payments, on the Bonds and all Parity Bonds, in each case during such 12 months.

For purposes of the calculations of payments to be made pursuant to the Resolution, the interest rates on Parity Bonds which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Parity Bonds bear a rate or rates of interest for a known period or periods of time, such rate or rates of interest for such period or periods and thereafter, for the portion of the calculation period not covered by such known period or periods, the Assumed Interest Rate.

For purposes of the above calculations of principal of and interest on Parity Bonds, if a Financial Products Agreement has been entered into by SMUD with respect to any Parity Bonds, interest on such Parity Bonds shall be included in the calculation of such principal and interest by including for each fiscal year or period an amount equal to the amount of interest payable on such Parity Bonds in such fiscal year or period at the rate or rates stated in such Parity Bonds plus any Financial Product Payments payable in such fiscal year or period minus any Financial Product Receipts receivable in such fiscal year or period; provided that in no event shall any calculation made pursuant to this clause result in a number less than zero being included in the calculation of such principal and interest.

For purposes of the above calculations of principal of and interest on Parity Bonds, Excluded Principal Payments shall be disregarded (but interest on the Parity Bonds to which such Excluded Principal Payments relate shall be included until but not after the stated due date when principal payments on such Parity Bonds are scheduled by their terms to commence) and Assumed Principal Payments and Assumed Interest Payments shall be included; and for purposes of the above calculations of interest on Parity Bonds, the interest rates on Parity Bonds which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Parity Bonds bear a rate or rates of interest for a known period or periods of time, such rate or rates of interest for such period or periods and thereafter, for the portion of the calculation period not covered by such known period or periods, the Assumed Interest Rate.

SMUD has full power to establish rates and charges for all SMUD services, and the levels of such rates are not subject to review or regulation by any other governmental agency, either federal or state.

***For purposes of the calculations specified in this section: (1) any calculation of principal of and interest on Parity Bonds for any period of time shall be reduced by the amount of any Subsidy that SMUD receives or expects to receive during such period of time relating to or in connection with such Parity Bonds; and (2) to the extent the calculation of principal of and interest on Parity Bonds is reduced by the Subsidy as provided in clause (1) of this paragraph, any calculation of Revenues for any period of time shall be reduced by the amount of any Subsidy received or expected to be received by SMUD with respect to or in connection with such Parity Bonds during such period of time.***

See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Build America Bonds Subsidy Payments*” for a description of the current Subsidy that SMUD receives with respect to certain Bonds.

See APPENDIX D hereto for the definitions of certain capitalized terms used in this section.

### **Limitations on Additional Obligations Payable from Revenues**

The Resolution provides that SMUD will not, so long as any Bonds are outstanding, issue any obligations payable in whole or in part from Revenues except the following:

1. Refunding bonds issued solely to refund all or part of the Bonds or Parity Bonds;
2. General obligation bonds or other securities secured by the full faith and credit of SMUD;
3. Additional revenue bonds (including additional Bonds under the Resolution and additional Parity Bonds), payable on a parity with the Bonds, with an equal lien and charge upon the Revenues, but only subject to the following conditions:
  - (a) Such additional revenue bonds shall have been authorized for and the proceeds therefrom required to be applied to additions, betterments, extensions or improvements to the Electric System (and necessary costs of issuance, interest during construction and reserve funds);
  - (b) The proceedings for the issuance of such additional revenue bonds shall require SMUD to fix and collect rates and charges in an amount not less, with respect to such bonds, than the amounts required with respect to Bonds issued under the Resolution;
  - (c) SMUD shall not then be in default under the Resolution or other resolutions authorizing the issuance of Parity Bonds; and

(d) The Trustee shall receive a certificate of SMUD to the effect (i) that Net Revenues, after completion of the improvements proposed to be financed by such additional revenue bonds, will be sufficient to pay the principal of and interest (and bond reserve fund requirements) on all Bonds and Parity Bonds then outstanding and on such additional revenue bonds; and (ii) that for a period of 12 consecutive months during the 24 months immediately preceding the issuance of the additional revenue bonds the Net Revenues have been at least equal to 1.25 times maximum annual debt service on all Bonds and Parity Bonds then outstanding and on such additional revenue bonds (after adjusting Net Revenues to include 75 percent of the estimated additional Net Revenues to be derived from an increase in rates and charges or from the acquisition of an existing revenue producing electric system); and

4. Revenue bonds junior and subordinate to the Bonds and Parity Bonds.

For purposes of the above calculations, Excluded Principal Payments shall be disregarded (but interest on the Parity Bonds to which such Excluded Principal Payments relate shall be included until but not after the stated due date when principal payments on such Parity Bonds are scheduled by their terms to commence) and Assumed Principal Payments and Assumed Interest Payments shall be included; and for purposes of the above calculations of interest on Parity Bonds, the interest rates on Parity Bonds which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Parity Bonds bear a rate or rates of interest for a known period or periods of time, such rate or rates of interest for such period or periods and thereafter, for the portion of the calculation period not covered by such known period or periods, the Assumed Interest Rate.

For purposes of the above calculations of principal of and interest on Parity Bonds, if a Financial Products Agreement has been entered into by SMUD with respect to any Parity Bonds, interest on such Parity Bonds shall be included in the calculation of such principal and interest by including for each fiscal year or period an amount equal to the amount of interest payable on such Parity Bonds in such fiscal year or period at the rate or rates stated in such Parity Bonds plus any Financial Product Payments payable in such fiscal year or period minus any Financial Product Receipts receivable in such fiscal year or period; provided that in no event shall any calculation made pursuant to this clause result in a number less than zero being included in the calculation of such principal and interest.

***For purposes of the calculations specified in this section: (1) any calculation of principal of and interest on Parity Bonds for any period of time shall be reduced by the amount of any Subsidy that SMUD receives or expects to receive during such period of time relating to or in connection with such Parity Bonds; and (2) to the extent the calculation of principal of and interest on Parity Bonds is reduced by the Subsidy as provided in clause (1) of this paragraph, any calculation of Net Revenues for any period of time shall be reduced by the amount of any Subsidy received or expected to be received by SMUD with respect to or in connection with such Parity Bonds during such period of time.***

See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Estimated Capital Requirements” for a description of SMUD’s projected capital requirements. Such capital requirements may be satisfied through the issuance of additional Bonds or Parity Bonds.

See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Build America Bonds Subsidy Payments*” for a description of the current Subsidy that SMUD receives with respect to certain Bonds.

See APPENDIX D hereto for the definitions of certain capitalized terms used in this section.

## **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

SMUD owns and operates an electric system that has provided retail electric service since 1946. SMUD's current service area is approximately 900 square miles, and includes the principal parts of Sacramento County and small portions of Placer and Yolo counties. For a full description of SMUD, its history, organization, operations, and financial performance, certain developments in the energy markets, certain factors affecting the electric utility industry, including impacts from the COVID-19 pandemic, and certain regulatory and other matters, see APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT."

### **ABSENCE OF LITIGATION REGARDING THE 2023 SERIES K BONDS**

SMUD is not aware of any action, suit or proceeding, threatened or pending, to restrain or enjoin the issuance, sale or delivery of the 2023 Series K Bonds, or in any way contesting or affecting the validity of the 2023 Series K Bonds or any of the proceedings of SMUD taken with respect to the 2023 Series K Bonds. SMUD is not aware of any action, suit or proceeding, threatened or pending, questioning the corporate existence of SMUD, or the title of the officers of SMUD to their respective offices, or the power and authority of SMUD to execute and deliver the 2023 Series K Bonds. For a description of certain litigation in which SMUD is involved, see APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – LEGAL PROCEEDINGS."

### **UNDERWRITING**

Barclays Capital Inc. ("Barclays"), as representative of itself [and BofA Securities, Inc. ("BofA") (each, an "Underwriter" and, collectively, the "Underwriters") have jointly and severally agreed, subject to certain customary conditions to closing, to purchase the 2023 Series K Bonds from SMUD at an aggregate purchase price of \$\_\_\_\_\_ (being the aggregate principal amount of the 2023 Series K Bonds, plus [net] original issue [premium/discount] of \$\_\_\_\_\_, and less Underwriters' discount of \$\_\_\_\_\_). The Underwriters will be obligated to purchase all 2023 Series K Bonds if any 2023 Series K Bonds are purchased. The Underwriters have agreed to make a public offering of the 2023 Series K Bonds at the initial offering prices set forth on the inside cover page hereof. The 2023 Series K Bonds may be offered and sold to certain dealers (including underwriters and other dealers depositing such bonds into investment trusts) at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriters.

BofA, an Underwriter, has entered into a distribution agreement with its affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"). As part of this arrangement, BofA may distribute securities to MLPF&S, which may in turn distribute such securities to investors through the financial advisor network of MLPF&S. As part of this arrangement, BofA may compensate MLPF&S as a dealer for its selling efforts with respect to the 2023 Series K Bonds.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for SMUD for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of, or issued for the benefit of, SMUD.

### **MUNICIPAL ADVISOR**

SMUD has retained PFM Financial Advisors LLC, as Municipal Advisor in connection with various matters relating to the delivery of the 2023 Series K Bonds. The Municipal Advisor assumes no responsibility for the accuracy, completeness or fairness of the information contained in this Official Statement. The Municipal Advisor is an independent advisory firm and is not engaged in underwriting or distribution of securities. The Municipal Advisor will receive compensation that is contingent upon the sale, issuance and delivery of the 2023 Series K Bonds.

### **SWAP ADVISOR**

SMUD has retained Evercrest Advisors, LLC, as Swap Advisor in connection with various matters relating to the termination of the interest rate swap entered into in anticipation of the issuance of the 2023 Series K Bonds. The Swap Advisor assumes no responsibility for the accuracy, completeness or fairness of the information contained in this Official Statement. The Swap Advisor is an independent advisory firm and is not engaged in underwriting or distribution of securities or the trading of interest rate swaps. The Swap Advisor will receive compensation that is contingent upon the sale, issuance and delivery of the 2023 Series K Bonds.

### **APPROVAL OF LEGAL PROCEEDINGS**

The validity of the 2023 Series K Bonds and certain other legal matters are subject to the approval of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD. The approving opinion of Bond Counsel will be delivered with the 2023 Series K Bonds in substantially the form appearing in APPENDIX E. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed on for the Underwriters by Nixon Peabody LLP, San Francisco, California, counsel to the Underwriters.

### **FINANCIAL STATEMENTS**

SMUD's audited, consolidated financial statements for the years ended December 31, 2022 and December 31, 2021 are included in APPENDIX B attached to this Official Statement. These financial statements have been audited by Baker Tilly Virchow Krause, LLP, Madison, Wisconsin (the "Auditor"), for the periods indicated and to the extent set forth in their report thereon and should be read in their entirety. SMUD has not requested nor did it obtain permission from the Auditor to include the audited, consolidated financial statements as an appendix to this Official Statement. Accordingly, the Auditor has not performed any procedures to review the financial condition or operations of SMUD subsequent to the date of its report included therein, nor has it reviewed any information contained in this Official Statement.

### **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD ("Bond Counsel"), based upon an analysis of existing laws, regulations, rulings and court decisions, and

assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2023 Series K Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the 2023 Series K Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the 2023 Series K Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on the 2023 Series K Bonds. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX E hereto.

[To the extent the issue price of any maturity of the 2023 Series K Bonds is less than the amount to be paid at maturity of such 2023 Series K Bonds (excluding amounts stated to be interest and payable at least annually over the term of such 2023 Series K Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the 2023 Series K Bonds which is excluded from gross income for federal income tax purposes and exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the 2023 Series K Bonds is the first price at which a substantial amount of such maturity of the 2023 Series K Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the 2023 Series K Bonds accrues daily over the term to maturity of such 2023 Series K Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such 2023 Series K Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such 2023 Series K Bonds. Beneficial Owners of the 2023 Series K Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2023 Series K Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such 2023 Series K Bonds in the original offering to the public at the first price at which a substantial amount of such 2023 Series K Bonds is sold to the public.]

2023 Series K Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a Beneficial Owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such Beneficial Owner. Beneficial Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the 2023 Series K Bonds. SMUD has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the 2023 Series K Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the 2023 Series K Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2023 Series K Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not

taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel's attention after the date of issuance of the 2023 Series K Bonds may adversely affect the value of, or the tax status of interest on, the 2023 Series K Bonds. Accordingly, the opinion of Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Bond Counsel is of the opinion that interest on the 2023 Series K Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of amounts treated as interest on, the 2023 Series K Bonds may otherwise affect a Beneficial Owner's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the 2023 Series K Bonds to be subject, directly or indirectly, in whole or in part, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals or clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the 2023 Series K Bonds. Prospective purchasers of the 2023 Series K Bonds should consult their own tax advisors regarding the potential impact of any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the 2023 Series K Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of SMUD, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. SMUD has covenanted, however, to comply with the requirements of the Code.

Bond Counsel's engagement with respect to the 2023 Series K Bonds ends with the issuance of the 2023 Series K Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend SMUD or the Beneficial Owners regarding the tax-exempt status of the 2023 Series K Bonds in the event of an audit examination by the IRS. Under current procedures, Beneficial Owners would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which SMUD legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the 2023 Series K Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the 2023 Series K Bonds, and may cause SMUD or the Beneficial Owners to incur significant expense.

Payments on the 2023 Series K Bonds generally will be subject to U.S. information reporting and possibly to "backup withholding." Under Section 3406 of the Code and applicable U.S. Treasury Regulations issued thereunder, a non-corporate Beneficial Owner of 2023 Series K Bonds may be subject to backup withholding with respect to "reportable payments," which include interest paid on the 2023 Series K Bonds and the gross proceeds of a sale, exchange, redemption, retirement or other disposition of the 2023 Series K Bonds. The payor will be required to deduct and withhold the prescribed amounts if (i) the payee fails to furnish a U.S. taxpayer identification number ("TIN") to the payor in the manner required, (ii) the IRS notifies the payor that the TIN furnished by the payee is incorrect, (iii) there has

been a “notified payee underreporting” described in Section 3406(c) of the Code or (iv) the payee fails to certify under penalty of perjury that the payee is not subject to withholding under Section 3406(a)(1)(C) of the Code. Amounts withheld under the backup withholding rules may be refunded or credited against a Beneficial Owner’s federal income tax liability, if any, provided that the required information is timely furnished to the IRS. Certain Beneficial Owners (including among others, corporations and certain tax-exempt organizations) are not subject to backup withholding. The failure to comply with the backup withholding rules may result in the imposition of penalties by the IRS.

## **CONTINUING DISCLOSURE UNDERTAKING**

Pursuant to the Continuing Disclosure Agreement, SMUD will covenant for the benefit of the holders and the “Beneficial Owners” (as defined in the Continuing Disclosure Agreement) of the 2023 Series K Bonds to provide certain financial information and operating data relating to SMUD by not later than 180 days after the end of each of SMUD’s fiscal years (presently, each December 31), commencing with the report for the year ending December 31, 2023 (the “Annual Report”), and to provide notices of the occurrence of certain listed events with respect to the 2023 Series K Bonds. The Annual Report will be filed by or on behalf of SMUD with the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access system (“EMMA”) and any notices of such listed events will be filed by or on behalf of SMUD with the MSRB through EMMA. The specific nature of the information to be contained in the Annual Report and the notices of listed events are set forth in the form of the Continuing Disclosure Agreement which is included in its entirety in APPENDIX F hereto. SMUD’s covenant will be made in order to assist the Underwriters in complying with Securities and Exchange Commission Rule 15c2-12.

[In a limited number of circumstances, certain of the annual reports, audited financial statements or listed event filings required to be made by SMUD during the last five years under its continuing disclosure undertakings were not connected to all of the CUSIP numbers of the bonds subject to the continuing disclosure undertakings. In addition, SMUD entered into two subordinated forward starting interest rate swaps in June 2020 and filed a notice of the interest rate swaps with the MSRB through EMMA in April 2020. A notice of rating upgrade on October 6, 2020, by Moody’s Investors Service of the Northern California Gas Authority No. 1 Gas Project Revenue Bonds, Series 2007B, was also not filed until October 28, 2020.]

## **RATINGS**

Fitch Ratings, Inc. (“Fitch”) and S&P Global Ratings (“S&P”) have assigned ratings of [“AA (stable outlook)” and “AA (stable outlook)”,] respectively, to the 2023 Series K Bonds. Such ratings reflect only the views of such organizations and are not a recommendation to buy, sell or hold the 2023 Series K Bonds. Explanations of the significance of such ratings may be obtained only from the respective rating agencies. SMUD has furnished to Fitch and S&P certain information and materials concerning the 2023 Series K Bonds and itself. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that such ratings will continue for any given period or that they will not be revised downward, suspended or withdrawn entirely by the respective rating agencies, if in the judgment of such rating agency, circumstances so warrant. SMUD has not, other than as described under “CONTINUING DISCLOSURE UNDERTAKING” above, and the Underwriters have not undertaken any responsibility either to bring to the attention of the holders or beneficial owners of the 2023 Series K Bonds any proposed revision, suspension or withdrawal of any rating on the 2023 Series K Bonds or to oppose any such proposed revision, suspension or withdrawal. Any such downward revision, suspension or withdrawal of such ratings may have an adverse effect on the market price or marketability of the 2023 Series K Bonds.



## **VERIFICATION**

Upon delivery of the 2023 Series K Bonds, [ ] (the “Verification Agent”) will verify, from the information provided to it, the mathematical accuracy as of the date of the closing of the 2023 Series K Bonds of the computations contained in the provided schedules to determine that the anticipated receipts from the securities and cash deposits listed in the Underwriters’ schedules, to be held in escrow, will be sufficient to pay, when due, the interest on and redemption requirements of the 2013B Refunded Bonds. The Verification Agent will express no opinion on the assumptions provided to them.

## **MISCELLANEOUS**

This Official Statement includes descriptions of the terms of the 2023 Series K Bonds, power purchase agreements with certain other parties, pooling and other agreements, the Resolution and certain provisions of the Act. Such descriptions do not purport to be complete, and all such descriptions and references thereto are qualified in their entirety by reference to each such document.

Copies of the Resolution, which forms a contract with the Holders of the 2023 Series K Bonds, will be made available upon request.

This Official Statement has been duly authorized by the Board of Directors of SMUD.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Chief Executive Officer and General Manager

**APPENDIX A**

**INFORMATION REGARDING  
SACRAMENTO MUNICIPAL UTILITY DISTRICT**

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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
*Sacramento, California*

**BOARD OF DIRECTORS**

Heidi Sanborn, President  
Rosanna Herber, Vice President  
Brandon Rose  
Nancy Bui-Thompson  
Gregg Fishman  
Rob Kerth  
Dave Tamayo

**OFFICERS AND EXECUTIVES**

Paul Lau, Chief Executive Officer and General Manager  
Frankie McDermott, Chief Operating Officer  
Jennifer Davidson, Chief Financial Officer  
Brandy Bolden, Chief Customer Officer  
Suresh Kotha, Chief Information Officer  
Jose Bodipo-Memba, Chief Diversity Officer  
Scott Martin, Chief Strategy Officer  
Laura Lewis, Chief Legal and Government Affairs Officer and General Counsel  
Lora Anguay, Chief Zero Carbon Officer  
Farres Everly, Chief Marketing & Communications Officer  
Russell Mills, Treasurer  
Lisa Limcaco, Controller

## INTRODUCTION

### General

The Sacramento Municipal Utility District (“SMUD”) owns and operates an electric system that has provided retail electric service since 1946. SMUD’s current service area is approximately 900 square miles, and includes the principal parts of Sacramento County and small portions of Placer and Yolo counties. See “THE SERVICE AREA AND ELECTRIC SYSTEM – The Service Area.”

### Independent Governance

SMUD is an independently run community-owned organization. SMUD is not required by law to transfer any portion of its collections from customers to any local government.

SMUD is governed by a Board of Directors (the “Board”), which consists of seven directors elected by ward for staggered four-year terms. The Board determines policy and appoints the Chief Executive Officer and General Manager, who is responsible for SMUD’s overall management and day-to-day operations. The Chief Executive Officer and General Manager is responsible for the hiring and removal of all employees, other than the Chief Legal and Government Affairs Officer and General Counsel, the Internal Auditor and the Special Assistant to the Board, who are hired and may be removed only by the Board. The employment status of nearly all SMUD employees is governed by a civil service system administered by the Chief Executive Officer and General Manager.

The Board elects its President and Vice President annually to take office in January. The current members of the Board are as follows:

Name	Occupation	Ward	Term Expires
Brandon Rose.....	Air Pollution Specialist, California Environmental Protection Agency	Ward 1	December 31, 2024
Nancy Bui-Thompson.....	Chief Information Officer, Wellspace Health	Ward 2	December 31, 2024
Gregg Fishman .....	Communications Specialist	Ward 3	December 31, 2026
Rosanna Herber, Vice-President...	Retired Utility Director	Ward 4	December 31, 2026
Rob Kerth .....	Business Owner	Ward 5	December 31, 2024
Dave Tamayo.....	Retired Environmental Specialist	Ward 6	December 31, 2026
Heidi Sanborn, President .....	Executive Director, National Stewardship Action Council	Ward 7	December 31, 2026

SMUD’s senior management consists of the following executives:

**Chief Executive Officer & General Manager.** Paul Lau was named chief executive officer and general manager (“CEO & GM”) of SMUD in October 2020. He reports to the SMUD Board of Directors. As CEO & GM, he leads the sixth largest community-owned electric utility in the nation, serving a population of approximately 1.5 million residents and managing a \$2.1 billion budget. Mr. Lau previously served as SMUD’s Chief Grid Strategy & Operations Officer and has held several other executive leadership positions during his 41-year career at SMUD. He serves on several national and local boards, including the Large Public Power Council, California Municipal Utilities Association, American Public Power Association, and Smart Electric Power Alliance, and as a Commissioner of the Balancing Authority of Northern California (“BANC”). A registered professional electrical engineer in the State of California

(the “State”), Mr. Lau received his bachelor’s degree in electrical power engineering from California State University, Sacramento.

**Chief Customer Officer.** Brandy Bolden reports to the CEO & GM and oversees SMUD’s Customer and Community Services business unit. She is responsible for customer experience delivery across our residential and commercial customer segments. She provides leadership and oversight of customer operations including customer care and revenue management, business intelligence, strategic account management, customer experience and segmentation strategy, channel management, customer program and service delivery, and special assistance. She is also responsible for commercial development and business attraction and oversees Community Energy Services, which provides services and support for community choice aggregators. Since joining SMUD in 2003, Brandy has demonstrated strong leadership and held a variety of senior leadership roles, including leading the Customer & Community Services project management office and the dual role of director of Customer Care and Revenue Operations. Ms. Bolden led the team responsible for implementing time-of-day rates, streamlining the meter-to-cash processes, delivering key billing and payment experience enhancements and recognizing operational efficiencies that resulted in sustained annual savings for SMUD. Ms. Bolden holds a Bachelor of Arts in Sociology from University of California, Davis.

**Chief Information Officer.** Suresh Kotha reports to the CEO & GM and is responsible for SMUD’s information technology strategy, operations, infrastructure, IT Project Management Office, enterprise innovation process, and cybersecurity. More recently, Mr. Kotha has been leading many technology efforts that are integral to developing a grid of the future that will help us achieve our zero-carbon goal, including our Advanced Distribution Management System, the software platform that supports the full suite of distribution management and optimization, and next-generation network upgrades. Mr. Kotha joined SMUD in 2002 as a principal technical developer, with responsibility for designing and leading implementation and upgrades of multiple technology systems, including the SAP software platform and our meter-to-cash systems. He holds a Master of Technology in Computer Science from Jawaharlal Nehru Technology University and a Bachelor of Engineering in Electronics & Communications Engineering from Gulbarga University.

**Chief Diversity Officer.** Jose Bodipo-Memba reports to the CEO & GM and is responsible for human resources, workforce diversity and inclusion, workforce business planning and SMUD’s Sustainable Communities program. Mr. Bodipo-Memba joined SMUD in 2010 as an environmental specialist and became manager of Environmental Services in 2016. He most recently served as SMUD’s first director of Sustainable Communities. Mr. Bodipo-Memba holds a Bachelor of Arts degree in history from University of California, Berkley and Masters of Business Administration from Drexel University.

**Chief Strategy Officer.** Scott Martin reports to the CEO & GM and is responsible for looking holistically at all strategies across the company and driving prioritization including zero carbon, rates and pricing, enterprise strategic planning and enterprise prioritization. Mr. Martin is a seasoned executive with more than 30 years of experience. Prior to assuming this role, Mr. Martin was a director for resource planning and new business strategy. Previous experience also includes customer strategy planning supervisor. Mr. Martin joined SMUD in 1999 and holds a Bachelor of Arts degree in economics from the University of California, Berkeley and a master of arts degree in economics from the University of Nevada, Las Vegas.

**Chief Legal & Government Affairs Officer and General Counsel.** Laura Lewis was named general counsel for SMUD in April 2014. In this position she serves as chief lawyer and manages SMUD’s legal office and its staff of eight attorneys. She also serves as the secretary to SMUD’s elected board of directors. She reports to the Board and to the CEO & GM and has responsibility for all legal matters in which SMUD is a party to, or has an interest in. Ms. Lewis also oversees SMUD’s government affairs and



reliability compliance department. In this capacity, she is responsible for management and coordination of all legislative matters and regulatory requirements affecting SMUD at the state and federal level, including the FERC-NERC electric reliability standards. Ms. Lewis joined SMUD in 1997 as a staff attorney, serving in that capacity through 1999, after which she moved to the San Francisco law firm Davis Wright Tremaine. In 2002, she returned to SMUD as a senior attorney. In 2010, she became assistant general counsel and in 2013 was appointed chief assistant general counsel. She holds a juris doctorate from McGeorge School of Law, where she won membership in the Order of the Coif honor society. She holds a bachelor's degree in political science from the University of California, San Diego and is a member of the American Bar Association, the Energy Bar Association, and the State Bar of California.

**Chief Operating Officer.** Frankie McDermott reports to the CEO & GM and is responsible for providing strategic leadership and tactical oversight related to the safe and reliable transmission and delivery of energy to customers, ensuring efficient planning, construction, operation and maintenance of transmission, and distribution facilities. This position has primary responsibility for the processes and functions related to system reliability and operations across SMUD. The Chief Operating Officer is also the safety leader for the enterprise, leader of operational efficiency and responsible for all non-IT capital investments. Prior to this role, Mr. McDermott served as Chief Energy Delivery Officer and Chief Customer Officer, responsible for SMUD's overall retail strategy. From 2010 to 2014, he served as customer services director, which included managing relationships with customer segments as SMUD moved forward with smart-grid technologies. Prior to that, he served as manager of enterprise performance and held positions in supply chain and in general services. Before joining SMUD in 2003, Mr. McDermott served in management roles in the semiconductor industry at NEC Electronics in Roseville, California and in Ireland. After engineering school in Ireland, he earned an MBA from Golden Gate University and completed the Advanced Management Program at the Haas School of Business at the University of California Berkeley.

**Chief Zero Carbon Officer.** Lora Anguay reports to the CEO & GM and is responsible for leadership oversight of SMUD's Energy Supply which includes Energy Trading and Contracts and SMUD's Power Generation Assets. This role is also responsible for the delivery of SMUD's plan to provide 100% carbon free energy resources by 2030. This includes obtaining new grants and partnerships, overseeing research and development, designing distributed energy resource programs, enabling processes to settle distributed energy transactions with SMUD's customers and transitioning SMUD's power generation assets and energy contracts to zero carbon resources. Prior to assuming this role, Ms. Anguay was the director of Distribution Operations & Maintenance and was responsible for the day-to-day operations of SMUD's electric distribution grid. Before that she was an engineering designer, process control supervisor, project manager for smart meter deployment, a senior project manager for smart grid distribution automation and supervisor in Grid Assets. Before SMUD, she worked for Oracle Corporation as a finance manager and is a veteran who served in the United States Coast Guard. Ms. Anguay joined SMUD in 2004 and holds a Bachelor of Science degree in business administration from California State University, Sacramento.

**Chief Financial Officer.** Jennifer Davidson reports to the CEO & GM and is responsible for corporate accounting, procurement, treasury operations, risk management, and planning and budgets functions as well as key corporate services, including facilities, security, emergency operations and warehouse and fleet. Ms. Davidson joined SMUD in 2006 and previously served as director of budget, enterprise performance and risk management. Before joining SMUD, Ms. Davidson held management positions with investor-owned utility Southern California Edison and software and services provider Amdocs. She holds a bachelor's degree in geography from the University of California, Los Angeles.

**Chief Marketing & Communications Officer.** Farres Everly reports to the CEO & GM and since 2009 has been responsible for oversight of the SMUD brand, all external and internal strategic marketing and communications activities and campaigns and SMUD's outreach efforts to the community and the

State's capital region, including volunteerism, events and sponsorships. He previously served as the Director Marketing and Communications. Prior to joining SMUD, Mr. Everly held marketing leadership positions at VSP Vision Care, The Money Store and the Sacramento Metropolitan Chamber of Commerce. He holds a bachelor's degree in Journalism from California State University, Chico.

***Treasurer.*** Russell Mills reports to the CFO. He oversees all treasury operations, including debt and cash management, banking, financial planning and forecasting, enterprise and commodity risk management, property and casualty insurance, and is responsible for developing and implementing capital borrowing strategies. Mr. Mills also serves as treasurer for the Transmission Agency of Northern California ("TANC"), the Central Valley Financing Authority ("CVFA"), the Sacramento Cogeneration Authority ("SCA"), the Sacramento Municipal Utility District Financing Authority ("SFA"), the Sacramento Power Authority ("SPA"), the Northern California Gas Authority No. 1 ("NCGA"), the Northern California Energy Authority ("NCEA") and BANC. Before joining SMUD in 2018 as Treasurer, Mr. Mills served as Chief Financial Officer of Southern California Public Power Authority. He also served as the Chief Financial Officer of the Power Supply Program at the California Department of Water Resources. He holds an MBA from Loyola Marymount University, and a bachelor's degree in economics from Towson University in Baltimore, Maryland. Mr. Mills also holds the Energy Risk Professional (ERP) designation and is a CFA level II candidate.

***Controller.*** Lisa Limcaco reports to the CFO and is responsible for accounting and financial reporting at SMUD. Prior to her appointment as controller in 2020, Ms. Limcaco served as an assistant controller, manager of customer value, performance and projects, senior energy commodity specialist and as principal accountant for SMUD's joint powers authorities. Ms. Limcaco also serves as controller for TANC, CVFA, SCA, SFA, SPA, NCGA, NCEA and BANC. Before joining SMUD in 2010 as a senior accountant, Ms. Limcaco had 12-years' experience as the Director of Accounting and controller for a food service provider in Sacramento and over 13-years' experience in public accounting including audit manager at Price Waterhouse LLP. Ms. Limcaco holds a bachelor's degree in accounting from the University of Hawaii, a Master of Business Administration from Sacramento State University and is a Certified Public Accountant in the State.

## **THE SERVICE AREA AND ELECTRIC SYSTEM**

### **The Service Area**

SMUD is the primary distributor of electric power within an area of approximately 900 square miles in central California. The service area includes the State Capital, Sacramento, the populous areas principally to the northeast and south of the City of Sacramento (the "City" or "Sacramento") and the agricultural areas to the north and south. The City is located 85 miles northeast of San Francisco.

SMUD's electric system supplies power to a population of approximately 1.5 million with a total annual retail load of approximately 10,622 million kilowatt-hours ("kWh") for the year ended December 31, 2022. As the capital of the nation's most populous state, Sacramento benefits from the historically stabilizing influence of a large government sector. Sacramento is home to the State government headquarters, the Sacramento County seat, the City government and various special districts that combine to make government the largest single employment sector in the Sacramento area. Information technology, transportation, education and health services, leisure and hospitality, and construction round out the other major sectors of employment and industry in the area.

SMUD's annual peak load has averaged 3,113 Megawatts ("MW") over the last three years, with SMUD's record peak load of 3,299 MW occurring on July 24, 2006. In 2022, SMUD recorded its second highest peak load of 3,292 MW. SMUD reviews its load forecast, at a minimum, on an annual basis.

## **The Electric System**

SMUD owns and operates an integrated electric system that includes generation, transmission and distribution facilities.

SMUD supplies power to its bulk power substations through a 230 kilovolt (“kV”) and 115 kV transmission system. This system transmits power from SMUD’s generation plants and interconnects with Pacific Gas & Electric (“PG&E”) and the Western Area Power Administration (“WAPA”). Power is distributed throughout Sacramento County via a 69 kV sub-transmission system with the exception of the City’s downtown area, which is served from the 115 kV transmission system. The downtown area is served from 115/12 kV and 115/21 kV substations. The distribution system serving the remainder of SMUD’s service territory is comprised of 69/12 kV substations with overhead and underground 12 kV distribution circuits.

## **BUSINESS STRATEGY**

### **General**

SMUD’s Board of Directors has established the following purpose and vision statements: “SMUD’s purpose is to enhance the quality of life for our customers and community by providing reliable and affordable electricity, and leading the transition to a clean energy future. SMUD’s vision is to be a trusted and powerful partner in achieving an inclusive, zero carbon economy. SMUD will leverage its relationships to accelerate innovation, ensure energy affordability and reliability, protect the environment, eliminate greenhouse gas emissions, catalyze economic and workforce development, promote environmental justice, and enhance community vitality for all.” The Board has adopted a set of Strategic Directions with related metrics, which it considers essential for the success of SMUD and for serving SMUD’s customers. These include competitive rates, access to credit markets, reliability, customer relations, environmental leadership, resource planning, enterprise risk management and safety. Some of the general elements in SMUD’s business strategy are:

- developing and maintaining a sustainable and reliable power supply to meet demand growth consistent with State mandates and the Board’s directions for renewable energy and the reduction of carbon emissions to zero by 2030. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *2030 Zero Carbon Plan*”;
- working closely with customers to provide the information, tools and incentives to assist them to more efficiently manage energy use, which will contribute to meeting greenhouse gas (“GHG”) emission targets and managing needle peak demand requirements (those 40 or so hours of the year with extreme temperatures when customer demand surges by up to 400 additional MW);
- managing price, volumetric and credit risks associated with energy and natural gas procurement;
- attracting, developing and retaining a diverse, skilled and engaged workforce that reflects SMUD’s values and is committed to achieving SMUD’s mission;
- retaining local decision making authority and operational independence; and
- collaborating regionally to attract new businesses and grow existing business to diversify and strengthen the Sacramento economy.

SMUD’s long-range business strategy focuses in part on ensuring financial stability by establishing rates that provide an acceptable fixed charge coverage ratio on a consolidated basis, taking into consideration the impact of capital expenditures and other factors on cash flow. SMUD’s Board policy sets

a minimum fixed charge coverage ratio of 1.50 times for annual budgets, though it generally plans to meet a minimum fixed charge coverage ratio of 1.70 times. Over the past ten years, the actual fixed charge coverage ratio has averaged 2.06 times on a consolidated basis. SMUD also manages its liquidity position by planning for a minimum of 150 days cash on hand and planning to maintain at least \$150 million of available capacity under its commercial paper and line of credit program. SMUD's commercial paper and line of credit program is currently authorized for \$400 million aggregate principal amount outstanding at any one time. As of March 1, 2023, SMUD had \$200 million aggregate principal amount of its commercial paper notes outstanding and \$200 million of the authorized aggregate principal amount of its commercial paper and line of credit program available for use. SMUD uses cash on hand and commercial paper and a line of credit to fund capital expenditures, then issues debt to reimburse itself for cash expended for qualified capital expenditures or to pay down the outstanding principal amount of its commercial paper program and line of credit. Over the past ten years, the days cash on hand has averaged 222. The resolutions securing SMUD's Senior Bonds and Subordinated Bonds (each as defined under the caption "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS" below) do not require SMUD to maintain a minimum fixed charge coverage ratio, minimum days cash on hand or minimum available capacity under its commercial paper program and line of credit.

In addition, SMUD's business strategy focuses on servicing its customers in a progressive, forward-looking manner, addressing current regulatory and legislative issues and potential competitive forces.

### **Serving SMUD's Customers**

SMUD continually looks for ways to better serve and partner with its customers to further strengthen customer loyalty, while providing reasonable product pricing. SMUD also has a focused effort to assist and incentivize customers to manage energy use more efficiently, which will contribute to meeting GHG emission targets and managing peak demand requirements as noted below.

***Digital Enhancements.*** Customers are increasingly turning to digital channels including SMUD's mobile application, SMUD.org, e-mail and social media to interact and do business with SMUD. SMUD has delivered many digital enhancements, including bill pay functionality; online payment arrangements; start/stop/transfer move service; view of energy usage, chat, an enhanced outage map including a newly launched meter test functionality; and the SMUD Energy Store, which is an online marketplace for energy-related products. SMUD plans to continue efforts to provide more personalized digital customer experiences.

***Advanced Metering, Infrastructure and Rate Design.*** As a community-owned organization, SMUD is dedicated to providing the tools and transparency in customer energy usage to enable customers to easily and positively affect energy usage, energy cost, and climate change. In 2012 SMUD installed smart technology, including 617,000 digital communicating smart meters, distribution automation systems and equipment to facilitate load management. The advanced technology has allowed SMUD to deliver tools such as text and e-mail bill alerts and online energy usage comparison charts to help customers manage energy use. SMUD has leveraged smart grid investments to improve reliability, reduce losses, reduce power quality issues and improve customer service through better, more timely information.

***Time-of-Day Rates.*** On June 15, 2017, the Board approved time-of-day ("TOD") rates as the standard rate for residential customers. The residential rate transition began in the fourth quarter of 2018 and was completed in the fourth quarter of 2019.

All of SMUD's business customers are also on time-based rates. On June 24, 2019, the Board approved an update to the commercial TOD rates to improve consistency and better align commercial rates with current energy market prices. Due to the impacts of the COVID-19 pandemic on SMUD's operations

and priorities, on August 20, 2020, the Board postponed the implementation of the commercial rate restructure for one year. The transition was completed in the first quarter of 2022. See “RATES AND CUSTOMER BASE – Rates and Charges.”

**Renewable Options.** SMUD’s customers have been increasingly interested in distributed energy resources, mainly through the installation of solar systems. As of January, 2023, approximately 47,615 of SMUD’s residential and commercial customers, approximately 7% of retail customers, had installed solar systems, representing approximately 324 MW of solar installations.

As the cost of energy storage continues to decline, SMUD anticipates an increase in behind-the-meter energy storage, mainly through the installation of battery storage systems. As of January 2023, approximately 1,183 of SMUD’s residential and commercial customers, approximately [2]% of retail customers, had installed storage systems, representing approximately 8 MW of storage.

As another option for solar, SMUD’s SolarShares® pilot program (the “SolarShares Pilot”) was established as a cost-effective and convenient way for commercial customers to meet their energy needs from solar power. The SolarShares Pilot offered SMUD commercial customers the opportunity to receive solar power without upfront costs or equipment installation through 5-, 10- or 20-year purchase contracts. Customers that entered into purchase contracts under the SolarShares Pilot receive up to half of their power from a utility-scale solar system. SMUD supplies solar power for the SolarShares Pilot either by building and maintaining utility-scale solar systems or by procuring solar power from third parties through power purchase agreements. The SolarShares Pilot generation was approximately 3.0% of retail sales in 2022. As of April 30, 2021, SMUD had completed the SolarShares Pilot and is not entering into new purchase contracts under the SolarShares Pilot.

Since January 2020, the California Building Code has required all newly constructed residential buildings under three stories to be powered by photovoltaic solar systems. A new home satisfies this requirement if it installs on-site solar or participates in an approved community solar or energy storage program. In February 2020, SMUD obtained approval from the California Energy Commission (“CEC”) to administer its own community solar program, called Neighborhood SolarShares® (“Neighborhood SolarShares”). SMUD’s Neighborhood SolarShares program can be used by developers of new low-rise residential buildings to satisfy the mandatory solar requirement. See also “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Rooftop Solar Mandate*.” Starting in 2023, the California Building Code’s mandatory solar requirement extends beyond low-rise residential properties, and other changes to the California Building Code’s community solar regulations took effect. SMUD revised its program to align with the new regulations and, in May 2023, obtained approval from the CEC to continue offering its Neighborhood SolarShares compliance option to newly constructed low rise residential homes in its service territory.

In addition to the SolarShares Pilot and Neighborhood SolarShares, SMUD maintains a voluntary green energy pricing program called Greenergy® (“Greenergy”). The Greenergy program allows customers the opportunity to pay an additional amount per month to ensure that either all or part of their electricity comes from green or carbon free energy sources. In 2022, the program allocated Renewable Energy Credits (“RECs”) equivalent to approximately 4.9% of retail sales to its participating customers.

**Energy Efficiency.** To further assist customers in managing energy usage and reducing regional carbon emissions and air pollution, SMUD offers an extensive array of energy efficiency and building electrification programs and services including financial incentives, loans, energy audits and education. In addition, SMUD has partnered with local developers to incorporate energy efficiency and all-electric construction measures into new residential and commercial construction, which helps developers plan and design efficient, cost-effective and low or zero-emission buildings. As part of SMUD’s 2019 Integrated

Resource Plan (“IRP”), SMUD set a goal for regional carbon emissions through transport and building electrification that aims to reduce carbon emissions in buildings and transport by 64% over the next 20 years. SMUD’s focus on electrification is continued in the Zero Carbon Plan (defined and discussed below). SMUD was the first electric utility in the country to set its efficiency goals based on carbon reductions, allowing building electrification and energy efficiency to both count toward meeting SMUD’s efficiency goals. This is a significant opportunity, as converting a typical home today to all-electric saves more than three times the carbon emissions compared to doing a major energy efficiency upgrade alone to the same building. See “POWER SUPPLY AND TRANSMISSION – Projected Resources.”

## **Sustainable Power Supply and Transmission**

Maintaining a sustainable power supply entails focusing efforts on researching, promoting and implementing new renewable energy technologies and sources to meet SMUD’s long-term commitment to reducing carbon emissions and providing a reliable energy supply. SMUD defines a sustainable power supply as one that reduces SMUD’s GHG emissions to serve retail customer load to zero by 2030. See “– 2030 Zero Carbon Plan” below. SMUD is planning to achieve zero GHG emissions to serve retail customer load through investments in energy efficiency, clean distributed energy resources, renewables portfolio standard (“RPS”) eligible renewables, energy storage, large hydroelectric generation, clean and emissions free fuels, and new technologies and business models. Additionally, SMUD plans to continue pursuing GHG emissions reductions through vehicle, building and equipment electrification. At the same time, SMUD’s plans for maintaining a sustainable power supply include assuring the reliability of SMUD’s electric system, minimizing environmental impacts on land, habitat, water and air quality, and maintaining competitive rates relative to other electricity providers in the State.

A number of bills affecting the electric utility industry have been enacted by the State Legislature. In general, these bills regulate GHG emissions and encourage greater investment in energy efficiency and sustainable generation alternatives, principally through more stringent RPS. See “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings” herein.

**2030 Zero Carbon Plan.** In July 2020, the Board declared a climate emergency and adopted a resolution calling for SMUD to take significant and consequential actions to reduce its carbon footprint by 2030. On April 28, 2021, the Board approved SMUD’s 2030 Zero Carbon Plan (the “Zero Carbon Plan”). The Zero Carbon Plan is intended to be a flexible roadmap for SMUD to eliminate carbon emissions from its electricity production by 2030 while maintaining reliable and affordable service. To achieve these goals the Zero Carbon Plan is focused on four main areas: natural gas generation repurposing, proven clean technologies, new technologies and business models and financial impacts and options. SMUD plans to revisit the Zero Carbon Plan annually.

The natural gas generation repurposing focus of the Zero Carbon Plan calls for exploring the replacement of two of SMUD’s five Local Gas-Fired Plants (as defined herein) and the retooling of the other three Local Gas-Fired Plants. See “POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants*.” Based on SMUD’s studies to date, SMUD estimates that McClellan (as defined herein) and the Campbell Soup Project (as defined herein) can be replaced by mid-decade. Final decisions about the replacement of these two Local Gas-Fired Plants will be based on additional reliability studies and engagement with the community. As part of the Zero Carbon Plan, SMUD is also exploring converting the Carson Project (as defined herein) and the Procter & Gamble Project (as defined herein) to reliability use operations only and investigating the use of alternative fuels like Renewable Natural Gas-biomethane (RNG-biomethane), hydrogen and other biofuels for the Carson Project, the Procter & Gamble Project, and the Consumnes Power Plant (as defined herein). In addition, SMUD is investigating new technologies such as long duration energy storage, carbon capture and sequestration, hydrogen and other

clean fuel alternatives to help support natural gas repurposing. All final generator configurations are subject to reliability assessments.

The proven clean technologies focus of the Zero Carbon Plan calls for SMUD to procure approximately 1,100 to 1,500 MW of utility-scale solar photovoltaic (“PV”) generating capacity, 700 to 1,100 MW of local utility-scale battery storage, 300 to 500 MW of wind generating capacity, and 100 to 220 MW of geothermal generating capacity. The Zero Carbon Plan also estimates that customer installation of approximately 500 to 750 MW of behind-the-meter solar PV generating capacity and approximately 50 to 250 MW of behind-the-meter battery storage will assist SMUD with achieving the Zero Carbon Plan goals.

With respect to new technologies and business models, the Zero Carbon Plan focuses on evaluating, prioritizing and scaling the emerging technologies that SMUD expects will have the largest impact on reducing carbon in SMUD’s 2030 resource mix. SMUD is currently focused on various areas of technology and customer-focused programs, including electrification, education, demand flexibility, virtual power plants, vehicle-to-grid technology, and new grid-scale technologies. The Zero Carbon Plan forecasts that customer-owned resources and SMUD customer-focused programs will contribute between 360 and 1,300 MW of capacity to SMUD’s grid by 2030.

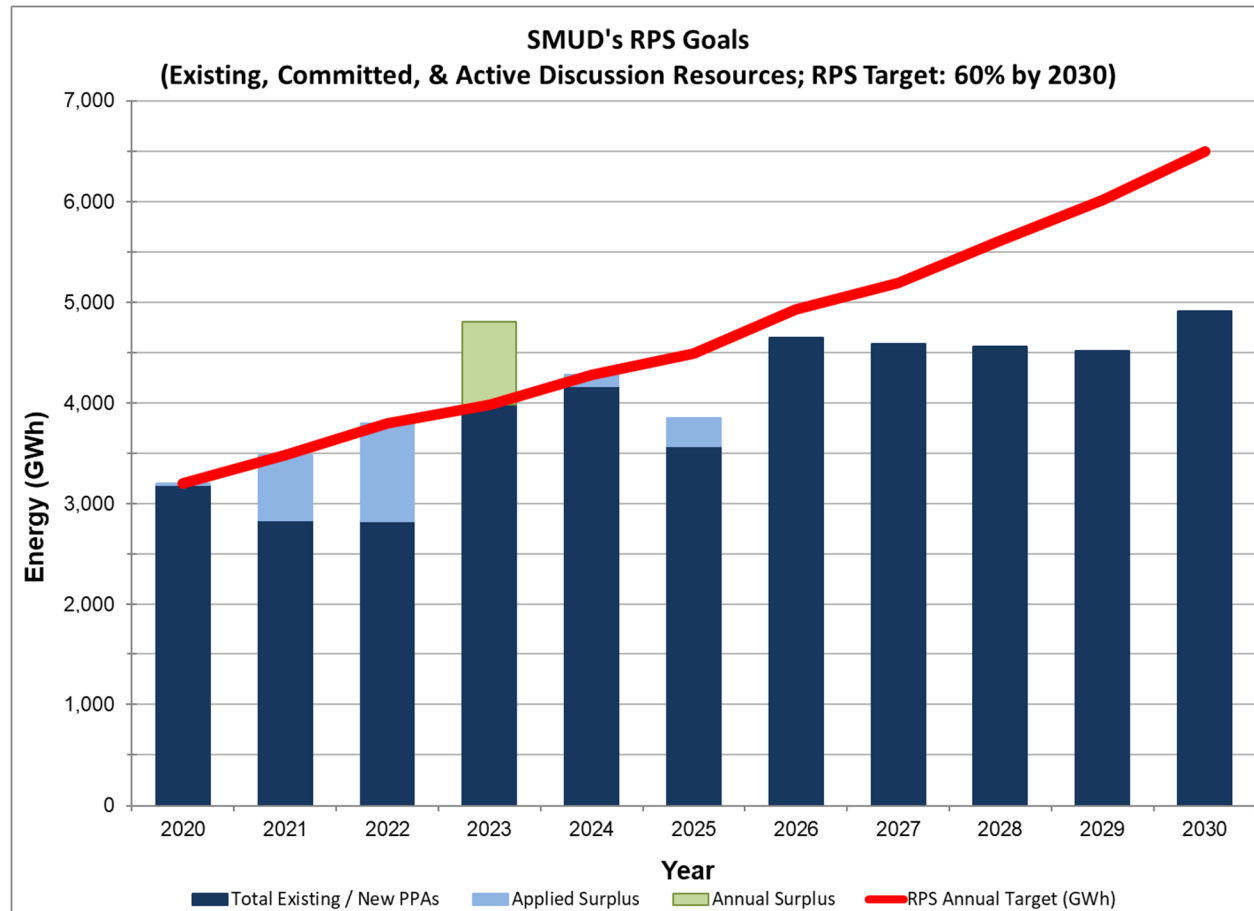
The financial impacts and options focus of the Zero Carbon Plan aims to keep SMUD rate increases at or below the rate of inflation while achieving SMUD’s goal of eliminating carbon emissions from its power supply by 2030. To pay for the expected costs of the Zero Carbon Plan and keep rate increases at or below the rate of inflation, the Zero Carbon Plan estimates the need for SMUD to realize between \$50 million and \$150 million of sustained annual savings. SMUD currently plans to achieve these sustained annual savings by exploring the implementation of operational savings strategies and pursuing partnership and grant opportunities.

While the ultimate impacts of the Zero Carbon Plan on SMUD’s financial results and operations are difficult to predict and are dependent on a variety of factors, such as the relative cost of procuring energy from clean technologies, the availability and relative cost of new technologies, and the adoption and implementation of energy efficiency and other measures by SMUD’s customers, such impacts could be material.

***Renewable Energy and Climate Change.*** The California Renewable Energy Resources Act, established by Senate Bill X1-2 (“SBX1-2”) and the Clean Energy and Pollution Reduction Act of 2015, enacted by Senate Bill 350 (“SB 350”) require that SMUD meets 33% of its retail sales from RPS-eligible renewable resources by 2020 and 50% of its retail sales from RPS-eligible renewable resources by 2030. Senate Bill 100 (“SB 100”), passed by the legislature and approved by then-Governor Brown on September 10, 2018, accelerates the RPS targets and establishes a new 60% target by 2030. The bill also created a planning goal to meet all of the State’s retail electricity supply with a mix of RPS-eligible and zero-carbon resources by December 31, 2045. See “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Renewables Portfolio Standards*” for a discussion of the State RPS requirements.

SMUD’s compliance with State RPS requirements is evaluated over 3 or 4-year compliance periods. SMUD met the State RPS requirements for the first compliance period (2011-2013) and second compliance period (2014-2016). The third compliance period (2017-2020) required SMUD to source one-third of its energy from renewable resources, and SMUD had sufficient RECs to meet the third compliance period requirements. SMUD filed its 2020 and third compliance period RPS compliance report with the CEC in the second quarter of 2021 and is awaiting verification of its submission from the CEC which is expected to occur by the end of 2023. As of the end of the third compliance period (2020), SMUD had

approximately 1.0 million surplus RECs available to help meet future RPS targets. SMUD expects to file its 2022 RPS compliance report by July 1, 2023, and due to increased load compared to forecast in 2022, and a delayed commercial online date for the NTUA solar project, expects to have provided 34.1% of its retail sales from RPS-eligible renewable resources in 2022, which is less than the interim 2022 RPS target of 38.5%. However, RPS compliance is determined by compliance period and not by individual years and SMUD anticipates that it has sufficient surplus procured and/or under contract resources in 2023 and 2024 to offset the 2022 shortfall. Therefore, SMUD expects to be in compliance with the RPS requirements for the fourth compliance period (2021 – 2024). In addition to meeting RPS standards, SMUD serves an additional 7.3% of its customer load with renewable energy through its voluntary SolarShares and Greenergy pricing programs described above. SMUD estimates that it has sufficient renewable energy deliveries, new power supply contract commitments, new power supply commitments under active discussion, and RPS-eligible surplus carryover to meet its RPS requirements through 2024. Additional resources have been identified in solicitations currently under way that are expected to provide sufficient RPS-eligible resources to cover most of SMUD’s RPS requirements through 2030. Future solicitations are expected to provide the additional resources to fill any remaining gaps. The following chart illustrates SMUD’s current RPS requirements through 2030 and its existing and committed resources, and its resources under active discussion that are expected to be utilized to meet those requirements.





In addition to procuring new sources, meeting the RPS requirements will require replacement of certain existing renewable contracts which expire in future years. While SMUD anticipates it will meet much of its renewable resource requirements through purchase contracts with third parties, it continues to explore additional options, including wind, solar, biomass, and geothermal developments, partnering with other utilities on future projects, and local development options. SMUD's resource forecast (see "POWER SUPPLY AND TRANSMISSION – Projected Resources") accounts for future renewable resources as a component of "Uncommitted Purchases." To meet SMUD's Zero Carbon Plan goals, SMUD anticipates meeting loads in 2030 with approximately 70-80% renewable resources, in addition to hydro and other new zero carbon technologies. See "*2030 Zero Carbon Plan*" above.

Given the intermittent nature of power from renewable resources such as wind and solar, SMUD is exploring and investing in options that provide the flexibility to manage the intermittency of such renewable resources. Potential options include energy storage resources, which SMUD has committed to as part of the Zero Carbon Plan, and expanding load management resources. Additionally, on April 3, 2019, SMUD, through its membership in BANC, a joint exercise of powers agency formed in 2009, and currently comprised of SMUD, the Modesto Irrigation District ("MID"), the City of Roseville ("Roseville"), the City of Redding ("Redding"), the City of Shasta Lake and the Trinity Public Utilities District, has commenced its participation in the California Independent System Operator Corporation ("CAISO") western energy imbalance market ("WEIM"). Participation in the WEIM benefits SMUD by providing it with broader access to balancing resources within the region to help manage its expanding renewable portfolio. In addition, other entities within the BANC Balancing Authority Area began participation in the WEIM on March 25, 2021. See "BUSINESS STRATEGY – Serving SMUD's Customers – *Operational Independence and Local Control*" and "POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements."

In 2018, SMUD's Board adopted a new IRP through a comprehensive public process and filed the approved IRP with the CEC on April 29, 2019 pursuant to the CEC's IRP guidelines. The approved IRP calls for a reduction in GHG emissions from SMUD's energy supply by more than 60% by 2030 relative to 1990 levels and a goal of net zero emissions by 2040 due, in part, to a significant investment in electrification of the local building and transportation sectors. The IRP was expected to reduce Sacramento's economy-wide GHG emissions by 70% relative to current levels. SMUD's Zero Carbon Plan, adopted in 2021, built upon the IRP and set a goal of zero carbon emissions by 2030. On September 14, 2022, SMUD submitted an updated IRP filing with the CEC to incorporate the goals set in the Zero Carbon Plan pursuant to the CEC's IRP guidelines. See "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *2030 Zero Carbon Plan*."

The State's carbon cap-and-trade market established pursuant to Assembly Bill 32 ("AB 32") began in 2013. See "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Greenhouse Gas Emissions*" for a discussion of AB 32 and the State's cap-and-trade program. SMUD anticipates that allowances allocated to SMUD will nearly equal SMUD's compliance obligations under normal water year conditions. Under low water year conditions, SMUD may need to purchase additional allowances to cover its compliance obligations, including carbon obligations related to wholesale energy sales from SMUD's natural gas power plants. As SMUD implements its clean power goals, SMUD expects its need for these allowances to decline.

There is scientific consensus that increasing concentrations of GHG have caused and will continue to cause a rise in temperatures in the State and around the world. The change in the earth's average atmospheric temperature, generally referred to as "climate change," is, among other things, expected to result in a wide range of changes in climate patterns, including increases in the frequency and severity of extreme weather events, including droughts and heat waves, more frequent incidences of wildfires, changes in wind patterns, sea level rise and flooding, any of which alone or in combination could materially

adversely affect SMUD's financial results or operations. See also "FACTORS AFFECTING THE REGION" and "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Other Factors." As described above, SMUD is actively working to meet its sustainable power supply goals, reduce its own GHG emissions, and assist the local governments in the territory it serves with their desired GHG reductions. In 2016, SMUD introduced the Pilot Natural Refrigerant Incentive Program, its first customer program providing incentives for GHG reduction in addition to kWh savings. SMUD is a founding member and active participant in the Capital Region Climate Readiness Collaborative, a public private partnership formed to better understand and plan for climate impacts expected in the region. SMUD is also an active member of the United States Department of Energy (the "DOE") Partnership for Energy Sector Climate Resilience. SMUD regularly reviews scientific findings related to climate change and in 2016 published its Climate Readiness Assessment and Action Plan. In 2024, SMUD is planning to update the Climate Readiness Assessment and Action Plan along with other climate resiliency actions.

***Energy Storage Systems.*** Assembly Bill 2514 ("AB 2514") requires the Board to re-evaluate energy storage goals every three years. In compliance with AB 2514, the Board established a target of 9 MW of energy storage procurement by December 31, 2020, which SMUD has procured. See "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Energy Storage Systems*" for further discussion of AB 2514. In September 2020, the Board directed that energy storage forecasts be implemented through SMUD's IRP process going forward. See "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*" above for a discussion of SMUD's IRP. SMUD is also evaluating how to couple utility-scale solar with utility-scale storage to support future system reliability needs and renewable energy goals.

***Meeting Peak Load.*** A significant consideration for SMUD will be how it addresses its system peak load. SMUD has implemented programs and tools, such as advanced metering, energy efficiency options, and TOD rates for residential customers, to help customers manage their costs while helping SMUD reduce its peak load. Analysis of 2021 data showed a reduction of approximately 115 MW, weather adjusted, for residential customers during the TOD peak period (5-8 p.m. local time). SMUD staff will continue to monitor the progress and results of the implementation of TOD rates and will use this information to inform future rate actions and load forecasts. See "BUSINESS STRATEGY – Serving SMUD's Customers – *Time-of-Day Rates.*"

On September 16, 2021, the Board approved an optional residential Critical Peak Pricing rate (the "Peak Pricing Rate"), which went into effect June 1, 2022. The Peak Pricing Rate is designed to reduce load by increasing the price of energy when the grid is most impacted, up to 50 hours per summer. In exchange, customers on the rate will receive a per kWh discount on summer Off-Peak and Mid-Peak rates. SMUD is also exploring the use of more distributed energy resources and demand response programs that could further reduce SMUD's system peak.

***Operational Independence and Local Control.*** A key component of SMUD's business strategy is focused on maintaining its independence in operating and maintaining its resources. As such, SMUD has taken a number of actions to mitigate the potential impacts of various federal and state regulatory actions. For example, in 2002 SMUD established itself as an independent control area (now termed "Balancing Authority") within the Western Electricity Coordinating Council ("WECC") region. By removing itself from CAISO's Balancing Authority area, SMUD became responsible for balancing electric supply and demand within its own service territory. This move substantially reduced fees paid to CAISO, preserved operational flexibility and helped to insulate SMUD from the uncertain regulatory environment and tariff structure of CAISO. In addition to decreased financial risks, this independence also reduced SMUD's exposure to the impacts of capacity and energy shortages in the CAISO Balancing Authority area. Further, as an independent Balancing Authority, SMUD continued to support the statewide electric grid in events of electrical emergencies requiring rotating outages, such as loss of major transmission lines or equipment,

as provided in the statewide emergency plan. By 2006, the SMUD Balancing Authority footprint expanded north to the California-Oregon border and south to Modesto, to include the service areas of the WAPA, MID, Redding and Roseville, and TANC -owned 340-mile 500-kV California-Oregon Transmission Project (“COTP”). In October 2009, SMUD, with the coordination and cooperation of WAPA, joined the Western Power Pool Reserve Sharing Group, which supports reliability and reduces operating costs. In May 2011, BANC assumed the role of the Balancing Authority, though SMUD continues to oversee operation of the grid on behalf of BANC. BANC members share cost responsibility for balancing authority-related compliance obligations, liabilities, and operations. BANC also serves as an important venue for SMUD and other BANC members to collaborate with respect to operational and market improvements inside the BANC footprint and to preserve their operational independence. See “POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements.” On April 3, 2019, SMUD, through its participation in BANC, began operating in the CAISO WEIM, which helps SMUD better manage the integration of renewable energy resources. The CAISO WEIM is a voluntary market, which allows SMUD to maintain its operational independence from the CAISO, while providing SMUD greater access to balancing resources throughout the western region. See “POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements.”

**FERC Order 1000.** In 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order 1000, which mandates regional transmission planning and imposes a regional cost allocation methodology for transmission facilities. FERC states that it has the authority to allocate costs to beneficiaries of transmission services even in the absence of a contractual relationship between the owner of the transmission facilities and the beneficiary. Despite appeals challenging FERC’s authority on a number of grounds, the D.C. Circuit Court of Appeals upheld Order 1000. See “DEVELOPMENTS IN THE ENERGY MARKETS – Federal Legislation and Regulatory Proceedings – *Federal Regulation of Transmission Access*.” Nevertheless, there remains flexibility with respect to SMUD’s participation in regional transmission planning. Specifically, SMUD is voluntarily participating as a Coordinating Transmission Owner (“CTO”) in the WestConnect transmission planning organization, and will rely on its WestConnect membership to keep it Order 1000 compliant. While SMUD opposes any cost allocation methodology that would obligate SMUD to pay for facilities that it does not use or need to maintain reliable operations or serve its load, the FERC-approved WestConnect planning process does provide a CTO the option to not accept an allocation of costs. WestConnect is composed of utility companies providing transmission of electricity in a portion of the western United States, working collaboratively to assess stakeholder and market needs and develop cost-effective enhancements to the western wholesale electricity market. SMUD is unable to predict at this time the full impact that Order 1000 will have on the operations and finances of SMUD’s electric system or the electric industry generally.

## **Electricity, Natural Gas, and Related Hedging**

SMUD continues to utilize a comprehensive and integrated power and fuel supply strategy to acquire a reliable and diversified portfolio of resources to meet existing and future needs. This strategy includes a combination of both physical supply and financial hedging transactions to reduce price risk exposure over a five-year horizon. SMUD’s physical supply arrangements include ownership of power generating resources, as well as a diversified portfolio of power and fuel supply purchase contracts that range in duration, with a mixture of fixed and variable pricing terms.

With regard to the power purchase contracts, SMUD has entered into a series of contracts for the purchase of electricity to supply the portion of its resource needs not already provided by owned resources. SMUD also actively manages its exposure on variable rate electricity purchases, and at times may enter into financial contracts to fix prices by using options to reduce price risk, in each case when warranted by economic conditions. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements.”

With regard to fuel supply contracts, SMUD utilizes a similar strategy of employing financial contracts of various durations to hedge its variable rate fuel supply contracts. As of March 31, 2023, these contracts are forecasted to have hedged the price exposure on approximately 83%, 66% and 55% of SMUD's anticipated natural gas requirements for 2023, 2024 and 2025, respectively. While the financial effects resulting from the unhedged portions of SMUD's natural gas requirements are difficult to predict, SMUD's financial results could be materially impacted. See "POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Supply*."

As provided in SMUD's natural gas contracts, SMUD may be required to post collateral to various counterparties. As of March 28, 2023, SMUD did not have any collateral posting obligations. A decrease in natural gas prices could result in a collateral posting by SMUD. While the posting of collateral is not an expense for SMUD, it does temporarily encumber unrestricted cash balances.

To hedge against hydroelectric production volatility of SMUD-owned hydroelectric facilities, SMUD implemented a pass-through rate component called the Hydro Generation Adjustment (the "HGA"). The HGA and the associated Hydro Rate Stabilization Fund (the "HRSF") help to offset increased power supply or fuel supply costs in years where precipitation levels at SMUD-owned hydroelectric facilities are low. To hedge against variations in the volume of energy received from non-SMUD-owned hydroelectric resources, SMUD uses a rate stabilization fund to help offset increased power supply or fuel supply costs. See "RATES AND CUSTOMER BASE – Rate Stabilization Funds."

## **Managing Risks**

SMUD maintains an Enterprise Risk Management ("ERM") program, a strategic approach to managing enterprise-wide risks as a portfolio, to help reduce the chance of loss, create greater financial stability and protect SMUD resources. It is designed to maintain an early warning system to monitor changes in, and the emergence of, risks that affect the organization's business objectives. Under the purview of the Enterprise Risk Oversight Committee, composed of executive members and chaired by the Chief Financial Officer, ERM conducts ongoing risk identification, assessments, monitoring, mitigation, risk-based budgeting and reporting. To ensure accountability and oversight, each identified risk is assigned to an executive-level risk owner. Risk status and mitigation efforts are reported monthly to the Board.

## **Competitive Challenges**

In the coming decade, utilities like SMUD may face competition from companies in other industries looking to diversify into the energy sector. Examples of developing competitive areas include retail sale of electricity, distributed electric storage resources, renewable distributed generation (mostly solar in Sacramento), customer installation of fuel cells, third-party electric vehicle charging, home or business automation that enables greater customer participation in energy markets, and third-party provision of energy management software and solutions.

SMUD has a wide range of initiatives to monitor and adapt to changing market conditions and new industry participants. Key areas of focus include:

- Enhancing customer experience. Recognizing the importance of meeting customer expectations, SMUD introduced the Customer Experience Strategy in 2016 to provide customers "value for what they pay" and further strengthen customer loyalty. The initiative is focused on ensuring SMUD has the people, systems, technology, programs and services to consistently meet or exceed customers' changing expectations. The customer experience is measured via surveys with the goal of achieving 80% of customers agreeing that SMUD provides them with value for what they pay by 2030.

- Restructuring electric rates. In 2017, the Board approved TOD rates as the standard rate for residential customers. The residential rate transition began in the fourth quarter of 2018, and the full transition was completed in the fourth quarter of 2019. All of SMUD's business customers are also on time-based rates. In 2019, the Board approved a restructuring of commercial rates to collect a greater portion of fixed costs through fixed charges and to better align time periods and prices with energy markets. The commercial rate restructuring was delayed by one year due to the impacts of the COVID-19 pandemic. The transition was completed in the first quarter of 2022. See "RATES AND CUSTOMER BASE – Rates and Charges" and "FACTORS AFFECTING THE REGION – Impacts from COVID-19 Pandemic."
- Ongoing integrated resource planning. SMUD monitors and updates its integrated resource planning to ensure future sources of energy balance cost, reliability and environmental requirements with the flexibility to meet challenges of changing market and regulatory conditions, customer energy resources, and emerging technologies.

### **Leveraging Core Competencies**

In addition to these initiatives, SMUD is leveraging core competencies to improve industry safety and help communities serve their customers' energy needs.

***Sacramento Power Academy.*** SMUD is leveraging its significant experience in training skilled line-workers with the opening of the SMUD Power Academy regional training center in 2016. The academy currently emphasizes training for public power, customer-owned utility employees. There are currently approximately 2,000 customer-owned utilities in the United States that are similar to SMUD, many of which may not have the resources to adequately train their employees. In addition to line-workers, the center will also train substation and network electricians. Other future plans include training electrical, telecom and meter technicians; engineers and designers; construction management inspectors; equipment operators; cable splicers and locators; and support staff.

***Community Energy Services.*** In 2002, Assembly Bill 117 was passed to establish Community Choice Aggregation in the State by authorizing Community Choice Aggregators ("CCAs") to aggregate customer electric load and purchase electricity for customers. SMUD's Community Energy Services department was established in 2017 to support organizations with values closely aligned with SMUD's values, while also generating additional revenue for SMUD. CCA programs are proliferating in the State thanks to support for expanding renewable energy use and desire for local control particularly for electricity procurement. There are numerous CCAs operating in the State, and more are anticipated to launch in the future. CCAs are responsible for procuring wholesale power, setting the generation rate, and staffing a call center to handle opt-outs and questions about the power portfolio. The local investor-owned utility ("IOU") continues to deliver electricity from the electric grid, maintain its electric infrastructure, bill customers and collect payments.

In October 2017, SMUD was selected by the governing board of Valley Clean Energy ("VCE") to provide technical, energy and support services, including data management and call center services, wholesale energy services, and business operations support, to VCE for a five-year term [expiring May 31, 2023. SMUD and VCE are currently negotiating a new contract.] VCE is a joint powers agency formed in 2016 by the City of Woodland, the City of Davis and Yolo County to implement a local CCA program. The service territory expanded to include the City of Winters in 2021. The mission of VCE is to deliver cost-competitive clean electricity, product choice, price stability, energy efficiency, and greenhouse gas emissions reductions to its customers in Yolo County. VCE began electric services to its customers in the summer of 2018, giving Yolo County residents a choice between two electricity providers, VCE and PG&E.

In November 2017, SMUD was selected by the governing board of East Bay Community Energy (“EBCE”) to provide call center and data management services for a three-year term beginning in January 2018. SMUD signed a new contract with EBCE in January 2022 for call center and data management services for an additional three-year term. EBCE is a joint powers agency formed in 2016 by the cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro and Union City in Alameda County to implement a local CCA program. EBCE expanded its territory to the cities of Pleasanton, Newark, and Tracy in April 2021.

In June 2019, SMUD was selected by the governing board of Silicon Valley Clean Energy (“SVCE”) to provide program services to help local SVCE communities reduce carbon pollution while delivering engaging customer experiences. SVCE programs are focused on grid integration, as well as electrifying transportation, buildings and homes. SVCE is a joint powers agency formed in 2016 by the cities of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County to implement a local CCA program.

In July 2022, SMUD was selected by the governing board of Marin Clean Energy (“MCE”) to provide data management, billing, data analytic and system assessment services to MCE. MCE is a joint powers agency formed in 2010 and represents 37 member communities across four Bay Area counties: Contra Costa, Marin, Napa and Solano.

In September 2022, SMUD was selected by the governing board of Sonoma Clean Power (“SCP”) to provide market research services to SCP. SCP is a joint powers agency that serves Sonoma and Mendocino counties.

While CCAs have had success in the State, they are susceptible to business, regulatory and other risks that could lead to a financial loss and/or result in a cessation of operations for the CCA. These risks could extend to a CCA’s counterparties, including SMUD. SMUD has made an effort to identify and mitigate potential counterparty risks to the extent possible in service agreements with the CCAs described above. SMUD may pursue opportunities to provide similar services to additional CCAs in the future. SMUD management does not expect its current arrangements to have a material adverse impact on SMUD’s financial position, liquidity or results of operations.

## **FACTORS AFFECTING THE REGION**

### **Precipitation Variability**

SMUD uses a National Weather Service precipitation station located at Pacific House, California to approximate available water supply to SMUD’s Upper American River Project (the “UARP”) hydropower reservoirs. As of March 31, 2023, precipitation at Pacific House, California totaled 77 inches for the October-September hydropower water supply period. This is 185% of the 50-year rolling median of 42 inches. Total reservoir storage in the UARP hydropower reservoirs was 269 [TAF] as of April 18, 2023, which was about 71% of capacity, approximately 8% below the historical average for this date to accommodate snowpack which was 156% of normal. SMUD manages its reservoirs to maximize water storage going into the summer season, which preserves generating capacity during SMUD’s high load months and ensures that SMUD meets its UARP FERC license requirements, including requirements for recreational and environmental flows.

There can be wide swings in precipitation from year to year. In years with below average rainfall, SMUD may have to generate or purchase replacement energy at additional cost. To hedge against variations in the volume of energy received from SMUD-owned UARP hydroelectric resources, SMUD uses the

HRSF to help offset increased power supply or fuel supply costs. See “RATES AND CUSTOMER BASE – Rate Stabilization Funds.”

SMUD is also exposed to precipitation variability through its contract with the WAPA. In an average water year this contract provides roughly 661 gigawatt hours (“GWh”) of power. WAPA’s actual deliveries are based on hydroelectric generation (minus energy use for pumping) at Central Valley Project reservoirs in Northern California, which varies based on annual precipitation patterns, water deliveries for agriculture, and flow requirements in the Sacramento-San Joaquin River Delta. Unlike the UARP, SMUD does not monitor precipitation stations to approximate power deliveries under the WAPA contract, and instead relies on a forecast of power deliveries from WAPA. As of March 31, 2023, WAPA has forecasted power deliveries of 451 GWh for 2023, down approximately 32% less than an average water year. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – *Western Area Power Administration*.”

## **Wildfires**

**General.** Wildfires in the State have become increasingly common and destructive. Frequent drought conditions and unseasonably warm temperatures have increased, and could further increase, the possibility of wildfires occurring in areas where SMUD maintains generation, transmission and distribution facilities. The number of diseased and dead trees has increased, and could further increase, this possibility. As a result, SMUD faces an increased risk that it may be required to pay for wildfire related property damage or personal injuries, fines and penalties, some of which may not be covered by insurance (including costs in excess of applicable policy limits), or may be disputed by insurers, and could be material. In addition, a significant fire or fires in SMUD’s generation, transmission or service area could result in damage or destruction to SMUD’s facilities, result in a temporary or permanent loss of customers or otherwise materially increase SMUD’s costs or materially adversely affect SMUD’s ability to operate its Electric System or generate revenues.

SMUD’s service territory is located within Sacramento County, which is located outside the California Public Utilities Commission (the “CPUC”) high fire threat areas established in 2018. However, as described below, SMUD’s UARP facilities and certain of SMUD’s and TANC’s transmission facilities are within CPUC high fire threat areas. In addition, as described below, certain portions of SMUD’s service territory are located within the California Department of Forestry and Fire Protection (“Cal Fire”) Fire Protection and Resource Assessment Program (“FRAP”) Moderate, High and Very High Fire Hazard Severity Zones. SMUD’s exposure to liability for damages related to its UARP facilities, which are located within high fire threat areas in El Dorado County, is reduced due to risk mitigation measures adopted by SMUD and the low number of inhabitants and structures near the UARP facilities (See “Wildfire Mitigation” below). SMUD continues to take responsible action to minimize its exposure to liability from wildfires; however, under current State law, utilities can be held liable for damages caused by wildfires sparked by their equipment or other facilities regardless of whether the utility was negligent or otherwise at fault. Therefore, at this time the full extent of SMUD’s potential exposure to wildfire risk is unknown.

**Distribution (SMUD Service Territory).** State law requires Cal Fire to classify areas in the State based on the severity of the fire hazard that is expected to prevail there. These areas or “Fire Hazard Severity Zones” are based on factors such as fuel (material that can burn), slope and the expected chance of burning. There are three Fire Hazard Severity Zones (Moderate, High and Very High) based on increasing fire hazard. Portions of SMUD’s service territory are located within these Fire Hazard Severity Zones. SMUD has assessed its service territory based on Cal Fire’s FRAP map, adopted in 2007; the following table illustrates SMUD’s assessment of the approximate extent of its service territory and retail customer base located within the three Fire Hazard Severity Zones.

<b>Fire Hazard Severity Zone</b>	<b>Moderate</b>	<b>High</b>	<b>Very High</b>
Acres of SMUD Service Area	231,816	2,337	1,061
% of Total SMUD Service Area	40.6%	0.4%	0.2%
Number of Retail Customers	53,621	4,285	148
% of Total Retail Customers	7.7%	0.6%	0.0%

***Transmission (Outside of SMUD Service Territory).*** In 2018, the CPUC approved a new statewide fire map that identifies areas of elevated and extreme wildfire risk from utility-associated assets located throughout the State. SMUD directly participated in the development of the CPUC’s statewide fire map. In connection with the development of the CPUC’s statewide fire map, a peer review and a team of independent nationwide experts led by Cal Fire affirmed that SMUD’s electric service area is properly located outside of these elevated (“Tier 2”) and extreme (“Tier 3”) high fire threat areas; however, SMUD’s UARP facilities are located within both Tier 2 and Tier 3 areas. According to the CPUC, Tier 2 fire-threat areas are areas where there is an elevated wildfire risk from utility assets and Tier 3 fire-threat areas are areas where there is an extreme risk from utility assets. As of June 8, 2021, approximately 37 right-of-way miles of SMUD’s transmission lines are in Tier 2 fire-threat areas and approximately 19 right-of-way miles of SMUD’s transmission lines are in Tier 3 fire-threat areas. SMUD is also a member of TANC. As of July 2022, approximately 116.3 right-of-way miles of TANC’s transmission lines are in Tier 2 fire-threat areas and approximately 4.5 right-of-way miles of TANC’s transmission lines are in Tier 3 fire-threat areas. In accordance with its FERC license, SMUD adheres to a FERC-approved Fire Prevention and Response Plan for its UARP facilities. On May 17, 2018, in accordance with State law, SMUD’s Board of Directors determined that the UARP area may have a “significant risk of catastrophic wildfire” resulting from overhead electric facilities and that SMUD’s FERC-approved UARP Fire Prevention and Response Plan meets requirements for presenting wildfire mitigation measures to the Board for its approval.

***Wildfire Mitigation.*** In response to potential wildfire risk, SMUD has implemented and is continuing to implement a series of measures intended to prevent wildfires from occurring, minimize the spread of any fire that does occur and improve the resiliency of its system. These measures include an increase in the degree of sophistication of fuel reduction inside and adjacent to rights-of-ways; installation of Cal Fire-approved exempt material to reduce the risk of sparking; enhanced inspection and maintenance programs; increased use of ignition-resistant construction, including covered conductors and undergrounding of conductors; increased monitoring of and identified responses to fire conditions, including operational procedures for the de-energization of lines during high fire conditions; and elimination of automatic reclosers on SMUD’s transmission lines and on SMUD’s distribution lines in certain areas during fire season.

SMUD’s proactive approach to vegetation management recently has been expanded to include the use of advanced technologies such as Light Detection and Ranging (“LIDAR”) surveys, ortho and oblique that is used to pinpoint tree health and/or condition that may not yet be visible to the naked eye. In addition, SMUD has installed additional weather stations in transmission corridors and substations for increased situational awareness and has continued coordination and collaboration with local agencies and first responders as well as vulnerable populations.

State legislation enacted in 2018 and 2019 (SB 901 and AB 1054, respectively) requires publicly owned utilities (“POUs”) to prepare and present Wildfire Mitigation Plans to their governing boards by January 1, 2020, and annually thereafter. SMUD assembled an enterprise-wide team of subject-matter experts to prepare its plan in compliance with this legislation. SMUD’s initial Wildfire Mitigation Plan (“WMP”) was adopted by the Board in the fourth quarter of 2019, after circulation for public comment and



review of the comprehensiveness of the plan by a qualified independent evaluator. The WMP and evaluator's report were submitted to the State Wildfire Safety Advisory Board (the "WSAB") in 2020. The WSAB was established pursuant to AB 1054 and is charged, among other things, with providing comments and advisory opinions relating to content and sufficiency of POU wildfire mitigation plans and recommendations on how to mitigate wildfire risk.

SMUD reviews its WMP each year, presenting the updated plan to the Board for adoption at duly noticed public meetings. The updated plans and evaluator reports are submitted to the WSAB for advisory opinion and recommendations. SMUD responds to the WSAB's comments regarding SMUD's Wildfire Mitigation Plan as part of its WMP process. SMUD will continue to annually review and update its WMP, conducting a comprehensive review at least every third year.

[SMUD is currently conducting a comprehensive review and update of its WMP and anticipates presenting its 2023-2025 WMP to the Board in second quarter of 2023, after soliciting public input and independent evaluation.]

**Wildfire Insurance.** Wildfires in the State have not only increased potential liability for utilities, but have also adversely impacted the insurance markets, leading to higher costs for coverage; coverages becoming prohibitively expensive; limited or restricted coverage to certain types of risks; or coverage at insufficient levels. SMUD most recently renewed its general and wildfire liability insurance coverage on June 15, 2022. SMUD increased the commercially-insured portion of its \$255 million wildfire coverage program from \$176 million to \$192.5 million and reduced the self-insured layers and quota share portions of the insurance tower down to \$62.5 million.

In addition, it is expected that SMUD will have a portion of the \$400 million aggregate principal amount of its commercial paper and line of credit program to provide operational flexibility in the event of the occurrence of a wildfire or other operational event. However, SMUD has not covenanted to maintain the availability of the commercial paper program and line of credit program for these purposes and no assurances can be given that the commercial paper and line of credit program will be available at the time of, or during, such an event.

### **August 2020 Heat Wave**

The State experienced a period of prolonged above average temperatures from August 14, 2020 through August 18, 2020. The CAISO was forced to institute rotating electricity outages in the State during this extreme heat wave. SMUD, as a member of BANC, did not have to implement any planned power disruptions. Additionally, SMUD was able to support the CAISO during some hours of the heat wave with both requested emergency assistance and wholesale market sales. SMUD's peak demand between August 14, 2020 and August 18, 2020, varied between 2,874 MW and 3,057 MW, well below SMUD's record peak of 3,299 MW.

### **September 2022 Heat Wave**

The State experienced a period of prolonged above average temperatures from September 5, 2022 through September 8, 2022. On September 6, 2022, SMUD experienced its second highest peak demand of 3,292 MW. SMUD did not have to implement any planned power disruptions.

### **Storm Damage**

In January 2023, SMUD experienced a series of winter storms that brought heavy rains and high winds causing damage to SMUD's grid and widespread outages for SMUD's customers. By the time the

storm response was complete, SMUD had experienced the largest mobilization of personnel and restoration crews in its history. SMUD incurred costs related to removing downed trees, restoring power from downed poles and broken lines, replenishing inventory, communicating with and providing assistance to customers, maintaining IT systems, and coordinating with local emergency agencies. SMUD is pursuing claims with Federal and State agencies. SMUD currently cannot predict financial impacts from the storm damage however such impacts may be material.

### **Cosumnes Power Plant Outage**

On June 5, 2022, the Cosumnes Power Plant was shut down due to a ground fault in the Steam Turbine Generator (“STG”) stator. The ground fault was caused by delamination of insulation of the through bolt. Damage from the ground fault resulted in a rewind and restack of the stator core, replacement of all stator through bolts, and a full rewind of turbine rotor. The Cosumnes Power Plant repairs were completed in February 2023 and the plant returned to service on March 5, 2023. During the extended outage, SMUD shifted generation to the other Local Gas-Fired Plants and the Sutter Energy Center and procured additional energy and resource adequacy capacity. SMUD also requested and received approval from the California Air Quality Board and California Energy Commission to operate one or both of the gas turbines without the STG. During the September 2022 heatwave, both of the gas turbines at the Cosumnes Power Plant were operated without the STG, providing 270 MW at peak.

To mitigate the financial impact of unplanned outages from its thermal assets, SMUD carries commercial property insurance with a business interruption endorsement that can provide up to \$30.8 million of claims recovery per month, with a sub-limit of \$310 million over any 18-month period. Business interruption claims are subject to a 60-day waiting period. SMUD has begun the property damage and business interruption insurance claim process and received a \$50 million advance in December 2022. SMUD is reviewing and submitting claim expenses and expects to reach claim settlement in the third quarter of 2023. The settlement amount is unknown but is expected to be material.

### **Impacts from COVID-19 Pandemic**

While the impact of the COVID-19 pandemic on SMUD has lessened since the height of the pandemic in 2020, SMUD is still experiencing impacts from the pandemic. Compared to weather adjusted load levels, SMUD’s overall load is near or above pre-pandemic levels. Compared to pre-pandemic loads, residential customer load remains higher and commercial customer load has almost recovered. SMUD anticipates that commercial customer load recovery will continue over the next couple of years resulting in continued movement towards pre-pandemic levels, but not a complete recovery as people continue to work from home long-term.

Part of the governmental response to the economic consequences of the pandemic required utility providers (including SMUD) to provide additional grace periods and flexible payment plans for the payment of utility bills or to refrain from pursuing collection remedies for unpaid bills for a period of time. SMUD also implemented a no-shutoff policy through January 2022 under which SMUD did not disconnect power to a customer for non-payment of its electric bill. Beginning in February 2022, SMUD resumed its normal payment, late fee, and disconnection process and began disconnections of unpaid accounts in late April 2022. As a result, SMUD has experienced an increase in delinquencies for customer electric accounts versus pre-pandemic levels. In December 2021, SMUD received \$41 million from the California Arrearage Payment Program (“CAPP”) initial funding, and an additional \$9.9 million in 2022. All funds were applied to delinquent balances. As of March 31, 2023, the total delinquencies for customer electric accounts were \$50.8 million, after the CAPP credit, which is an increase from the February 2020 balance of total delinquencies for customer electric accounts of \$16.9 million.

SMUD also paused the recertification process for existing customers in SMUD's low-income discount program during the pandemic. The number of customers participating in the low-income assistance program increased by 19,775, or approximately 26% from February 2020 to February 2023. SMUD has resumed the recertification process for existing customers in the low-income discount program in 2023.

While the impacts of the COVID-19 pandemic on SMUD have lessened, if the pandemic and its consequences again become more severe or another similar event occurs, the impacts on SMUD's financial results and operations could be material.

## **RATES AND CUSTOMER BASE**

### **Rates and Charges**

SMUD's Board of Directors has autonomous authority to establish the rates charged for all SMUD services. Unlike IOUs and some other municipal utility systems, retail rate and revenue levels are not subject to review or regulation by any other federal, State or local governmental agencies. Changes to SMUD rates only require formal action by the Board of Directors after two public workshops and a public hearing. SMUD is not required by law to transfer any portion of its collections from customers to any local government. SMUD typically reviews and sets rates on a two-year cycle.

#### ***2019 Rate Action.***

On June 24, 2019, the Board approved a 3.75% rate increase effective January 1, 2020, a 3.00% rate increase effective October 1, 2020, a 2.50% rate increase effective January 1, 2021, and a 2.00% rate increase effective October 1, 2021, for all customer classes. Additionally, the Board approved a restructuring of the commercial rates, including new time periods and an overall increase in the fixed bill components, such as the System Infrastructure Fixed Charge and demand charges, and a corresponding decrease in energy charges, making the restructuring revenue neutral by rate category. To minimize bill impacts, rate categories will be restructured over an 8-year period. Due to the impacts of the COVID-19 pandemic on SMUD's operations and priorities, on August 20, 2020, the Board approved postponing the implementation of the commercial rate restructure for one year. Customers were transitioned to the new rates in the first quarter of 2022. There is currently pending litigation concerning the adoption of the 2020 and 2021 rates. See "LEGAL PROCEEDINGS – Proposition 26 Lawsuit."

#### ***2021 Rate Action.***

On September 16, 2021, the Board approved a 1.5% rate increase effective March 1, 2022 and a 2.0% rate increase effective January 1, 2023 for all customer classes. Additionally, the Board approved the Solar and Storage Rate, the optional residential Peak Pricing Rate, and updates to certain schedules of SMUD's Open Access Transmission Tariff ("OATT"). The Board also approved a new timeline for the commercial rate restructure transition, and all impacted commercial customers were transitioned to the new rates by the end of the first quarter of 2022.

SMUD also implemented a solar interconnection fee based on the size of solar interconnection and supporting programs such as battery incentives, incentives to enroll in SMUD's Peak Pricing Rate, battery incentives for Virtual Power Plants, and a program to bring the benefits of solar to under-resourced multi-family communities. These programs and fees are not subject to Board approval.

## **Rate Stabilization Funds**

The Rate Stabilization Fund (the “RSF”) is maintained by SMUD to reduce the need for future rate increases when costs exceed existing rates. At the direction of the Board, amounts may be either transferred into the RSF (which reduces revenues) or transferred out of the RSF (which increases revenues). The Board authorizes RSF transfers on an event driven basis. The RSF includes funds to hedge variations in the volume of energy received from WAPA hydroelectric generation, variation in AB 32 revenue and variations in Low Carbon Fuel Credit (“LCFS”) revenue. As of April, 2023, the balance in the RSF was \$120.1 million, which is approximately 7.3% of annual retail revenue.

Effective July 2008, SMUD implemented the HGA, which is a pass-through rate component to deal with variations in hydroelectric generation from the UARP (see “POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Hydroelectric*”). The HGA is designed to increase revenues in dry years when SMUD must buy power to replace hydroelectric generation and return money to the HRSF in wet years when SMUD has more hydroelectric generation than expected. Each year SMUD determines the impact of precipitation variances on projected hydroelectric generation from the UARP. When the precipitation variance results in a deficiency of hydroelectric generation from the UARP, transfers from the HRSF, which was created as a component of the RSF, to SMUD’s available cash, will be made in an amount approximating the cost to SMUD of replacement power (up to 4% of revenues) until the balance in the HRSF is zero. When the precipitation variance results in a projected surplus of hydroelectric generation from the UARP, deposits will be made into the HRSF in an amount approximating the positive impact to SMUD from the surplus hydroelectric generation (up to 4% of revenues) until the balance in the HRSF is equal to 6% of budgeted retail revenue. If the balance in the HRSF is not sufficient to cover transfers that would otherwise be made in the event of a projected deficiency in UARP hydroelectric generation, a 12-month HGA surcharge will automatically be included on customers’ electric bills at a level that generates up to 4% of retail revenue. If the balance in the HRSF is equal to 6% of budgeted retail revenue on any precipitation variance calculation date and the precipitation variance results in a projected UARP hydroelectric generation surplus, the positive impact of the surplus may be used for other purposes at staff’s recommendation, with the approval of the Board, including returned to customers through an electric bill discount up to 4% of retail revenue. SMUD calculates HRSF transfers based on an April-March (water year) precipitation period at Pacific House, California. This National Weather Service precipitation station is used to approximate available water supply to SMUD’s UARP hydropower reservoirs. As of March 31, 2023, precipitation at Pacific House, California totaled 90.83 inches which is above the 50-year rolling median of 50.52 inches.

As of April, 2023, the balance in the RSF and HRSF combined was \$216.5 million. SMUD transferred approximately \$65.4 million into of the HRSF from SMUD’s available cash in April 2023 due to above average precipitation, which increased the balance in the HRSF from \$31 million to approximately \$96.4 million. Although the HRSF and the subaccount of the RSF that hedge variations in the volume of energy received from non-SMUD hydroelectric generation currently have positive balances, below average precipitation could deplete the HRSF and RSF balances to zero.

## **Low Income Discount**

As of February 2023, approximately 95,175 customers received the low-income discount offered by SMUD, which represents approximately 17% of all residential customers. SMUD suspended recertification during the pandemic, but continued to monitor the program to ensure participants continue to be eligible for the discount. In 2022, the total discount was approximately \$31.3 million. As a result of the effects of the COVID-19 pandemic and related economic downturn, SMUD experienced an increase in low-income discount applicants. See “FACTORS AFFECTING THE REGION – Impacts from COVID-19 Pandemic.”

SMUD expanded its programs and services starting in 2016 to help customers with energy assistance, home improvement packages and education. SMUD is creating tailored solutions to best meet the needs of low-income customers. These solutions include free solar panels and inspecting homes to identify energy saving and fuel switching opportunities. As of February 2023, SMUD has performed 27,000 energy retrofits and, in partnership with Grid Alternatives (a non-profit organization that focuses on implementing solar power and energy efficiency for low-income families), 196 customers have benefited from free solar installations. Forty-eight additional homes received solar and energy efficiency through a partnership with Habitat for Humanity of Greater Sacramento. As part of SMUD's Zero Carbon Plan and the focus on building electrification, SMUD has also been ramping up electrification investments for low-income customers. Since 2019, SMUD has assisted more than 1,000 households with electrification upgrades.

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## Rate Comparisons

SMUD's rates remain significantly below those of PG&E and other large utilities throughout the State. The following table sets forth the average charges per kWh by customer class for both SMUD and PG&E. PG&E's rates reflect their recently approved rate increase effective March 1, 2023.

### AVERAGE CLASS RATES

	SMUD Rates (cents/kWh) <sup>(1)</sup>	PG&E Rates (cents/kWh) <sup>(2)</sup>	Percent SMUD is Below PG&E <sup>(3)</sup>
Residential – Standard	17.96¢	36.27¢	50.5%
Residential – Low Income	12.53¢	23.11¢	45.7%
<b>All Residential</b>	<b>17.10¢</b>	<b>30.50¢</b>	<b>44.0%</b>
Small Commercial (Less than 20 kW)	17.39¢	34.55¢	49.7%
Small Commercial (21 to 299 kW)	16.07¢	33.90¢	52.6%
Medium Commercial (300 to 499 kW)	15.01¢	32.39¢	53.6%
Medium Commercial (500 to 999 kW)	14.08¢	28.00¢	49.7%
Large Commercial (Greater than 1,000 kW)	12.03¢	22.12¢	45.6%
Lighting – Traffic Signals	13.77¢	33.94¢	59.4%
Lighting – Street Lighting	15.64¢	46.15¢	66.1%
Agriculture	15.25¢	31.49¢	51.6%
<b>System Average</b>	<b>15.65¢</b>	<b>29.83¢</b>	<b>47.6%</b>

<sup>(1)</sup> Projected 2023 average prices for SMUD with rates effective January 1, 2023.

<sup>(2)</sup> PG&E average prices in 2023 reflect rates effective March 1, 2023, per Advice Letter 6863-E- dated February 15, 2023.

<sup>(3)</sup> The rates in the Average Class Rates table are calculated by dividing the total revenue of each class by the total usage of that class in kWh. The actual savings per customer will vary based on their electricity consumption.

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The following table shows a comparison of SMUD’s charges for the average residential usage of 750 kWh per month (based on an average of summer and non-summer) and charges of seven similar neighboring or largest utilities in the State.

**STATEWIDE COMPARISON–RESIDENTIAL SERVICE**

	<b>Monthly Billing Charge 750 kWh<sup>(1)(2)</sup></b>	<b>Percent SMUD is (Below)/Above Utility</b>
Sacramento Municipal Utility District	\$131.40	
Pacific Gas & Electric Company	\$282.25	(53%)
Roseville Electric Utility	\$122.47	7%
Turlock Irrigation District	\$123.70	6%
Modesto Irrigation District	\$144.30	(9%)
Los Angeles Dept. of Water & Power	\$169.76	(23%)
Southern California Edison Company	\$273.21	(52%)
San Diego Gas and Electric Company	\$357.12	(63%)

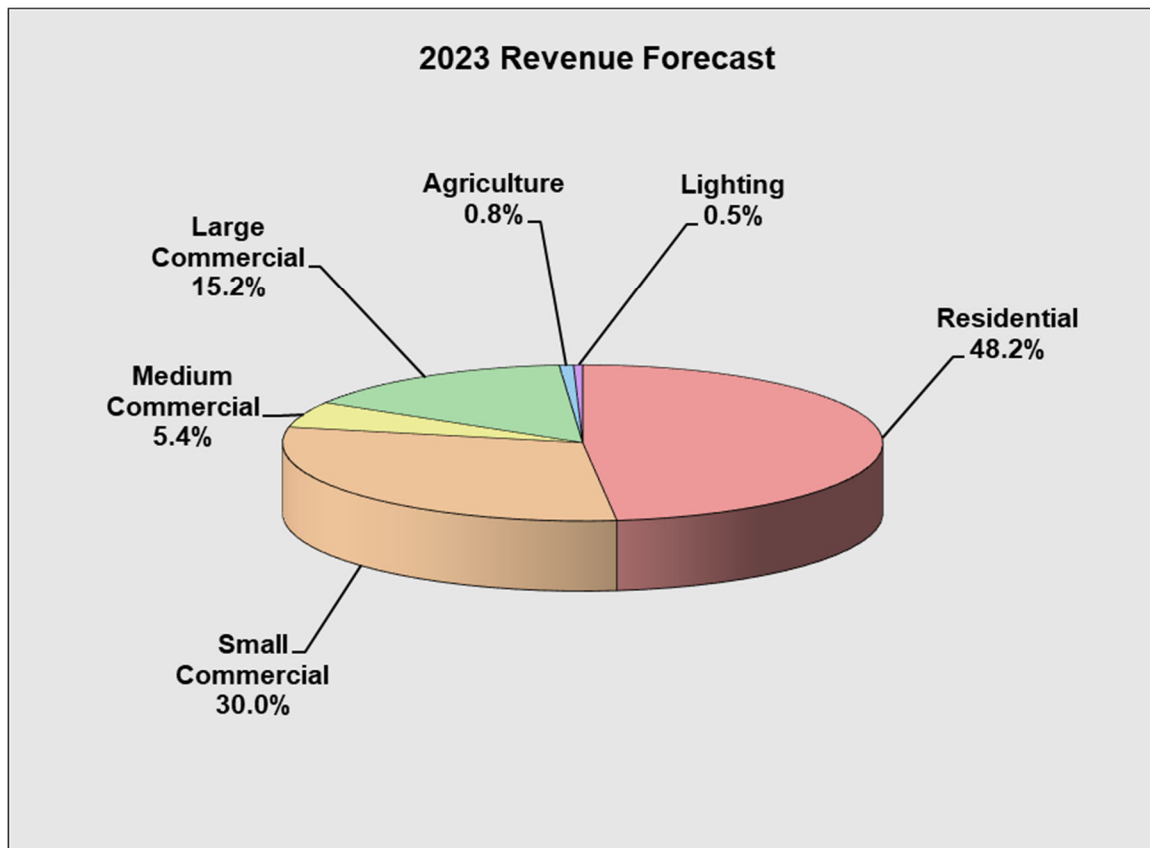
<sup>(1)</sup> Per individual utility’s published schedules as of March 1, 2023.

<sup>(2)</sup> Average usage of theoretical customer using 750kWh per month.

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### Allocation of Revenue by Customer Class

The following chart sets forth the forecast percentage of SMUD revenues from billed sales associated with each customer class.



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## Customer Base; Largest Customers

A stabilizing influence on SMUD's revenues is that a substantial proportion is derived from residential customers (48.9% in 2022). Historically, revenue from commercial and industrial consumption has been more sensitive to economic fluctuation. Furthermore, SMUD has no dominant customers that account for a significant percentage of annual revenues. In 2022, no single customer contributed more than 3% of revenues. The top ten customers generated approximately 11% of revenues and the top 30 generated approximately 17%. The following table presents information on SMUD's top ten customers as of December 31, 2022.

### SMUD'S LARGEST CUSTOMERS (As of December 31, 2022)

Customer Type	Annual Revenue (\$ millions)	% of Total Revenue
Technology	37.56	2.31%
Government	33.02	2.03%
Government	31.59	1.94%
Government	14.58	0.90%
Government	14.11	0.87%
Communications	9.89	0.61%
Industrial Gases	9.12	0.56%
Government	8.04	0.49%
Grocery	7.37	0.45%
Government	7.29	0.45%
<b>Top 10 Total</b>	<b>172.57</b>	<b>10.59%</b>

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## POWER SUPPLY AND TRANSMISSION

### Power Supply Resources

The following table sets forth information concerning SMUD's power supply resources as of March 31, 2023. Capacity availability reflects expected capacities at SMUD's load center, as well as entitlement, firm allocations and contract amounts in the month of July, which is generally SMUD's peak month.

### POWER SUPPLY RESOURCES (As of March 31, 2023)

Source:	Capacity Available (MW) <sup>(1)</sup>
<b>Generating Facilities:</b>	
Upper American River Project – Hydroelectric .....	685
Solano Wind Project – Wind <sup>(2)</sup> .....	94
Hedge Battery <sup>(2)</sup> .....	4
<b>Sub-total:</b> .....	<b>783</b>
<b>Local Gas-Fired Plants:</b>	
Cosumnes Power Plant .....	570
Carson Project.....	103
Procter & Gamble Project.....	166
McClellan .....	72
Campbell Soup Project .....	170
<b>Sub-total:</b> .....	<b>1,081</b>
<b>Purchased Power:</b>	
Western Area Power Administration (WAPA) <sup>(3)</sup> <sup>(4)</sup> .....	351
Grady – Wind <sup>(2)</sup> .....	34
Avangrid (Iberdrola) (PPM) – Wind <sup>(2)</sup> .....	22
Feed-in-Tariff Photovoltaic – Solar <sup>(2)</sup> .....	40
Rancho Seco Solar <sup>(2)</sup> .....	53
NTUA Navajo Drew Solar <sup>(2)</sup> .....	55
Great Valley – Solar <sup>(2)</sup> .....	40
Wildflower Solar <sup>(2)</sup> .....	8
Calpine Geysers – Geothermal .....	95
CalEnergy – Geothermal .....	26
Patua (Gradient/Vulcan) – Geothermal.....	12
Other Long-Term Contracts.....	18
ELCC Portfolio Adjustment <sup>(2)</sup> .....	4
Sutter Calpine Thermal .....	258
Firm Contract Reserves <sup>(4)</sup> .....	18
Committed Short-Term Purchases <sup>(5)</sup> .....	275
Uncommitted Short-Term Purchases .....	8
<b>Sub-total:</b> .....	<b>1,314</b>
<b>Total</b> .....	<b>3,178</b>

<sup>(1)</sup> Available capacity is the net capacity available to serve SMUD's system peak load during the month of July.

<sup>(2)</sup> Capacity values shown are based on resource effective load carrying capability modeling.

<sup>(3)</sup> Total includes SMUD's Base Resource share and WAPA Customer allocations.

<sup>(4)</sup> Assumes firm reserves of 5% are included.

<sup>(5)</sup> Committed Short-Term Purchases are primarily purchased on a year-ahead to season-ahead basis from various sources.

Note: Totals may not add due to rounding.

## Power Generation Facilities

**Hydroelectric.** The UARP consists of three relatively large storage reservoirs (Union Valley, Loon Lake and Ice House) with an aggregate water storage capacity of approximately 400,000 acre-feet and eight small reservoirs. Project facilities also include eight tunnels with a combined length of over 26 miles and eight powerhouses containing 11 turbines. In addition to providing clean hydroelectric power and operating flexibility for SMUD, the UARP area provides habitat for fish and wildlife and a variety of recreational opportunities, including camping, fishing, boating, hiking, horseback riding, mountain biking and cross-country skiing.

The combined capacity of the UARP is approximately 685 MW at SMUD's load center in Sacramento. Under current licensing and mean water conditions, these facilities are expected to generate approximately 1,600 GWh of electric energy annually, which represents approximately 15% of SMUD's current average annual retail energy requirements. In 1957, the Federal Power Commission (predecessor agency to FERC) issued a license to SMUD for the UARP. This 50-year license was subsequently amended to add and upgrade facilities and now includes all segments of SMUD's hydroelectric facilities located on the South Fork of the American River and its tributaries upstream from the Chili Bar Project (described below). On July 23, 2014, FERC issued to SMUD a new 50-year license for the UARP.

On November 9, 2016 FERC issued an Order authorizing SMUD to construct the South Fork Powerhouse downstream of the UARP's Slab Creek Dam. Construction was substantially completed in the fall of 2020, and the new powerhouse was placed into operation on October 25, 2022, adding 1.8 MW of generation to the UARP's overall capacity.

On June 16, 2021, pursuant to Board authorization, SMUD acquired the Chili Bar Hydroelectric Project which consists of a 7 MW powerhouse, reservoir, dam and spillway, north of Placerville on the South Fork of the American River for approximately \$10.4 million (the "Chili Bar Project"). The Chili Bar Project is immediately downstream from the UARP and operates as the regulating reservoir for the UARP's largest powerhouse. Owning the UARP and the Chili Bar Project enables SMUD to operate the two projects with a holistic approach to license compliance and generation efficiency.

**Solano Wind Project.** SMUD owns and operates an 87 MW wind project, located in Solano County, known as Solano 2. Solano 2 consist of 29 wind turbine generators ("WTGs") rated at 3 MW each. Energy from the project is collected at 21 kV and transmitted over a dedicated 3-mile overhead system to the SMUD-owned Russell substation. At the Russell facility, the energy is transformed to 230 kV and interconnected to PG&E's Birds Landing Switching Station. Energy deliveries are scheduled through the CAISO.

**Solano 3 Project.** In 2011 and 2012, SMUD constructed a 128 MW wind project adjacent to Solano Phase 2, known as Solano 3. The Solano 3 project consists of 31 WTGs rated at 1.8 MW and 24 WTGs rated at 3.0 MW. The project interconnects through a 34.5 kV underground collection system to the Russell substation. Like the Solano Phase 2 project, this energy is transformed to 230 kV and delivered through the CAISO.

**Solano 4 Project.** SMUD is developing the Solano 4 Wind Project on SMUD-owned land near the Solano 3 project, known as the Collinsville and Roberts properties, to install 10 WTGs rated at 4.5 MW, and to remove the Solano 1 turbines and replace them with 9 WTGs rated at 4.5 MW. SMUD received the Cluster II Phase I Study results from the CAISO in January 2019, provided the initial security posting in April 2019, and received the Phase II Study Report in November 2019, furthering the process towards a Large Generator Interconnection Agreement ("LGIA"). SMUD has met all of the CAISO requirements and has executed a LGIA as of June 2021 that will allow for 90.8 MW of capacity at the point of

interconnection. WAPA and PG&E identified upgrades needed to interconnect the Solano 4 Wind Project that may not be complete before 2024. The WAPA impacts have been resolved at no cost. PG&E has an approved project and expects to complete the needed upgrades by May of 2025. In April 2021, SMUD submitted an application for advisory review by the Solano County Airport Land Use Commission (the “Solano ALUC”) of the Solano 4 Wind Project’s consistency with the 2015 Travis Air Force Base Land Use Compatibility Plan (the “Travis Plan”). In May 2021, the Solano ALUC purported to resolve that the Solano 4 Wind Project was inconsistent with the Travis Plan. In August 2021, the Board approved the Project Environmental Impact Report, made findings overriding the Solano ALUC’s finding of inconsistency, made findings there was no alternative to the project, and approved the Solano 4 Wind Project. In September 2021, Solano County filed a writ petition challenging SMUD’s approval of the Solano 4 Wind Project based on procedural environmental, zoning and land use grounds. The parties entered into a settlement agreement on December 14, 2022, and the suit was dismissed on January 10, 2023. The settlement agreement allows for the construction of the Solano 4 Wind Project as planned.

In addition, SMUD applied for and obtained extensions of the Federal Aviation Administration Determinations of No Hazard allowing for construction of the turbines. A contract for the construction of the Solano 4 Wind Project was awarded to Vestas Corporation and the Solano 4 Wind Project is currently under construction. The expected operation date for the Solano 4 Wind Project is May 2024. Realization of the full capacity of the Solano 4 Wind Project may be delayed into the first quarter of 2025 due to the timeframe established for the PG&E required upgrades. SMUD has developed a mitigation plan for the limited interconnection capacity for the first year of operation, in coordination with CAISO and PG&E, of using all of the existing SMUD Solano Russell substation interconnection capacity combined for the dispatch of all the Solano Wind Project. SMUD completed a combined LGIA amendment administrative process, which combines all phases of the Solano Wind Project so it may operate as one project. This was fully executed by SMUD, CAISO, and PG&E on February 27, 2023.

***Distributed Solar Photovoltaic.*** SMUD owns and operates approximately 2 MW of solar photovoltaic generating facilities. These facilities include installations at the Hedge Substation property, SMUD Headquarters, the East Campus Operations Center, and other smaller photovoltaic systems throughout the service area on parking lots.

***Hedge Battery.*** SMUD owns and operates a 4 MW, 8 MWh, battery energy storage system located near the Hedge Substation in South Sacramento. The facility reached commercial operation in January 2023.

***Local Gas-Fired Plants.*** SMUD constructed five local natural gas-fired plants in its service area: the Carson Project, the Procter & Gamble Project, the Campbell Soup Project, McClellan and the Cosumnes Power Plant (each defined below). These five plants are referred to collectively as the “Local Gas-Fired Plants.” These plants are a strategic component of SMUD’s resource mix. In addition to providing SMUD a total capacity of approximately 1,139 MW, the Local Gas-Fired Plants provide SMUD with needed voltage support, operational and load following capability, and the reliability inherent in having power resources located close to loads. With the exception of McClellan, these plants were financed through the issuance of project revenue bonds by separate joint powers authorities (collectively, the “Authorities”). In late 2021, ownership of all of the Local Gas-Fired Plants was transferred to one of the Authorities, SFA. SMUD has entered into long-term agreements with SFA providing for the purchase by SMUD of all of the power from each of the Local Gas-Fired Plants on a take-or-pay basis. This consolidation created operational and administrative efficiencies without changing any of the functionality of the power plants. Although the Local Gas-Fired Plants are owned by SFA, SMUD has exclusive control of their dispatch and manages their operations as part of its overall power supply strategy.

Payments under the power purchase agreements are payable from the revenues of SMUD's Electric System prior to the payment of the principal of or interest on SMUD's Senior Bonds and Subordinated Bonds (each as defined under the caption "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS" below), as are other maintenance and operation costs and energy payments. For further discussion of SMUD's obligations to make these payments to SFA, see "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Joint Powers Authorities*."

The following is a brief description of the five Local Gas-Fired Plants:

*The Cosumnes Power Plant (the "Cosumnes Power Plant").* The Cosumnes Power Plant is a 612 MW natural gas-fired, combined cycle plant located in the southern portion of Sacramento County adjacent to SMUD's decommissioned Rancho Seco Nuclear Power Plant. Commercial operation of the Cosumnes Power Plant commenced on February 24, 2006. SFA increased the net generating capacity of the facility by 81 MWs via an Advanced Gas Path ("AGP") upgrade. The additional AGP generation was realized after hardware and software upgrades were completed on both units in March of 2019. The Cosumnes Power Plant is owned by SFA, a joint powers authority formed by SMUD and MID. The existing take-or-pay power purchase agreement between SMUD and SFA expires no earlier than when the related bonds have been paid in full (the outstanding related bonds are scheduled to mature on July 1, 2030). On June 5, 2022, the Cosumnes Power Plant was shut down due to a ground fault in the STG stator. The repair was completed in February 2023 and the plant returned to service on March 5, 2023. See "FACTORS AFFECTING THE REGION – Cosumnes Power Plant Outage".

*The Carson Cogeneration Project (the "Carson Project").* The Carson Project, a 103 MW natural-gas-fired cogeneration project consisting of separate combined cycle and peaking plants, provides steam to the Sacramento Regional County Sanitation District ("SRCSD") wastewater treatment plant adjacent to the site. The Carson Project was originally owned by the CVFA, a joint powers authority formed by SMUD and the SRCSD. Construction of the Carson Project was completed and the plant began commercial operation on October 11, 1995. The CVFA bonds were defeased in September 2019. In late 2021, ownership of the Carson Project was transferred to SFA. The take-or-pay power purchase agreement between SMUD and SFA relating to the Carson Project will be in effect until terminated by SMUD.

*The Procter & Gamble Cogeneration Project (the "Procter & Gamble Project").* The Procter & Gamble Project, a 182 MW natural gas-fired cogeneration facility, is located in an established industrial area of Sacramento. The initial combined cycle portion of the plant began commercial operation on March 1, 1997. Construction of the peaking plant portion of the Procter & Gamble Project commenced during 2000 and the unit achieved commercial status on April 24, 2001. The Procter & Gamble Project produces steam for use in Procter & Gamble Manufacturing Company's oleochemical manufacturing processes and electricity for sale to SMUD. The Procter & Gamble Project was originally owned by the SCA, a joint powers authority formed by SMUD and SFA, a separate joint powers authority. The SCA bonds were defeased in September 2019. In late 2021, ownership of the Procter & Gamble Project was transferred to SFA. The take-or-pay power purchase agreement between SMUD and SFA relating to the Procter & Gamble Project will be in effect until terminated by SMUD.

*The Campbell Soup Cogeneration Project (the "Campbell Soup Project").* The Campbell Soup Project, a 170 MW natural gas-fired cogeneration project, was completed and began commercial operations on December 4, 1997. Upgrades were implemented during 2000, which increased the plant's peaking capacity to 180 MW, well above its net demonstrated capacity of 159.8 MW. The plant is located in south Sacramento adjacent to the Capital Commerce Center (formerly the Campbell Soup Company food processing facility). The Campbell Soup Project was originally owned by SPA, a joint powers authority formed by SMUD and SFA. The SPA bonds were redeemed in July 2015. In late 2021, ownership of the Campbell Soup Project was transferred to SFA. The take-or-pay power purchase agreement between

SMUD and SFA relating to the Campbell Soup Project (the “Campbell Soup/McClellan PPA”) covers both the Campbell Soup Project and McClellan and will be in effect until terminated by SMUD. As part of the Zero Carbon Plan, SMUD is exploring retiring the Campbell Soup Project in 2025, contingent upon SMUD having sufficient other resources available and grid reliability can be maintained. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – 2030 Zero Carbon Plan.”

*The McClellan Gas Turbine (“McClellan”).* McClellan is a 72 MW natural gas-fired simple cycle combustion turbine generating plant at McClellan Business Park in Sacramento. This turbine is connected to SMUD’s electric system and is operated to meet SMUD’s peak-load requirements. McClellan is aligned for remote starting and operation with both black start and fast start capabilities. SMUD constructed the McClellan unit in 1986 as a 50 MW emergency power source for the McClellan Air Force Base. In 2001, following the Air Force Base closure, McClellan was upgraded to 72 MW and converted for SMUD use. In May 2007, SMUD transferred ownership of McClellan to SPA for more efficient operation. SPA did not issue debt related to McClellan. In late 2021, ownership of McClellan was transferred to SFA. SFA passes all costs of operations and maintenance through to SMUD in accordance with the terms of the Campbell Soup/McClellan PPA. In exchange for paying all costs related to McClellan, SMUD receives all of the power generated thereby on a take-or-pay basis. As part of the Zero Carbon Plan, SMUD is exploring retiring McClellan in 2024, contingent upon SMUD having sufficient other resources available and grid reliability can be maintained. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – 2030 Zero Carbon Plan.”

## **Fuel Supply**

**General.** SMUD is obligated to arrange for the purchase and delivery of natural gas to the Local Gas-Fired Plants. Management of the natural gas procurement and delivery process is a key focus of SMUD’s reliability and risk policies. Although the natural gas consumption of the power plants for SMUD’s load can vary significantly depending on the season, precipitation, and the market price of power and natural gas, the plants are forecasted to need, on average in 2023, a total of approximately 97,000 Decatherms per day (“Dth/day”) with a daily peak slightly more than 171,000 Dth/day of natural gas. SMUD has implemented a comprehensive strategy to secure a reliable and diversified fuel supply through a variety of agreements for the supply, transportation, and storage of natural gas.

**Supply.** SMUD hedges a significant portion of its expected gas needs to meet customer power requirements. This includes gas for the Local Gas-Fired Plants and for the Sutter Energy Center. See “Power Purchase Agreements – *Sutter Energy Center*”. This is accomplished through a combination of long-term supply arrangements and an exposure reduction program. The program consists of a primary rolling three-year exposure reduction component, a fuel hedging component on a rolling three-year basis, as well as supplemental fixed calendar year components reaching out up to five calendar years. Long-term arrangements may consist of a combination of physical commodity supply contracts, financial hedges, or options. Natural gas is purchased from a wide variety of producers and marketers at the northern and southern California borders, at Alberta, Canada and from the San Juan and the Rocky Mountain supply basins. SMUD has a number of both fixed-price supply agreements and financial hedging contracts to fix gas costs ranging from one month to several years in duration. Including fixed price biogas contracts as of March 31, 2023, these contracts have hedged the price of approximately 83%, 66% and 55% of SMUD’s forecasted natural gas requirements for 2023, 2024 and 2025, respectively. While the financial effects resulting from the unhedged portions of SMUD’s natural gas requirements are difficult to predict, SMUD’s financial results could be materially impacted.

SMUD has contracted with the Northern California Gas Authority No. 1 (“NCGA”) to purchase an approximate average of 8,700Dth/day over the remaining life of a contract expiring May 31, 2027 (the “NCGA Contract”). Under the NCGA contract, SMUD pays a discounted variable price for the fuel and

anticipates periodically fixing the effective price under separate hedging contracts. Currently the delivery point for the NCGA Contract is the AECO hub in Alberta. SMUD is using its long-term transport capacity to deliver the fuel to the local area plants. To increase delivery efficiencies, SMUD expects to exchange the gas delivered at the AECO hub under the NCGA Contract with gas to be delivered at the Malin receipt point beginning in November 2023.

SMUD has also contracted with the Northern California Energy Authority (“NCEA”) to purchase an approximate average of 22,000 Dth/day or to be converted to the approximate value in Megawatt-hours (“MWh”) of electricity over the remaining life of a contract expiring on May 31, 2049. The gas will be delivered to the SMUD system via the Malin receipt point on the PG&E backbone system. SMUD is using its long-term transport capacity to deliver the fuel to the local area plants. SMUD will pay a discounted variable price for the fuel and anticipates periodically fixing the effective price under separate hedging contracts.

***Renewable Natural Gas Supply.*** As a component of meeting SMUD’s RPS goals, SMUD procures renewable natural gas and digester gas as fuels to generate renewable electricity from the Cosumnes Power Plant. Descriptions of the renewable natural gas supply agreements are provided below.

In March 2009, SMUD entered into a 15-year contract (that qualifies as renewable energy) with Shell Energy North America (US), L.P. (“Shell Energy”) to purchase up to 6,000 Dth/day of renewable natural gas produced from a landfill project in Texas. SMUD began taking deliveries of this supply in April 2009. In March 2012, SMUD amended the contract with Shell Energy to increase the maximum volumes to 7,300 Dth/day and extended the term by 10 years to March 31, 2034. Currently, the delivery point is PG&E Topock and SMUD is using its long-term transport capacity to deliver it to the Cosumnes Power Plant. In 2016, SMUD entered into a 3-year contract with Shell Energy to sell back the entire volume of renewable natural gas purchased, less 500 Dth/day, to be sold into the vehicle transportation markets. Upon expiration of the initial 3-year contract for the sale of biogas to Shell Energy, SMUD extended the sell back of the entire volume of biogas twice for an additional 3 years with Element Markets (now Anew RNG, LLC), starting in 2020 and 2023.

SMUD contracted with Heartland Renewable Energy, LLC (“HRE”) in December 2009 for a 20-year supply of up to 7,000 Dth/day of renewable natural gas from a digester facility in Colorado. Deliveries began in March of 2014. Currently, the delivery point is Opal, Wyoming and SMUD uses its long-term transport capacity to deliver it to the Cosumnes Power Plant. HRE has not delivered volumes from the project to SMUD since December 2016 due to current litigation with Weld County, Colorado regarding odor and permit issues. EDF Renewables, the majority owner of HRE, notified SMUD in August of 2017 that it is in discussions with a short list of bidders to sell its interests in the facility. In June of 2020, the project was purchased and SMUD’s contract was assigned to the new owner, Platte River Biogas, LLC (“PRB”). SMUD and PRB terminated the contract in the third quarter of 2021.

In September 2011, SMUD and CVFA entered into a “Digester Gas Purchase and Sale Agreement” through which the Carson Project cleans nearly all of the digester gas received from Sacramento Regional County Sanitation District (“SRCSD”) and sells it to SMUD for delivery to the Cosumnes Power Plant. In return, SMUD pays all of the Carson Project’s costs in acquiring, cleaning and making the gas available to SMUD. The Digester Gas Purchase and Sale Agreement expires in September 2025. In late 2021, the Digester Gas Purchase and Sale Agreement, along with the Carson Project was transferred to SFA. The Carson Project is currently receiving, processing and selling up to 1,500 Dth/day with provisions for volume increases over time to 2,500 Dth/day. Digester gas, when designated for use in SMUD’s power plants, is counted as renewable generation towards SMUD’s RPS obligations.

In December 2011, SMUD entered into a 20-year agreement with EIF KC Landfill Gas LLC (“EIF”) to purchase up to 7,050 Dth/day of renewable natural gas produced from multiple landfill projects. SMUD began taking deliveries of this supply in January 2014. Currently the delivery point is Kern River – Opal and SMUD uses its long-term transport capacity to deliver it to the Cosumnes Power Plant. Renewable natural gas, when designated for use in SMUD’s power plants, is counted as renewable generation towards SMUD’s RPS obligations. In April 2022 SMUD entered into a transaction to sell the renewable natural gas purchased into the vehicle transportation markets. The transaction expires in March 2025. In 2023, SMUD entered into a 3-year contract with Anew Climate, LLC (“Anew”) to sell back the entire volume of renewable natural gas purchased, to be sold into the vehicle transportation markets.

AB 2196 is a law that defines the criteria by which existing and future renewable natural gas contracts will qualify for the State RPS program. The CEC adopted a RPS Eligibility Guidebook on April 30, 2013, which includes detailed rules for implementation of AB 2196. SMUD received an updated certificate of eligibility from the CEC in July 2014 for the Cosumnes Power Plant that included the quantities of renewable natural gas from all four contracts. The CEC adopted a revised RPS Eligibility Guidebook (Ninth Edition) on April 27, 2017. This latest guidebook did not change the RPS eligibility of any of the above SMUD renewable natural gas and digester gas contracts, but did simplify reporting requirements for these contracts. When fully delivering, these contracts represent roughly 30% of SMUD’s 2020 RPS requirement.

## **Gas Transmission**

SMUD has satisfied its obligation to deliver natural gas to its power plants by constructing a natural gas pipeline, purchasing an equity interest in two PG&E backbone gas transmission lines, and contracting for capacity on a number of existing interstate natural gas transmission lines.

***The Local Pipeline.*** SMUD constructed and owns a 20-inch, 50-mile natural gas pipeline in the greater Sacramento area (the “Local Pipeline”) that transports gas to all of the Local Gas-Fired Plants except McClellan. The Local Pipeline is interconnected with PG&E’s major State gas transmission lines 300 and 401. Additionally, it may be interconnected with one or more private gas gathering pipelines located in the area, a gas storage project and/or other FERC approved pipelines that may be built in the local area. In conjunction with the construction of the Cosumnes Power Plant, SMUD extended the Local Pipeline to the plant site. The 26-mile extension was completed in 2004. The extension is 24 inches in diameter and was designed to serve both the Cosumnes Power Plant and an additional second phase, if constructed.

***PG&E Backbone Gas Transmission Lines 300 and 401.*** In 1996, SMUD purchased an equity interest in PG&E’s backbone gas transmission lines 300 and 401 (referred to as the PG&E backbone). The total capacity acquired at that time was approximately 85,000 Dth/day and consisted of approximately 43,600 Dth/day of firm gas transport from the California–Oregon border at Malin, Oregon and 44,700 Dth/day from the California–Arizona border at Topock, Arizona, to SMUD’s interconnection with the PG&E backbone near Winters, California. SMUD was also entitled to a share of non-firm capacity, which was approximately 4,360 Dth/day; making the total capacity potentially available to SMUD almost 90,000 Dth/day. This purchase made SMUD a co-owner of the PG&E backbone gas transmission lines 300 and 401 and obligated SMUD to pay PG&E to operate the pipelines on its behalf subject to the terms of the purchase agreement and operating protocols. PG&E reduced operating pressures on Line 300 after PG&E suffered a natural gas explosion in San Bruno, CA in September of 2010. Operating pressures and capacity may also fluctuate due to regulatory and other changes. As of December 1, 2021, SMUD holds a total capacity of approximately 87,000 Dth/day, consisting of approximately 47,572 Dth/day of firm gas transport from the California–Oregon border at Malin, and 39,193 Dth/day of firm gas transport from the California–Arizona border at Topock, Arizona, to SMUD’s interconnection with the PG&E backbone near Winters, California.



SMUD also holds additional backbone capacity under tariff service for 5,000 Dth/day of northern path (Redwood) capacity. This contract expires in June 2023. Currently, SMUD is not planning to renew the contract upon expiration.

***Kern River Gas Transmission Company Long Term Agreement.*** SMUD has an agreement with Kern River Gas Transmission Company for 20,000 Dth/day of firm capacity through April 30, 2028. This capacity gives SMUD access to the Rocky Mountain supply basin at Opal, Wyoming, and connects to PG&E Line 300 (owned in part by SMUD) at Daggett, California.

***TransCanada Firm Transmission Service Agreements.*** SMUD has several agreements with TransCanada Corporation that give SMUD access to Canadian supply from the Alberta basin to Kingsgate, British Columbia and the California-Oregon border at Malin. SMUD has agreements for 22,101 Dth/day at the California-Oregon border at Malin via the Gas Transmission Northwest (“GTN”) pipeline that expires in 2023. SMUD has agreements for approximately 12,000 Dth/day from the Alberta ANG/Foothills pipeline, also expiring in 2023. In order to match the Canadian capacity with the takeaway capacity at Malin, SMUD had an agreement with Foothills Pipeline for approximately 10,000 Dth/day that expired on October 31, 2022. Currently, SMUD is not planning to renew the GTN or the Alberta ANG/Foothills agreements.

SMUD’s diversified portfolio of gas transmission arrangements allow for the purchase of gas from a variety of suppliers and locations, and the opportunity to capitalize on regional price differentials where possible. In addition, its ownership interest in the SMUD/PG&E backbone and Local Pipeline enhances the reliability of SMUD’s gas supply.

## **Gas Storage**

SMUD also employs gas storage as part of its overall fuel supply strategy. Gas storage is useful in helping to balance gas supply, mitigate market price volatility, and provide a reliable supply to meet peak day delivery requirements.

SMUD also has a contract with Lodi Gas Storage, LLC, which began in April 2023 and expires in March 2026, for capacity in the Lodi Gas Storage project located near Acampo in northern California. The contract provides SMUD with capacity levels of 1.0 million Dth of storage inventory, 10,000 Dth/day of injection rights and 20,000 Dth/day of withdrawal capacity.

SMUD has a second contract with Lodi Gas Storage, LLC, which began in April 2022 and expires in March 2024, for additional capacity in the Lodi Gas Storage project located near Acampo in northern California. The contract provides SMUD with capacity levels of 1.0 million Dth of storage inventory, 10,000 Dth/day of injection rights and 20,000 Dth/day of withdrawal capacity.

## **Power Purchase Agreements**

SMUD has a number of power purchase agreements to help meet its power requirements. Some of these agreements are described below.

***Western Area Power Administration.*** Effective January 1, 2005, SMUD entered into a 20-year contract with WAPA. SMUD has entered into a replacement agreement extending the term by 30 years for the period of January 1, 2025 through December 31, 2054. Power sold under this contract is generated by the Central Valley Project (“CVP”), a series of federal hydroelectric facilities in northern California operated by the United States Bureau of Reclamation. The contract provides WAPA’s CVP Base Resource customers (including SMUD) delivery of a percentage share of project generation in return for

reimbursement of an equivalent share of project costs. SMUD's CVP Base Resource share is roughly 25% of project generation and costs. This is expected to be approximately 318 MW of capacity and 661 GWh of energy in an average water year but will vary depending on precipitation. Energy available under the contract is determined by water releases required for water supply and flood control and is then shaped into higher value periods within other CVP operating constraints. More capacity and energy are typically available in spring and summer months and less in fall and winter.

SMUD also has a contract with WAPA expiring December 31, 2024, by which WAPA delivers an additional 200-300 MW per hour from projects located in the Pacific Northwest based on certain contractual parameters. In 2022, SMUD received 1,913 GWh of energy under this contract.

***Avangrid (formerly Iberdrola Renewables ("Iberdrola"))***. SMUD has a contract with Iberdrola that provides SMUD with bundled renewable energy (energy plus RECs). The contract agreement is for 126 GWh of wind power generated in Solano County, California. The SMUD Board approved an extension of the wind contract through June 30, 2025.

***Patua Project LLC***. In April 2010, SMUD entered into a power purchase agreement with Patua Project LLC ("Patua"), a subsidiary of Gradient Resources, for the delivery of up to 132 MW (expected to be 120 MW nominal power output) of renewable energy from geothermal generation being developed in north central Nevada, from a Gradient Resources project known as the Patua Project. The Patua Project was to have been developed in three phases. Since 2010, the agreed upon capacity has been reduced several times. In December 2013, Phase 1 of the project, which had been reduced to 30 MW, finally achieved commercial operation. In 2014, the parties concluded negotiations on the fourth amendment to the power purchase agreement with Patua, which reduced the total capacity down to 40 MW, extended the commercial operation date of Phase 2 to January 1, 2016, and allowed Patua to add up to 13 MW of solar photovoltaics to supplement geothermal production. In addition, this amendment shifted responsibility to Patua for a portion of the long-term transmission service agreements that have been underutilized due to the project not meeting its targets. In November 2015, the Patua Project was acquired by TL Power, LLC, a wholly owned subsidiary of Cyrq Energy, Inc. ("Cyrq"). In December 2015, Cyrq terminated Phase 2. Upon termination of Phase 2, the contractual right for Cyrq to add solar photovoltaics to supplement geothermal production was reduced to 10 MW. As a result of poor performance during the first year of operation, SMUD reduced its obligation to take power from 30 MW to 25 MW. Performance continued to lag in 2015 and 2016 and SMUD further reduced its obligation to take power from 25 MW to 19 MW.

***Renewable Energy Feed-In Tariff***. In September 2009, SMUD's Board authorized a feed-in tariff program for the purchase of renewable energy from local renewable energy projects connected to SMUD's distribution system. SMUD's Board authorized connection of up to 100 MW under the feed-in tariff which included standard payment rates and standard purchase terms for power. The feed-in tariff program became effective on January 1, 2010. Under the feed-in tariff, SMUD has executed 20-year term power purchase agreements for solar projects totaling 98.5 MW. Construction and start-up were completed on all projects between 2010 and 2012.

***CalEnergy LLC***. In August 2014, SMUD entered into a 22-year power purchase agreement with CalEnergy LLC for the purchase of 30 MWs per year of renewable energy from its Salton Sea geothermal facilities. As of July 1, 2017, SMUD began receiving up to 10 MWs from the CalEnergy portfolio, which escalated to the full 30 MWs on May 1, 2020.

***Rancho Seco Solar***. In October 2015, SMUD entered into a 20-year power purchase agreement with Rancho Seco Solar LLC for the purchase of energy from a 10.88 MW solar PV project sited on SMUD's property at the closed Rancho Seco Nuclear Generating Station. Commercial operation was achieved in August of 2016. Rancho Seco Solar LLC leased the property from SMUD under a land lease

agreement. The output of this project directly serves two large commercial customers that executed agreements with SMUD for retail supply of solar power.

In May 2019, SMUD entered into a 30-year power purchase agreement for an additional 160 MW solar PV project with Rancho Seco Solar II, LLC. The project is located on SMUD-owned property at the closed Rancho Seco Nuclear Generating Station, adjacent to the existing 10.88 MW solar PV project. Construction began in 2019, and the project became commercially operable in February 2021.

**Grady Wind Energy.** In October 2015, SMUD entered into a 25-year power purchase agreement with Grady Wind Energy LLC (“Grady”) for the purchase of energy from a 200 MW wind project located in New Mexico (the “Grady Project”). The Grady Project began commercial operations on August 5, 2019. Energy from the Grady Project is delivered to CAISO. SMUD purchases 100% of the Grady Project output which includes energy, renewable energy credits, and capacity attributes. SMUD and Grady had a short-term (6-month) agreement spanning the winter 2021-spring 2022 season wherein Grady has the option to pay SMUD to curtail up to 100 MW. This agreement does not affect the remaining term of the agreement.

**Great Valley Solar 2, LLC.** In January 2017, SMUD entered into a 20-year power purchase agreement with Great Valley Solar 2, LLC for the purchase of energy from a 60 MW solar PV project located in Fresno County, California. The project’s commercial operation date was December 28, 2017.

**ARP-Loyalton Cogen LLC.** On September 14, 2016, Senate Bill 859 (“SB 859”) was signed into law. Under SB 859, a POU must procure its proportionate share of 125 MWs of renewable energy from biomass plants burning high hazard forest fuels, subject to terms of at least five years. Seven POUs (SMUD, MID, Turlock Irrigation District (“TID”), Anaheim Public Utilities, Imperial Irrigation District, Los Angeles Department of Water & Power and Riverside Public Utilities, collectively described herein as the “ARP-Loyalton POUs”) jointly solicited proposals for up to 29 MW of contract capacity for renewable energy to meet the requirements of SB 859. In January 2018, SMUD entered into a 5-year power purchase agreement with ARP-Loyalton Cogen LLC to fulfill 18 MWs of the required 29 MWs with SMUD’s share being just over 23 percent (the “ARP-Loyalton PPA”). See “—Roseburg Forest Product Co.” below for a discussion of the remaining SB 859 capacity. The contract became effective on April 1, 2018. On February 18, 2020, ARP-Loyalton Cogen LLC filed for Chapter 11 bankruptcy and stopped producing and selling energy from the biomass plant. On May 7, 2020, the bankruptcy court approved the sale of the Loyalton facility to Sierra Valley Enterprises, LLC (“SVE”). SVE initially expressed interest in bringing the facility back into service; however, the bankruptcy trustee requested repeated extension of the deadline for SVE to accept or reject the ARP-Loyalton PPA. The latest deadline was April 19, 2023, the date of expiration of the ARP-Loyalton PPA term. As SVE did not resume operations before the end of the ARP-Loyalton PPA term, the ARP-Loyalton POUs have negotiated a settlement agreement with the bankruptcy trustee (the “ARP-Loyalton Settlement Agreement”). The ARP-Loyalton Settlement Agreement defines funds from the performance security that the ARP-Loyalton POUs will keep to cover legal and administrative fees, along with a contingency amount to cover potential risk of future damages. Since the ARP-Loyalton POUs entered into a 5-year agreement to procure compliant biomass and provided SVE the opportunity to accept the ARP-Loyalton PPA and restart operations, the ARP-Loyalton POUs consider their statutory obligations to have been fulfilled.

**Roseburg Forest Products Co.** For the remaining SB 859 biomass obligation of 11 MW, SMUD and the other ARP-Loyalton POUs have entered into a five-year power purchase agreement with Roseburg Forest Products Co. SMUD’s share of the contract capacity is 2.5795 MW, and the plant began operating under the contract on February 26, 2021.

**Sutter Energy Center.** SMUD entered into an initial two-year contract (with a third-year exercisable option) with Calpine Energy Services, L.P. (“Calpine”) for the ability to schedule up to 258

MWs of energy from Sutter Energy Center. The Sutter Energy Center is a natural gas-fired, combined-cycle facility located in Yuba City, California. The initial contract became effective on April 1, 2018. SMUD exercised its option to extend the contract, which expired November 1, 2020. SMUD entered into a new contract with Calpine for the same 258 MWs of energy that became effective January 1, 2021, and had an original expiration date of January 1, 2024. In December 2021, SMUD extended this contract through December 31, 2026.

***Drew Solar, LLC.*** In June 2018, SMUD entered into a 30-year power purchase agreement with Drew Solar, LLC for the purchase of energy from a 100 MW solar PV project located in Imperial County, California. The project's scheduled commercial operation date was set to be December 31, 2021. The commercial operation date was delayed due to Force Majeure claims surrounding the COVID pandemic and supply chain constraints caused by changes in Federal regulatory requirements. The project began commercially operating on November 3, 2022.

***Wildflower Solar.*** In October 2018, SMUD entered into a 25-year power purchase agreement with Wildflower Solar I, LLC, for the purchase of energy, capacity, and RECs from a 13 MW solar PV project located in Rio Linda, California. The project began commercially operating on December 18, 2020.

***Coyote Creek (Formerly Sacramento Valley Energy Center, LLC.)*** In August 2021, SMUD entered into a 30-year power purchase agreement with Sacramento Valley Energy Center, LLC for the purchase of energy from a 200 MW solar PV and 100 MW four-hour Battery Energy Storage System ("BESS") capacity project located in Sacramento County, California. The project's commercial operation date was expected to be December 31, 2023. The scheduled commercial operation date has been delayed to 2026 due to ongoing development and permitting delays.

***SloughHouse Solar, LLC.*** In September 2021, SMUD entered into a 30-year power purchase agreement with SloughHouse Solar, LLC for the purchase of energy from a 50 MW solar PV project located in Sacramento County, California. The project's commercial operation date was originally expected to be December 31, 2023, but the commercial operation date has been delayed to 2026 due to ongoing development and permitting delays.

***Country Acres Solar.*** In December 2021, SMUD issued a Request for Offers ("RFO") seeking qualified Power Purchase Agreement offers for a utility scale PV with BESS project under development which will interconnect to SMUD's North Area transmission system. The project site is located on over 1,000 acres in Placer County near the city of Roseville. SMUD selected a developer for the power purchase agreement, which is currently expected to be in place by the third quarter of 2023. Development efforts are underway with an expected commercial operation date in late 2025 to early 2026.

***Geysers Power Company, LLC.*** In March 2021, SMUD executed a 10-year power purchase agreement with Geysers Power Company, LLC for 100 MW of capacity from the Geysers geothermal energy plant located in Lake and Sonoma Counties, California. SMUD started to receive deliveries on January 1, 2023.

## **Transmission Service Agreements**

***TANC California-Oregon Transmission Project.*** The 340-mile COTP is one part of a three 500-kV line coordinated system known as the California-Oregon Intertie ("COI"). The COTP is allocated one-third of the 4,800 MW capability of the COI system (see related agreements below). TANC is entitled to use 1,390 MW and is obligated to pay approximately 80% of the operating costs of the COTP. SMUD is a member of TANC and a party to Project Agreement No. 3 ("PA3"), under which it is entitled to 378 MW and obligated to pay on an unconditional take-or-pay basis about 27.5% of TANC's COTP debt service and

operations costs, subject to a “step-up” obligation of up to 25% of its entitlement share upon the unremedied default of another TANC member-participant. In 2009, SMUD entered into a long-term layoff agreement with certain members that increased SMUD’s entitlement by 35 MW. In 2014, SMUD entered into another long-term layoff agreement with certain other members that increased SMUD’s COTP entitlements by 128 MW and amended the 2009 layoff agreement that returned 13 MW to a member. As of December 31, 2018, SMUD was entitled to approximately 528 MW of TANC’s transfer capability for imports and 405 MW for exports, and is obligated to pay approximately 38.6% of TANC’s COTP debt service and operations costs. SMUD’s payments under this contract, like SMUD’s payments under its other power purchase and transmission service agreements, are treated as “Maintenance and Operation Costs” or “Energy Payments” under the resolutions securing the Senior Bonds and Subordinated Bonds (each as defined under the caption “CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS” below). SMUD relies on its COTP rights to purchase power, access contingency reserves through the Western Power Pool, and obtain renewable resources to supplement its own resources to serve its load. TANC maintains its own property/casualty insurance program. TANC’s budget for COTP costs, support services and advocacy expenses is about \$45.4 million for 2023. SMUD’s obligation of the TANC budget is about \$17.4 million for 2023.

***TANC Tesla-Midway Transmission Service.*** TANC has a long-term contract with PG&E to provide TANC with 300 MW of transmission service between PG&E’s Midway Substation and the electric systems of the TANC Members (the “Tesla-Midway Service”). SMUD’s share of the Tesla-Midway Service had been 46 MW. As part of the 2009 long-term layoff agreement, SMUD acquired an additional 2 MW of South-of Tesla Principles (“SOTP”) transmission rights for 15 years starting February, 2009 from another TANC member, bringing SMUD’s share of the Tesla-Midway Service to 48 MW.

***Bonneville Power Administration.*** In 2009, SMUD entered into a transmission service agreement with the Bonneville Power Administration (“BPA”) for 60 MW of firm point-to-point transmission service from BPA’s Hilltop substation in north eastern California to the Malin substation at the California-Oregon border for the purpose of transmitting power under SMUD’s power purchase agreement with Gradient Resources for Phase 1 of the Patua geothermal project over BPA’s 230kV transmission lines. In early 2013, in accordance with BPA’s transmission tariff, the transmission service was split into two 30 MW services and deferred as appropriate to better fit the timing of expected commercial operation of Phase 1 and Phase 2 of the Patua Project. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – Patua Project LLC.” SMUD submitted another request for the 30 MW of transmission procured for Phase 2 of the Patua Project to split the service into a 10 MW and a 20 MW service, with the 10 MW of service deferred and timed with the originally expected commercial operation date of Phase 2 of the Patua Project. With the termination of Phase 2 of the Patua Project and SMUD’s reduced obligation due to the poor performance of Phase 1 of the Patua Project, much of the transmission reserved for it will no longer be needed. BPA does not have a provision in its transmission tariff for early termination of transmission service. However, the power purchase agreement with Patua requires Patua to cover unused transmission that SMUD has procured for the Patua purchases. On January 1, 2020, SMUD’s transmission rights with BPA were reduced to 19 MW. This now aligns with SMUD’s PacifiCorp transmission rights of 19 MW described in the immediately following paragraph.

***PacifiCorp.*** In 2009, SMUD entered into a transmission service agreement with PacifiCorp for 60 MW of firm point-to-point transmission service across PacifiCorp’s high voltage step-up transformer at the Malin substation at the California-Oregon border for the purpose of transmitting power under SMUD’s power purchase agreement with Gradient Resources for Phase 1 of the Patua Project. In early 2013, in accordance with PacifiCorp’s transmission tariff, the commencement of the 60 MW of transmission service was deferred to fit the timing of first deliveries expected from the 30 MW of Phase 1 of the Patua Project. In 2013, SMUD terminated the 60 MW of transmission service and requested two new transmission services of 30 MW each, with service start dates timed to better fit with the expected start dates of Phase 1

and Phase 2 of the Patua Project. With the reduction in expected output of the Patua Project, SMUD terminated the second 30 MW transmission agreement, and replaced it with a 10 MW transmission service agreement for Phase 2 of the Patua Project. With the termination of Phase 2 of the Patua Project, SMUD terminated the 10 MW Pacificorp transmission service agreement and as a result of the reduced obligation to take power from the Patua Project, SMUD has reduced its remaining Pacificorp transmission service from 30 MW to 19 MW.

***Western Area Power Administration.*** SMUD does not have a direct interconnection of its power system to the COTP. To receive power deliveries that use its COTP rights, SMUD has a long-term transmission service agreement with WAPA for transmission of 342 MW of power from the COTP line (received at WAPA's Tracy or Olinda substations) to SMUD's system. In May of 2011, WAPA completed the Sacramento Voltage Support Transmission Project. Completion of this project has given SMUD an additional 165 MW of transmission service rights on WAPA's system from the COTP at the Olinda Substation to SMUD's system at the Elverta Substation.

## **Projected Resources**

The following tables titled "Projected Requirements and Resources to Meet Load Requirements Energy Requirements and Resources" (the "Energy Table") and "Capacity Requirements and Resources Net Capacity – Megawatts" (the "Capacity Table") describe SMUD's contracted commitments and owned resources available to meet its forecasted load requirements through the year 2032. Resources are shown on an annualized basis with market purchases netted against surplus sales to arrive at a single net position for each year. Because SMUD's available resources do not exactly match its actual load requirements on an hourly basis, there are times during a year when resources available will either exceed or be insufficient to meet SMUD's needs. Expected actual capacity values are included in the tables. These values may differ from measured net demonstrated capacity values of the Local Area Gas-Fired Plants. The table below also includes the impact energy efficiency has on resource requirements as discussed below under "Demand Side Management Programs." See "BUSINESS STRATEGY" and "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants.*"

Resources listed in both the Energy Table and the Capacity Table are listed as either renewable or non-renewable. Generally, SMUD follows the CEC guidelines for eligibility requirements. Some of SMUD's renewable resources listed include solar, wind, geothermal, small hydroelectric facilities with a capacity of 30 MW or less, and biomass (representing generation from a fuel comprised of agricultural wastes and residues, landscape and tree trimmings, wood and wood waste).

As in any forecast, assumptions are made. In both the Energy Table and the Capacity Table the WAPA and UARP forecasts assume average water conditions throughout the period. On the capacity table, WAPA and Cosumnes Power Plant renewable capacity is estimated based on the ratio of renewable energy to total WAPA or Cosumnes Power Plant energy. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Hydroelectric.*"

The Uncommitted Purchases (Sales) on the tables represent either anticipated future needs or surpluses. Future needs are met well in advance of delivery. They also include both renewable and non-renewable resources.

The Transmission Losses represent reductions in the amount of energy or capacity from the location it was purchased to the point of entering SMUD's electrical system. This amount reduces the Total Resources available to meet the Total Projected Energy Requirements of the electrical system.

## **Demand Side Management Programs**

SMUD's demand-side management initiatives represent an integral element of its total resource portfolio, and are organized into two major components: energy efficiency and load management programs. Energy efficiency offerings include a wide variety of programs and services to customers to retrofit or upgrade existing equipment and fixtures and to install new energy efficiency measures in existing and new construction facilities. Load management allows SMUD to reduce the load on the electric system by cycling residential air conditioning, and calling upon commercial/industrial customers to curtail energy usage when energy is constrained during the summer or system emergencies. Load management programs are projected to allow SMUD to shed approximately 60 MW of peak load in an emergency on a hot day, representing about 2% of SMUD's maximum system peak demand.

The customer "smart meter" system with 2-way communication capability provides information regarding customer usage patterns, which is expected to help SMUD tailor rate designs that provide customers with both the information and ability to manage their energy usage around high energy cost periods.

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**PROJECTED REQUIREMENTS AND RESOURCES TO MEET  
LOAD REQUIREMENTS<sup>(1)</sup>  
ENERGY REQUIREMENTS AND RESOURCES (GWh)**

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Renewable Resources</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP - Small Hydro <sup>(2)</sup>	115	93	92	94	94	95	94	94	94	95
Solano Wind	585	738	895	902	902	904	902	902	902	904
Cosumnes-Shell Landfill Gas and Digester Gas <sup>(3)</sup>	48	166	167	582	692	692	692	692	692	692
<b>Total</b>	<b>748</b>	<b>996</b>	<b>1,154</b>	<b>1,578</b>	<b>1,688</b>	<b>1,691</b>	<b>1,688</b>	<b>1,688</b>	<b>1,688</b>	<b>1,691</b>
<u>Purchases</u>										
Western (WAPA) – Small Hydro <sup>(2)</sup>	13	15	15	15	15	15	15	15	15	15
Grady – Wind	933	900	897	897	897	900	897	897	897	900
Avangrid (Iberdrola) (PPM) - Wind	97	98	45	0	0	0	0	0	0	0
Patua (Gradient/Vulcan) – Geothermal	140	147	147	147	147	147	147	147	141	147
Geysers – Geothermal	876	878	876	876	876	878	876	876	876	878
Cal Energy – Geothermal	218	224	223	223	223	224	223	223	223	224
Great Valley SolarShares	167	170	171	171	169	169	169	166	166	167
Rancho Seco PV2	261	332	330	328	327	325	323	322	320	319
Rancho Seco PV	21	22	22	22	22	22	22	22	22	22
Feed-in-Tariff Photovoltaic – Solar	205	209	208	207	206	205	204	203	202	60
Navajo Drew (NTUA) Solar	299	301	298	297	285	276	273	264	271	237
Sloughhouse (Kings Country)	0	0	0	131	124	124	123	122	122	121
Wildflower Solar	31	31	31	31	33	32	33	31	32	32
CoyoteCreek (SVEC) Solar	0	0	0	519	505	502	500	497	495	492
Country Acres	0	0	0	710	706	703	699	696	692	689
Other Long-Term Contracts	145	150	140	29	8	8	6	6	6	6
Future Renewables	0	0	0	0	1,044	1,989	3,351	4,206	4,537	5,870
<b>Total</b>	<b>3,404</b>	<b>3,477</b>	<b>3,403</b>	<b>4,602</b>	<b>5,587</b>	<b>6,521</b>	<b>7,861</b>	<b>8,693</b>	<b>9,018</b>	<b>10,179</b>
<b>Non-Renewable</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP – Large Hydro <sup>(2)</sup>	2,561	1,614	1,627	1,647	1,618	1,625	1,635	1,625	1,617	1,626
Cosumnes Power Plant	3,428	4,173	4,187	3,685	2,511	1,792	675	530	528	525
Procter & Gamble Project	786	859	809	831	123	43	2	3	5	4
Carson Project	423	480	435	401	3	0	1	3	4	4
Campbell Soup Project	776	929	926	0	0	0	0	0	0	0
McClellan	24	61	0	0	0	0	0	0	0	0
<b>Total</b>	<b>7,998</b>	<b>8,116</b>	<b>7,984</b>	<b>6,565</b>	<b>4,256</b>	<b>3,460</b>	<b>2,313</b>	<b>2,160</b>	<b>2,155</b>	<b>2,160</b>
<u>Purchases</u>										
Western (WAPA) – Large Hydro <sup>(2)</sup>	410	482	485	485	485	485	485	485	485	485
Western (WAPA) Customers (Wheeling) <sup>(2)</sup>	25	37	38	38	38	38	38	38	38	38
Calpine Sutter	1,733	1,695	1,660	1,585	0	0	0	0	0	0
Committed Purchases	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>2,168</b>	<b>2,213</b>	<b>2,182</b>	<b>2,108</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>
<b>Total Resources</b>	<b>14,319</b>	<b>14,803</b>	<b>14,723</b>	<b>14,852</b>	<b>12,053</b>	<b>12,195</b>	<b>12,384</b>	<b>13,064</b>	<b>13,383</b>	<b>14,552</b>
Uncommitted Purchases / (Sales)	(3,382)	(3,773)	(3,606)	(3,599)	(1,067)	(920)	(921)	(1,374)	(1,471)	(2,351)
Transmission Losses (COTP/CVP)	(3)	(11)	(11)	(9)	(82)	(102)	(129)	(146)	(152)	(179)
<b>Total Projected Energy Requirements</b>	<b>10,933</b>	<b>11,018</b>	<b>11,106</b>	<b>11,244</b>	<b>10,903</b>	<b>11,174</b>	<b>11,335</b>	<b>11,544</b>	<b>11,759</b>	<b>12,021</b>
Energy Efficiency (EE)	16	30	44	57	69	79	89	99	108	117
Customer PV	63	121	181	238	793	844	894	943	988	1,033
Expected Electric Vehicle (EV) Charging	(34)	(75)	(143)	(228)	(324)	(430)	(545)	(674)	(803)	(947)
Electric Building (EB)	(12)	(28)	(50)	(77)	(108)	(146)	(201)	(267)	(339)	(412)
Battery Storage (Utility)	0	0	0	0	(121)	(142)	(188)	(225)	(232)	(266)
Battery Storage (BTM)	(0)	(0)	(1)	(1)	(7)	(11)	(17)	(23)	(31)	(38)
<b>Total Gross Energy Requirements before EE, PV and EV Charging</b>	<b>10,966</b>	<b>11,066</b>	<b>11,136</b>	<b>11,233</b>	<b>11,205</b>	<b>11,368</b>	<b>11,368</b>	<b>11,396</b>	<b>11,451</b>	<b>11,508</b>

(1) Totals may not sum due to rounding.

(2) [2023 based on current precipitation levels as of March 31, 2023. All other years assume average precipitation.]

(3) Includes a biomethane contract counted as renewable (see “POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Renewable Natural Gas Supply*”).



# CAPACITY REQUIREMENTS AND RESOURCES<sup>(1)</sup>

## NET CAPACITY – MEGAWATTS

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b><u>Load:</u></b>										
<b>Planned Peak</b>	<b>2,806</b>	<b>2,807</b>	<b>2,813</b>	<b>2,820</b>	<b>2,766</b>	<b>2,784</b>	<b>2,790</b>	<b>2,795</b>	<b>2,800</b>	<b>2,808</b>
Transmission Losses	28	28	28	28	28	28	28	28	28	28
Dispatchable Demand Resource	(71)	(71)	(71)	(71)	(165)	(183)	(202)	(165)	(165)	(165)
<b>Adjusted Peak</b>	<b>2,764</b>	<b>2,764</b>	<b>2,770</b>	<b>2,778</b>	<b>2,629</b>	<b>2,629</b>	<b>2,616</b>	<b>2,658</b>	<b>2,663</b>	<b>2,671</b>
Reserve Margin	415	415	416	417	394	394	392	399	399	401
<b>Adjusted Peak with Reserves</b>	<b>3,178</b>	<b>3,179</b>	<b>3,186</b>	<b>3,194</b>	<b>3,023</b>	<b>3,023</b>	<b>3,008</b>	<b>3,057</b>	<b>3,062</b>	<b>3,072</b>
<b><u>Renewable Resources</u></b>										
<b><u>District or Joint Powers Authority Owned:</u></b>										
UARP – Small Hydro	45	45	45	45	45	45	45	45	45	45
Solano Wind	94	97	158	202	204	194	197	198	201	201
Cosumnes – Shell Landfill Gas and Digester Gas <sup>(2)</sup>	7	7	26	94	120	120	120	120	120	120
<b>Total</b>	<b>146</b>	<b>148</b>	<b>229</b>	<b>341</b>	<b>369</b>	<b>359</b>	<b>362</b>	<b>363</b>	<b>365</b>	<b>366</b>
<b><u>Purchases</u></b>										
Western (WAPA) – Small Hydro	10	10	9	9	9	9	9	9	9	9
Grady – Wind	34	33	33	32	32	33	33	33	29	29
Avangrid (Iberdrola) (PPM) - Wind	22	21	--	--	--	--	--	--	--	--
Patua (Gradient/Vulcan) – Geothermal	12	12	12	12	12	12	12	12	12	12
CalEnergy– Geothermal	26	26	26	26	26	26	26	26	26	26
Geysers – Geothermal	95	95	95	95	95	95	95	95	95	95
Great Value Solar Shares	40	35	33	14	14	15	16	15	14	13
Rancho Seco – PV1	3	3	3	0	1	2	1	1	1	1
Rancho Seco – PV2	50	66	61	16	23	26	19	17	14	11
Feed-in-Tariff Photovoltaic - Solar	40	35	31	7	10	13	6	8	5	5
Wildflower Solar	8	4	4	1	1	2	2	1	1	1
Navajo Solar	55	49	45	14	16	19	16	14	11	9
Sloughhouse Solar	--	--	--	14	15	17	15	14	13	12
CoyoteCreek Solar with Storage	--	--	--	154	147	152	147	145	143	141
CountryAcre with Storage	--	--	--	225	214	219	213	209	206	204
Stand-alone Storage	4	4	4	4	521	521	625	664	844	994
Future Renewables Solar, Wind	--	--	--	--	90	209	215	289	333	346
Future Firm Renewables (Geo)	--	--	--	--	--	12	125	125	125	185
Other Long-Term Contracts	18	18	17	2	2	2	2	2	2	2
<b>Total</b>	<b>414</b>	<b>410</b>	<b>371</b>	<b>625</b>	<b>1,228</b>	<b>1,383</b>	<b>1,576</b>	<b>1,678</b>	<b>1,881</b>	<b>2,093</b>
<b><u>Non-Renewable</u></b>										
<b><u>District or Joint Powers Authority Owned:</u></b>										
UARP – Large Hydro	640	640	640	640	640	640	640	640	640	640
Cosumnes Power Plant	563	563	544	476	450	450	450	450	450	450
Carson Project	103	103	103	103	100	100	100	100	100	100
Procter & Gamble Project	166	166	166	166	166	166	166	150	150	150
McClellan	72	72	--	--	--	--	--	--	--	--
Campbell Soup Project	170	170	170	--	--	--	--	--	--	--
<b>Total</b>	<b>1,714</b>	<b>1,714</b>	<b>1,623</b>	<b>1,385</b>	<b>1,356</b>	<b>1,356</b>	<b>1,356</b>	<b>1,340</b>	<b>1,340</b>	<b>1,340</b>
<b><u>Purchases</u></b>										
Western (WAPA) – Large Hydro	323	309	304	304	304	304	304	304	304	304
Western (WAPA) Customers (wheeling)	19	18	18	18	18	18	18	18	18	18
Sutter Energy Center	258	258	258	258	--	--	--	--	--	--
Firm Contract Reserves <sup>(3)</sup>	18	17	17	17	17	17	17	17	17	17
Committed Purchases	275	--	--	--	--	--	--	--	--	--
<b>Total</b>	<b>892</b>	<b>602</b>	<b>596</b>	<b>596</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>
<b>Total Variable Renewal Diversity Benefit/(Risk)</b>	<b>4</b>	<b>107</b>	<b>124</b>	<b>263</b>	<b>164</b>	<b>131</b>	<b>162</b>	<b>178</b>	<b>199</b>	<b>215</b>
Uncommitted Purchases / (Sales)	7	197	242	(16)	(432)	(544)	(787)	(840)	(1,062)	(1,281)
<b>Total Resources</b>	<b>3,178</b>	<b>3,179</b>	<b>3,186</b>	<b>3,194</b>	<b>3,023</b>	<b>3,023</b>	<b>3,008</b>	<b>3,057</b>	<b>3,062</b>	<b>3,072</b>

(1) [Based on information available as of March 31, 2023]. Totals may not sum due to rounding. [Capacity values for wind, solar, storage, and future variable renewable projects shown are based on resource effective load carrying capability (ELCC) modeling.]

(2) [The Cosumnes Power Plant is a 495 MW plant that includes 100 MW capacity attributable to a biogas contract counted as renewable (see “POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Renewable Natural Gas Supply*”) and 395 MW capacity from natural gas.]

(3) [SMUD assumes that for all firm system purchases, the suppliers will be planning 5% reserves.]

## Balancing Authority Area Agreements

**Background.** SMUD began operating as an independent control area, later termed a Balancing Authority, on June 18, 2002 within the WECC reliability organization's region. This reduced SMUD's exposure to the costs and reliability risks of the CAISO's markets. SMUD expanded its operational footprint beyond SMUD's service territory to include WAPA's electric system, including the MID, Roseville, and Redding service areas (on January 1, 2005) and the COTP (on December 1, 2005). As described further below, SMUD ceased to be the Balancing Authority on April 30, 2011, as BANC took SMUD's place as the Balancing Authority. SMUD remains the operator of the Balancing Authority through a contract with BANC. SMUD administers the contracts with WAPA and TANC to provide specified Balancing Authority-related and other services, and is compensated by WAPA and TANC for its added labor expense. TANC recovers such Balancing Authority services costs as a part of its annual operating budget from the COTP Participants and WAPA recovers its Balancing Authority services costs through its rates for power and transmission service. The agreement with WAPA, among other terms, establishes operating reserve obligations between the parties. WAPA in turn has agreements with electric systems connected to it to assure that such systems also operate reliably (i.e., MID, Roseville and Redding). As a result of the transition to BANC as the Balancing Authority, SMUD assigned or terminated its interconnection and operations agreements with other interconnecting Balancing Authority areas (i.e., CAISO, BPA and TID). BANC is now the party to these agreements as they primarily address only Balancing Authority matters required for compliance with the reliability standards issued by the North American Electric Reliability Corporation ("NERC"), such as emergency assistance arrangements. See also "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Western Energy Imbalance Market."

**Reliability Standards.** The Energy Policy Act of 2005 gave FERC authority to enforce reliability standards for the bulk electric system. In June 2007, these standards became mandatory for SMUD and BANC.

In 2022, SMUD and BANC underwent a combined NERC/WECC audit to evaluate compliance with applicable reliability standards. These audits occur every three years. At the conclusion of the audit, regulators determined that neither entity had any compliance violations related to the Operations and Planning or Critical Infrastructure Protection Standards. SMUD and BANC will undergo another NERC/WECC audit sometime in 2025.

**Balancing Authority of Northern California.** SMUD, MID, Redding and Roseville executed a Joint Exercise of Powers Agreement (the "BANC JPA Agreement") creating BANC on May 8, 2009. BANC became operational on May 1, 2011 as a Balancing Authority and replaced SMUD as the entity responsible for Balancing Authority-related reliability standards. Since that time, the Trinity Public Utilities District and the City of Shasta Lake have also become members of BANC. As provided in the BANC member agreement, liability for penalties associated with such Balancing Authority-related reliability standards are shared on a *pro rata* basis among the members of BANC. SMUD is the Balancing Authority operator under contract and performs Balancing Authority operational functions on behalf of BANC, much as it did when it was the Balancing Authority. The BANC JPA Agreement assigns cost responsibility based on member load within the BANC Balancing Authority, with SMUD representing approximately 70% of the total load.

## Power Pool and Other Agreements

**Western Power Pool Agreement.** The Western Power Pool ("WPP") is an agreement among over 30 utilities and public agencies in the western United States to coordinate contingency reserve sharing, referred to as the WPP Reserve Sharing Program ("RSP"). The RSP permits participants to rely on one

another in the event that any participant experiences a generating resource outage. While SMUD became an RSP participant in 2009, participation is limited to Balancing Authorities, which SMUD relinquished to BANC in 2011. Under the RSP, BANC and TID (also a WPP member) share their reserve amounts and when necessary may call upon WPP reserves using BANC member systems and unused COTP rights. The WPP RSP permits members to operate more efficiently by reducing the contingency reserves that they would otherwise need to have available if they could not rely on each other.

***TANC-SMUD OASIS Administration Agreement.*** SMUD entered into an agreement with TANC to provide OASIS services (transmission sales and scheduling related services in the BANC BA of TANC members' COTP rights) on September 29, 2005. SMUD is compensated for performing these services. TANC and SMUD entered into a letter agreement dated October 25, 2010 to clarify each party's role for regulatory reliability standards compliance responsibilities and take into account SMUD's increased efforts related to supporting TANC's compliance requirements. SMUD and TANC entered into an agreement to transition this service to the Western Area Power Administration, effective on May 1, 2023. Going forward SMUD will only have a minor role in receiving payments and distributing revenues to the TANC members.

### **Other Agreements with PG&E**

***Background.*** SMUD's electric system was originally purchased from PG&E in 1947. SMUD's service area is mostly surrounded by PG&E's service area and the two electric systems are interconnected at SMUD's Rancho Seco and Lake 230-kV substations.

***Interconnection Agreement.*** PG&E and SMUD executed a Replacement Interconnection Agreement ("RIA") which became effective on January 1, 2010. The RIA provides that SMUD and PG&E operate their interconnections reliably, plan their electric systems to meet their load requirements, and avoid or mitigate impacts they cause by certain electric system modifications. The new agreement has a termination date of December 31, 2024, subject to FERC approval.

***Generator Interconnection Agreements.*** SMUD signed a LGIA with CAISO and PG&E for the Solano 3 Wind Project, effective December 16, 2008, with a 50-year term. The Solano 2 Wind Project has interconnection rights granted through a LGIA, also with the CAISO and PG&E. The agreement became effective in January 2010 and has a term of 20 years. On June 3, 2021, SMUD entered into a LGIA with the CAISO and PG&E, for the planned 90.8 MW Solano 4 Wind project with a 10-year term and automatic renewal for successive one-year terms thereafter. On February 27, 2023, SMUD completed a combined LGIA amendment administrative process which combines the Solano 2, 3 & 4 projects into one Solano Wind Project. The original agreement conditions for the individual projects are carried forward with a new combined project maximum production limit of 320.8 MW at the point of interconnection at the Russell Substation.

Other generator interconnection agreements include a Small Generator Interconnection Agreement with PG&E for Slab Creek with a 22-year term which became effective on January 14, 2010, and a Small Generator Interconnection Agreement with PG&E for the Chili Bar Project with a 10-year term which became effective on June 2, 2021.

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## SELECTED OPERATING DATA

Selected operating data of SMUD for the four years ended December 31, 2019 through 2022, and for the three months ended March 31, 2023 and March 31, 2022 are presented in the following table.

### SMUD SELECTED OPERATING DATA CUSTOMERS, SALES, SOURCES OF ENERGY AND REVENUES

	Three Months Ended March 31,		Year Ended December 31,			
	2023	2022	2022	2021	2020	2019
<b>Customers at End of Period:</b>						
Residential .....	577,659	573,693	576,471	572,786	568,741	565,103
Commercial and industrial .....	69,503	69,531	69,512	69,426	68,628	68,203
Other .....	7,284	7,331	7,290	7,345	7,354	7,406
Total .....	654,446	650,555	653,273	649,557	644,723	640,712
<b>MWh Sales:</b>						
Residential .....	1,108,861	1,010,095	4,763,277	4,749,079	4,906,566	4,493,548
Commercial and industrial .....	1,234,611	1,313,519	5,805,052	5,649,474	5,453,120	5,616,920
Other .....	14,045	14,272	53,965	54,473	55,590	55,770
Total .....	2,357,517	2,337,886	10,622,294	10,453,026	10,415,276	10,166,238
Surplus power/out of area sales .....	989,530	551,317	2,493,651	2,774,907	2,259,991	1,878,205
Total .....	3,347,047	2,889,203	13,115,945	13,227,933	12,675,267	12,044,443
<b>Sources of Energy Sold MWh:</b>						
Generated by SMUD .....	1,683,465	1,297,158	4,368,126	6,776,244	6,414,380	7,143,944
Purchased or exchanged .....	1,773,658	1,679,188	9,162,576	6,884,003	6,691,279	5,324,217
Total .....	3,457,123	2,976,346	13,530,702	13,660,247	13,105,659	12,468,161
Less System losses and SMUD usage .....	106,194	87,143	414,757	432,314	430,392	423,718
Total .....	3,350,929	2,889,203	13,115,945	13,227,933	12,675,267	12,044,443
Gross System peak demand (kW) <sup>(1)</sup> .....	1,549,000	1,526,000	3,263,000	3,019,000	3,057,000	2,927,000
Average kWh sales per residential customer <sup>(2)</sup> .....	1,921	1,762	8,293	8,316	8,650	7,987
<b>Average Revenue per kWh Sold:</b>						
Residential <sup>(2)</sup> (cents) .....	14.52	14.34	16.73	16.20	15.27	14.90
Commercial & industrial <sup>(2)</sup> (cents) .....	13.91	12.11	13.97	13.95	13.17	12.71

<sup>(1)</sup> Peak system MW values are measured at the four SMUD interconnection points and exclude SMUD's generation losses. Historical values include the impacts of dispatchable, non-dispatchable, and energy efficiency program capacity savings.

<sup>(2)</sup> The average kWh sales per residential customer and the average revenue per kWh sold are calculated based upon billed and unbilled sales.

Source: SMUD

## SELECTED FINANCIAL DATA

### SMUD Financial Information

The following table presents selected financial data of SMUD. Under generally accepted accounting principles, data with respect to SMUD's component units, such as the Authorities, is included with that of SMUD. The following presents data for SMUD only and not its component units, such as the Authorities. SMUD's audited financial statements for the years ended December 31, 2022 and December 31, 2021 are included in APPENDIX B attached to this Official Statement. The following unaudited data for SMUD (excluding its component units) is drawn from SMUD's financial records that have been subjected to the auditing procedures applied in the audits of SMUD's and its component units financial statements for the years ended December 31, 2019 through 2022. The selected financial data for the periods ended March 31, 2023 and March 31, 2022 are derived from SMUD's unaudited financial records, which

have been prepared on the same basis as SMUD's data for the years ended December 31, 2019 through 2022. The selected financial data for the period ended March 31, 2023 are not necessarily indicative of the financial data to be expected for the entire year ending December 31, 2023.

**SMUD FINANCIAL DATA<sup>(1)</sup>**  
(thousands of dollars)

	Three Months Ended March 31,		Year Ended December 31,			
	2023	2022	2022	2021 (Restated)	2020	2019
<b>Summary of Income</b>						
Operating Revenues <sup>(2)</sup> .....	\$ 466,524	\$ 378,404	\$ 2,138,655	\$ 1,784,290	\$1,582,979	\$1,553,167
Operating Expenses .....	(489,270)	(376,017)	(2,102,849)	(1,464,069)	(1,397,845)	(1,412,199)
Operating Income (Loss) .....	(22,746)	2,387	35,806	320,221	185,134	140,968
Interest and Other Income (Expense) ..	32,593	10,777	124,704	108,788	63,014	(21,113)
Interest Expense .....	(18,608)	(19,294)	(74,702)	(81,692)	(80,699)	(66,185)
Change in Net Position .....	\$ (8,761)	\$ (6,130)	\$ 85,808	\$ 347,317	\$ 167,449	\$ 53,670
<b>Selected Statement of Net Position Information</b>						
Net Plant in Service .....	\$ 3,604,649	\$ 3,413,234	\$ 3,654,725	\$ 3,502,335	\$3,234,208	\$3,187,135
Construction Work in Progress .....	343,966	409,932	323,499	365,478	460,155	351,584
Electric Utility Plant – Net.....	\$ 3,948,615	\$ 3,823,166	\$ 3,978,224	\$ 3,867,813	\$3,694,363	\$3,538,719
Unrestricted Cash.....	\$ 554,360	\$ 536,534	\$ 591,410	\$ 569,001	\$ 662,155	\$ 451,800
Rate Stabilization Fund.....	\$ 151,118	\$ 193,608	\$ 156,016	\$ 188,992	\$ 168,726	\$ 143,669
Total Assets .....	\$ 6,297,170	\$ 6,032,532	\$ 6,421,666	\$ 6,096,865	\$5,826,449	\$5,429,137
Net Position .....	\$ 2,368,958	\$ 2,286,511	\$ 2,377,719	\$ 2,291,910	\$1,944,593	\$1,777,145
Long-Term Debt <sup>(3)</sup> .....	\$ 2,228,327	\$ 2,378,960	\$ 2,236,824	\$ 2,387,686	\$2,523,921	\$2,166,389
<b>Debt Service Coverage Ratios</b>						
Parity Debt Service Coverage Ratio ..			2.04x	2.59x	2.25x	2.11x
Parity and Subordinate Debt Service Coverage Ratio.....			1.94x	2.47x	2.14x	2.06x

<sup>(1)</sup> The financial statements of SMUD comprise financial information of SMUD along with its component units, CVFA, SPA, SCA, SFA, NCGA and NCEA. This table includes only financial information of SMUD excluding its component units. Net operating revenues and expenses and Electric Utility Plant and Capitalization of CVFA, SPA, SCA, SFA, NCGA and NCEA are not included in this table, although amounts paid to or received from the Authorities by SMUD are included.

<sup>(2)</sup> Operating Revenues reflect net transfers to (from) the Rate Stabilization Fund for each full year as follows:

2023 (\$4.9) million through March 31, 2023

2022 (\$33.0) million

2021 \$20.3 million

2020 \$25.1 million

2019 \$47.0 million

Transfers to the Rate Stabilization Fund reduce operating revenues in the year transferred; transfers from the Rate Stabilization Fund increase operating revenues. Transfers from the HGA balancing account in the Rate Stabilization Fund are automatic based on the amount of precipitation received. See "RATES AND CUSTOMER BASE – Rates and Charges" above.

<sup>(3)</sup> Long-Term Debt includes Long-Term Debt due within one year and unamortized premiums.

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## Financial Information of SMUD and the Authorities

The following table presents a summary of selected financial information for SMUD and the Authorities.

### SUMMARY OF FINANCIAL INFORMATION OF SMUD AND THE AUTHORITIES FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021 (thousands of dollars)

	Year Ended December 31, 2022			Year Ended December 31, 2021 (Restated)		
	SMUD	Authorities	Total <sup>(1)</sup>	SMUD	Authorities	Total <sup>(1)</sup>
<b>Summary of Income</b>						
Operating Revenues <sup>(2)</sup> .....	\$ 2,138,655	\$ 166,674	\$ 2,147,334	\$ 1,784,290	\$ 270,694	\$ 1,790,276
Operating Expenses .....	(2,102,849)	(120,798)	(2,065,652)	(1,464,069)	(250,980)	(1,450,341)
Operating Income .....	35,806	45,876	81,682	320,221	19,714	339,935
Interest and Other Income	124,704	1,871	90,044	108,788	712	108,114
Interest Expense.....	(74,702)	(26,482)	(101,184)	(81,692)	(27,608)	(109,300)
Change in Net Position.....	\$ 85,808	\$ 21,265	\$ 70,542	\$ 347,317	\$ (7,182)	\$ 338,749
<b>Selected Statement of Net Position Information</b>						
Net Plant in Service .....	\$3,654,725	\$ 285,346	\$3,653,281	\$3,502,335	\$ 307,755	\$3,523,243
Construction Work in Progress.....	323,499	24,259	347,758	365,478	1,819	367,297
Electric Utility Plant – Net ....	\$3,978,224	\$ 309,605	\$4,001,039	\$3,867,813	\$ 309,574	\$3,890,540
Unrestricted Cash .....	\$ 591,410	\$ 36,454	\$ 627,864	\$ 569,001	\$ 61,375	\$ 630,376
Rate Stabilization Fund ....	\$ 156,016	--	\$ 156,016	\$ 188,992	--	\$ 188,992
Total Assets .....	\$6,421,666	\$1,133,461	\$7,191,063	\$6,096,865	\$1,179,848	\$6,916,205
Net Position .....	\$2,377,719	\$ 271,836	\$2,366,803	\$2,291,910	\$ 286,890	\$2,296,261
Long-Term Debt <sup>(3)</sup> .....	\$2,236,824	\$ 787,215	\$3,024,039	\$2,387,686	\$ 826,171	\$3,213,857

<sup>(1)</sup> Financial information for SMUD and the SMUD JPAs (CVFA, SPA, SCA, SFA, NCGA and NCEA) include intercompany balances. The financial information reflects balances after the elimination of intercompany accounts including Authorities distributions to SMUD of \$36.5 million in 2022 and \$1.4 million in 2021.

<sup>(2)</sup> Operating Revenues reflect net transfers to (from) the Rate Stabilization Fund as follows:

2022 (\$33.0) million

2021: \$20.3 million

Transfers to the Rate Stabilization Fund reduce operating revenues in the year transferred; transfers from the Rate Stabilization Fund increase operating revenues. Transfers from the HGA balancing account in the Rate Stabilization Fund are automatic based on the amount of precipitation received. See "RATES AND CUSTOMER BASE – Rates and Charges" above.

<sup>(3)</sup> Long-Term Debt includes Long-Term Debt due within one year and unamortized premiums.

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## Management's Discussion of SMUD's Operating Results

**Three Months Ended March 31, 2023 (Unaudited).** For the three months ended March 31, 2023, SMUD reported a decrease in net position of \$8.8 million as compared to a decrease of \$6.1 million for the three months ended March 31, 2022.

Operating revenues were \$88.1 million higher than 2022. This was primarily due to higher sales of surplus power (\$47.1 million), sales to customers (\$29.0 million), and transfers from the rate stabilization fund (\$9.3 million).

Operating expenses were \$113.3 million higher than 2022. This was primarily due to higher purchased power expenses (\$42.7 million), amortization of pension and OPEB (\$19.5 million), transmission and distribution maintenance expenses (\$12.6 million), administrative and general expenses (\$11.5 million), depreciation expense (\$9.7 million), production expenses (\$4.1 million), production maintenance expenses (\$3.5 million), customer service and information expenses (\$3.3 million), public good expenses (\$2.6 million), and customer accounts expenses (\$2.0 million).

Non-Operating income was \$21.8 million higher than 2022. This was primarily due to a gain on land sale (\$14.3 million), higher interest income (\$6.0 million), and unrealized holding gains (\$2.6 million) offset by investment expenses (\$2 million).

Interest expense decreased \$0.7 million from 2022.

**Year Ended December 31, 2022.** For the year ended December 31, 2022, SMUD reported an increase in net position of \$85.8 million as compared to an increase of \$347.3 million for 2021.

Operating revenues were \$354.4 million higher than 2021. This was primarily due to higher sales to customers (\$130.7 million), sales of surplus gas (\$96.0 million), sales of surplus power (\$62.2 million), transfers from the RSF (\$24.3 million), customer fees (\$9.5 million), AB 32 revenue (\$4.9 million) and LCFS revenue (\$2.2 million), partially offset by lower gain on sale of carbon allowance futures (\$3.7 million) and transfers to the RSF (\$28.9 million).

Operating expenses were \$638.8 million higher than 2021. This was primarily due to higher purchased power expenses (\$369.6 million), amortization of pension and OPEB (\$126.9 million), production operating expenses (\$114.0 million), transmission and distribution maintenance expenses (\$23.3 million), depreciation expenses (\$8.9 million), transmission and distribution operating expenses (\$8.8 million), public good expenses (\$7.7 million), customer service and information expenses (\$4.5 million), and production maintenance expenses (\$2.8 million), partially offset by lower administrative and general expenses (\$30.4 million).

Non-Operating income increased by \$15.9 million primarily due to higher investment income (\$19.7 million), partially offset by unrealized holding losses (\$3.7 million), closeout of escrow account (\$2.8 million), higher fee based product costs (\$1.9 million), and loss on asset retirements (\$1.9 million).

Interest expense decreased \$7.0 million from 2021.

**Year Ended December 31, 2021.** For the year ended December 31, 2021, SMUD reported an increase in net position of \$347.3 million as compared to an increase of \$167.4 million for 2020.

Operating revenues were \$201.3 million higher than 2020. This was primarily due to higher sales to customers (\$70.1 million), sales of surplus gas (\$65.4 million), sales of surplus power (\$47.1 million),

transfers from the RSF (\$18.2 million), AB 32 revenue (\$17.9 million) and gain on sale of carbon allowance futures (\$3.1 million), partially offset by transfers to the RSF (\$13.4 million) and lower public good revenue (\$3.5 million).

Operating expenses were \$66.2 million higher than 2020. This was primarily due to higher production operating expenses (\$89.6 million), purchased power expenses (\$47.0 million), and depreciation expenses (\$37.8 million), partially offset by lower amortization of pension and OPEB (\$84.2 million), public good expenses (\$10.7 million), customer accounts expenses (\$6.8 million) and transmission and distribution maintenance expenses (\$5.5 million).

Non-Operating income increased by \$45.8 million primarily due to California Arrearage Payment Program funding (\$41.4 million), a settlement related to Rancho Seco damages (\$15.0 million), higher investment income (\$11.5 million), higher contributions in aid of construction (\$4.0 million), lower legal settlement costs (\$2.2 million), offset by dissolution of RBC CSCDA gas prepay contract (\$10.9 million), lower insurance proceeds (\$8.6 million), lower interest income (\$6.9 million), lower unrealized holding gains (\$4.0) and lower distributions from the JPAs (\$2.6 million).

Interest expense increased \$1.0 million from 2020.

***Regulatory Assets.*** In accordance with Governmental Accounting Standards Board (“GASB”) No. 62, “Regulated Operations,” SMUD defers, as regulatory assets, certain types of expenditures. These assets are amortized and collected through future rates.

As of December 31, 2022, SMUD had a total of \$764.2 million recorded for regulatory assets. Regulatory assets associated with costs related to implementation of GASB No. 68, which requires SMUD to record a net pension liability was \$340.5 million and deferred outflows related to GASB No. 68 was \$86.6 million at December 31, 2022. Regulatory assets associated with costs related to implementation of GASB No. 75, which requires SMUD to record a net Other Post Employment Benefit (OPEB) liability was \$281.0 million and deferred outflows related to GASB No. 75 was \$19.2 million at December 31, 2022. Regulatory assets associated with Rancho Seco decommissioning costs totaled \$83.9 million at December 31, 2022. Nuclear fuel storage costs and non-radiological decommissioning costs have been collected in rates since 2009. For a complete description of these regulatory assets, see Note 8 (Regulatory Deferrals) to SMUD’s financial statements.

The Board has authorized the deferral of any charges or credits that result from the change in valuation of ineffective hedges that should be reported as Investment Revenue/Expense on the Statements of Revenues, Expenses and changes in net position. The Board’s resolution establishes that such charges or credits are not included in rates based on market value changes but are included in rates when the underlying transactions occur. Therefore, under GASB No. 62, “Regulated Operations,” any such changes are included in the Statement of Net Position as regulatory assets or liabilities. For a complete description of these derivative financial instruments, see Note 9 (Derivative Financial Instruments) to SMUD’s financial statements.

## **RANCHO SECO DECOMMISSIONING**

***Overview.*** The 913 MW Rancho Seco Nuclear Power Plant (“Rancho Seco”) began Nuclear Regulatory Commission (“NRC”) licensed operations in 1974. In June 1989, the electorate of SMUD voted against allowing SMUD to continue to operate Rancho Seco as a nuclear generating facility, and the plant was shut down. In 1991, SMUD submitted a report (the “Financial Assurance Plan”) providing required financial assurance to the NRC that SMUD will have sufficient funds available to pay for the cost of decommissioning. On March 17, 1992, the NRC granted SMUD a change from an operating to a



possession-only license for Rancho Seco that relieved SMUD from compliance with a number of NRC regulations applicable to operating nuclear power plants. SMUD also filed a proposed decommissioning plan with the NRC (the “Decommissioning Plan”), which was approved in March 1995.

After the decommissioning efforts began, no suitable disposal option was available to SMUD for the Class B and Class C low level radioactive waste generated during the plant decommissioning. With the used nuclear fuel stored onsite requiring oversight staff, SMUD opted to store the Class B and Class C radioactive waste in an existing interim onsite storage building until a suitable disposal option was available. In November 2007, the possession-only license for Rancho Seco was amended to update the Decommissioning Plan to terminate the possession-only license for the Class B and Class C waste in two phases. Phase I of the decommissioning was completed at the end of 2008. Following verification of the site conditions, SMUD submitted a request to the NRC to reduce the licensed facility from 2,480 acres to the interim onsite storage building and about one acre surrounding it. The request was approved by the NRC in September 2009. Phase II of decommissioning included the approximately two-acre interim storage building containing the Class B and Class C radioactive waste and surrounding area. In September 2013, SMUD entered into a contract with the operator of the low-level radioactive waste disposal facility located in Andrews, Texas. Shipment of the Class B and Class C radioactive waste for disposal was completed in November 2014. SMUD conducted additional clean-up activities and radiological surveys, which were followed by NRC confirmatory surveys. The results of these surveys demonstrated unit dose criteria well below NRC release criteria, and the NRC approved the Phase II area for unrestricted use. On September 21, 2017, SMUD formally requested the termination of the possession-only license. On August 31, 2018, the NRC officially terminated SMUD’s possession-only license for the remaining Class B and Class C waste at Rancho Seco.

As part of the Decommissioning Plan, the nuclear fuel and Greater Than Class C (“GTCC”) radioactive waste is being stored in a dry storage facility (the Independent Spent Fuel Storage Installation or “ISFSI”) constructed by SMUD, adjacent to the former reactor facility. The NRC has separately licensed this facility. The DOE, under the Nuclear Waste Policy Act of 1982, is responsible for permanent disposal of used nuclear fuel and GTCC radioactive waste. SMUD has a contract with the DOE for the removal and disposal of this waste. The DOE was to have a waste repository operating by 1998, but has experienced significant and ongoing delays. The Nuclear Waste Policy Act designates Yucca Mountain in Nevada as the final and exclusive repository for the nation’s used nuclear fuel. The DOE discontinued the Yucca Mountain license review activities in 2010, but after a court ordered the NRC to resume its review in 2013, the NRC published its final safety evaluation report in 2015. The final safety report, and the final environmental impact statement, concluded that the proposed repository would be safe and environmentally sound for one million years.

Nevertheless, seeking alternatives to Yucca Mountain, the Blue-Ribbon Commission on America’s Nuclear Future delivered its final report in January 2012 with several recommendations. The Department of Energy (the “DOE”) responded to the recommendations by issuing a report in January 2013 (Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste). Key to both documents is a focus on used fuel from decommissioned sites including Rancho Seco. The DOE report accepts most of the Blue-Ribbon Commission recommendations, and contains timelines for fuel management options which proposed removing the fuel from Rancho Seco as early as 2021. However, any progress on the strategies proposed by the DOE is dependent on legislative action by Congress. With no legislative action taken to date, the 2021 projected date for fuel removal slips year-for-year. Therefore, SMUD cannot determine at this time when the DOE will fulfill its contractual obligations to remove the nuclear fuel and GTCC waste from the Rancho Seco facility. In the meantime, SMUD continues to incur costs of approximately \$5 to \$6 million per year for storage of used nuclear fuel at the ISFSI. SMUD has filed a series of successful lawsuits against the federal government for recovery of past spent fuel costs, with recoveries to date from the DOE in excess of \$104 million. SMUD plans to continue pursuing cost

recovery claims to ensure it is reimbursed for all such costs in the future. The ISFSI will be decommissioned, and its license terminated after the fuel and GTCC is removed.

***Financial Assurance Plan.*** In accordance with the Financial Assurance Plan, SMUD established and funded an external decommissioning trust fund currently held by Wells Fargo Bank (the “Decommissioning Trust Fund”). Pursuant to the Financial Assurance Plan, SMUD made the final deposit into the Decommissioning Trust Fund in 2008. Additional deposits are not expected but will be made if increased cost estimates or reduced fund interest earnings require it. In 2011, the NRC began requiring that SMUD demonstrate financial assurance for decommissioning the ISFSI as well as the former power facility, increasing the overall cost for decommissioning Rancho Seco. The estimated total cost for decommissioning the ISFSI was approximately \$6.5 million on December 31, 2022. The decommissioning cost estimate is required to be updated every three years. As of December 31, 2022, the balance of the Decommissioning Trust Fund was \$8.98 million, excluding unrealized gains and losses. Based on the current decommissioning cost estimate and the value of the fund, SMUD’s existing Decommissioning Trust Fund provides sufficient funds to complete decommissioning and terminate the ISFSI license.

In addition to these costs, SMUD also estimates that it would cost approximately \$13.1 million to restore the site to make it available for other SMUD uses with some major structures remaining intact. Site restoration is not a legal requirement. No site restoration is currently underway.

## **EMPLOYEE RELATIONS**

SMUD has approximately 2,335 employees, most of whom are covered by a civil service system. SMUD is a contracting member of the California Public Employees’ Retirement System (“PERS”). Approximately 50% of SMUD’s work-force is represented as to wages, hours and other terms and conditions of employment, by one of three recognized employee organizations, the International Brotherhood of Electrical Workers (“IBEW”) Local 1245, the Organization of SMUD Employees (“OSE”), and the SMUD Public Safety Officers’ Association (“PSOA”). The remaining 50% of SMUD’s work-force, which includes managers, professional, administrative, supervisory, confidential and security staff, is unrepresented.

SMUD negotiated a four-year Memoranda of Understanding (“MOU”) with IBEW and the OSE, effective January 1, 2022, through December 31, 2025. Both contracts contain a no-strike/no-lockout clause effective during the life of the agreements. SMUD has an MOU with PSOA effective through December 31, 2026. SMUD has experienced only one labor interruption, which occurred in January 1980 that lasted four days.

## **RETIREMENT BENEFITS AND POST-EMPLOYMENT MEDICAL BENEFITS**

### **Pension Plans**

SMUD participates in PERS, an agent multiple-employer public employee defined benefit pension plan. PERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. PERS acts as a common investment and administrative agent for participating public entities within the State. Benefit provisions and all other requirements are established by State statute and SMUD policies. The pension plan provides retirement benefits, survivor benefits, and death and disability benefits based upon employees’ years of credited service, age, and final compensation.

As of June 30, 2021, the last actuarial valuation date for SMUD’s plan within PERS, the market value of the SMUD plan assets was \$2.51 billion. The plan is 100.1% funded on a market value of assets

basis, an increase of 21.0% compared to the June 30, 2020 funded status based on the market value of assets.

As an employer, SMUD is required to contribute a percentage of payroll each year to PERS to fund SMUD's plan based on actuarial valuations performed by PERS. PERS collects the normal cost based on a percentage of payroll and the unfunded liability portion is based on a dollar amount. SMUD also makes partial contributions required of SMUD employees on their behalf and for their account. At the PERS fiscal year ended June 30, 2022, SMUD's required employer contribution rate for normal cost was 9.0% of payroll and the unfunded liability contribution was \$36.3 million. During 2022, SMUD contributed \$52.7 million to PERS (including SMUD's contributions to cover required employee contributions), and SMUD employees paid \$16.5 million for their share of the PERS contribution.

For the fiscal years ending June 30, 2023 and June 30, 2024, SMUD is required to contribute 8.9% and 9.6% of payroll for normal costs and \$22.4 million for fiscal year ending June 30, 2023 for the unfunded liability contribution. There is no estimated employer contribution to the unfunded liability for fiscal year ending June 30, 2024. Assuming no amendments to the plan and no liability gains or losses (which can have a significant impact), PERS has projected that SMUD will be required to contribute 9.5% of payroll to the plan for normal costs and no employer contribution for the unfunded liability for the fiscal year ending June 30, 2025, not including SMUD contributions to cover required employee contributions. The amount SMUD is required to contribute to PERS is expected to increase in the future. The actual amount of such increases will depend on a variety of factors, including but not limited to investment returns, actuarial methods and assumptions, experience and retirement benefit adjustments.

SMUD has the option to prepay an annual lump sum payment to PERS for the unfunded accrued liability portion only (not including SMUD contributions to cover required employee contributions). SMUD made an annual lump sum prepayment of \$35.1 million, and also voluntarily made an additional payment of \$56.3 million, for the unfunded accrued liability for the fiscal year ended June 30, 2022. SMUD also made an annual lump sum prepayment of \$19.5 million, and voluntarily made an additional payment of \$2.9 million for the unfunded accrued liability for the fiscal year ending June 30, 2023.

While SMUD has some ability to adjust the retirement benefits provided to its employees, PERS determines the actuarial methods and assumptions used with respect to assets administered by PERS (including the SMUD plan assets) and makes the investment decisions with respect to such assets. For a description of such actuarial methods and assumptions (including the smoothing conventions used by PERS when setting employer contribution rates) and investments, see the comprehensive annual financial report of PERS (SMUD's plan is part of the Public Employees' Retirement Fund of PERS) available on its website at [www.calpers.ca.gov](http://www.calpers.ca.gov). SMUD cannot guarantee the accuracy of such information and neither the comprehensive annual financial report of PERS nor any other information contained on the PERS website is incorporated by reference in or part of this Official Statement. Actuarial assessments are "forward-looking" information that reflect the judgment of the fiduciaries of the pension plans, and are based upon a variety of assumptions, one or more of which may prove to be inaccurate or be changed in the future. Actuarial assessments will change with the future experience of the pension plans.

GASB issued statement No. 68 "Accounting and Financial Reporting for Pensions – An Amendment of GASB Statement No. 27" ("GASB No. 68"). The primary objective of GASB No. 68 is to improve accounting and financial reporting by state and local governments for pensions. Under GASB No. 68, SMUD is required to report the net pension asset or net pension liability (i.e., the difference between the total pension liability and the pension plan's net position or market value of assets) in its Statement of Net Position. This standard requires shorter amortization periods for recognition of non-investment gains and losses and actuarial assumption changes, as well as for recognition of investment gains and losses. GASB No. 68 separates financial reporting from funding requirements for pension plans. The net pension

liability as of December 31, 2022 is \$235.5 million and the net pension asset as of December 31, 2021 is \$27.7 million.

SMUD provides its employees with two cash deferred compensation plans: one pursuant to Internal Revenue Code (“IRC”) Section 401(k) (the “401(k) Plan”) and one pursuant to IRC Section 457 (the “457 Plan” and collectively, the “Plans”). The Plans are contributory plans in which SMUD’s employees contribute the funds. Each of SMUD’s eligible full-time or permanent part-time employees may participate in either or both Plans, and amounts contributed by employees are vested immediately. Such funds are held by a trustee in trust for the employees upon retirement from SMUD service and, accordingly, are not subject to the general claims of SMUD’s creditors. SMUD makes annual contributions to the 401(k) Plan on behalf of certain employees pursuant to a memorandum of understanding with both of its collective bargaining units. SMUD matches non-represented employee contributions to the 401(k) Plan up to a set amount. SMUD also makes limited discretionary contributions to non-represented employees hired after January 1, 2013, which contributions fully vest after five years. Prior to 2022, SMUD did not match employee contributions, nor make contributions on behalf of its employees to the 457 Plan. Beginning in 2022, SMUD makes annual contributions to the 457 Plan on behalf of certain employees and matches employee contributions up to a set amount pursuant to a memorandum of understanding with one of its collective bargaining units. SMUD made contributions to both Plans of \$7.0 million in 2022 and to the 401(k) Plan of \$6.1 million in 2021. Participating employees made contributions into both Plans totaling \$32.4 million in 2022 and \$30.6 million in 2021.

### **Other Post-Employment Benefits**

SMUD provides post-employment healthcare benefits, in accordance with SMUD policy and negotiated agreements with employee representation groups in a single employer defined benefit plan, to all employees who retire from SMUD, and their dependents. SMUD also provides post-employment healthcare benefits to covered employees who are eligible for disability retirement. SMUD contributes the full cost of coverage for retirees hired before January 1, 1991, and a portion of the cost based on credited years of service for retirees hired after January 1, 1991. SMUD also contributes a portion of the costs of coverage for these retirees’ dependents. Retirees are required to contribute the portion that is not paid by SMUD. The benefits, benefit levels, retiree contributions and employer contributions are governed by SMUD and can be amended by SMUD through its personnel manual and union contracts.

SMUD’s post-employment health care benefits are funded through the PERS California Employers’ Retiree Benefit Trust (“CERBT”), an agent multiple-employer plan. The funding of a plan occurs when the following events take place: the employer makes payments of benefits directly to or on behalf of a retiree or beneficiary; the employer makes premium payments to an insurer; or the employer irrevocably transfers assets to a trust or other third party acting in the role of trustee, where the plan assets are dedicated to the sole purpose of the payments of the plan benefits, and creditors of the government do not have access to those assets.

SMUD has elected to contribute the normal costs to the CERBT but annually receive reimbursement for cash benefit payments from the CERBT. In 2023, SMUD’s contribution for the normal costs to CERBT is \$8.6 million. In 2022 and 2021, SMUD decided to forgo making a contribution for the normal costs to the CERBT because there was a net OPEB asset at December 31, 2021 and December 31, 2020. SMUD can elect to make additional contributions to the trust. During 2022 and 2021, SMUD made healthcare benefit contributions by paying actual medical costs of \$24.5 million and \$24.1 million, respectively. During 2022 and 2021, SMUD received a \$23.3 million reimbursement for cash benefit payments from the CERBT each year.

At June 30, 2022 and 2021, SMUD estimated that the actuarially determined accumulated post-employment benefit obligation was approximately \$381.7 and \$398.2 million, respectively. At June 30, 2022 and 2021, the plan was 97.9% and 113.1% funded, respectively.

SMUD's actuary uses PERS economic and other assumptions as the basis for the calculation of the post-employment benefit obligation. The actual accumulated post-employment benefit obligation will vary substantially if such PERS assumptions, such as interest rate and life expectancy, among others, prove to be inaccurate or different than SMUD's actual experience. Although SMUD believes that such assumptions and estimates are reasonable, no assurance can be given that any such assumptions will prove to be accurate, or that SMUD's actual accumulated post-employment benefit obligation will not materially exceed its estimates. Additional information is available in Note 15 (Other Postemployment Benefits) and "Required Supplementary Information" to SMUD's consolidated financial statements.

GASB previously issued SGAS No. 75 "Accounting and Financial Reporting for Postemployment Benefits Other than Pensions". The primary objective of GASB No. 75 is to improve accounting and financial reporting by state and local governments for post-employment benefits other than pensions ("OPEB"). Under GASB No. 75, SMUD is required to report the net OPEB asset or net OPEB liability (i.e., the difference between the total OPEB liability and the OPEB plan's net position or market value of assets) in its Statement of Net Position. This standard requires shorter amortization periods for recognition of non-investment gains and losses and actuarial assumption changes, as well as for recognition of investment gains and losses. The net OPEB liability as of December 31, 2022 is \$6.8 million and the net OPEB asset as of December 31, 2021 is \$57.5 million.

## **CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS**

### **Estimated Capital Requirements**

SMUD has a projected capital requirement of approximately \$2.70 billion for the period 2023 through 2027 as shown in the table below. Approximately 60% of this requirement is anticipated to be funded with internally generated funds and cash on hand.

Special projects include costs relating to construction of large substations and the potential construction of Solano Phase 4. The Estimated Capital Requirements table below includes \$207 million for Solano Phase 4. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – Solano 4 Project."

### **ESTIMATED CAPITAL REQUIREMENTS (Dollars in Thousands)**

	<b>Service Area and Other System Improvements Including Distribution System</b>	<b>Improvements to Existing Generation Plant</b>	<b>General Plant</b>	<b>Special Projects</b>	<b>Total Capital Requirements</b>
2023	\$150,334	\$57,763	\$78,675	\$207,427	\$494,199
2024	195,581	40,608	97,225	216,229	549,643
2025	247,528	100,303	107,766	94,651	550,248
2026	247,528	100,303	107,766	94,651	550,248
2027	247,528	100,303	107,766	94,651	550,248

## Outstanding Indebtedness

**General.** SMUD typically finances its capital requirements through the sale of revenue bonds, the sale of commercial paper, from draws on its Revolving Credit Facility (as defined below) and from internally generated funds. With the recent passage of the Inflation Reduction Act and the Infrastructure Investment and Jobs Act SMUD is monitoring and exploring new methods of financing, including those afforded under these two programs that provide not-for-profit public power utilities with direct federal incentive payments.

SMUD's Electric Revenue Bonds (the "Senior Bonds") are issued pursuant to Resolution No. 6649 (the "Senior Resolution") adopted in 1971, as amended and supplemented (the "Senior Resolution"). As of May 1, 2023, SMUD had Senior Bonds in the aggregate principal amount of \$1,841,715,000 outstanding. [If the plan of finance described in the forepart of this Official Statement is implemented in whole, Senior Bonds in the aggregate principal amount of \$[\_\_\_\_\_] are expected to be outstanding under the Senior Resolution.] See "PLAN OF FINANCE" in the forepart of this Official Statement. The Senior Bonds are payable solely from the Net Revenues of SMUD's Electric System. The Senior Bonds are subordinate in right of payment to the prior payment of "Maintenance and Operation Costs" and "Energy Payments" as defined in the Master Resolution, including payments by SMUD to TANC under PA3, payments by SMUD under power purchase agreements related to the Authorities and payments by SMUD to NCGA and NCEA under their respective gas supply contracts.

SMUD's Subordinated Electric Revenue Bonds (the "Subordinated Bonds") are issued pursuant to Resolution No. 85-11-1 of SMUD, adopted on November 7, 1985, as amended and supplemented (the "Subordinate Resolution"). As of May 1, 2023, SMUD had Subordinated Bonds in the aggregate principal amount of \$200,000,000 outstanding. [If the plan of finance described in the forepart of this Official Statement is implemented in whole, Subordinate Bonds in the aggregate principal amount of \$[\_\_\_\_\_] are expected to be outstanding under the Subordinate Resolution.] The Subordinated Bonds are payable solely from the Net Subordinated Revenues of SMUD's Electric System. The Subordinated Bonds are subordinate in right of payment to the prior payment of principal of and interest on the Senior Bonds.

SMUD issues commercial paper notes (the "Notes") from time to time. As of May 1, 2023, SMUD's Notes were outstanding in the aggregate principal amount of \$200,000,000. Currently, Notes in the aggregate principal amount of \$300,000,000 may be outstanding at any one time, but SMUD reserves the right to increase or decrease the aggregate principal amount of the Notes that may be outstanding at any one time in the future. The Notes are secured by letters of credit issued by commercial banks. The Notes (and SMUD's obligations to repay drawings under the letters of credit) are payable solely from available revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds. Drawings under the letters of credit, to the extent not repaid immediately from the proceeds of commercial paper or other available SMUD funds, are repayable with interest over a period of five years. The letters of credit currently expire in February and August of 2025. SMUD expects to pay \$200,000,000 of the outstanding principal amount of the Notes with proceeds of the [2023 Bonds] (as defined in the forepart of the Official Statement). See "PLAN OF FINANCE" in the forepart of the Official Statement.

SMUD also entered into a revolving credit agreement with a commercial bank and issued its taxable and tax-exempt revolving notes thereunder (collectively, the "Revolving Credit Facility") in February 2022. As of May 1, 2023, no principal was outstanding under the Revolving Credit Facility. Currently, the aggregate principal amount that can be outstanding under the Revolving Credit Facility at any one time is limited to \$100,000,000. However, SMUD reserves the right to increase or decrease the aggregate principal amount that can be outstanding at any one time under the Revolving Credit Facility in the future. SMUD's payment obligations under the Revolving Credit Facility are payable solely from available

revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds. The current term of the Revolving Credit Facility expires in February 2026.

***Joint Powers Authorities.*** SMUD has entered into long-term take-or-pay power purchase agreements with SFA relating to the Local Gas-Fired Plants. Under such agreements, SMUD has exclusive control of the dispatch of all five of the Local Gas-Fired Plants and takes all of the power produced by the Local Gas-Fired Plants. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants.*" The Authorities are each treated as component units of SMUD for accounting purposes. Only SFA has outstanding debt, which relates solely to the Cosumnes Power Plant and is payable solely from capacity payments made by SMUD under the related power purchase agreement. As of May 1, 2023, bonds issued by SFA to finance the Cosumnes Power Plant were outstanding in the aggregate principal amount of \$89,735,000. SMUD's payments under the power purchase agreements relating to the Local Gas-Fired Plants are payable from revenues of SMUD's Electric System prior to the payment of principal of and interest on the Senior Bonds and Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and Subordinate Resolution.

SMUD and Sacramento Municipal Utility District Financing Authority formed a joint powers authority called the Northern California Gas Authority No. 1 ("NCGA"). NCGA is treated as a component unit of SMUD for accounting purposes. NCGA issued \$757,055,000 in bonds in May 2007 for the purpose of paying Morgan Stanley Capital Group in advance for natural gas to be delivered to NCGA and then sold to SMUD pursuant to a long-term purchase contract. SMUD's obligation under the purchase contract is limited to payment for gas supplies delivered by NCGA. SMUD's payments under the purchase contract are payable from revenues of SMUD's Electric System prior to the payment of principal and interest on the Senior Bonds and the Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and the Subordinate Resolution. SMUD is not obligated to make any payments in respect of debt service on the NCGA bonds. As of May 1, 2023, related bonds in the aggregate principal amount of \$142,935,000 remain outstanding.

SMUD and Sacramento Municipal Utility District Financing Authority formed a joint powers authority called the Northern California Energy Authority ("NCEA"). NCEA is treated as a component unit of SMUD for accounting purposes. NCEA issued \$539,615,000 in bonds in December 2018 for the purpose of paying J. Aron & Company LLC in advance for natural gas or electricity to be delivered to NCEA and then sold to SMUD pursuant to a long-term purchase contract. SMUD's obligation under the purchase contract is limited to payment for gas or electricity supplies delivered by NCEA. SMUD's payments under the purchase contract are payable from revenues of SMUD's Electric System prior to the payment of principal and interest on the Senior Bonds and the Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and the Subordinate Resolution. SMUD is not obligated to make any payments in respect of debt service on the NCEA bonds. As of May 1, 2023, related bonds in the aggregate principal amount of \$539,615,000 remain outstanding.

***Interest Rate Swap Agreements.*** SMUD has two interest rate swap agreements relating to previously or currently outstanding Subordinated Bonds and two forward starting interest rate swap agreements relating to potential refunding bonds to be issued in the future, as shown in the following table. For more information, see Note 9 (Derivative Financial Instruments) to SMUD's consolidated financial statements.

Effective Date	Termination Date	SMUD Pays		SMUD Receives	Notional Amount (000's)	Counterparty
7/2/1997	7/1/2024	Floating	SIFMA	5.154%	\$38,165	J Aron & Company LLC
7/15/2003	8/15/2028	Fixed	2.894%	63% of 1M LIBOR	68,450	Morgan Stanley Capital Services, Inc.
07/12/2023	08/15/2041	Fixed	0.718%	70% of 1M LIBOR	132,020	Barclays Bank
07/12/2023	08/15/2033	Fixed	0.554%	70% of 1M LIBOR	75,680	Barclays Bank

The obligations of SMUD under the swap agreements are not secured by a pledge of revenues of SMUD's electric system or any other property of SMUD. SMUD does not currently have any collateral posting requirements with respect to the interest rate swap agreements, but SMUD may be required to post collateral under certain circumstances. [In connection with the plan of finance described in the forepart of this Official Statement, SMUD expects to terminate the swap with Barclays Bank with a notional amount of \$75,680,000 that would otherwise become effective on July 12, 2023]. See "PLAN OF FINANCE" in the forepart of this Official Statement.

**Build America Bonds Subsidy Payments.** SMUD's Electric Revenue Bonds, 2009 Series V (the "2009 Series V Bonds") and Electric Revenue Bonds, 2010 Series W (the "2010 Series W Bonds") were issued as "Build America Bonds" under the provisions of the American Recovery and Reinvestment Act of 2009. At the time the 2009 Series V Bonds and 2010 Series W Bonds were issued, SMUD expected to receive an annual cash subsidy payment from the United States Treasury equal to 35% of the interest payable on the 2009 Series V Bonds and the 2010 Series W Bonds. However, as a result of the federal budget process, many payments from the federal government, including Build America Bonds subsidy payments, have been reduced. Absent the federal budget reductions, the aggregate annual cash subsidy payable to SMUD with respect to the 2009 Series V Bonds and the 2010 Series W Bonds would be approximately \$9.8 million. With the current federal budget reductions, SMUD has typically been receiving aggregate annual cash subsidy payments with respect to the 2009 Series V Bonds and the 2010 Series W Bonds of approximately \$9.2 million. It is possible that future federal budget actions could further reduce, or eliminate entirely, the annual cash subsidy payments with respect to Build America Bonds, including the annual cash subsidy payments payable to SMUD with respect to the 2009 Series V Bonds and the 2010 Series W Bonds. SMUD cannot predict the likelihood of the further reduction or elimination of the Build America Bonds subsidy payments. A significant reduction or elimination of the cash subsidy payments payable to SMUD with respect to the 2009 Series V Bonds or the 2010 Series W Bonds could be material.

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**Debt Service Requirements.** The following table sets forth SMUD’s debt service requirements with respect to SMUD’s Senior Bonds and Subordinated Bonds.

**DEBT SERVICE REQUIREMENTS[TO BE UPDATED]<sup>(1)</sup>**

<b>Calendar Year</b>	<b>Senior Bonds Debt Service<sup>(2)</sup></b>	<b>Subordinated Bonds Debt Service<sup>(3)</sup></b>	<b>Total Debt Service</b>
2022	\$ 198,841,641	\$ 10,000,000	\$ 208,841,641
2023	208,076,945	10,861,111	218,938,056
2024	176,548,637	7,483,333	184,031,970
2025	177,270,712	8,833,333	186,104,045
2026	177,369,062	5,500,000	182,869,062
2027	177,458,312	6,000,000	183,458,312
2028	177,568,563	6,000,000	183,568,563
2029	126,192,937	6,000,000	132,192,937
2030	136,265,941	6,000,000	142,265,941
2031	141,875,082	6,000,000	147,875,082
2032	141,716,845	6,000,000	147,716,845
2033	141,576,102	6,000,000	147,576,102
2034	144,261,606	6,000,000	150,261,606
2035	144,110,773	6,000,000	150,110,773
2036	143,962,001	6,000,000	149,962,001
2037	83,681,613	6,000,000	89,681,613
2038	83,528,863	6,000,000	89,528,863
2039	80,375,800	6,000,000	86,375,800
2040	80,382,550	6,000,000	86,382,550
2041	85,735,800	6,000,000	91,735,800
2042	31,422,350	28,490,000	59,912,350
2043	31,214,150	28,490,300	59,704,450
2044	31,008,750	28,490,350	59,499,100
2045	30,799,950	28,494,550	59,294,500
2046	25,391,750	28,492,150	53,883,900
2047	25,392,000	28,492,700	53,884,700
2048	25,392,500	28,490,450	53,882,950
2049	25,390,750	28,489,800	53,880,550
2050	25,394,250	-	25,394,250
<b>Total</b>	<b>\$3,078,206,235</b>	<b>\$360,608,077</b>	<b>\$3,438,814,312</b>

(1) Does not include outstanding bonds issued by the Authorities for the Local Gas-Fired Plants. Does not include bonds issued by NCGA, NCEA or SMUD’s portion of bonds issued by TANC. Payments by SMUD which are used by the Authorities, NCGA, NCEA, and TANC to pay debt service on such bonds constitute either “Maintenance and Operation Costs” or “Energy Payments” under the Senior Resolution and the Subordinate Resolution.

(2) Includes debt service for the [ ] Bonds and excludes debt service for the [Refunded Bonds]. Debt service for all Senior Bonds other than the [ ] Bonds calculated as of December 31, 2022. Debt service for the [ ] Bonds calculated assuming the [ ] Bonds are issued on [ ]. Debt service is not reduced by the amount of any subsidy that SMUD currently expects to receive in connection with the 2009 Series V Bonds and 2010 Series W Bonds.

(3) [As of December 31, 2021. Based on an assumed interest rate of 3% per annum following (i) the initial scheduled Mandatory Purchase Date of October 17, 2023 for SMUD’s Subordinated Electric Revenue Bonds, 2019 Series A and (ii) the initial scheduled Mandatory Purchase Date of October 15, 2025 for SMUD’s Subordinated Electric Revenue Bonds, 2019 Series B.]

Note: Amounts may not add due to rounding.

## **INSURANCE**

SMUD maintains a comprehensive property/casualty insurance program designed to protect against catastrophic losses that would have an adverse effect on its financial position or operational capabilities. Insurance programs are continuously reviewed and modified when construction, operational exposures, or developments in the insurance industry so warrant. Long term relationships with a variety of insurers minimize SMUD's susceptibility to the effects of market cycles. SMUD budgets reserves to meet potential insurance deductibles and self-insured liability claims.

SMUD safeguards assets with all-risk property and boiler/machinery insurance with limits of \$800 million per occurrence for physical damage and business interruption combined. Various coverage sublimits and deductibles apply to losses arising from certain perils, such as business interruption, earthquake, or flood, respectively. Liability insurance is in effect to defend and indemnify SMUD against third party claims, including general, automobile and sudden and accidental pollution claims with policy limits of \$140 million, and wildfire coverage with policy limits of \$250 million, all of which include a variety of self-insured retentions.

Nuclear property and liability insurance policies are maintained in accordance with the NRC's requirements for decommissioned nuclear plants that maintain dry storage of spent fuel on-site. This includes \$100 million in first party property damage and decontamination, \$100 million for nuclear liability arising from accidents on-site, \$200 million for supplier's and transporter's nuclear liability, and \$300 million for nuclear worker liability. SMUD is exposed to possible retrospective assessments for nuclear property events occurring at other nuclear facilities in the United States capped at ten times SMUD's annual nuclear property premium (currently the maximum retrospective assessment is approximately \$1,000,000).

Other types of insurance include non-owned aircraft liability, workers' compensation, crime, cyber security, fidelity, fiduciary liability, directors' and officers' liability, professional errors and omissions, transportation, and builder's risk for major facilities under construction.

## **LEGAL PROCEEDINGS**

SMUD is a party to numerous actions arising out of the conduct of its business and affairs, some of which are discussed below. SMUD believes that any losses or adverse financial results it may suffer in these current actions, to the extent not covered by insurance, would not, in the aggregate, have an adverse material impact on SMUD, its business and affairs, the results of its operations, financial position or liquidity.

### **Environmental Litigation**

SMUD was one of many potentially responsible parties that had been named in a number of actions relating to environmental claims and/or complaints. SMUD has resolved these environmental claims and/or complaints and entered into settlement agreements and/or consent orders. These settlement agreements and consent orders have statutory reopener provisions which allow regulatory agencies to seek additional funds for environmental remediation under certain limited circumstances. While SMUD believes it is unlikely that any of the prior settlements or consent orders will be reopened, the possibility exists. If any of the settlements or consent orders were to be reopened, SMUD management does not believe that the outcome will have a material adverse impact on SMUD's financial position, liquidity or results of operations.

## **Claim for Accidental Death**

In February 2020, SMUD received a claim alleging an employee of a gutter company died after he accidentally came into contact with a SMUD electrical line during an installation. The claim is for approximately \$43 million. SMUD concluded the electrical lines at the site of the accident exceeded required clearances and there is no basis for the claim against SMUD. SMUD management believes that SMUD has no potential liability in this matter and that any costs ultimately borne by SMUD will not have a material adverse impact on SMUD's financial position, liquidity or results of operations.

## **Proposition 26 Lawsuit**

Two SMUD customers jointly filed a complaint against SMUD in October 2019, and subsequently one of the plaintiffs removed themselves from the complaint. The complaint states that SMUD violated Proposition 26 (see "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – Proposition 26" for a description of Proposition 26) when SMUD's Board on June 24, 2019 adopted rate increases for 2020 and 2021. The plaintiff contends the rate increases do not reflect SMUD's reasonable cost of service because they include a 9.2% scalar that SMUD applied to its TOD residential rate restructure in the 2017 rate process which SMUD's Board adopted at that time. Therefore, the plaintiff contends SMUD's 2020 and 2021 rates should be decreased by this scalar amount because the scalar exceeded SMUD's cost of service, and refunded to SMUD customers. Because SMUD has a strong evidentiary record supporting the Board's rate decisions in 2017 and 2019, and views the lawsuit as having little merit, SMUD anticipates the court will rule in SMUD's favor. The plaintiff has requested to amend the complaint, which has delayed the court's proceeding until the amended complaint is filed. While SMUD believes the court will rule in its favor, SMUD is unable to predict the outcome of the litigation or, if or to the extent SMUD ultimately is not successful in the litigation, what remedies against SMUD may be available. SMUD management believes that if SMUD is not successful in the litigation, and to the extent the outcome would have a material adverse impact on SMUD's financial position, liquidity, or results of operations, the Board would make appropriate rate modifications based on an evidentiary record consistent with guidance from a judicial decision in the case.

## **Other Litigation Matters**

Currently, SMUD is party to various claims, legal actions and complaints relating to its operations, including but not limited to: property damage and personal injury, contract disputes, torts, and employment matters. SMUD management believes that the ultimate resolution of these matters will not have a material adverse effect on SMUD's financial position, liquidity or results of operation.

## **FERC Administrative Proceedings**

SMUD is involved in a number of FERC administrative proceedings related to the operation of wholesale energy markets, regional transmission planning, gas transportation and NERC reliability standards. These proceedings generally fall into the following categories: (i) filings initiated by the CAISO (or other market participants) to adopt/modify the CAISO Tariff and/or establish market design and behavior rules; (ii) filings initiated by existing transmission owners (i.e., PG&E and the other IOUs) to pass-through costs to their existing wholesale transmission customers; (iii) filings initiated by FERC on market participants to establish market design and behavior rules or investigate market behavior by certain market participants; (iv) filings initiated by transmission owners under their transmission owner tariffs to establish a regional transmission planning process; (v) filings initiated by providers of firm gas transportation services under the Natural Gas Act; and (vi) filings initiated by NERC to develop reliability standards applicable to owners, users, and operators of the bulk electric system. In addition, SMUD is an active participant in other FERC administrative proceedings, including those related to reliability, variable

resource integration and the changing resource mix, and transmission planning and cost allocation. SMUD management believes that determinations of these FERC proceedings will not have a material adverse effect on SMUD's financial position, liquidity or results of operations.

### **CPUC Administrative Proceedings**

Periodically, PG&E seeks to update its gas transmission and storage ("GT&S") revenue requirements and rate designs. These applications are litigated at the CPUC and affect SMUD through several tariff rates SMUD pays to move natural gas along PG&E's backbone transmission lines. In the 2019 GT&S rate case (the "2019 GT&S Case"), the CPUC affirmed the application in GT&S rates of cost causation principles to prevent excessive and unreasonable costs being shifted to electric generator backbone customers like SMUD, either through proposed changes in PG&E's natural gas storage strategy or through cost shifts within the electric generator customer class.

PG&E filed its 2023 General Rate Case ("GRC") in June 2021 which includes its gas transmission and storage revenue requirements. In September 2021, PG&E filed an application for approval of its Gas Cost Allocation and Rate Design Proposals ("CARD"). SMUD is actively participating in PG&E's GRC and CARD proceedings to ensure that costs are fairly allocated to non-core customers, including electric generator backbone customers. Separately, SMUD continues to participate and monitor a proceeding at the CPUC concerning long-term gas system planning. At this point in these proceedings, SMUD management does not anticipate that the ultimate resolution of such cases will have a material adverse effect on SMUD's financial position, liquidity, or results of operation.

## **DEVELOPMENTS IN THE ENERGY SECTOR**

### **Electric Market Deregulation**

In 1996, the State partially deregulated its electric energy market and the CAISO was established in 1998. Since the CAISO's formation, the State has experienced episodes of higher and more volatile prices for natural gas and wholesale electricity. In reaction to such conditions, SMUD made significant changes to its business strategy to mitigate the impacts of the more volatile and unpredictable energy markets. Volatility in energy prices in the State are always a potential risk due to a variety of factors which affect both the supply and demand for electricity in the western United States. These factors include, but are not limited to, the implementation of the CAISO market design changes, insufficient generation resources, the increase in intermittent renewable energy resources, natural gas price volatility, fuel costs and availability, weather and natural disasters, transmission constraints and levels of hydroelectric generation within the region. While SMUD has taken a number of steps to mitigate its exposure to price volatility associated with these factors, this price volatility under extreme conditions may contribute to greater volatility in SMUD's net revenues from the purchase and sale of electric energy and, therefore, could materially adversely affect the financial condition and liquidity of SMUD. For a discussion of SMUD's current resource planning activities and risk management strategies, see "BUSINESS STRATEGY" above.

### **Cybersecurity**

Cybersecurity continues to be a top priority for SMUD. Attacks or threats directed at critical electric or energy sector operations could damage or cause the shut-down of generation, transmission or distribution assets that are essential to SMUD's ability to serve its customers, cause operational malfunctions and outages affecting SMUD's electric system, and result in costly recovery and remediation efforts. The costs of security measures or of remedying breaches could be material.

SMUD participates in sharing and receiving information about cyber security threats in real-time through the Electricity Information Sharing and Analysis Center (“E-ISAC”), the central hub for such data to actively manage risk related to potential cyber intrusion. SMUD also participates in NERC’s development of mandatory, enforceable cyber security standards to address vulnerabilities in electric utility systems. SMUD also adopts voluntary measures suggested as best practices by the National Institute of Standards and Technology (“NIST”) in its national framework.

SMUD’s prudent response to this ever-changing threat requires constant monitoring and frequent updates to implement new regulatory requirements as they are developed. SMUD manages risk related to frequently changing regulatory requirements by participating in the development of standards at NERC and NIST and through active engagement in the cyber security policy dialogue in Congress.

## **Physical Security**

Physical security is a critical concern for electric utilities as they seek to protect their infrastructure from a range of threats. The electric utility infrastructure is complex and consists of multiple components, such as power plants, substations, transmission and distribution lines, and other facilities. SMUD employs a dedicated physical security team that is deployed 24/7 and allows SMUD to respond to emergent events in a safe, coordinated, efficient, and cohesive manner, protecting the lives of its employees, customers, community, properties and assets. SMUD has policies, processes and procedures in place that outline the access controls and restrictions for its properties. SMUD restricts access based on need as it determines, while adhering to applicable laws, regulations and standards such as NERC Reliability Standards and NRC regulations. SMUD also maintains a Utility Security Plan adopted by the Board representing SMUD’s compliance with the CPUC’s Safety and Enforcement Divisions six-step security plan process described in CPUC Decision 19-01-018.

During times of elevated, imminent threats, safety and/or security concerns, SMUD’s Security Operations team, under the direction of the Chief Financial Officer or delegate, reserves the right to deploy additional security measures, controls, and further restrict or limit access to its properties to increase its security posture.

SMUD operates a 24/7 security operations center which monitors and coordinates responses to situations reported by internal and external stakeholders, or which are detected by SMUD’s security technology. The technology includes access control, video surveillance, and various types of intrusion detection solutions. The security operations center is a central hub for initial contact for physical security calls from employees of suspicious events and initiates incident responses as needed.

## **Federal Legislation and Regulatory Proceedings**

***Energy Policy Act of 2005.*** On August 8, 2005, the Energy Policy Act of 2005 (the “EPAAct of 2005”) was signed into law. The law includes a number of energy-related provisions, including among other things limited FERC jurisdiction over interstate transmission assets of municipal utilities, cooperatives and federal utilities to order these entities to provide transmission services on rates and terms comparable to those the entities charge and provide to themselves; the grant of authority to FERC to establish and certify an electric reliability organization to develop and enforce reliability standards for users of the bulk power transmission system; and prohibitions of certain market practices including the provision of false information and related expansion of FERC civil and criminal penalty authority. So far, the most visible impact of the EPAAct of 2005 on SMUD has been the development of mandatory federal reliability standards.

***Federal Regulation of Transmission Access.*** The Energy Policy Act of 1992 (the “Energy Policy Act”) made fundamental changes in the federal regulation of the electric utility industry, particularly in the area of transmission access. The Energy Policy Act provided FERC with the authority to require a transmitting utility to provide transmission services at rates, charges, terms and conditions set by FERC. The purpose of these changes, in part, was to bring about increased competition in the electric utility industry. Under the Energy Policy Act, electric utilities owned by municipalities and other public agencies which own or operate electric power transmission facilities which are used for the sale of electric energy at wholesale are “transmitting utilities” subject to the requirements of the Energy Policy Act.

Since the Energy Policy Act, FERC has adopted a series of rules to implement competitive open access to transmission facilities and regional transmission planning. Order No. 888, issued in 1996, requires the provision of open access transmission services on a nondiscriminatory basis by all “jurisdictional utilities” (which, by definition, does not include municipal entities like SMUD) by requiring all such utilities to file OATTs. Order No. 888 also requires “nonjurisdictional utilities” (which, by definition, does include SMUD) that purchase transmission services from a jurisdictional utility under an open access tariff and that owns or controls transmission facilities to provide open access service to the jurisdictional utility under terms that are comparable to the service that the nonjurisdictional utility provides itself. Section 211A of the EAct of 2005 authorizes, but does not require, FERC to order unregulated transmission utilities to provide transmission services, including rates and terms and conditions, that are comparable to those under which the unregulated transmitting utility provides transmission services to itself that are not unduly discriminatory or preferential.

In Order 890, issued in 2007, FERC stated that it will implement its authority under Section 211A on a case-by-case basis and retain the current reciprocity provisions.

In 2011, FERC issued Order 1000, which among other things requires public utility (jurisdictional) transmission providers to participate in a regional transmission planning process that produces a regional transmission plan and that incorporates a regional and inter-regional cost allocation methodology. Similar to Order 890, FERC states that it will implement its authority under Section 211A on a case-by-case basis. However, in Order 1000, FERC appears to expand upon the current reciprocity provisions and states that it has the authority to allocate costs to beneficiaries of services provided by specific transmission facilities even in the absence of a contractual relationship between the owner of the transmission facilities and the identified beneficiary.

SMUD, individually, and through the Large Public Power Council (“LPPC”), appealed Order 1000, but in 2014 the D.C. Circuit Court of Appeals rejected all of the arguments raised on appeal, upholding the entirety of Order 1000.

The jurisdictional members of WestConnect filed their proposed regional planning process and cost allocation methodology through a series of compliance filings at FERC. FERC accepted binding cost allocation for jurisdictional transmission providers of WestConnect and mandated that non-jurisdictional transmission providers (such as SMUD) identified as beneficiaries of a project have the ability to not accept the cost allocation. WestConnect’s Order 1000 planning process began with the 2016-2017 planning cycle.

However, in response to FERC’s WestConnect orders on compliance, El Paso Electric Company (“El Paso”), a jurisdictional transmission provider, petitioned to the Court of Appeals for the 5th Circuit. El Paso contends that FERC’s WestConnect orders violate Order 1000’s cost causation principle because WestConnect’s binding cost allocation applies only to the jurisdictional transmission providers and thus forces jurisdictional transmission providers to subsidize projects benefitting non-jurisdictional transmission providers that opt-out of projects. The non-jurisdictional transmission providers agreed on a settlement with the jurisdictional transmission providers to resolve the matters on appeal in the 5th Circuit, but FERC

ultimately did not accept the settlement. The court scheduled briefings and oral argument for the case, which took place April 3, 2023. A court decision is expected sometime later in 2023. In the meantime, SMUD continues to participate in the WestConnect process.

SMUD is unable to predict at this time the full impact that Order 1000 will have on the operations and finances of SMUD's electric system or the electric industry generally. However, WestConnect has conducted planning cycles under its Order 1000 planning process and has not identified any project eligible for cost allocation. SMUD will continue to take any action necessary, including withdrawing from a cost allocation determination and engaging in FERC proceedings, to ensure that it is not required to pay for transmission costs in the absence of an agreement or service relationship.

Of note, on April 21, 2022, FERC issued a Notice of Proposed Rulemaking on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection (the "NOPR"). The NOPR seeks input on proposals that would impact the Order 1000 planning and cost allocation process. SMUD has been engaged in the proceeding, providing input and helping draft comments with trade organizations, including LPPC. FERC has not issued any subsequent order. SMUD will continue to monitor and be engaged in any developments at FERC that impact the Order 1000 process and its participation in WestConnect.

***NERC Reliability Standards.*** The EAct of 2005 required FERC to certify an electric reliability organization ("ERO") to develop mandatory and enforceable reliability standards, subject to FERC review and approval. On February 3, 2006, FERC issued Order 672, which certified NERC as the ERO. Many reliability standards have since been approved by FERC, including those aimed at protecting the bulk electric system from physical and cyber threats.

The ERO or the regional entities, such as WECC, may enforce the reliability standards, subject to FERC oversight or FERC may independently enforce reliability standards. Potential monetary sanctions include fines of up to \$1,496,035 per violation per day. Order 693 provides ERO and regional entities with the discretion necessary to assess penalties for such violations, while also having discretion to calculate a penalty without collecting the penalty if circumstances warrant.

***Anti-Market Manipulation Rules.*** EAct of 2005 gave FERC the authority to issue rules to prevent market manipulation in jurisdictional wholesale power and gas markets, and in jurisdictional transmission and transportation services. These anti-market manipulation rules apply to non-jurisdictional entities such as SMUD. Further, EAct of 2005 provided FERC civil penalty authority, which the Commission has stated that it will exercise carefully by assuring that its market manipulation rules are clear.

***Greenhouse Gas Emissions.*** The United States Environmental Protection Agency (the "EPA") has taken steps to regulate GHG emissions under existing law. In 2007, the U.S. Supreme Court held that the Clean Air Act ("CAA") directed EPA to regulate GHG emissions from new motor vehicles if it judged that such emissions contribute to climate change. In 2009, EPA finalized an "Endangerment Finding" under the CAA, declaring that six identified GHGs – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – cause global warming, and that global warming endangers public health and welfare. Subsequently, EPA promulgated GHG standards for passenger cars and light-duty trucks (the so-called "Tailpipe Rule"). Although that rulemaking was later withdrawn by a different administration, prompting litigation and re-proposal of the standards that has only recently been finalized, the original promulgation of the Tailpipe Rule required EPA to also address emissions of the same pollutants from other sources, namely, the electric sector.

In 2014, EPA issued a proposed rule under section 111(d) of the CAA called the Clean Power Plan (the "CPP") that projected power sector emissions reductions of 30% below 2005 levels by 2030. The

proposed CPP would have established a rate-based emissions goal for each state, providing states the responsibility to develop a State Implementation Plan (“SIP”) describing how each will meet the goal assigned by EPA using the “Best System of Emissions Reduction” (“BSER”) established by EPA. The BSER under the CPP featured a suite of emissions reduction measures including fuel switching, emissions trading, and other measures. Significantly for the State and its regulated entities, the proposed CPP included a “state measures” plan that allowed for continued operation of successful state programs that achieve CPP goals. The rule was finalized in October 2015.

In November 2015, 27 states and numerous corporations challenged the CPP in court, alleging that EPA had exceeded its authority under the CAA. The U.S. Supreme Court stayed implementation of the CPP pending disposition of the petitions for review in the D.C. Circuit and any subsequent review by the Supreme Court. The D.C. Circuit Court of Appeals held oral arguments on the petitioner’s claims, but before the court issued a decision, the 2016 presidential election resulted in a change of administration.

The new administration quickly moved for an abeyance (or stay) of the case for as long as the agency needed to review and withdraw the CPP. The court issued a series of 60-day abeyances and ultimately dismissed the case on September 17, 2019. Meanwhile, in August 2018, EPA proceeded to withdraw the CPP and proposed a different rule under the same provision of the CAA. The new rule, known as the Affordable Clean Energy (“ACE”) rule, would establish a BSER that only includes measures that can be undertaken at an individual power plant, rather than the broader suite of measures envisioned under the CPP. The ACE rule would also allow states to decide individually, on a case-by-case basis, the standards to be achieved by the best system of emission reductions, as well as exempt certain upgrades of fossil-fuel power plants from the CAA’s New Source Review program and extend the time to implement SIPs after the ACE rule is finalized. The ACE rule was challenged in court by environmental groups and states alleging that the revised rule inadequately responds to EPA’s responsibility to protect public health and welfare. SMUD joined in this litigation along with other challengers. The D.C. Circuit vacated the ACE rule on January 19, 2021, and remanded it to the EPA for review and revision, just days before a new presidential administration took office. Several states led by West Virginia and coal industry members appealed the decision.

In June 2022, the U.S. Supreme Court issued its opinion in *West Virginia v. EPA*, striking down the CPP and foreclosing any future regulations of “significant political and economic significance” if Congress has not expressly authorized them. While the decision does not restrict EPA to only requiring measures “inside the fence line” at an individual power plant to control GHGs, it appears unlikely that the EPA will be able to require material reductions in GHGs to mitigate climate change through section 111(d) of the CAA.

**Federal Clean Energy Legislation.** SMUD actively participates in discussion at the federal level regarding legislation that would meaningfully impact SMUD’s existing GHG reduction strategies or impose new requirements for electric generators, including a proposed federal clean energy standard. In the 117th Congress, a clean electricity performance program was considered but ultimately lacked support to pass. Instead, Congress extended and expanded clean energy tax credits and created new grant and rebate programs to incentivize clean energy investments in the Inflation Reduction Act of 2022. While it is possible that a future Congress may revisit the concept of a clean energy standard or other GHG reduction regime, it is possible that the passage of the Inflation Reduction Act will diminish the likelihood of a new regulatory framework being enacted in the near future.

SMUD is unable to predict whether any new EPA rulemakings will be undertaken, and what the full impact of the reduction of fossil-based generation over time will have on the operations and finances of SMUD’s electric system or the electric utility industry generally.



## State Legislation and Regulatory Proceedings

A number of bills affecting the electric utility industry have been enacted by the State Legislature. In general, these bills provide for reduced GHG emission standards and greater investment in energy efficient and environmentally friendly generation alternatives through more stringent RPS. Additionally, ongoing regulatory proceedings address water flow and quality issues related to the Sacramento – San Joaquin River Delta. The following is a brief summary of these bills and regulatory proceedings.

**Greenhouse Gas Emissions.** On September 27, 2006, the Governor of the State signed into law AB 32, the Global Warming Solutions Act of 2006 (“AB 32”). AB 32 requires the California Air Resources Board (“CARB”) to adopt enforceable GHG emission limits and emission reduction measures in order to reduce GHG emissions to 1990 levels by 2020. In addition, AB 32 establishes a mandatory reporting program for all IOUs, local, publicly-owned electric utilities and other load-serving entities (electric utilities providing energy to end-use customers) (“LSEs”). The AB 32 reporting program allows CARB to adopt regulations using market-based compliance mechanisms such as a “cap-and-trade” system.

On December 16, 2010, CARB approved a resolution adopting cap-and-trade regulations for the State. The regulations became effective on January 1, 2012. As adopted, the cap-and-trade program covers sources accounting for 85% of the State’s GHG emissions, the largest program of its type in the United States.

The cap-and-trade program has been implemented in phases. The first phase of the program (through December 31, 2014) introduced a hard emissions cap on the combined electric utility and large industrial sectors, covering all sources emitting more than 25,000 metric tons of carbon dioxide-equivalent greenhouse gases (“CO<sub>2</sub>e”) per year. In 2015, the program was expanded to cover distributors of transportation, natural gas, and other fossil fuels. The cap declined about 2 percent in 2014, and declined 3 percent annually from 2015 to 2020. The cap-and-trade program requires covered entities to retire compliance instruments (allowances and carbon offsets) for each metric ton of CO<sub>2</sub>e they emit. Initially, CARB allocated free allowances to LSEs and most industrial facilities at roughly 90% of their average emissions. SMUD was granted a higher amount because of early action taken to reduce GHG emissions. In the case of electric utilities, the value of allowances must be used to benefit ratepayers and achieve GHG emission reductions. As the program matures, some covered entities will be required to buy an increasing portion of their allowances at auction or on the secondary market. The cap-and-trade program also allows covered entities to use offset credits for compliance purposes (not exceeding 8% of a regulated entity’s compliance obligation through 2020, 4% from 2021 through 2025, and 6% from 2026 through 2030). Offsets must be obtained from certified projects in sectors that are not regulated under the cap-and-trade program and are subject to other restrictions.

In November of 2012, CARB conducted its first allowance auction and auctions now occur on a quarterly schedule. On January 1, 2014, CARB linked the State cap and trade program with a companion program in the Canadian province of Quebec. The first quarterly joint auction for the linked programs occurred in November, 2014. On January 1, 2018, CARB linked the State’s cap-and-trade program with a companion program in the Canadian province of Ontario. Immediately thereafter, an entity in any one of the three jurisdictions was able to purchase allowances on the secondary market in a linked jurisdiction, and as of February 21, 2018 (the date of the first joint auction) could purchase allowances in the joint auction. In June 2018, elections in Ontario changed political parties and the new administration formally withdrew from the Cap-and-Trade linkage. CARB has limited purchase and use of Ontario allowances in response. The August 2018 Cap and Trade auction did not include Ontario. In 2021, the Washington state legislature passed a Cap-and-Trade bill, which [is expected to] interact with the State’s markets. Future potential near-term links to the CARB cap-and-trade program also include the states of Oregon, which has

adopted a cap and trade program, and New Mexico, which is considering the adoption of a cap and trade program.

On October 7, 2015, the Governor of the State signed SB 350 that contained aggressive goals for reducing carbon emissions by 2030, including raising the proportion of renewable energy to 50%, reducing the use of petroleum fuel in cars and trucks by up to 50%, and doubling the energy efficiency of existing buildings. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*” for additional information. In addition, SB 350 established requirements for larger POUs to adopt (by January 1, 2019) and file with the CEC Integrated Resource Plans (“IRPs”) by April 2019 that would show planned procurement to achieve the 50% RPS and State GHG goals established by CARB. The CEC developed “guidelines” for these IRPs for POUs in 2017, updated them in 2018, and proposed additional updates in 2022. CARB established specific GHG target ranges for these IRPs in summer 2018, with SMUD’s planning target set at 1.1 – 1.9 million metric tons of emissions. SMUD developed and adopted an IRP in 2018 through a comprehensive public process and filed the adopted IRP with the CEC in April 2019. SMUD adopted an updated IRP in June 2022 and filed the updated IRP with the CEC in September 2022. SMUD’s updated IRP plans for a greater than 92% reduction in GHG emissions by 2030 relative to 1990 levels, which equals approximately 250,000 metric tons of GHG emissions in 2030. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*.”

On April 29, 2015, the Governor of the State signed Executive Order B-30-15, establishing a goal for the State to reduce GHG emissions to 40% below 1990 levels by 2030. In 2016, the State Legislature passed Senate Bill 32 (“SB 32”), which codified Governor Brown’s goal of reducing the State’s GHG emissions to 40% below 1990 levels by 2030. In 2017, the State Legislature passed Assembly Bill 398 (“AB 398”), explicitly authorizing the continuation of the cap and trade program, with designated changes, through 2030. Subsequently, CARB adopted an initial set of regulatory changes extending the Cap-and-Trade program, including establishing utility sector allowance allocations through 2030. In 2018, CARB completed a rulemaking to implement the cap-and-trade program changes designated by AB 398. These changes include development of a hard price ceiling for the cap-and-trade program and two price-containment points below that ceiling, in an attempt to ensure stable prices in the program. CARB adopted final regulations on December 13, 2018.

In December 2022, CARB approved the agency’s 2022 Scoping Plan, a roadmap to reducing GHG emissions by 85% and achieving economy-wide carbon neutrality by 2045. The Plan does not impose new mandates, but calls for state policymakers and regulatory agencies to implement programs and policies that support the Plan’s goals. In 2023, CARB signaled that they would reopen regulations that govern several programs that SMUD participates in, including Cap and Trade, to align them with the goals set forth in the Scoping Plan. SMUD will monitor and, as appropriate, participate in these forthcoming regulatory proceedings.

In addition, any new projects constructed in the State, including power plants, that may cause a significant adverse impact on the environment must be analyzed under CEQA. Some State agencies have begun using CEQA in novel ways to require mitigation of “significant” GHG emissions caused, either directly or indirectly, by a project. Pursuant to Senate Bill 97 passed in 2007, CARB will assist the Governor’s Office of Planning and Research in setting thresholds of significance under CEQA of GHG impacts from new projects. This is an area of State law that is evolving and untested in the courts. However, there is a risk that any project proponent of an electric system infrastructure project might have to mitigate such potential impacts to a level of less than significance.

On December 3, 2012, the Superior Court issued a ruling in *Cleveland National Forest Foundation v. San Diego Association of Governments* (“SANDAG”), Case No. 2100-00101593, that sided with the

State Attorney General and the other petitioners stating that SANDAG did not follow CEQA when it adopted a \$257 billion regional transportation plan in 2011. The ruling expressly invalidated the certification of the Environmental Impact Report (“EIR”) on the grounds that the EIR should have analyzed the plan’s consistency with the governor’s policy goal to reduce GHG emissions by 80% by 2050 as articulated in the 2005 Executive Order S-03-05. On November 24, 2014, the Fourth Appellate District upheld the trial court in a published decision, and SANDAG appealed to the State Supreme Court. On July 13, 2017, the Supreme Court reversed and held that SANDAG’s decision not to adopt the 2050 goal was not an abuse of discretion. Nevertheless, the Court articulated three clear principles for agencies to follow in their CEQA review of planning documents: 1) agencies must take seriously the significance of even small increases in GHG emissions; 2) they must consider science-based State policy guidance in their decision-making; and 3) they are required to use the best scientific information available to determine whether their planning decisions are consistent with the State’s goals. These principles will apply to SMUD in CEQA reviews of future projects.

On September 29, 2006, the Governor of the State signed into law Senate Bill 1368 (“SB 1368”), the GHG Emissions Performance Standard (“EPS”). SB 1368 limits long-term investments in baseload generation by the State’s utilities to power plants that meet an EPS jointly established by the CEC and the CPUC. The agencies have set the EPS at 1,100 pounds CO<sub>2</sub> per MWh, which is roughly half of the CO<sub>2</sub> emissions rate of a conventional coal-fired power plant. CEC regulations to implement the law for POUs were approved by the Office of Administrative Law on October 16, 2007.

SMUD’s primary supply and demand-side resource needs to meet customers’ electricity usage patterns over the next 10 years are for peaking resources. Currently there is a ban in the State that prohibits the development of nuclear power plants until there is a permanent storage solution for spent fuel rods. With the effective ban on new coal power imports under SB 1368, natural gas-fired, combined cycle power plants would appear to be the primary viable option for fossil fuel-based baseload power plant development absent the implementation of new technologies in connection with other resource options. The reliance on a single fuel source will continue to put pressure on the natural gas market in the United States. SMUD has in place a natural gas procurement plan to mitigate natural gas volatility, see “POWER SUPPLY AND TRANSMISSION – Fuel Supply” above.

On September 16, 2022, the Governor of the State signed into law SB 1158, which requires every retail supplier of electricity to annually report hourly greenhouse gas emissions. The California Energy Commission will establish a process by July 1, 2024, and the implementation date is 2028.

Also on September 16, 2022, the Governor of the State signed into law SB 1020, which creates interim climate targets under which eligible renewable energy resources and zero-carbon resources must supply 90% of all retail sales of electricity to California end-use customers by December 31, 2035, and 95% by December 31, 2040. The bill also requires each State agency to ensure that zero carbon resources and eligible renewable energy resources supply 100 percent of electricity procured on its behalf by December 31, 2035. SMUD provides electricity to a number of State agency buildings and will work with State agencies to comply with this requirement.

**Reliability.** On June 30, 2022, the Governor signed the 2022-23 budget, along with a number of trailer bills, which provide implementing details on the budget line items. Included in AB 205, the energy trailer bill, are a number of reliability programs.

1. CEC Distributed Electricity Backup Assets Program to incentivize the construction of cleaner and more efficient distributed energy assets that would serve as on-call emergency supply or load reduction for the state’s electrical grid during extreme events.

2. CEC Demand Side Grid Support Program to pay customers to reduce demand during stressed grid events this summer. SMUD is actively engaging the CEC on the development of this program.
3. DWR Strategic Reliability Reserve to secure resources for summer reliability or to preserve the option to extend the life of facilities that otherwise would retire, new temporary generators of more than 5 megawatts (MWs), new energy storage systems of at least 20 MWs, generation facilities that use lean, zero-emission fuel technologies, or new zero-emission technologies that can be operational by December 31, 2026.

**Energy Efficiency.** Senate Bill 1037 (“SB 1037”), signed by Governor Schwarzenegger on September 29, 2005, requires that each municipal electric utility, including SMUD, prior to procuring new energy generation resources, first acquire all available energy efficiency, demand reduction and renewable resources that are cost effective, reliable and feasible. SB 1037 also requires each municipal electric utility to report annually to its customers and to the CEC its investment in energy efficiency and demand reduction programs. Further, State Assembly Bill 2021 (“AB 2021”), signed by the Governor on September 29, 2006 requires that the publicly owned utilities establish energy efficiency and demand reduction targets and report and explain the basis of the targets beginning June 1, 2007 and every three years thereafter for a ten year horizon. Future reporting requirements as set forth in AB 2021 include: (i) the identification of sources of funding for the investment in energy efficiency and demand reduction programs, (ii) the methodologies and input assumptions used to determine cost effectiveness, and (iii) the results of an independent evaluation to measure and verify energy efficiency savings and demand reduction program impacts. The information obtained from local publicly owned utilities will be used by the CEC to present the progress made by the publicly owned utilities on the State’s goal of reducing electrical consumption by 10% in ten years and amelioration with the GHG targets presented in Executive Order S-3-05 enacted by the Governor of the State on June 1, 2005.

In response to SB 1037 and AB 2021, SMUD established a specific goal of reducing energy consumption by 15% by 2018 and adopted annual targets for gigawatt hour and megawatt savings. SMUD revisits its energy efficiency goals and programs on a regular basis to ensure compliance with State policies established by SB 1037 and AB 2021 (as modified by SB 350).

SB 350 (passed in 2015) requires the CEC to develop statewide energy efficiency targets for 2030 aimed at doubling the achieved savings, and requires POUs to establish efficiency targets that are “consistent” with those targets. In 2017, the CEC developed a report on the doubling of energy efficiency targets required by SB 350. Both SB 350 and the CEC report contemplate the use of fuel substitution to meet energy efficiency targets and have a strong focus on carbon reduction. In response, SMUD developed a methodology and carbon tool to count fuel substitution, namely switching natural gas end-uses to efficient electric end uses and measuring savings in carbon emissions. SMUD presented its methodology to the joint state agency working group known as the Fuel Substitution Working Group several times in 2019 and adopted a carbon-based metric in early 2020 to guide overall SMUD carbon targets. This goal is expected to facilitate substantial expansion of building electrification and result in more than double the overall amount of energy efficiency being delivered per year, when measured on a carbon reduction basis. The vast majority of this energy efficiency (more than 85%) is expected to be delivered through efficient electrification by 2030.

Also passed in 2015 was AB 802. This bill directed the CEC to develop a State-wide building energy use benchmarking and public disclosure program for those buildings greater than 50,000 square feet. As set forth in regulations adopted by the CEC, building owners are required to report building characteristic information and energy use data each year. The reporting began in 2018 for buildings without residential utility accounts and in 2019 for buildings with 17 or more residential utility accounts. Energy utilities must provide building-level energy use data to building owners upon request.

In order to support the implementation of SB 350 and AB 802, the CEC opened a rulemaking to amend its Title 20 Data Collection regulations, resulting in an expansion of customer data utilities must report to the CEC. The CEC adopted regulations pursuant to the rulemaking in February 2018, and the regulations were approved and went into effect in the Summer of 2018. SMUD has made several data filings under the new regulations. In 2020, the CEC opened a second phase of Data Collection rulemaking to amend regulations necessary to develop the policy reports and analysis as required by statute to assist in the CEC's energy forecasting and assessment activities. The OAL approved the codifying of the regulations from that proceeding on December 30, 2021.

***Electric Transportation Mandates*** Executive Order B-48-18, enacted January 2018, ordered all state entities to work with the private sector and all appropriate levels of government to put at least 5 million zero-emission vehicles on California roads by 2030, as well as 250,000 zero-emission vehicle chargers by 2025.

In September 2020, Governor Newsom signed Executive Order N-79-20 to accelerate actions to mitigate and adapt to climate change, and to more quickly move toward a low-carbon, sustainable and resilient future. Executive Order N-79-20 states the goal of 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035 and 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks.

CARB has proposed or adopted a suite of regulations to support these State policies, including the Zero Emission Forklift Regulation, Advanced Clean Trucks Rule (the "ACT Rule"), Advanced Clean Cars II ("ACC II"), and the Advanced Clean Fleets Rule (the "ACF Rule"). The ACT Rule and ACC II establish increasing zero-emission vehicle ("ZEV") sales requirements for truck and light-duty vehicle manufacturers, respectively. The ACT Rule, which took effect in March 2021, requires that by 2035, at least 55% of Class 2b-3 truck sales are ZEVs, at least 75% of Class 4-8 straight truck sales, and 40% of truck tractor sales. ACC II, which took effect in November 2022, requires that 100% of light-duty passenger car, truck, and SUV sales in California be ZEV by the 2035 model year.

CARB is expected to adopt the ACF Rule in 2023. The proposed ACF Rule would establish ZEV purchase and fleet composition requirements for on-road medium- and heavy-duty ("MHD") fleets in California. Under the proposed ACF Rule, public fleets like SMUD would have two compliance options. The first is a ZEV purchase requirement: 50% of annual MHD vehicle purchases would need to be ZEVs starting in 2024, and 100% starting in 2027. The second is the optional ZEV milestone option, under which the composition of the MHD fleet meets certain ZEV percentages over time, which would provide SMUD with considerably greater compliance flexibility. The proposed ACF Rule would also accelerate the manufacturer ZEV sales requirement to 100% of all MHD truck sales by the 2036 model year.

Additionally, CARB is developing a regulation to drive greater deployment of zero-emission forklifts within fleets throughout the State. This Zero-Emission Forklift Regulation is scheduled for CARB consideration in 2023.

Increases in ZEV adoption and deployment will result in increased customer usage of electricity. The ACF Rule would also require SMUD, as a fleet owner, to transition SMUD's MHD fleet to ZEVs.

***Rooftop Solar Mandate.*** In February, 2018, the CEC approved updates to the 2019 Building Energy Efficiency Standards to require installation of rooftop photovoltaic solar systems for residential buildings under three stories constructed starting in 2020, with an option to satisfy the requirement through community shared solar electric generation or battery storage systems. This "Community Solar" compliance mechanism permits a program administrator, such as a utility, to provide solar power to participating residential customers instead of rooftop solar. SMUD submitted an application to the CEC to

be a program administrator of SMUD's Community Solar program, Neighborhood SolarShares, in 2019, and the CEC approved SMUD's application in February 2020. In 2021, the CEC revised the Community Solar provisions in the 2022 Building Energy Efficiency Standards to include an "opt-out" provision, which will impact the design and implementation of SMUD's Neighborhood SolarShares program. SMUD updated its Neighborhood SolarShares program materials to incorporate the 2022 revisions, which took effect in January 2023, and has received approval from the CEC to continue serving as a program administrator. See also "BUSINESS STRATEGY – Serving SMUD's Customers – *Renewable Options*."

***Renewables Portfolio Standard.*** Senate Bill 100 was passed by the Legislature and approved by Governor Brown on September 10, 2018. The bill sets a 50% RPS target for 2026 and sets compliance period targets at 44% by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030. The bill also creates a statewide planning goal to meet all of the state's retail electricity supply with a mix of RPS-eligible and zero-carbon resources by December 31, 2045.

***Load Management Standards.*** Sections 25213, 25218(e) and 25403.5 of the Public Resources Code mandate and authorize the CEC to adopt rules and regulations to reduce the uneconomic and unnecessary consumption of energy and to manage energy loads, or demand, to help maintain electrical grid reliability. The original Load Management Standards ("LMS") regulations were adopted in 1979 and required the implementation of marginal cost pricing industrial time-of-use rates, and residential load control programs. In October 2022, the CEC adopted an update to the LMS regulations to require the largest electric service providers in California (including SMUD) to develop retail electricity rates that change at least hourly to reflect locational marginal costs and submit those rates to the utility's governing body for approval. The LMS proposes the following: a) voluntary hourly or sub-hourly rates for each customer class or b) a cost-effective program, to be implemented by the utilities by January 2026. The effective date of the LMS regulation is April 1, 2023. The LMS regulations are intended to increase efficiency and demand flexibility in California's electricity grid. SMUD's Pricing team is leading SMUD's LMS implementation work, including the development of a Compliance Plan to be submitted to SMUD's Board by the fourth quarter of 2023 and then to the CEC.

***Energy Storage Systems.*** In September 2010, the State Legislature enacted, and the Governor signed into law, Assembly Bill 2514 ("AB 2514"). On or before March 1, 2012, the governing board of each POU was required to initiate a process to determine appropriate targets, if any, for the utility to procure viable and cost-effective energy storage systems to be achieved by December 31, 2016, and December 31, 2020. The bill required each POU to report certain information to the CEC. In 2014, SMUD set a 0 MW target for 2017, and in 2017 set a 9 MW target for 2020. In 2018, SMUD identified a potential need for 246 MW of storage by 2030. Following SMUD's 2020 compliance report to the CEC in January 2021, going forward SMUD will evaluate and report energy storage planning as part of its IRP update at least once every five years. See also "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Energy Storage Systems*."

***Sacramento-San Joaquin River Bay-Delta Processes.*** The Sacramento-San Joaquin River Delta is an expansive inland estuary, formed at the western edge of the California Central Valley by the confluence of the Sacramento and San Joaquin rivers ("Delta"). There are two substantial Delta planning processes with the potential to affect (1) energy available for SMUD's purchase from the Central Valley Project ("CVP") and (2) flows within the Upper American River watershed. These processes are called the Bay-Delta Water Quality Control Plan ("Bay-Delta Plan") and the Delta Conveyance Project.

The Bay-Delta Water Quality Control Plan is updated periodically by the State Water Resources Control Board ("SWRCB"), the last time being in 2006. The current Bay-Delta Plan update process is being implemented in four phases. The first phase considered southern Delta water quality, with a significant focus on San Joaquin River tributaries. Phase 2, which is initially being addressed by a

document under development by SWRCB staff, will address Sacramento River tributaries and various flow related issues, including the critically important one of those tributaries' contribution to Delta outflow. Phase 3 will concern changes to water rights needed to implement Phase 2. A substantial change in Delta outflow requirements could have a major impact on the timing of hydroelectric energy generation by the CVP. SMUD has a long-term agreement with WAPA to purchase some of this power (see "POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – *Western Area Power Administration*"). On July 18, 2018, the SWRCB released an updated Framework document signaling its staff's intent to propose Delta outflow requirements of 45–65% unimpaired flows for the Sacramento River tributaries (which includes the American River, the upper portions of which are where the UARP sits), though the report will analyze requirements of 35–75%. If these criteria were implemented, they could cut CVP generation by 50 to 63%. Governor Newsom has urged the SWRCB, other agencies and affected parties to execute voluntary agreements to address species' needs and outflow requirements. Although the negotiations have been slow, it is expected they will eventually result in a reasonable compromise. If the agreements do not come to fruition, SMUD plans to fully participate in all regulatory and legal proceedings to argue for consideration and minimization of impacts to hydropower generation. SMUD will assess the potential impacts of proposed modifications to the present outflow objectives on SMUD's operations once the SWRCB makes those available.

In July 2022, the State Department of Water Resources ("DWR") released a Draft Environmental Impact Report ("EIR") to evaluate the potential impacts of carrying out the Delta Conveyance Project; the U.S. Army Corps of Engineers released a separate Environmental Impact Statement to evaluate the effects of the Project pursuant to the National Environmental Policy Act. The Delta Conveyance Project is expected to entail construction of two intakes on the Sacramento River that will carry water to a main tunnel to the California Aqueduct for delivery south of the Delta. The Delta Conveyance Project may pose the potential to exacerbate impacts to already imperiled aquatic species, and in turn could have indirectly prompted regulatory agencies to require third parties, such as SMUD, to compensate by making changes to their operations. The Bureau of Reclamation is not a party to the Delta Conveyance Project, which should eliminate the potential for CVP power to be used to supply Delta Conveyance Project pumps. SMUD will monitor the proceedings and participate as necessary to ensure any impacts to SMUD interests are minimized.

**Proposition 26.** Proposition 26 was approved by the electorate on November 2, 2010 and amends Article XIII A and Article XIII C of the State Constitution. Proposition 26 imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State, unless the fees and charges are expressly excluded. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes, unless the fees and charges are expressly excluded. The initiative, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters pursuant to Proposition 13, approved in 1978, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product. Proposition 26 is not retroactive as applied to local governments. Although SMUD believes that the initiative was not intended to apply to fees for utility services such as those charged by SMUD and its fees and charges meet the criteria of the exclusion described above, it is possible that Proposition 26 could be interpreted to further limit fees and charges for electric utility services and/or require stricter standards for the allocation of costs among customer classes. SMUD is unable to predict at this time how Proposition 26 will be interpreted by the courts or what its ultimate impact will be. As of the date of this Official Statement, SMUD is unaware of any fees or charges relating to SMUD's service that would have to be reduced or eliminated because of Proposition 26. However, certain of SMUD's adopted rate increases have been challenged. See "LEGAL PROCEEDINGS – Proposition 26 Lawsuit."

**Wildfire Legislation.** In September 2016, Governor Brown signed into law Senate Bill 1028 (“SB 1028”), which requires POU’s (including SMUD), IOUs, and electrical cooperatives to construct, maintain and operate their electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by electrical lines and equipment. SB 1028 also requires the governing board of POU’s to make an initial determination whether any portion of that geographical area has a significant risk of catastrophic wildfire resulting from those electrical lines and equipment, based on historical fire data and local conditions, and in consultation with the fire departments or other entities responsible for control of wildfires within the geographical area.

Senate Bill 901 (“SB 901”), signed into law in September 2018 by Governor Brown, further addresses response, mitigation and prevention of wildfires. The bill requires POU’s, including SMUD, before January 1, 2020, and annually thereafter, to prepare a wildfire mitigation plan and present it in a public meeting to their governing board. SB 901 requires POU’s to accept comments on the wildfire mitigation plan from the public, other local and State agencies, and interested parties, and to verify that the plan complies with all applicable rules, regulations, and standards, as appropriate. The bill requires a qualified independent evaluator to review and assess the comprehensiveness of its wildfire mitigation plan and present its report to the board in a public meeting.

In 2019, Governor Newsom released his comprehensive strategy on wildfires, laying the groundwork for legislative discussions on utility wildfire liability and allocating costs associated with catastrophic wildfires, among other things. While the Governor supported a modification of State’s current inverse condemnation doctrine, under which utilities are held liable for wildfire damage without regard to the fault of the utility, no bill was introduced. AB 1054 (Holden) did pass in 2019 that included several provisions for solvent investor owned utilities, including the development of a fund to help pay victim claims for utility ignited wildfires. The bill also created a new Wildfire Safety Division within the CPUC to prioritize wildfire safety throughout the State, and established an appointed Wildfire Safety Advisory Board to advise and make recommendations relating to wildfire safety to this new Division. For POU’s, the bill requires submittal of annual wildfire mitigation plans to the Advisory Board for review and advisory opinions.

Senate Bill 247 (“SB 247”), signed by Governor Newsom on October 2, 2019, establishes notification, audit and reporting guidelines for electrical corporations relating to vegetation management requirements in the wildfire mitigation plan. SB 247 also specifies the qualifications for electrical line clearance tree trimmers performing work to comply with the vegetation management requirements in an electrical corporation’s wildfire mitigation plan and requires that qualified line clearance tree trimmers be paid no less than a specified prevailing wage rate. POU’s are not required to adhere to SB 247, but the market impacts are projected to significantly increase SMUD’s annual vegetation management costs.

**Nonstock Security.** SMUD sponsored legislation in 2019, Assembly Bill 689, which was signed into law by Governor Newsom on September 5, 2019. This bill expressly allows SMUD the ability to operate a pilot project (effective January 1, 2020, to January 1, 2025), of up to three acquisitions, to hold nonstock security in a corporation or other private entity if acquired as part of a procurement of goods or services from that entity, provided that no separate funding is expended solely for the nonstock security. This will allow SMUD to realize the financial benefits of its investments, partnerships, and intellectual property.

On September 15, 2022, the Board authorized the CEO & GM to enter into a joint collaboration agreement with ESS Tech, Inc. (“ESS”). Under that agreement SMUD would procure from ESS iron flow batteries for utility scale long-duration energy storage applications. The agreement contemplates a multi-year phased deployment of up to 200MW/2GWh of long duration energy storage by 2028. As part of that procurement, SMUD acquired nonstock security in ESS.



## **Future Regulation**

The electric industry is subject to continuing legislative and administrative reform. States and Federal entities routinely consider changes to the way in which they regulate the electric industry. Recently, both further deregulation and forms of additional regulation have been proposed for the industry, which has been highly regulated throughout its history. SMUD is unable to predict at this time the impact any such proposals will have on the operations and finances of SMUD or the electric utility industry generally.

## **OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY**

### **CAISO Market Initiatives**

The CAISO routinely conducts a number of initiatives and stakeholder processes that propose certain operational and market changes that impact SMUD. SMUD does and will continue to monitor the various initiatives proposed by the CAISO and participate in its stakeholder processes to ensure that its interests are protected.

SMUD participates in the CAISO market for only a small percentage of energy needs, however, it continues to benefit from its participation in the CAISO's WEIM and is currently exploring further participation in the CAISO's proposed Extended Day Ahead Market ("EDAM") (both the WEIM and EDAM are described further below). Along with monitoring other key market initiatives at the CAISO which impact wholesale energy markets, SMUD will continue to actively participate in all processes related to EIM and EDAM, to ensure both participation models are beneficial to SMUD's customers. Given its success in EIM and active engagement with the CAISO and CAISO leadership, SMUD has earned a key role in the stakeholder processes related to these important and evolving markets.

### **Resource Adequacy Filing**

In September 2005, the State Legislature enacted and the Governor signed into law Assembly Bill 380 ("AB 380"), which requires the CPUC to establish resource adequacy requirements for all LSEs within the CPUC's jurisdiction. In addition, AB 380 requires publicly owned utilities, including SMUD, to meet the most recent resource adequacy standard as adopted by the WECC. In October 2005, the CPUC issued a decision stating that LSEs under its jurisdiction would be required, by June 2006, to demonstrate that they have acquired capacity sufficient to serve their forecast retail customer load plus a 15-17% planning reserve margin. In March 2021, the CPUC issued a decision requiring the three largest investor owned utilities (PG&E, Southern California Edison, and San Diego Gas & Electric) to target a minimum of 2.5% of incremental resources for their planning reserve margin for 2021 and 2022. Subsequently, in December 2021, the CPUC issued another decision that increased the investor-owned utilities' minimum target by an additional 2.5-5% of incremental resources for 2022 (which creates an effective planning reserve margin of 20-22%) and extended this target to 2023. And in June 2022, the CPUC issued a decision adopting a planning reserve margin of 16% for 2023, and 17% for 2024, for all LSEs under its jurisdiction. The WECC has yet to formally adopt a resource adequacy requirement. However, consistent with current WECC practices, SMUD utilizes a 15% planning reserve margin when assessing the need for future resources.

### **Western Energy Imbalance Market and Extended Day Ahead Market**

Federal and state policymakers have long-promoted the development of organized markets in the west as a means (among other reasons) to better integrate intermittent renewable resources into the electric system, the first of which markets is the Western EIM, operated by the CAISO. The CAISO successfully launched the WEIM, a real time only imbalance market, on October 1, 2014, with PacifiCorp as the first participant. Since this time, the WEIM has grown significantly with the additions of NV Energy, Arizona

Public Service, Puget Sound Energy, Portland General Electric, Idaho Power, Powerex, BANC, the Salt River Project, Seattle City Light, the Turlock Irrigation District, the Los Angeles Department of Water and Power, NorthWestern Energy, the Public Service Company of New Mexico, Avista, Tacoma Power, Bonneville Power Administration, and Tucson Electric Power. Additionally, the WEIM footprint will continue to expand further in 2023 with the additions of Avangrid, WAPA Desert Southwest Region, and El Paso Electric. SMUD expects the WEIM to comprise a significant portion of the Western Interconnection in 2023.

To date, participation in the WEIM by SMUD has shown significant financial and operational benefits, in addition to furthering an already favorable working partnership between SMUD and the CAISO to develop solutions to integrate renewable resources in support of carbon reduction goals.

BANC's participation not only signaled the first public power participant in the EIM, but it was also implemented utilizing a unique phased approach, with SMUD (as the largest member of BANC) implementing so-called WEIM Phase 1 in 2019, while the other BANC members and WAPA (the "Phase 2 Parties") joined after further evaluation and approvals in March of 2021.

Part of the BANC Phase 2 participation included reimbursement to SMUD certain upfront infrastructure costs incurred by SMUD in Phase 1 to establish BANC as an WEIM Entity. This reimbursement to SMUD by the Phase 2 Parties has been completed.

The CAISO and WEIM participants, including SMUD and BANC, have participated in developing a design framework to extend the successful WEIM real time framework to the EDAM. Like WEIM, EDAM would broaden the access to regional resources for the reliable integration of renewable resources, only over a longer (day ahead) time horizon by allowing for a more economic and efficient optimization of regional resources by providing grid operators greater time (day ahead as opposed to real time) to commit or decommit units based on market price signals. Only participants in the WEIM will be allowed to extend their participation to EDAM. The CAISO launched a public stakeholder initiative and utilized most of 2022 developing the EDAM design. On February 1, 2023 the CAISO Board of Governors and EIM Governing Body approved the EDAM proposal. Tariff development, regulatory approvals and implementation activities will take place in 2023 and 2024, with expected market go-live first quarter 2025. SMUD (and BANC) will likely need to consider its participation before 2024 if it wishes to on-board in time for the first phase of EDAM participation in 2025. Similar to the process around WEIM participation, SMUD, along with BANC, are performing cost-benefit studies to ensure EDAM participation will expand on the existing WEIM benefits prior to seeking approvals to proceed.

## **PG&E Bankruptcy**

On January 14, 2019, PG&E and its parent company, PG&E Corporation, announced their intention to file, on or about January 29, 2019, for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") mainly as a result of wildfire liability claims and exposure. On January 29, 2019, PG&E and PG&E Corporation filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Code"). On May 28, 2020, the CPUC approved PG&E's Plan of Reorganization. On June 20, 2020 the United States Bankruptcy Court for the Northern District of California confirmed PG&E's Plan of Reorganization. SMUD does not anticipate any material impacts to SMUD in connection with PG&E's Plan of Reorganization.

In addition, other electric utilities, including the other major IOUs in the State, Southern California Edison and San Diego Gas & Electric Company, have experienced credit rating downgrades as a result of potential wildfire liabilities exposure, which may have implications for the electric market generally.

## Other Factors

The electric utility industry in general has been, or in the future may be, affected by a number of other factors which could impact the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. In addition to the factors discussed above, such factors include, among others, (a) effects of compliance with rapidly changing environmental, safety, licensing, regulatory and legislative requirements other than those described above; (b) changes resulting from conservation and demand side management programs on the timing and use of electric energy; (c) changes resulting from a national energy policy; (d) effects of competition from other electric utilities (including increased competition resulting from mergers, acquisitions, and “strategic alliances” of competing electric and natural gas utilities and from competitors transmitting less expensive electricity from much greater distances over an interconnected system) and new methods of, and new facilities for, producing low cost electricity; (e) the repeal of certain federal statutes that would have the effect of increasing the competitiveness of many IOUs; (f) increased competition from independent power producers and marketers, brokers and federal power marketing agencies; (g) “self-generation” or “distributed generation” (such as solar, microturbines and fuel cells) by industrial and commercial customers and others; (h) issues relating to the ability to issue tax exempt obligations, including severe restrictions on the ability to sell to nongovernmental entities electricity from generation projects and transmission service from transmission line projects financed with tax exempt obligations; (i) effects of inflation on the operating and maintenance costs of an electric utility and its facilities; (j) changes from projected future load requirements; (k) increases in costs and uncertain availability of capital; (l) issues relating to supply chains and the uncertain availability or increased costs of necessary materials; (m) shifts in the availability and relative costs of different fuels (including the cost of natural gas); (n) sudden and dramatic increases in the price of energy purchased on the open market that may occur in times of high peak demand in an area of the country experiencing such high peak demand, such as has occurred in the State; (o) issues relating to risk management procedures and practices with respect to, among other things, the purchase and sale of natural gas, energy and transmission capacity; (p) other legislative changes, voter initiatives, referenda and statewide propositions; (q) effects of changes in the economy; (r) effects of possible manipulation of the electric markets; (s) natural disasters or other physical calamities, including, but not limited to, earthquakes, droughts, severe weather, wildfires and floods; (t) changes to the climate, including increasing volatility in rainfall in the Western United States and a reduction in the depth and duration of the Sierra snowpack; (u) issues relating to cyber-security; and (v) outbreaks of infectious diseases or the occurrence of pandemics. Any of these factors (as well as other factors) could have an adverse effect on the financial condition of any given electric utility, including SMUD’s electric utility, and likely will affect individual utilities in different ways.

SMUD is unable to predict what impact such factors will have on the business operations and financial condition of SMUD’s electric system, but the impact could be significant. SMUD has taken major steps to mitigate the impacts of many of the changes. This Official Statement includes a brief discussion of certain of these factors. This discussion does not purport to be comprehensive or definitive, and these matters are subject to change subsequent to the date hereof. Extensive information on the electric utility industry is available from the legislative and regulatory bodies and other sources in the public domain, and potential purchasers of the [2023 Bonds] should obtain and review such information.

## **APPENDIX B**

### **2022 AND 2021 CONSOLIDATED FINANCIAL STATEMENTS AND REPORT OF INDEPENDENT ACCOUNTANTS**

## APPENDIX C

### BOOK-ENTRY SYSTEM

The information in this Appendix regarding DTC has been provided by DTC, and SMUD takes no responsibility for the accuracy or completeness thereof. SMUD cannot and does not give any assurances that DTC, DTC Participants or Indirect Participants will distribute the Beneficial Owners either (a) payments of interest or principal with respect to the 2023 Series K Bonds or (b) certificates representing ownership interest in or other confirmation of ownership interest in the 2023 Series K Bonds, or that they will so do on a timely basis or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Official Statement.

The Depository Trust Company (“DTC”) New York, NY, will act as securities depository for the 2023 Series K Bonds. The 2023 Series K Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each maturity of the 2023 Series K Bonds, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others, such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of the 2023 Series K Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2023 Series K Bonds on DTC’s records. The ownership interest of each actual purchaser of each 2023 Series K Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2023 Series K Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their beneficial ownership interests in the 2023 Series K Bonds, except in the event that use of the book-entry system for the 2023 Series K Bonds is discontinued.

To facilitate subsequent transfers, all 2023 Series K Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of the 2023 Series K Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2023 Series K Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2023 Series K Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the 2023 Series K Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2023 Series K Bonds, such as redemptions, tenders, defaults, and proposed amendments to the bond documents. For example, Beneficial Owners of the 2023 Series K Bonds may wish to ascertain that the nominee holding the 2023 Series K Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners.

Redemption notices shall be sent to DTC. If less than all of a maturity of the 2023 Series K Bonds is being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in the 2023 Series K Bonds of such maturity to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the 2023 Series K Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to SMUD as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2023 Series K Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, redemption proceeds and interest payments on the 2023 Series K Bonds will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from SMUD or the Trustee, on a payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participants and not of DTC, its nominee, the Trustee or SMUD, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, redemption proceeds and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee. Disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of the Direct and Indirect Participants.

DTC may discontinue providing its services as depository with respect to the 2023 Series K Bonds at any time by giving reasonable notice to SMUD or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, bond certificates are required to be printed and delivered.

SMUD may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates for such 2023 Series K Bonds will be printed and delivered to DTC.

**Neither SMUD or the Trustee will have any responsibility or obligation to Participants, to Indirect Participants or to any Beneficial Owner with respect to (i) the accuracy of any records maintained by DTC, any Participant, or any Indirect Participant; (ii) the payment by DTC or any Participant or Indirect Participant of any amount with respect to the principal of or premium, if any, or interest on the 2023 Series K Bonds; (iii) any notice which is permitted or required to be given to Holders under the Resolution; (iv) the selection by DTC, any Participant or any Indirect Participant of any person to receive payment in the event of a partial redemption of 2023 Series K Bonds; (v) any consent given or other action taken by DTC as Bondholder; or (vi) any other procedures or obligations of DTC, Participants or Indirect Participants under the book-entry system.**

## APPENDIX D

### SUMMARY OF CERTAIN PROVISIONS OF THE RESOLUTION

The following is a summary of certain provisions of the Resolution. Other provisions of the Resolution are described under the captions “THE 2023 SERIES K BONDS” and “SECURITY FOR THE BONDS.” This summary is not to be considered a full statement of the terms of the Resolution and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in the Resolution.

Between July 1997 and August 2003, SMUD received consents to amend the Resolution from the owners of the requisite percentage of Outstanding Bonds. Pursuant to the authority granted by such consents, SMUD amended the Resolution in October 2003 by adopting the Forty-Eighth Supplemental Resolution and the Forty-Ninth Supplemental Resolution. The following summary of the Resolution reflects such amendments.

The purchasers of the 2023 Series K Bonds, by virtue of their purchase of the 2023 Series K Bonds, will consent to certain amendments to the Resolution (the “Proposed Amendments”). Such amendments are described in ***bold italic*** font in the forepart of this Official Statement under “SECURITY FOR THE BONDS – Rates and Charges” and “—Limitations on Additional Obligations Payable from Revenues” and in this summary of the Resolution under the captions “Certain Definitions” and “Reserve Fund for Certain Bonds.” The written consents to the Proposed Amendments of the holders and registered owners of at least 60% of the Bonds outstanding have been filed with SMUD or the Trustee, as required by the Resolution. However, while certain Bonds remain outstanding SMUD must also obtain the written consents of certain bond insurers to implement the Proposed Amendments. SMUD expects to implement the Proposed Amendments when the written consents of such bond insurers are obtained or when the Bonds insured by such bond insurers are no longer outstanding. The final maturity date of the insured Bonds is July 1, 2024.

#### Certain Definitions

“Assumed Interest Payments” means for any fiscal year or period interest which would accrue during such fiscal year or period on an amount equal to the then unamortized balance of the remaining sum of Assumed Principal Payments at the Assumed Interest Rate.

“Assumed Interest Rate” for any Parity Bond means an interest rate equal to the “Bond Buyer Revenue Bond Index” most recently published in The Bond Buyer prior to the date of issuance of the Parity Bond to which the Assumed Interest Rate is applicable.

“Assumed Principal Payments” means for any fiscal year or period the sum of all amortized portions of each Excluded Principal Payment which fall within such fiscal year or period after the Excluded Principal Payments have been amortized (for purposes of this definition) equally over the years (pro rata in the case of a partial year) in the period commencing on the date of issuance of the Parity Bonds to which such Excluded Principal Payment relates and ending on the date which is 30 years from such date of issuance. Notwithstanding the foregoing, if Parity Bonds determined by SMUD to be an Excluded Principal Payment are refinanced with Parity Bonds determined by SMUD to be another Excluded Principal Payment, (1) Assumed Principal Payments with respect to the refinancing Parity Bonds shall not include any amount of principal which has previously been assumed amortized with respect to the refinanced Parity Bonds and (2) the period over which the refinancing Parity Bonds shall be assumed to be amortized shall be the period commencing on the date of issuance of the refinancing Parity Bonds and ending on the date which is 30 years from the date of issuance of the refinanced Parity Bonds.



“Electric System” means the entire electric system of SMUD, together with all additions, betterments, extensions and improvements.

“Energy Payments” means, when used with respect to the Electric System, all actual costs incurred, or charges made therefor, by SMUD in any particular fiscal year or period to which said term is applicable for purchased power (including power purchased from any special district included within the boundaries of SMUD), electric and thermal energy and capacity under contracts providing for payments by SMUD for electric or thermal energy or capacity whether or not such energy or capacity is delivered or capable of being delivered or otherwise made available to or received by or for the account of SMUD.

“Excluded Principal Payments” means each payment of principal on Parity Bonds which the Board of Directors of SMUD determines (on a date not later than the date of issuance of such Parity Bonds) that SMUD intends to refinance at or prior to the maturity date(s) of such Parity Bonds or otherwise to pay with moneys which are not Revenues. No such determination shall affect the security for such Parity Bonds or the obligation of SMUD to pay such payments from Revenues.

“Financial Products Agreement” means an interest rate swap, cap, collar, option, floor, forward or other hedging agreement, arrangement or security, however denominated, entered into by SMUD with a Qualified Provider not for investment purposes but with respect to specific Parity Bonds for the purpose of (1) reducing or otherwise managing SMUD’s risk of interest rate changes or (2) effectively converting SMUD’s interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, or from a variable rate exposure to a fixed rate exposure.

“Financial Product Payments” means payments periodically required to be paid to a counterparty by SMUD pursuant to a Financial Products Agreement.

“Financial Product Receipts” means amounts periodically required to be paid to SMUD by a counterparty pursuant to a Financial Products Agreement.

“Maintenance and Operation Costs” means all actual maintenance and operation costs incurred by SMUD (including purchased power and fuel costs) or charges therefor made in conformity with generally accepted accounting principles, exclusive in all cases of depreciation, or obsolescence charges or reserves therefor, amortization of intangibles or other entries of a similar nature, interest charges and charges for the payment of principal of SMUD debt.

“Net Revenues” for any fiscal period means the sum of (a) the Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by SMUD from the Rate Stabilization Fund for treatment as Revenues for such fiscal period, less the sum of (c) all Maintenance and Operation Costs for such fiscal period, (d) all Energy Payments for such fiscal period not included in Maintenance and Operation Costs for such fiscal period, and (e) the amounts, if any, withdrawn by SMUD from Revenues for such fiscal period for deposit in the Rate Stabilization Fund pursuant to the Resolution.

“Parity Bonds” includes the Bonds and all revenue bonds issued on a parity with the Bonds as provided or permitted in the Resolution. No Parity Bonds (other than the Bonds) are currently outstanding.

“Qualified Provider” means any financial institution or insurance company which is a party to a Financial Products Agreement if the unsecured long-term debt obligations of such financial institution or insurance company (or of the parent or a subsidiary of such financial institution or insurance company if such parent or subsidiary unconditionally guarantees the performance of such financial institution or insurance company under such Financial Products Agreement and the Trustee receives an opinion of

counsel to the effect that such guarantee is a valid and binding agreement of such parent or subsidiary), or obligations secured or supported by a letter of credit, contract, guarantee, agreement, insurance policy or surety bond issued by such financial institution or insurance company (or such guarantor parent or subsidiary), are rated in one of the two highest rating categories of a national rating agency (without regard to any gradation or such rating category) at the time of the execution and delivery of the Financial Products Agreement.

“Rate Stabilization Fund” means the fund by that name established in the Resolution. From time to time, after provision for debt service, SMUD may deposit in the Rate Stabilization Fund from remaining Revenues such amounts as SMUD shall determine, provided that deposits may be made until (but not after) the date 120 days after the end of such fiscal year. SMUD may withdraw amounts from the Rate Stabilization Fund only for inclusion in Revenues for any fiscal year, such withdrawals to be made until (but not after) 120 days after the end of such fiscal year. All interest or other earnings on deposits in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as Revenues. Notwithstanding the foregoing, no deposit of Revenues to the Rate Stabilization Fund may be made to the extent such Revenues were included in an engineer’s certificate submitted in connection with the issuance of additional revenue bonds payable from Revenues and withdrawal of the Revenues to be deposited in the Rate Stabilization Fund from the Revenues employed in rendering said engineer’s certificate would have caused noncompliance with the provisions of the Resolution restricting issuance of additional obligations or securities payable from Revenues or to the extent any withdrawal of amounts from remaining Revenues for the Rate Stabilization Fund for any fiscal year would have reduced the debt service ratio referred to in this Appendix under the caption “Reserve Fund for Certain Bonds” to or below 1.40.

“Revenues” means all charges received for, and all other income and receipts derived by SMUD from the operation of the Electric System, or arising from the Electric System (consisting primarily of income derived from the sale or use of electric energy generated, transmitted or distributed by facilities of the Electric System, but also including receipts from the sale of property pertaining to the Electric System or incidental to the operation of the Electric System or from services performed by SMUD in connection with the Electric System and revenues derived from certain wholesale, but not retail, sales of water), but exclusive in every case of any moneys derived from the levy or collection of taxes upon any taxable property in SMUD.

***“Subsidy” means any subsidy, reimbursement or other payment from the federal government of the United States of America under the American Recovery and Reinvestment Act of 2009 (or any similar legislation or regulation of the federal government of the United States of America or any other governmental entity or any extension of any of such legislation or regulation).***

### **Reserve Fund for Certain Bonds**

The Electric Revenue Bond Reserve Fund (the “Reserve Fund”) is created under the Resolution. The Reserve Fund secures all Bonds issued prior to January 1, 2004 that are currently outstanding (and not otherwise deemed to be paid and discharged under the Resolution) and may secure additional Bonds issued in the future. However, the Reserve Fund does not secure and will not be available to pay debt service on the 2023 Series K Bonds.

After the close of each fiscal year, SMUD shall determine the ratio (herein called the “debt service ratio”) of (1) the Net Revenues during said fiscal year to (2) the maximum annual debt service during the period of three fiscal years next following said fiscal year on all Bonds and Parity Bonds then outstanding. For this purpose, the term “maximum annual debt service” shall mean the sum of (i) the interest falling due on serial bonds and term bonds, (ii) the principal amount of serial bonds falling due by

their terms, and (iii) the amount of minimum sinking fund payments required, as computed for the year in which such sum shall be a maximum. Interest during construction which has been funded and provided for shall not be included in "minimum annual debt service" for the purpose of the above calculation.

So long as the debt service ratio shall exceed 1.40, the amount required to be maintained in the Reserve Fund shall be an amount such that the amount in the combined reserve funds of all Parity Bonds then outstanding will at no time be less than the current annual interest requirements on all then outstanding Parity Bonds, except only bonds (if any) for which payment has been provided in advance. If the debt service ratio in any fiscal year shall fall below 1.40, the Treasurer shall set aside in the Reserve Fund or in any other reserve fund or funds established for any one or more issues of the Parity Bonds (on or before the first day of each month of the next succeeding fiscal year) from the first available Net Revenues an amount not less than 15% of the sum of the current monthly interest requirements of all Parity Bonds then outstanding until the next year in which the debt service ratio shall exceed 1.40 or until the aggregate amount in the combined reserve funds established for all of the Parity Bonds (including the Reserve Fund) is equal to the maximum annual debt service on all of the Parity Bonds then outstanding, whichever shall first occur.

For purposes of the above calculation, the interest rates of Bonds which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Bonds bear a rate or rates of interest for a known period or periods of time, such interest rate or rates for such period or periods, and thereafter, for the portion of the calculation period not covered by such known period or periods, the interest rate shall be the greater of the numerical maximum rate that such Bonds may vary or be adjusted to and the numerical maximum rate (if any) that the interest rate for such Bonds may be fixed to, in both cases as set forth in the supplemental resolution authorizing such Bonds, or if such rate or rates have been increased in accordance with such supplemental resolution at such increased rate or rates.

Any amount in the Reserve Fund at any time in excess of the balance required to be then maintained therein shall be released to SMUD for any SMUD use.

SMUD shall not be required, notwithstanding anything herein contained, to maintain in the combined reserve funds appertaining to all Parity Bonds of SMUD, an aggregate amount in excess of the maximum annual debt service requirements in any subsequent fiscal year on all of the then outstanding Parity Bonds.

Any moneys at any time in any of said reserve funds shall be held by the Treasurer in trust for the benefit of the holder or holders from time to time of the Bonds and the coupons appertaining thereto entitled to be paid therewith, and SMUD shall not have any beneficial right or interest in any such moneys.

Notwithstanding the foregoing, a Supplemental Resolution adopted after the Forty-Eighth Supplemental Resolution may provide that a Series of Bonds issued pursuant to such Supplemental Resolution shall not be secured by the Reserve Fund. In such event, (i) payments of the principal of and interest on such Bonds shall be excluded from all calculations made in respect of the amount to be maintained in the Reserve Fund and (ii) amounts on deposit in the Reserve Fund shall not be applied to the payment of the principal of or interest on such Bonds, even if no other moneys are available therefor.

**The 2023 Series K Bonds are not secured by the Reserve Fund.**

In lieu of maintaining and depositing moneys in the Reserve Fund, SMUD may maintain and deposit in the Reserve Fund, for the sole benefit of the holders of Parity Bonds, a letter of credit (1) which is issued by a bank with a credit rating at the time of deposit of such letter of credit into the Reserve Fund within one of the top two rating categories (without regard to any refinement or graduation of such rating category by numerical modifier or otherwise) of Moody's Investors Service ("Moody's") and Standard & Poor's Rating Group, a division of The McGraw-Hill Companies, Inc. ("S&P"), (2) the repayment obligation with respect to which is not secured by a lien on assets of SMUD senior to any lien which secures the Bondholders and (3) which has a term of at least 364 days from the date of issuance thereof. If the credit rating of the bank issuing such letter of credit falls below such top two rating categories, SMUD shall within twelve months of such downgrading either (a) substitute a new letter of credit satisfying the requirements of this paragraph, (b) fund the Reserve Fund through the deposit of cash or an irrevocable surety bond policy satisfying the requirements of the immediately succeeding paragraph or (c) fund the Reserve Fund through a combination of (a) and (b). At least 120 days prior to the expiration date of a letter of credit on deposit in the Reserve Fund, SMUD shall either (a) substitute a new letter of credit satisfying the requirements of this paragraph, (b) fund the Reserve Fund through the deposit of cash or an irrevocable surety bond policy satisfying the requirements of the immediately succeeding paragraph or (c) fund the Reserve Fund through a combination of (a) and (b). Any such letter of credit shall permit SMUD to draw amounts thereunder for deposit in the Reserve Fund which, together with any moneys on deposit in, or surety bond policy available to fund, the Reserve Fund, are not less than the balance required to then be maintained in the Reserve Fund (the "Reserve Fund Requirement") and which may be applied to any purpose for which moneys in the Reserve Fund may be applied. SMUD shall make a drawing on such letter of credit and deposit the moneys obtained from drawing in the Reserve Fund (a) whenever moneys are required for the purposes for which Reserve Fund moneys may be applied, and (b) prior to any expiration or termination thereof; provided, however, that no such drawing need be made if other moneys or an irrevocable surety bond are available in the Reserve Fund in the amount of the Reserve Fund Requirement.

In lieu of maintaining and depositing moneys in the Reserve Fund, SMUD also may maintain and deposit in the Reserve Fund, for the sole benefit of the holders of the Bonds, an irrevocable surety bond policy (1) which is issued by a bond insurance company with a claims-paying ability rating at the time of deposit of such surety bond policy into the Reserve Fund within one of the top two rating categories (without regard to any refinement or graduation of such rating category by numerical modifier or otherwise) from Moody's and S&P, (2) the repayment obligation with respect to which is not secured by a lien on assets of SMUD senior to any lien which secures the Bondholders and (3) has a term of at least 364 days from the date of issuance thereof. If the credit rating of the bond insurance company issuing such surety bond policy falls below such top two rating categories, SMUD shall, within twelve months of such downgrading, either (a) substitute a new surety bond policy satisfying the requirements of this paragraph, (b) fund the Reserve Fund through the deposit of cash or a letter of credit satisfying the requirements of the immediately preceding paragraph or (c) fund the Reserve Fund through a combination of (a) and (b). At least 120 days prior to the expiration date of a surety bond policy on deposit in the Reserve Fund, SMUD shall either (a) substitute a new surety bond policy satisfying the requirements of this paragraph, (b) fund the Reserve Fund through the deposit of cash or a letter of credit satisfying the requirements of the immediately preceding paragraph or (c) fund the Reserve Fund through a combination of (a) and (b). Any such surety bond policy shall permit SMUD to obtain amounts thereunder for deposit in the Reserve Fund which, together with any moneys on deposit in, or letter of credit available to fund, the Reserve Fund, are not less than the Reserve Fund Requirement and which may be applied to any purpose for which moneys in the Reserve Fund may be applied. SMUD shall make a drawing on such surety bond policy and deposit the proceeds derived from such drawing in the Reserve Fund (a) whenever moneys are required for the purposes for which Reserve Fund moneys may be applied, and (b) prior to

any expiration or termination thereof; provided, however, that no such drawing need be made if other moneys or a letter of credit are available in the Reserve Fund in the amount of the Reserve Fund Requirement.

Notwithstanding anything to the contrary in the prior two paragraphs, if at any time that there is on deposit in the Reserve Fund a combination of cash, a letter of credit and/or a surety bond as contemplated above, SMUD shall draw first on such cash to the extent required and available, then on (1) such surety bond and letter of credit on a pro rata basis (if both a surety bond and letter of credit are available) to the extent required and available, or (2) such surety bond or letter of credit (if either a surety bond or letter of credit, but not both, is available) to the extent required and available.

***For purposes of calculating the “debt service ratio” and, unless otherwise specified in a Supplemental Resolution providing for the issuance of a series of Parity Bonds, the amount required to be maintained in the Reserve Fund as described above: (1) any calculation of principal of and interest on Parity Bonds for any period of time shall be reduced by the amount of any Subsidy that SMUD receives or expects to receive during such period of time relating to or in connection with such Parity Bonds; and (2) to the extent the calculation of principal of and interest on Parity Bonds is reduced by the Subsidy as provided in clause (1) of this paragraph, any calculation of Net Revenues for any period of time shall be reduced by the amount of any Subsidy received or expected to be received by SMUD with respect to or in connection with such Parity Bonds during such period of time.***

#### **Additional Covenants**

The Resolution contains the following additional covenants, among others:

1. That the Electric System will be maintained in good repair, working order and condition at all times, and will be continuously operated in an efficient and economical manner.
2. That no electric energy shall be supplied free by SMUD, and a reasonable wholesale charge will be made for water distributed at any cost to SMUD and such charge will be deemed Revenues; but SMUD may supply without charge water furnished to it without distribution cost, and any moneys received from any retail sales of water will not be deemed Revenues.
3. That all taxes and governmental charges and other lawful claims which might become a lien on the Electric System or the Revenues or impair the security of the Bonds will be paid and discharged when due.
4. That SMUD will comply with all lawful orders of any governmental agency or authority having jurisdiction in the premises (except while the validity or application thereof is being contested in good faith) and with all necessary permits and licenses issued by the NRC.
5. That no lease or agreement will be entered into, or sale or other disposition of essential property made, that would impair the operation of the Electric System or the rights of Bondholders with respect to the Revenues; provided, however, that notwithstanding the foregoing or any other provision of the Master Resolution, SMUD may sell or otherwise dispose of its accounts receivable and customer loan balances due to SMUD provided that SMUD delivers to the Trustee:
  - (a) a Certificate of SMUD to the effect that the amount derived by SMUD from the sale or other disposition of such accounts receivable or loan balances is a result of the sale or other disposition of such accounts receivable or loan balances upon fair and reasonable terms no

less favorable to SMUD than the terms of a comparable arm's-length transaction treated as a sale and not a loan under generally accepted accounting principles; and

(b) a written statement or report of an independent certified public accountant to the effect that, based on the audited financial statements of SMUD for the most recent fiscal year for which audited financial statements are available and after giving effect to such transaction by reducing Revenues for such fiscal year by the difference between the face amount of such accounts receivable or loan balances and the amount derived by SMUD from the sale or other disposition of such accounts receivable or loan balances, the debt service ratio computed pursuant to the Master Resolution would not have been reduced to less than 1.40:1.0.

6. That proper records and accounts will be maintained of all transactions relating to the Electric System and the Revenues (open to inspection by the Trustee and the holders of not less than 10 percent in principal amount of the Bonds), to be audited annually by an independent certified public accountant within 90 days after close of the fiscal year, and copies of such financial statements supplied to Bondholders on request.

7. That insurance adequate in amounts and as to risks covered will be maintained against such risks as are usually insurable in connection with similar electric systems, and in addition public liability and property damage insurance in amounts not less than \$1,000,000 per accident and adequate fidelity bonds on all officers and employees of SMUD handling or responsible for SMUD funds, subject in each case to the condition that such insurance is obtainable at reasonable rates and upon reasonable terms and conditions. See APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – INSURANCE" attached to this Official Statement for a description of SMUD's insurance.

8. That the net proceeds realized by SMUD in the event all or any part of the Electric System is taken by eminent domain proceedings will be applied to the redemption or retirement of all Bonds and Parity Bonds if sufficient therefor, and, if not, then pro rata to the redemption or retirement of Bonds and Parity Bonds or to new facilities if the additional Revenues to be derived therefrom will sufficiently offset the loss of Revenues resulting from such eminent domain so that the ability of SMUD to meet its obligations will not be substantially impaired.

9. That SMUD will at all times use its best efforts to maintain the powers, functions and duties now reposed in it pursuant to law.

10. That SMUD will establish and at all times maintain and collect rates and charges for the sale or use of its electric energy sufficient to permit SMUD to purchase power or issue and sell Bonds or Parity Bonds to finance additions, betterments, extensions and improvements to the Electric System as may be reasonably necessary to satisfy its then projected electric demand upon its Electric System, and that unless the Board determines that SMUD will be able to satisfy such demand through the purchase of electric energy, SMUD will proceed with all reasonable diligence to issue and sell such Bonds or Parity Bonds.

11. That SMUD will not create, or permit the creation of, any mortgage or lien upon the Electric System or any property essential to the proper operation of the Electric System or to the maintenance of the Revenues. SMUD will not create, or permit the creation of, any pledge, lien, charge or encumbrance upon the Revenues except only as provided in the Master Resolution; provided that, notwithstanding the foregoing or any other provision of the Master Resolution, SMUD may create a pledge, lien, charge or encumbrance upon its accounts receivable and customer loan balances due to SMUD (which pledge, lien, charge or encumbrance shall be prior to any pledge, lien, charge or

encumbrance created or made pursuant to the Master Resolution, including without limitation the pledge of Revenues made pursuant to the Master Resolution) to secure indebtedness with a term of one year or less provided that the principal amount of such indebtedness does not exceed 50% of the aggregate face amount of the accounts receivable and customer loan balances due to SMUD as shown on SMUD's most recent audited financial statements.

### **Amendment of the Resolution**

The Resolution and the rights and obligations of SMUD and of the holders of the Bonds may be modified or amended at any time pursuant to the affirmative vote at a meeting of Bondholders, or with the written consent without a meeting, of the holders of 60 percent in aggregate principal amount of the Bonds then outstanding, provided that no such modification or amendment shall (i) extend the fixed maturity of any Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon or reduce any premium payable upon the redemption thereof, without the consent of the holder of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds required for consent to an amendment or modification, without the consent of the holders of all the Bonds then outstanding. Modifications or amendments may be made, without the consent of any Bondholders, to add covenants of SMUD or to surrender rights reserved by SMUD in the Resolution, to cure ambiguities or defective or inconsistent provisions or in regard to questions arising under the Resolution without adversely affecting the interests of the Bondholders, or to provide for the issuance of a series of Bonds, subject to the provisions contained in the Resolution with respect thereto.

### **Events of Default and Remedies of Bondholders**

The Resolution declares each of the following to be an event of default:

- (a) Failure to pay the principal of and premium on any Bond when due and payable;
- (b) Failure to pay any installment of interest on any Bond when due and payable, if such default continues for a period of 30 days;
- (c) Default by SMUD in the observance of any of the covenants, agreements or conditions on its part in the Resolution or in the Bonds, if such default continues for a period of 60 days after written notice thereof (specifying such default and requiring the same to be remedied) has been given to SMUD by the Trustee, or to SMUD and the Trustee by the holders of not less than 25 percent in aggregate principal amount of the Bonds at the time outstanding; and
- (d) If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of SMUD or of the whole or any substantial part of its property, and such custody or control shall not be terminated or stayed within 60 days.

In the event of default, the Trustee or the holders of not less than a majority in aggregate principal amount of the outstanding Bonds may, upon written notice to SMUD, declare the principal of all outstanding Bonds, and the interest accrued thereon, to be due and payable immediately. The Trustee is appointed as trustee to represent Bondholders and may take such action as may seem appropriate to it, and, upon the written request of the holders of 25 percent in aggregate principal amount of the outstanding Bonds, and upon being furnished with indemnity satisfactory to it, will take such action on behalf of Bondholders as is specified in such written request. Each Bondholder is entitled to proceed to protect and enforce the rights vested in such holder by the Resolution by such appropriate judicial proceedings as such holder deems most effectual.

The rights of Bondholders are limited and restricted to the use and application of Revenues as provided in the Resolution and do not extend to the levy of any attachment or execution upon or forfeiture of any of the properties of SMUD or to any moneys derived by SMUD from the levy or collection of taxes.

In addition to the limitations on remedies contained in the Resolution, the rights and remedies provided by the Bonds and the Resolution, as well as the enforcement by SMUD of contracts with customers of the Electric System, may be limited by and are subject to bankruptcy, insolvency, reorganization and other laws affecting the enforcement of creditors' rights.

### **Refunding of 2023 Series K Bonds**

If Refunding Bonds are issued for the purpose of refunding 2023 Series K Bonds, then SMUD is authorized to apply proceeds of the sale of such Refunding Bonds to the payment of the purchase price of direct noncallable obligations of the United States of America ("Treasury Obligations") to be held by the Trustee to insure the payment or retirement at or before maturity of all or a portion of the outstanding 2023 Series K Bonds. Upon deposit with the Trustee, in trust, of money or Treasury Obligations (including, but not limited to, direct obligations of the United States of America issued in book-entry form on the books of the Department of the Treasury of the United States of America), or any combination thereof, sufficient, together with the interest to accrue on any such Treasury Obligations, to pay or redeem all or a portion of 2023 Series K Bonds then outstanding at or before their maturity date, all liability of SMUD in respect of such 2023 Series K Bonds shall cease, determine and be completely discharged, and the holders thereof shall thereafter be entitled only to payment by SMUD out of the money and Treasury Obligations deposited with the Trustee for their payment. If the liability of SMUD shall cease and determine with respect to all or a portion of the 2023 Series K Bonds, then said 2023 Series K Bonds shall not be considered to be outstanding Bonds for any purpose of the Resolution.

### **Discharge of Resolution**

The Resolution may be discharged by depositing with the Trustee in trust, moneys or Federal Securities or general obligation bonds of the State of California, in such amount as the Trustee shall determine will, together with the interest to accrue thereon, be fully sufficient to pay and discharge the indebtedness on all Bonds at or before their respective maturity dates.

### **Investment of Funds**

Moneys in any fund established by the Resolution may be invested in bonds, notes, certificates of indebtedness, bills, bankers acceptances or other securities in which funds of SMUD may be legally invested as provided by the law in effect at the time of such investment. Currently this investment authority includes, among other things, the Local Agency Investment Fund which is administered by the Treasurer of the State of California for the investment of funds belonging to local agencies in the State of California.



## APPENDIX E

### PROPOSED FORM OF LEGAL OPINION FOR 2023 SERIES K BONDS

[subject to internal review]

[Closing Date]

Sacramento Municipal Utility District  
Sacramento, California

Sacramento Municipal Utility District  
Electric Revenue Refunding Bonds, 2023 Series K  
(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel to the Sacramento Municipal Utility District (“SMUD”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Sacramento Municipal Utility District Electric Revenue Refunding Bonds, 2023 Series K (the “2023 Series K Bonds”), issued pursuant to Resolution No. 6649 of the Board of Directors of SMUD, adopted January 7, 1971 (the “Master Resolution”), as supplemented and amended by later resolutions of said Board of Directors (as so supplemented and amended, the “Resolution”), including Resolution No. 23-05-[ ], adopted May 19, 2023 (the “Sixty-Sixth Supplemental Resolution”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

In such connection, we have reviewed the Resolution; the Tax Certificate, dated the date hereof (the “Tax Certificate”), executed by SMUD; opinions of counsel to SMUD and the Trustee; certificates of SMUD, the Trustee and others; and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after original delivery of the 2023 Series K Bonds on the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after original delivery of the 2023 Series K Bonds on the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the 2023 Series K Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures provided to us and the due and legal execution and delivery thereof by, and validity against, any parties other than SMUD. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Resolution and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the 2023 Series K Bonds to be included in gross income for federal income tax purposes.

We call attention to the fact that the rights and obligations under the 2023 Series K Bonds, the Resolution and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to

or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against governmental entities such as SMUD. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Resolution or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement, dated [\_\_\_\_], 2023, or other offering material relating to the 2023 Series K Bonds and express no opinion or view with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The 2023 Series K Bonds constitute the valid and binding limited obligations of SMUD.
2. The Resolution, including the Sixty-Sixth Supplemental Resolution, has been duly adopted by, and constitutes the valid and binding obligation of, SMUD. The Resolution creates a valid pledge, to secure the payment of the principal of and interest on the 2023 Series K Bonds, of the Net Revenues, subject to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution.
3. Interest on the 2023 Series K Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the 2023 Series K Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. We observe that, for tax years beginning after December 31, 2022, interest on the 2023 Series K Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023 Series K Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

per

## APPENDIX F

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by the Sacramento Municipal Utility District (the “Issuer”) and U.S. Bank Trust Company, National Association, in its capacity as Dissemination Agent (the “Dissemination Agent”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Sacramento Municipal Utility District Electric Revenue Refunding Bonds, 2023 Series K (the “2023 Series K Bonds”). The 2023 Series K Bonds are being issued pursuant to the Issuer’s Resolution No. 6649, adopted on January 7, 1971, as amended and supplemented by supplemental resolutions, including Resolution No. 23-05-[ ], adopted on May 19, 2023 (the “Resolution”). Pursuant to Section 143.11 of the Resolution, the Issuer and the Dissemination Agent covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Issuer and the Dissemination Agent for the benefit of the Holders and Beneficial Owners of the 2023 Series K Bonds and in order to assist the Participating Underwriters in complying with S.E.C. Rule 15c2-12(b)(5).

**SECTION 2. Definitions.** In addition to the definitions set forth in the Resolution, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023 Series K Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the Treasurer of the Issuer or his or her designee, or such other officer or employee as the Issuer shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean U.S. Bank Trust Company, National Association, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access system.

“Financial Obligation” shall mean, for purposes of the Listed Events set out in Section 5(a)(15) and Section 5(a)(16), a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “Financial Obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board.

“Participating Underwriters” shall mean any of the original underwriters of the 2023 Series K Bonds required to comply with the Rule in connection with offering of the 2023 Series K Bonds.

“Repository” shall mean the MSRB through EMMA or any other entity or system designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of California.

### **SECTION 3. Provision of Annual Reports.**

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than one hundred eighty (180) days after the end of the Issuer’s fiscal year (presently December 31), commencing with the report for the 2023 Fiscal Year, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the fiscal year changes for the Issuer, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5 hereof.

(b) Not later than fifteen (15) Business Days prior to the dates specified in subsection (a) for providing the Annual Report to each Repository, the Issuer shall provide its respective Annual Report to the Dissemination Agent. If by such date, the Dissemination Agent has not received a copy of the Annual Report from the Issuer, the Dissemination Agent shall contact the Issuer to determine if the Issuer is in compliance with the first sentence of this subsection (b).

(c) If the Dissemination Agent is unable to verify that an Annual Report of the Issuer has been provided to each Repository by the date required in subsection (a), the Dissemination Agent shall send a notice to each Repository and the MSRB (if the MSRB is not a Repository) in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of each Repository and then-applicable rules and procedures for filing the Annual Report with each Repository, if any; and

(2) file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing each Repository to which it was provided.

### **SECTION 4. Content of Annual Reports.**

(a) The Issuer’s Annual Report shall contain or include by reference the following:

(1) The audited financial statements of the Issuer for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board and where not in conflict with the Financial Accounting Standards Board (“FASB”) pronouncements or accounting principles prescribed by FASB. If the Issuer’s audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the

Annual Report shall contain unaudited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(2) An update of the following types of information contained in Appendix A to the official statement, dated [\_\_\_\_], 2023 and related to the 2023 Series K Bonds:

(i) The table entitled “Power Supply Resources.”

(ii) The table entitled “Projected Requirements and Resources to Meet Load Requirements.”

(iii) The table entitled “Average Class Rates” (to the extent such table relates to rates and revenues of the Issuer).

(iv) The table entitled “Selected Operating Data.”

(v) The table entitled “Unconsolidated Financial Data.”

(vi) The balance in the Decommissioning Trust Fund, the current estimate of decommissioning costs, the decommissioning costs to date, and the annual contribution level to the Decommissioning Trust Fund, all relating to the Rancho Seco Nuclear Power Plant.

(vii) The table entitled “Estimated Capital Requirements.”

(b) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or public entities related thereto, which have been submitted to each Repository or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

## **SECTION 5. Reporting of Listed Events.**

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the 2023 Series K Bonds not later than ten (10) business days after the occurrence of the event:

(1) principal and interest payment delinquencies;

(2) non-payment related defaults, if material;

(3) unscheduled draws on any applicable debt service reserves reflecting financial difficulties;

(4) unscheduled draws on credit enhancement reflecting financial difficulties;

(5) substitution of credit or liquidity providers, or their failure to perform;

(6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the 2023 Series K Bonds or other material events adversely affecting the tax status of the 2023 Series K Bonds;

- (7) modifications to rights of Bondholders, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the 2023 Series K Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Issuer;
- (13) the consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of the Trustee, if material;
- (15) incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect Bondholders, if material; and
- (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

(b) For the purpose of the event identified in Section 5(a)(12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, the Issuer shall as soon as possible determine if such event is required to be reported pursuant to this Section 5.

(d) If the Issuer has determined that such event is required to be reported pursuant to this Section 5, the Issuer shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (e).

(e) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB (if the MSRB is not a Repository) and each Repository.

**SECTION 6. Termination of Reporting Obligation.** The obligations of the Issuer and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the 2023 Series K Bonds. If such termination occurs prior to the final maturity of the 2023 Series K Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event under Section 5.

**SECTION 7. Dissemination Agent; Filings.**

(a) The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Agreement. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent shall be U.S. Bank Trust Company, National Association.

(b) Unless and until one or more different or additional Repositories are designated or authorized by the Securities and Exchange Commission, all filings with a Repository which are required by this Disclosure Agreement shall be filed with the MSRB through EMMA and shall be in an electronic format and accompanied by such identifying information as prescribed by the MSRB in accordance with the Rule.

**SECTION 8. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the Issuer and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the 2023 Series K Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the 2023 Series K Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (1) is approved by the Holders of 60% of the 2023 Series K Bonds, or (2) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the 2023 Series K Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in its next respective Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles from those described in Section 4(a)(1), on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (1) notice of such change shall be given in the same manner as for a Listed Event under Section 5, and (2) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**SECTION 9. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. Default.** In the event of a failure of the Issuer or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee shall, at the request of any Participating Underwriters or the Holders of at least 25% aggregate principal amount of Outstanding Bonds and upon being indemnified to its satisfaction from and against any costs, liability, expenses and fees of the Trustee, including, without limitation fees and expenses of its attorneys, or any Holder or Beneficial Owner of the 2023 Series K Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Resolution, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

**SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.** The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Issuer agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement and no implied duties for obligation shall be read into this Disclosure Agreement against the Dissemination Agent. The Dissemination Agent has no power to enforce nonperformance on the part of the Issuer. The Dissemination Agent shall be paid compensation by the Issuer for its services provided hereunder in accordance with its schedule of fees provided to the Issuer and all expenses, legal fees and costs of the Dissemination Agent made or incurred by the Dissemination Agent in the performance of its duties hereunder. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the 2023 Series K Bonds.

**SECTION 12. Notices.** Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the Issuer:	Sacramento Municipal Utility District 6201 S Street, MS B405 Sacramento, California 95817 Attention: Treasurer Telephone: (916) 732-6509 Fax: (916) 732-5835
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To the Dissemination Agent: U.S. Bank Trust Company, National Association  
Global Corporate Trust  
One California Street, Suite 1000  
San Francisco, California 94111  
Telephone: (415) 677-3699  
Fax: (415) 677-3769

To the Trustee: U.S. Bank Trust Company, National Association  
Global Corporate Trust  
One California Street, Suite 1000  
San Francisco, California 94111  
Telephone: (415) 677-3699  
Fax: (415) 677-3769

The Issuer, the Dissemination Agent and the Trustee may, by giving written notice hereunder to the other person listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent. Unless specifically otherwise required by the context of this Disclosure Agreement, a party may give notice by any form of electronic transmission capable of producing a written record. Each such party shall file with the Trustee and Dissemination Agent information appropriate to receiving such form of electronic transmission.

**SECTION 13. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the 2023 Series K Bonds, and shall create no rights in any other person or entity.

**SECTION 14. Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated: \_\_, 2023.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
Treasurer

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Dissemination Agent

By \_\_\_\_\_  
Authorized Officer

ACKNOWLEDGED:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Sacramento Municipal Utility District  
Name of Bond Issue: Electric Revenue Refunding Bonds, 2023 Series K  
Name of Borrower: Sacramento Municipal Utility District  
Date of Issuance: \_\_, 2023

NOTICE IS HEREBY GIVEN that the Sacramento Municipal Utility District (the “Issuer”) has not provided an Annual Report with respect to the above-named Bonds as required by Section 143.11 of Resolution No. 23-05-[ ] adopted May 18, 2023, by the Issuer. [The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
on behalf of Sacramento Municipal Utility District

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cc: Sacramento Municipal Utility District

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$132,020,000 SUBORDINATED ELECTRIC REVENUE  
REFUNDING BONDS  
2023 SERIES C**

**FF C      S**

**NEW ISSUE- FULL BOOK-ENTRY**

**Ratings: See “RATINGS” herein**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD, based upon an analysis of existing laws, regulations, rulings and court decisions and, assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2023C Subordinated Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the 2023C Subordinated Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the 2023C Subordinated Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023C Subordinated Bonds. See “TAX MATTERS.”*



**\$132,020,000 Subordinated Electric Revenue Refunding Bonds**  
**2023 Series C**  
**CUSIP: [ ]<sup>†</sup>**

**Dated: Date of Delivery**

**Price: 100%**

**Due: [Maturity Date]**

The Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023C Subordinated Bonds”) will be issued pursuant to Resolution No. 85-11-1 of the Sacramento Municipal Utility District (“SMUD”), adopted November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted June 21, 2001, as supplemented and amended, and will be payable from the Net Subordinated Revenues of the Electric System of SMUD, as described herein. The 2023C Subordinated Bonds are being issued to [(i) refund certain of SMUD’s outstanding Senior Bonds (as defined herein) and (ii) pay certain costs associated with the issuance of the 2023C Subordinated Bonds]. See “PLAN OF FINANCE.”

The 2023C Subordinated Bonds will initially be issued in the Daily Mode and will bear interest initially at a Daily Rate determined by the Underwriter and thereafter will bear interest at the Daily Rates established by the Remarketing Agent for the 2023C Subordinated Bonds. Interest on the 2023C Subordinate Bonds bearing interest in the Daily or Weekly Mode will be computed on the basis of 365/366-day year and actual days elapsed. While in the Daily or Weekly Mode, interest on the 2023C Subordinated Bonds shall be payable on the first Business Day of each month, commencing on [ ], 2023. The 2023C Subordinated Bonds may, under certain circumstances, be converted from the Daily Mode to a Weekly Mode, Flexible Mode, Index Mode, Direct Purchase Index Mode, Term Rate Mode or Fixed Rate Mode. The 2023C Subordinated Bonds are subject to mandatory tender in the event of any such conversion (except for conversions between the Daily Mode and the Weekly Mode). See “THE 2023C SUBORDINATED BONDS – Conversion Between Modes” and “– Mandatory Purchase on the Mandatory Purchase Date”. *This Official Statement provides information as of its date concerning the 2023C Subordinated Bonds only while bearing interest in the Daily Mode or the Weekly Mode. Owners and prospective purchasers of the 2023C Subordinated Bonds should not rely on this Official Statement for information concerning the 2023C Subordinated Bonds in connection with any conversion of the 2023C Subordinated Bonds to an Interest Rate Mode other than the Daily Mode or the Weekly Mode but should look solely to the offering document to be used in connection with any such conversion.*

The 2023C Subordinated Bonds are also subject to optional and mandatory tender, and optional and mandatory redemption prior to maturity as set forth herein. See “THE 2023C SUBORDINATED BONDS – Optional Tender,” “– Mandatory Purchase on the Mandatory Purchase Date,” “– Optional Redemption” and “– Mandatory Sinking Fund Redemption” herein.

The 2023C Subordinated Bonds in the Weekly Mode are being issued in denominations of \$100,000 and any integral multiple of \$5,000 in excess thereof as fully registered bonds and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the 2023C Subordinated Bonds, and individual purchases of the 2023C Subordinated Bonds will be made in book-entry form only. Principal or Redemption Price or Purchase Price of, and interest on the 2023C Subordinated Bonds will be payable by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”) to DTC, which is obligated in turn to remit such principal or Redemption Price or Purchase Price, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the 2023C Subordinated Bonds, as described herein.

In order to provide for the payment of the Purchase Price of the 2023C Subordinated Bonds that are tendered for purchase and not remarketed, SMUD will enter into a standby bond purchase agreement (the “Initial Liquidity Facility”) with TD Bank, N.A. (the “Initial Liquidity Provider”).

[TD Bank, N.A. logo]

Pursuant to the terms of the Initial Liquidity Facility, with respect to 2023C Subordinated Bonds that are tendered for purchase and not remarketed, the Initial Liquidity Provider will be obligated to purchase the 2023C Subordinated Bonds, subject to the occurrence of certain suspension and termination events, as more fully described herein. Unless otherwise terminated or extended pursuant to its terms, the Initial Liquidity Facility will expire on [ ].

**Under certain circumstances, the obligation of the Initial Liquidity Provider to purchase the 2023C Subordinated Bonds optionally tendered for purchase by the owners thereof or subject to mandatory tender for purchase may be terminated or suspended without a purchase by the Initial Liquidity Provider. In such event, sufficient funds may not be available to purchase 2023C Subordinated Bonds optionally tendered for purchase by the owners thereof or subject to mandatory tender for purchase. In addition, the Initial Liquidity Facility does not provide security for the payment of principal, or Redemption Price of, on the 2023C Subordinated Bonds and only provides for the purchase of tendered 2023C Subordinated Bonds. If, for any reason, sufficient funds are not available under the Initial Liquidity Facility to pay the Purchase Price of 2023C Subordinated Bonds tendered for purchase and not remarketed, SMUD is not obligated to pay the Purchase Price of such 2023C Subordinated Bonds and failure to pay the Purchase Price of such 2023C Subordinated Bonds is not an Event of Default.**

**The principal of and interest on the 2023C Subordinated Bonds, together with the debt service on other Subordinated Bonds and Parity Subordinated Debt (as defined herein), are payable exclusively from and secured by a pledge of the Net Subordinated Revenues of the Electric System of SMUD. Neither the credit nor the taxing power of SMUD or the State of California is pledged to the payment of the 2023C Subordinated Bonds. Payment of the principal of and interest on the Subordinated Bonds, including the 2023C Subordinated Bonds, is subordinated to the payment of principal and interest on SMUD’s Electric Revenue Bonds and other Parity Bonds (as defined herein).**

The information presented on this cover page is for general reference only and is qualified in its entirety by reference to the entire Official Statement and the documents summarized and described herein.

The 2023C Subordinated Bonds are offered when, as and if issued and received by the Underwriter, subject to the approval of the validity of the 2023C Subordinated Bonds and certain other legal matters by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD. Certain legal matters will be passed on for the Underwriter by its counsel, Nixon Peabody LLP, San Francisco, California. Certain legal matters relating to the Initial Liquidity Facility will be passed upon for the Initial Liquidity Provider by its counsel, Chapman and Cutler LLP. It is expected that the 2023C Subordinated Bonds will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2023.

**Barclays**  
**(as Underwriter and Remarketing Agent)**

\_\_\_\_\_, 2023

<sup>†</sup>CUSIP® is a registered trademark of the American Bankers Association. CUSIP® data herein is provided by CUSIP Global Services (CGS), which is managed on behalf of the American Bankers Association by FactSet Research Systems Inc. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers have been assigned by an independent company not affiliated with SMUD or the Underwriter and are included solely for the convenience of the registered owners of the 2023C Subordinated Bonds. Neither SMUD nor the Underwriter are responsible for the selection or uses of these CUSIP® numbers, and no representation is made as to their correctness on the 2023C Subordinated Bonds or as included herein. The CUSIP® number for a specific maturity is subject to being changed after the execution and delivery of the 2023C Subordinated Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the 2023C Subordinated Bonds.

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
*Sacramento, California*

**BOARD OF DIRECTORS**

Heidi Sanborn, President  
Rosanna Herber, Vice President  
Brandon Rose  
Nancy Bui-Thompson  
Gregg Fishman  
Rob Kerth  
Dave Tamayo

**OFFICERS AND EXECUTIVES**

Paul Lau, Chief Executive Officer and General Manager  
Frankie McDermott, Chief Operating Officer  
Jennifer Davidson, Chief Financial Officer  
Brandy Bolden, Chief Customer Officer  
Suresh Kotha, Chief Information Officer  
Jose Bodipo-Memba, Chief Diversity Officer  
Scott Martin, Chief Strategy Officer  
Laura Lewis, Chief Legal and Government Affairs Officer and General Counsel  
Lora Anguay, Chief Zero Carbon Officer  
Farres Everly, Director, Communications, Marketing and Community Relations  
Russell Mills, Treasurer  
Lisa Limcaco, Controller

**SPECIAL SERVICES**

ORRICK, HERRINGTON & SUTCLIFFE LLP  
Bond Counsel

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
Trustee and Paying Agent

BAKER TILLY VIRCHOW KRAUSE, LLP, Madison, Wisconsin  
Independent Accountants

PFM FINANCIAL ADVISORS LLC, Philadelphia, Pennsylvania  
Municipal Advisor

EVERCREST ADVISORS, LLC  
Swap Advisor

[ ]  
Verification Agent

No dealer, broker, salesperson or other person has been authorized by SMUD or the Underwriter to give any information or to make any representations with respect to the 2023C Subordinated Bonds other than those contained in this Official Statement and, if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell nor the solicitation of an offer to buy, nor shall there be any sale of the 2023C Subordinated Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from SMUD and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of, the Underwriter. The information and expressions of opinion stated herein are subject to change without notice. The delivery of this Official Statement shall not, under any circumstances, create any implication that there has been no change in the affairs of SMUD since the date hereof. The Underwriter has provided the following sentence for inclusion in this Official Statement: The Underwriter has reviewed the information in this Official Statement in accordance with and as part of their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

The 2023C Subordinated Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption from the registration requirements contained in such Act. The 2023C Subordinated Bonds have not been registered or qualified under the securities laws of any state.

IN CONNECTION WITH THE OFFERING OF THE 2023C SUBORDINATED BONDS, THE UNDERWRITER MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICES OF SUCH BONDS AT LEVELS ABOVE THOSE THAT MIGHT OTHERWISE PREVAIL ON THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITER MAY OFFER AND SELL THE 2023C SUBORDINATED BONDS TO CERTAIN DEALERS AND OTHERS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICES SET FORTH ON THE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICES MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

#### **CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT**

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements.” Such statements generally are identifiable by the terminology used, such as “plan,” “expect,” “estimate,” “budget” or other similar words.

The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. SMUD does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access website. SMUD maintains a website. However, the information presented therein is not part of this Official Statement and should not be relied upon in making investment decisions with respect to the 2023C Subordinated Bonds. The references to internet websites in this Official Statement are shown for reference and convenience only; unless explicitly stated to the contrary, the information contained within the websites is not incorporated herein by reference and does not constitute part of this Official Statement.



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## **OFFICIAL STATEMENT**

**Relating to**

### **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**\$132,020,000**

**Subordinated Electric Revenue Refunding Bonds  
2023 Series C**

## **INTRODUCTION**

This Official Statement, including the cover page and Appendices attached hereto, describes the Sacramento Municipal Utility District (“SMUD”), a political subdivision of the State of California (the “State”), and its \$132,020,000 Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023C Subordinated Bonds”), in connection with the sale by SMUD of the 2023C Subordinated Bonds. The 2023C Subordinated Bonds are being issued to (i) refund SMUD’s Electric Revenue Refunding Bonds, 2013 Series A (the “2013A Refunded Senior Bonds”) and (ii) pay certain costs associated with the issuance of the 2023C Subordinated Bonds. See “PLAN OF FINANCE.”

The 2023C Subordinated Bonds are being issued pursuant to Resolution No. 85-11-1 of SMUD, adopted November 7, 1985, as amended and restated by Resolution No. 01-06-10 (the “Subordinate Master Resolution”), as supplemented and amended, and pursuant to applicable California law, including the Municipal Utility District Act (Public Utilities Code Sections 12850 to 12860) (the “Act”), the Revenue Bond Law of 1941 (Government Code Section 54300 *et seq.*) and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (Government Code Section 53580 *et seq.*). The issuance of the 2023C Subordinated Bonds was authorized on May 18, 2023, by a resolution of the Board of Directors of SMUD (the “2023 Supplemental Resolution”). The Subordinate Master Resolution and all supplemental resolutions, including the 2023 Supplemental Resolution, are collectively referred to herein as the Subordinate Resolution. See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION.”

U.S. Bank Trust Company, National Association serves as trustee and paying agent under the Subordinate Resolution (the “Trustee”).

The 2023C Subordinated Bonds and other bonds issued on a parity therewith pursuant to the Subordinate Resolution are collectively referred to herein as the “Subordinated Bonds.” As of May 1, 2023, Subordinated Bonds in the aggregate principal amount of \$200,000,000 were outstanding under the Subordinate Resolution.

The payment of the principal of and interest on the Subordinated Bonds, including the 2023C Subordinated Bonds, is subordinate to the payment of the principal of and interest on SMUD’s Electric Revenue Bonds (the “Senior Bonds”) and other Parity Bonds. As of May 1, 2023, Senior Bonds in the aggregate principal amount of \$1,841,715,000 were outstanding. Senior Bonds are issued pursuant to Resolution No. 6649 (the “Senior Bond Resolution”) adopted in 1971, as amended and supplemented. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION.”

The issuance of the 2023C Subordinated Bonds and the refunding of the 2013A Refunded Senior Bonds is a component of a plan of finance (the “Plan of Finance”) that includes the issuance of SMUD’s Electric Revenue Refunding Bonds, 2023 Series K (the “2023K Senior Bonds”) to refund SMUD’s

Electric Revenue Refunding Bonds, 2013 Series B (the “2013B Refunded Senior Bonds”), the issuance of SMUD’s Subordinated Electric Revenue Bonds, 2023 Series D and 2023 Series E (the “2023D Subordinated Bonds” and “2023E Subordinated Bonds,” respectively), to finance and refinance certain improvements and additions to SMUD’s Electric System, including through the refunding of SMUD’s commercial paper notes, and the issuance of SMUD’s Subordinated Electric Revenue Refunding Bonds, 2023 Series F (the “2023F Subordinated Bonds”) to refund SMUD’s Subordinated Electric Revenue Bonds, 2019 Series A (the “2019A Refunded Subordinated Bonds”). The issuance of the 2023C Subordinated Bonds to refund the 2013A Refunded Senior Bonds is not contingent upon the implementation of the other components of the Plan of Finance, and SMUD is not obligated to implement any of the components of the Plan of Finance. Upon the issuance of the 2023C Subordinated Bonds and the refunding of the 2013A Refunded Senior Bonds, Senior Bonds in the aggregate principal amount of \$[ ] and Subordinated Bonds in the aggregate principal amount of \$[ ] will be outstanding. If the Plan of Finance is implemented in whole, upon completion of the Plan of Finance, Senior Bonds in the aggregate principal amount of approximately \$[ ] and Subordinated Bonds in the aggregate principal amount of approximately \$[ ] are expected to be outstanding. See “PLAN OF FINANCE.”

The 2023C Subordinated Bonds will be subject to optional and mandatory tender for purchase at a purchase price equal to the principal thereof plus accrued interest thereon, if any, to but excluding the date of purchase (the “Purchase Price”), as provided in the Supplemental Resolution. In order to provide for the payment of the Purchase Price of the 2023C Subordinated Bonds that are tendered for purchase and not remarketed, SMUD will enter into a standby bond purchase agreement (the “Initial Liquidity Facility”) with TD Bank, N.A. (the “Initial Liquidity Provider”). Pursuant to the terms of the Initial Liquidity Facility, with respect to 2023C Subordinated Bonds that are tendered for purchase and not remarketed, the Initial Liquidity Provider will be obligated to purchase the 2023C Subordinated Bonds, subject to the occurrence of certain suspension and termination events, as more fully described herein. Unless otherwise terminated or extended pursuant to its terms, the Initial Liquidity Facility will expire on [ ]. The Initial Liquidity Facility may be replaced by an Alternate Liquidity Facility, as described herein. See “INITIAL LIQUIDITY FACILITY” and “THE 2023C SUBORDINATED BONDS – Alternate Credit Enhancement and Alternate Liquidity Facility.”

SMUD also issues commercial paper notes (the “Notes”) from time to time. As of May 1, 2023, Notes in the principal amount of \$200,000,000 were outstanding. Currently, Notes in the aggregate principal amount of \$300,000,000 may be outstanding at any one time, but SMUD reserves the right to increase or decrease the aggregate principal amount of the Notes that may be outstanding at any one time in the future. The Notes are secured by letters of credit issued by commercial banks. The Notes (and SMUD’s obligations to repay drawings under the letters of credit) are payable solely from available revenues of SMUD’s Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds (including the 2023C Subordinated Bonds). Drawings under the letters of credit, to the extent not repaid immediately from the proceeds of commercial paper or other available SMUD funds, are repayable with interest over a period of five years. The letters of credit currently expire in February and August of 2025. SMUD intends to pay all of the outstanding principal amount of the Notes with the proceeds of the 2023D Subordinated Bonds and the 2023E Subordinated Bonds. See “PLAN OF FINANCE.”

SMUD has also previously issued its taxable and tax-exempt revolving notes pursuant to a revolving credit agreement with a commercial bank (collectively, the “Revolving Credit Facility”). As of May 1, 2023, no principal was outstanding under the Revolving Credit Facility. Currently, the aggregate principal amount that can be outstanding under the Revolving Credit Facility at any one time is limited to \$100,000,000. However, SMUD reserves the right to increase or decrease the aggregate principal amount that can be outstanding at any one time under the Revolving Credit Facility in the future. SMUD’s payment obligations under the Revolving Credit Facility are payable solely from available revenues of SMUD’s Electric System and are subordinate in right of payment to the prior payment of principal of,

premium if any, and interest on the Senior Bonds and the Subordinated Bonds (including the 2023C Subordinated Bonds). The current term of the Revolving Credit Facility expires in February 2026.

SMUD is responsible for the acquisition, generation, transmission and distribution of electric power to its service area, which includes most of Sacramento County and small portions of Placer and Yolo counties. For the year ended December 31, 2022, SMUD served a population of approximately 1.5 million with a total annual retail load of approximately 10,622 million kilowatt hours (“kWh”). SMUD owns and operates an electric system which, as of March 31, 2023, included generating facilities owned and operated by SMUD with an aggregate generating capacity of approximately 783 megawatts (“MW”), local gas-fired plants owned and operated by a joint powers authority and managed by SMUD with an aggregate generating capacity of approximately 1,081 MW, over which SMUD has exclusive control of dispatch, and purchased power with an aggregate generating capacity of approximately 1,314 MW and transmission and distribution facilities. SMUD’s power requirements exceed its generating capacity and thus SMUD has agreements with others (including the Local Gas-Fired Plants as defined in APPENDIX A) for the purchase of a portion of its power requirements. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – POWER SUPPLY AND TRANSMISSION – Power Supply Resources.” Continuing development of SMUD’s business strategy in response to changing environmental and regulatory requirements has had, and is expected to continue to have, a major effect on SMUD’s power supply planning. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – BUSINESS STRATEGY.”

Pursuant to a Continuing Disclosure Agreement, dated the date of issuance of the 2023C Subordinated Bonds (the “Continuing Disclosure Agreement”) between SMUD and the Trustee, SMUD will covenant for the benefit for the holders of the 2023C Subordinated Bonds and owners of beneficial interest in the 2023C Subordinated Bonds to provide certain financial information and operating data and to provide certain notices. See “CONTINUING DISCLOSURE UNDERTAKING” and APPENDIX G – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

The information presented in this Introduction is qualified in its entirety by reference to this entire Official Statement and the documents summarized or described herein. This Official Statement, including the Appendices, summarizes the terms of the 2023C Subordinated Bonds, the Subordinate Resolution and certain agreements, contracts and other arrangements, some of which currently exist and others of which may exist in the future. The summaries of and references to all documents, statutes, regulations and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each such document, statute, regulation or instrument.

Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION – Certain Definitions” or in the Subordinate Resolution.

## **PLAN OF FINANCE**

The proceeds of the 2023C Subordinated Bonds will be used to (i) refund the 2013A Refunded Senior Bonds, currently outstanding in the principal amount of \$132,020,000, and (ii) pay certain costs associated with the issuance of the 2023C Subordinated Bonds. In June 2020, SMUD had entered into a forward starting interest rate swap agreement to hedge potential interest rate exposure relating to the future refunding of the 2013A Refunded Senior Bonds (the “Financial Products Agreement”). The Financial Products Agreement will become effective on July 12, 2023. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Interest Rate Swap Agreements*.” The issuance of the 2023C Subordinated Bonds to refund the 2013A Refunded

Senior Bonds is a component of the Plan of Finance, as further described below. The issuance of the 2023C Subordinated Bonds to refund the 2013A Refunded Senior Bonds is not contingent upon the implementation of the other components of the Plan of Finance, and SMUD is not obligated to implement all of the components of the Plan of Finance.

### **Refunding of 2013A Refunded Senior Bonds**

A portion of the proceeds of the 2023C Subordinated Bonds, together with other available funds, will be deposited in trust in an escrow fund (the “2013A Escrow Fund”) established under an escrow agreement between SMUD and the Trustee, in an amount sufficient to pay the interest on the 2013A Refunded Bonds due on August 15, 2023 (the “2013A Redemption Date”) and to redeem the 2013A Refunded Bonds on the 2013A Redemption Date. The moneys so deposited may be invested in direct obligations of the United States of America (the “Federal Securities”). Upon deposit, all liability of SMUD with respect to the 2013A Refunded Bonds (except for the obligation of SMUD to pay the interest on and redemption price of the 2013A Refunded Bonds from moneys on deposit in the 2013A Escrow Fund) will cease. The holders of the 2013A Refunded Bonds will be entitled to payment from SMUD solely from moneys or Federal Securities on deposit in the 2013A Escrow Fund, and the 2013A Refunded Bonds will no longer be outstanding under the Senior Bond Resolution. The moneys or Federal Securities in the 2013A Escrow Fund will not secure the 2023C Subordinated Bonds and will not be available to pay the principal of or interest on the 2023C Subordinated Bonds.

### **Issuance of 2023K Senior Bonds and Refunding of 2013B Refunded Senior Bonds**

[Concurrently with the issuance of the 2023C Subordinated Bonds,] SMUD expects to issue approximately \$[ ] in principal amount of the 2023K Senior Bonds. The 2023K Senior Bonds are expected to be issued as fixed rate bonds with a final maturity of 2033. The proceeds of the 2023K Senior Bonds are expected to be used to refund the 2013B Refunded Senior Bonds. In connection with the refunding of the 2013B Refunded Senior Bonds, SMUD expects to terminate a forward starting interest rate swap agreement that was executed in June 2020 to hedge potential interest rate exposure relating to the future refunding of the 2013B Refunded Senior Bonds. SMUD expects that it will receive a termination payment for the termination of the interest rate swap agreement. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Interest Rate Swap Agreements.*”

A portion of the proceeds of the 2023K Senior Bonds, together with other available funds, will be deposited in trust in an escrow fund (the “2013B Escrow Fund”) established under an escrow agreement between SMUD and the Trustee. The moneys so deposited will be invested in direct obligations of the United States of America, the interest on and principal of which will be sufficient to pay the interest on the 2013B Refunded Bonds due on August 15, 2023 (the “2013B Redemption Date”) and to redeem the 2013B Refunded Bonds on the 2013B Redemption Date. The securities and moneys in the 2013B Escrow Fund will not secure the 2023C Subordinated Bonds and will not be available to pay the principal of or interest on the 2023C Subordinated Bonds.

### **Issuance of 2023D Subordinated Bonds and 2023E Subordinated Bonds**

[Shortly after the issuance of the 2023C Subordinated Bonds], SMUD expects to issue the 2023D Subordinated Bonds and the 2023E Subordinated Bonds in the approximate principal amounts of \$[ ] and \$[ ], respectively. The proceeds of the 2023D Subordinated Bonds and the 2023E Subordinated Bonds are expected to be used to finance and refinance certain improvements and additions to SMUD’s Electric System, including through the refunding of SMUD’s commercial paper notes in the outstanding principal amount of \$200,000,000. The 2023D Subordinated Bonds and the 2023E Subordinated Bonds

are each expected to be issued in a term rate mode, bearing fixed rates during the initial term rate periods of [ ] years and [ ] years, respectively.

### Issuance of 2023F Subordinated Bonds

[Shortly after the issuance of the 2023C Subordinated Bonds], SMUD expects to issue the 2023F Subordinated Bonds in the approximate principal amount of \$[ ] to refund the outstanding 2019A Refunded Subordinated Bonds. The 2023F Subordinated Bonds are expected to be issued in a term rate mode, bearing fixed rates during an initial term rate period of [five] years.

### ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the 2023C Subordinated Bonds are as follows:

#### Sources of Funds:

Principal Amount of 2023C Subordinated Bonds	\$
SMUD Contribution	
Total Sources of Funds	<u>\$</u>

#### Uses of Funds:

Refunding of 2013A Refunded Senior Bonds	\$
Costs of Issuance (including Underwriter's Discount)	
Total Uses of Funds	<u>\$</u>

### THE 2023C SUBORDINATED BONDS

The following is a summary of certain provisions of the 2023C Subordinated Bonds. Reference is made to the 2023C Subordinated Bonds for the complete text thereof and to the Subordinate Resolution for a more detailed description of such provisions. The discussion herein is qualified by such reference. *This Official Statement provides information as of its date with respect to 2023C Subordinated Bonds bearing interest in the Daily Mode or the Weekly Mode. Owners and prospective purchasers of the 2023C Subordinated Bonds should not rely on this Official Statement for information concerning the 2023C Subordinated Bonds in connection with any conversion of the 2023C Subordinated Bonds to a Mode other than the Daily Mode or the Weekly Mode, but should look solely to the offering document to be used in connection with any such conversion.*

### General

The 2023C Subordinated Bonds are being issued in the principal amount shown on the cover of this Official Statement. The 2023C Subordinated Bonds will be issued under a book-entry only system, and will be registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), New York, New York, which will act as bond depository for the 2023C Subordinated Bonds. Principal or Redemption Price of, and interest on the 2023C Subordinated Bonds or the Purchase Price thereof are payable by the Trustee to DTC, which is obligated in turn to remit such principal or Redemption Price, and interest or Purchase Price to its DTC Participants for subsequent disbursement to the beneficial owners of the 2023C Subordinated Bonds. See APPENDIX C – "BOOK-ENTRY SYSTEM".

The 2023C Subordinated Bonds will be dated the date of initial delivery and will mature on the date on the cover page of this Official Statement. The 2023C Subordinated Bonds will initially be issued in the Daily Mode and only as fully registered 2023C Subordinated Bonds in the denominations of

\$100,000 and any integral multiple of \$5,000 in excess thereof (the “Authorized Denominations”) while in the Daily Mode.

The 2023C Subordinated Bonds will initially bear interest at an initial rate set by the Underwriter prior to delivery of the 2023C Subordinated Bonds. Thereafter, the 2023C Subordinated Bonds will bear interest at rates established by the Remarketing Agent until maturity, redemption or conversion, as described herein.

At the option of SMUD and upon certain conditions provided in the Subordinate Resolution, the 2023C Subordinated Bonds may be converted to the Weekly Mode, Flexible Mode, Term Rate Mode, Index Mode, Direct Purchase Index Mode, or Fixed Rate Mode. See “Conversion Between Modes” herein. While the 2023C Subordinated Bonds may, under certain circumstances, be converted to a Weekly Mode, Flexible Mode, Term Rate Mode, Index Mode, Direct Purchase Index Mode or Fixed Rate Mode, this Official Statement describes the 2023C Subordinated Bonds only during the period in which they bear interest in the Daily Mode or the Weekly Mode. The 2023C Subordinated Bonds are subject to mandatory tender in the event of any such conversion related thereto (except for conversions between the Daily Mode and the Weekly Mode). See “Conversion Between Modes” and “Mandatory Purchase on the Mandatory Purchase Date” herein.

While in the Daily Mode or the Weekly Mode, interest on the 2023C Subordinated Bonds shall be payable on a monthly basis on the first Business Day of each month (an “Interest Payment Date”) commencing on [ ], 2023, any Mandatory Purchase Date, and on the Maturity Date of the 2023C Subordinated Bonds. Interest on the 2023C Subordinated Bonds shall be computed on the basis of a 365 or 366-day year, for the actual number of days elapsed. The Record Date for the payment of interest while a 2023C Subordinated Bond is in the Daily Mode or the Weekly Mode is the last Business Day before an Interest Payment Date.

During the Daily Mode, Remarketing Agent shall establish the Daily Rate by 10:00 a.m., New York City time, on each Rate Determination Date. The Daily Rate for any day during the Daily Mode which is not a Business Day shall be the Daily Rate established on the immediately preceding Rate Determination Date. During the Weekly Mode, Remarketing Agent shall establish the Weekly Rate by 4:00 p.m., New York City time, on each Rate Determination Date. The Weekly Rate shall be in effect during the applicable Weekly Rate Period. The Weekly Rate Period is the period commencing on Thursday of each week to and including Wednesday of the following week, except (i) the first Weekly Rate Period which shall be from the Conversion on which the Interest Rate Mode for the 2023C Subordinated Bonds is changed to a Weekly Mode to and including the Wednesday of the following week, and (ii) the last Weekly Rate Period which shall end on the day preceding the earliest to occur of the Conversion Date on which the Interest Rate Mode for the 2023C Subordinated Bonds is changed from the Weekly Mode to a different Interest Rate Mode, the Maturity Date or the Mandatory Purchase Date for such 2023C Subordinated Bond.

The Rate Determination Date for the 2023C Subordinated Bonds in the Daily Mode will be each Business Day commencing with the first day (which must be a Business Day) the 2023C Subordinated Bonds becomes subject to the Daily Mode. The Rate Determination Date for the 2023C Subordinated Bonds in the Weekly Mode will be (i) each Wednesday or, if Wednesday is not a Business Day, then the Business Day next succeeding such Wednesday, and (ii) not later than the Business Day preceding a Conversion Date, the date upon which an Alternate Credit Enhancement or Alternate Liquidity facility is scheduled to be substituted for a Credit Enhancement or Liquidity then in effect (a “Substitution Date”) or a Mandatory Purchase Date that is any Business Day specified by SMUD with the consent of a Liquidity Provider, if any, not less than 20 days after the Trustee’s receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023C Subordinated Bonds.



The Daily Rate and the Weekly Rate for each Interest Period will be the rate of interest per annum determined by Remarketing Agent on and as of the applicable Rate Determination Date as the minimum rate of interest which, in the opinion of the Remarketing Agent under then-existing market conditions, would result in the sale of such 2023C Subordinated Bonds in the Daily Rate Period or Weekly Rate Period, as applicable, at a price equal to the principal amount thereof, plus interest, if any, accrued through the Rate Determination Date during then current Interest Accrual Period. In making any such determination, the Remarketing Agent will not take into account the per annum rate of interest that would be applicable to 2023C Subordinated Bonds purchased by the Liquidity Provider with funds drawn on or advanced under the Liquidity Facility (“Liquidity Provider Bonds”) pursuant to the terms of the applicable Liquidity Facility. No 2023C Subordinated Bonds other than Liquidity Provider Bonds may bear interest at an interest rate higher than twelve percent (12%) per year.

If the Remarketing Agent fails or is unable to make such determination, the method by which the Remarketing Agent determines the interest rate is held to be unenforceable by a court of law of competent jurisdiction, or the Remarketing Agent suspends its remarketing effort in accordance with the Remarketing Agreement, then the rate to take effect on the first day of any Interest Period shall be the Alternate Rate. “Alternate Rate” is defined in the Subordinate Resolution to mean a rate per annum equal to 110% of (a) the SIFMA Municipal Swap Index of Municipal Market Data most recently available as of the date of determination, or (b) if such index is no longer available, or if the SIFMA Municipal Swap Index is no longer published, the S&P Municipal Bond 7 Day High Grade Index, or if neither the SIFMA Municipal Swap Index nor the S&P Municipal Bond 7 Day High Grade Index is published, the index determined to equal the prevailing rate determined by the Remarketing Agent for tax-exempt state and local government bonds meeting criteria determined in good faith by the Remarketing Agent to be comparable under the circumstances to the criteria used by the Securities Industry and Financial Markets Association to determine the SIFMA Municipal Swap Index just prior to when the Securities and Financial Markets Association stopped publishing the SIFMA Municipal Swap Index.

Subject to the provisions discussed in APPENDIX C – “BOOK-ENTRY SYSTEM,” principal or Redemption Price will be payable upon surrender of the 2023C Subordinated Bonds at the principal corporate trust office of the Trustee. Interest on the 2023C Subordinated Bonds will be paid by wire transfer within the continental United States of immediately available funds from the Trustee to the registered owner, determined as of the close of business on the applicable Record Date, at its address as shown on the registration books maintained by the Trustee.

### **Conversion Between Modes**

While the 2023C Subordinated Bonds are in the Daily Mode or Weekly Mode, conversions to any other Interest Rate Mode may take place on any Business Day, upon not less than 10 days’ prior written notice from the Trustee to the registered owners of such 2023C Subordinated Bonds.

Upon such conversion, the 2023C Subordinated Bonds will be subject to mandatory purchase on the Mandatory Purchase Date as described herein under “Mandatory Purchase on the Mandatory Purchase Date.” Each conversion of the 2023C Subordinated Bonds from one Interest Rate Mode to another Interest Rate Mode shall be subject to the conditions set forth in the Subordinate Resolution, including delivery of a Favorable Opinion of Bond Counsel. In addition, SMUD may rescind any election to convert to another Interest Rate Mode up to 10:00 a.m., New York City time, on the Business Day preceding the proposed conversion date. In the event that the conditions for a proposed conversion to a new Interest Rate Mode are not met or SMUD rescinds the direction to convert, (i) such new Interest Rate Mode shall not take effect on the proposed conversion date, notwithstanding any prior notice to the registered owners of such conversion, (ii) the 2023C Subordinated Bonds shall remain in the prior Interest Rate Mode, and (iii) the 2023C Subordinated Bonds shall be subject to mandatory purchase on the Mandatory Purchase Date as described in the Subordinate Resolution if notice has been sent to the

registered owners stating that the 2023C Subordinated Bonds would be subject to mandatory purchase on such date. In no event shall the failure of the 2023C Subordinated Bonds to be converted to another Interest Rate Mode be deemed to be a default or an Event of Default.

### **Optional Tender**

While the 2023C Subordinated Bonds are in the Daily Mode or Weekly Mode, the Beneficial Owners of 2023C Subordinated Bonds may elect to have their 2023C Subordinated Bonds (or portions of those 2023C Subordinated Bonds, provided that no 2023C Subordinated Bonds remain Outstanding in other than Authorized Denominations) purchased on any Business Day at a price equal to the Purchase Price.

“Purchase Price” means an amount equal to the principal amount of any 2023C Subordinated Bonds purchased on the any Purchase Date, plus accrued interest to but excluding the Purchase Date ; provided, however, that if the Purchase Date for any 2023C Subordinated Bond is an Interest Payment Date for such 2023C Subordinated Bond, in which case the Purchase Price thereof shall be the principal amount thereof, and interest on such 2023C Subordinated Bond shall be paid to the Holder of such 2023C Subordinated Bond in the normal course.

In order to exercise the right to tender, the Beneficial Owners must deliver to the Trustee by Electronic Means or in writing with respect to a 2023C Subordinated Bond a notice that states (i) the principal amount of such 2023C Subordinated Bond to be purchased pursuant to the Subordinate Resolution, (ii) the Purchase Date on which such 2023C Subordinated Bond is to be purchased, (iii) applicable payment instructions with respect to the 2023C Subordinated Bonds being tendered for purchase and (iv) an irrevocable demand for such purchase (a “Tender Notice”). If the 2023C Subordinated Bonds is in the Daily Mode, the 2023C Subordinated Bonds will be purchased on any Business Day if a Tender Notice is delivered to the Trustee not later than 11:00 a.m., New York City time, on any Business Day. If the 2023C Subordinated Bonds is in the Weekly Mode, the 2023C Subordinated Bonds will be purchased on the Business Day specified in such Tender Notice, if a Tender Notice is delivered to the Trustee by 5:00 p.m., New York City time, on a Business Day not less than seven days prior to the Purchase Date.

Notice of tender of a Series of 2023C Subordinated Bonds is irrevocable. If the Beneficial Owner of a 2023C Subordinated Bond has elected to require purchase as provided above, the Beneficial Owner shall be deemed, by such election, to have agreed irrevocably to sell such 2023C Subordinated Bond to any purchaser, on the date fixed for purchase at the Purchase Price. The Purchase Price of such 2023C Subordinated Bond shall be paid to the registered owner by the Trustee on the Purchase Date or any subsequent Business Day on which such 2023C Subordinated Bond is delivered to the Trustee by 12:00 noon, New York City time. From and after the Purchase Date, no further interest on such 2023C Subordinated Bond shall be payable to the Beneficial Owner who gave notice of tender for purchase, provided that there are sufficient funds available on the Purchase Date to pay the Purchase Price.

Notwithstanding the foregoing provisions, all tenders of a Series of 2023C Subordinated Bonds for purchase during any period in which the 2023C Subordinated Bonds is registered in the name of any Securities Depository shall be subject to the terms and conditions set forth in the Representations Letter between SMUD and the Securities Depository and to any regulations promulgated by the Securities Depository. During any period that the 2023C Subordinated Bonds are registered in the name of DTC or its nominee, the tender option rights of Holders of such 2023C Subordinated Bonds may be exercised only by a Direct Participant of DTC acting, directly or indirectly, on behalf of a Beneficial Owner of such 2023C Subordinated Bonds by giving notice of its election to tender such 2023C Subordinated Bonds or portions thereof at the times and in the manner described above. Beneficial Owners will not have any rights to tender 2023C Subordinated Bonds directly to the Trustee. Procedures under which a Beneficial

Owner may direct a Direct Participant or DTC, or an Indirect Participant of DTC acting through a Director Participant of DTC, to exercise a tender option right in respect of 2023C Subordinated Bonds or portions thereof in an amount equal to all or a portion of such Beneficial Owner's beneficial ownership interest therein shall be governed by standing instructions and customary practices determined by such Direct Participant or Indirect Participant. During any period that the 2023C Subordinated Bonds are registered in the name of DTC or its nominee, delivery of such 2023C Subordinated Bonds required to be tendered for purchase shall be effected by the transfer by a Direct Participant on the applicable Purchase Date of a book-entry credit to the account of the Trustee of a beneficial ownership interest in such 2023C Subordinated Bonds. See APPENDIX C – "BOOK-ENTRY SYSTEM."

### **Mandatory Purchase on the Mandatory Purchase Date**

While in the Daily Mode or Weekly Mode, the 2023C Subordinated Bonds are subject to mandatory purchase at the Purchase Price (each, a "Mandatory Purchase Date") on (i) any Conversion Date (or the date that otherwise would have been a Conversion Date had one of the conditions precedent to such Conversion Date not failed to occur), (ii) any Substitution Date with respect to a Credit Enhancement or Liquidity Facility, (iii) the fifth Business Day prior to the Expiration Date with respect to a Credit Enhancement or Liquidity Facility securing such 2023C Subordinated Bonds, (iv) the date specified by the Trustee following the occurrence of an event under the Reimbursement Agreement or Liquidity Facility which requires or gives the Credit Provider or Liquidity Provider the option to cause a mandatory tender of the 2023C Subordinated Bonds or terminate the Credit Enhancement or Liquidity Facility upon notice, which date shall be a Business Day not more than five Business Days after the Trustee's receipt of written notice of such event from the Credit Provider or the Liquidity Provider and directing the Trustee to cause a mandatory tender of the 2023C Subordinated Bonds and in no event later than the day preceding the termination date specified by the Credit Provider or the Liquidity Provider; (v) any Business Day specified by SMUD with the consent of the Liquidity Provider, if any, not less than 20 days after the Trustee's receipt of such notice and in no event later than the day preceding the Expiration Date of the Liquidity Facility, if any, then in effect with respect to such 2023C Subordinated Bonds.

Notice of mandatory purchase shall be given by the Trustee in writing to the Holders of such 2023C Subordinated Bonds subject to mandatory purchase no less than 10 days prior to the applicable Mandatory Purchase Date (or no less than three days with respect to a mandatory purchase described in clause (v) of the paragraph above). From and after the Mandatory Purchase Date, interest on the 2022C Subordinated Bonds subject to mandatory purchase will cease to accrue.

### **Remarketing of 2023C Subordinated Bonds**

The Remarketing Agent shall use its best efforts pursuant to the terms and conditions of the Remarketing Agreement to offer for sale:

- (i) all 2023C Subordinated Bonds or portions thereof as to which a Tender Notice has been delivered; and
- (ii) all 2023C Subordinated Bonds required to be purchased on a Mandatory Purchase Date pursuant to a Conversion, a Substitution or on a Mandatory Purchase Date specified by SMUD with the consent of the Liquidity Provider as further described in clause (v) under "Mandatory Purchase on the Mandatory Purchase Date" above; and
- (iii) any Liquidity Provider Bonds as described in the Subordinate Resolution.

The Remarketing Agent shall not remarket 2023C Subordinated Bonds to SMUD or any affiliate thereof. In connection with the remarketing of any 2023C Subordinated Bonds with respect to which

notice of redemption or notice of mandatory purchase has been given, the Remarketing Agent shall notify each person to which such 2023C Subordinated Bonds are remarketed of such notice of redemption or notice of mandatory purchase.

Anything in the Subordinate Resolution to the contrary notwithstanding, if there shall have occurred and be continuing a Liquidity Provider Failure with respect to the 2023C Subordinated Bonds, the Remarketing Agent will not remarket such 2023C Subordinated Bonds. All other provisions of the Subordinate Resolution, including without limitation, those relating to the setting of interest rates and Interest Periods and mandatory and optional purchases, will remain in full force and effect during the continuance of such Liquidity Provider Failure.

### **Draws on Liquidity Facility**

On each [date on which a 2023C Subordinated Bond is to be purchased][Mandatory Purchase Date], if a Remarketing Agent gives notice to the Trustee pursuant to the Subordinate Resolution that it has been unable to remarket any tendered 2023C Subordinated Bonds or if the Trustee has not received from a Remarketing Agent an amount sufficient to pay the Purchase Price of tendered 2023C Subordinated Bonds by 12:00 noon, New York City time, on the Purchase Date, the Trustee shall draw on the Liquidity Facility (or, if there is no Liquidity Facility, request funds from SMUD) by 12.15 p.m., New York City time, in an amount equal to the Purchase Price of all the 2023C Subordinated Bonds which have not been successfully remarketed.

If a Liquidity Facility is in effect, on each date on which a 2023C Subordinated Bond secured by the Liquidity Facility is to be purchased, the Trustee, by demand given by Electronic Means by 12:15 p.m., New York City time, will draw on the Liquidity Facility in accordance with the terms thereof so as to receive thereunder by 2:45 p.m., New York City time, on such date an amount, in immediately available funds, sufficient, together with the proceeds of the remarketing of such 2023C Subordinated Bonds on such date, to enable the Trustee to pay the Purchase Price in connection therewith. The Trustee shall deposit said proceeds in the Liquidity Facility Purchase Account established for the 2023C Subordinated Bonds pursuant to the Subordinate Resolution.

The Initial Liquidity Facility shall constitute the initial Liquidity Facility under the Subordinate Resolution. See “THE INITIAL LIQUIDITY FACILITY.”

### **Source of Funds for Purchase of 2023C Subordinated Bonds**

The Trustee shall purchase 2023C Subordinated Bonds subject to mandatory tender for purchase on each Mandatory Purchase Date pursuant to the Subordinate Resolution (“Tendered Bonds”) from the tendering owners at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and neither of SMUD or the Trustee shall be obligated to provide funds from any other source:

- (i) immediately available funds on deposit in the Remarketing Proceeds Account established for the 2023C Subordinated Bonds under the Subordinate Resolution;
- (ii) immediately available funds on deposit in the Liquidity Facility Purchase Account established for the 2023C Subordinated Bonds under the Subordinate Resolution; and
- (iii) moneys of SMUD on deposit in the District Purchase Account established for the 2023C Subordinated Bonds under the Subordinate Resolution.

If a Liquidity Facility is in effect with respect to the 2023C Subordinated Bonds, then SMUD may, but shall not be obligated to, deposit amounts into the District Purchase Account established for the 2023C Subordinated Bonds sufficient to pay the Purchase Price to the extent that amounts on deposit in the Remarketing Proceeds Account established for the 2023C Subordinated Bonds and the Liquidity Facility Purchase Account established for the 2023C Subordinated Bonds are insufficient therefor.

### **Inadequate Funds for Tenders**

If moneys sufficient to pay the Purchase Price of all Tendered Bonds to be purchased on any Purchase Date are not available (1) no purchase shall be consummated of Tendered Bonds on such Purchase Date; (2) all Tendered Bonds shall be returned to the Holders thereof; and (3) all remarketing proceeds with respect to such 2023C Subordinated Bonds shall be returned to Remarketing Agent for return to the persons providing such moneys. All Tendered Bonds (other than Liquidity Provider Bonds) will bear interest at [ ]% per annum during the period of time from and including the applicable Purchase Date to (but not including) the date that all such Tendered Bonds are successfully remarketed, redeemed, purchased or paid (the “Delayed Remarketing Period”).

During the Delayed Remarketing Period, SMUD may (1) direct the conversion of Tendered Bonds without complying with the applicable notice requirements for such conversion; (2), subject to the terms of the Remarketing Agreement, the Remarketing Agent will continue to use its best effort to remarket all of the Tendered Bonds at rates up to and including the Maximum Rate; (3) upon five Business Days’ notice, redeem Tendered Bonds as a whole or in part on any Business Day at a redemption price equal to the principal amount thereof, together with accrued interest thereon to the date fixed for redemption, without premium. During the Delayed Remarketing Period, interest on Tendered Bonds will be paid to the Holders thereof (i) on the first Business Day of each calendar month and (ii) on the last day of the Delayed Remarketing Period.

### **Alternate Credit Enhancement and Alternate Liquidity Facility**

If at any time there shall have been delivered to the Trustee (i) an Alternate Credit Enhancement or an Alternate Liquidity Facility in substitution for a Liquidity Facility then in effect, (ii) a Favorable Opinion of Bond Counsel, (iii) a written Opinion of Counsel for the provider of the Alternate Credit Enhancement or Alternate Liquidity Facility, as applicable, to the effect that such Alternate Credit Enhancement or Alternate Liquidity Facility is a valid, legal and binding obligation of the provider thereof, and (iv) unless waived by such entity, written evidence satisfactory to the related Credit Provider and the Liquidity Provider of the provision for purchase from the Liquidity Provider of all Liquidity Provider Bonds, at a price equal to the principal amount thereof plus accrued and unpaid interest, and payment of all amounts due to the Credit Provider and the Liquidity Provider under the applicable Reimbursement Agreement or Liquidity Facility on or before the effective date of such Alternate Credit Enhancement or Alternate Liquidity Facility, then the Trustee shall accept such Alternate Credit Enhancement or Alternate Liquidity Facility, as applicable, on the Substitution Date and shall surrender the Liquidity Facility then in effect to the provider thereof on the Substitution Date. The Trustee shall give notice of such proposed substitution by mail to the Beneficial Owners of the 2023C Subordinated Bonds no less than fifteen days prior to the proposed Substitution Date. If any condition to the substitution is not satisfied, the substitution shall not occur but the 2023C Subordinated Bonds shall remain subject to mandatory purchase on the proposed Substitution Date. See “Mandatory Purchase on the Mandatory Purchase Date” above.

### **Optional Redemption**

The 2023C Subordinated Bonds in the Daily Mode or the Weekly Mode are subject to redemption at the option of SMUD in whole or in part (provided that no 2023C Subordinated Bonds shall

remain Outstanding except in Authorized Denominations) on any Business Day at a Redemption Price equal to the principal amount, or portions thereof, of such 2023C Subordinated Bonds to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

### **Mandatory Sinking Fund Redemption**

The 2023C Subordinated Bonds are subject to mandatory redemption in part, by lot, on August 15 in the years shown in the following table, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the date of redemption in an amount equal to the Sinking Fund Installments for such 2023C Subordinated Bonds for such date:

Years (August 15)	Sinking Fund Installment	Years (August 15)	Sinking Fund Installment
2034	\$11,665,000	2038	\$19,090,000
2035	\$11,320,000	2039	\$19,545,000
2036	\$10,970,000	2040	\$20,005,000
2037	\$18,640,000	2041 <sup>†</sup>	\$20,785,000

<sup>†</sup> Stated Maturity

### **Selection of Bonds to be Redeemed; Notice of Redemption**

Whenever provision is made for the redemption of less than all of the 2023C Subordinated Bonds, the Trustee shall select the 2023C Subordinated Bonds to be redeemed, from the outstanding 2023C Subordinated Bonds not previously called for redemption, by lot in any manner which the Trustee deems fair; provided, however, that Liquidity Provider Bonds will be redeemed prior to the redemption of other 2023C Subordinated Bonds.

Notice of redemption shall be mailed by first-class mail by the Trustee, not less than 10 days prior to the redemption date, to the Holder of any 2023C Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023C Subordinated Bonds. Each notice of redemption shall state the redemption date, the place of redemption, the principal amount to be redeemed, and shall also state that the interest on the 2023C Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023C Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the applicable redemption date to pay the applicable redemption price of the 2023C Subordinated Bonds to be redeemed.

Any notice of optional redemption may be rescinded by written notice given to the Trustee by SMUD no later than two Business Days prior to the dated specified for redemption.

Notwithstanding the foregoing, notice of redemption shall not be required for 2023C Subordinated Bonds redeemed on a Mandatory Purchase Date.

## DEBT SERVICE SCHEDULE

The following table sets forth the debt service requirements with respect to the 2023C Subordinated Bonds assuming no early redemptions. See also APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Debt Service Requirements*.”

<u>Calendar Year</u>	<u>2023C Subordinated Bonds Principal</u>	<u>2023C Subordinated Bonds Interest<sup>(1)</sup></u>	<u>Total</u>
	\$	\$	\$

<u>                    </u>	<u>                    </u>	<u>                    </u>
\$	\$	\$

<sup>(1)</sup> Based on the Financial Products Agreement rate of 0.7179%% per annum.

## SPECIAL CONSIDERATIONS RELATING TO THE 2023C SUBORDINATED BONDS

### Initial Liquidity Facility

Concurrently with the issuance of the 2023C Bonds, SMUD will enter into the Initial Liquidity Facility with the Initial Liquidity Provider in order to provide for the payment of the Purchase Price of the 2023C Subordinated Bonds that are tendered for purchase and not remarketed. Pursuant to the terms of the Initial Liquidity Facility, with respect to 2023C Subordinated Bonds that are tendered for purchase and not remarketed, the Initial Liquidity Provider will be obligated to purchase the 2023C Subordinated Bonds, subject to the occurrence of certain suspension and termination events, as more fully described herein. Unless otherwise terminated or extended pursuant to its terms, the Initial Liquidity Facility will expire on [ ].

There can be no assurance that SMUD will be able to obtain an extension of the Initial Liquidity Facility. The Initial Liquidity Provider is under no obligation to extend the Initial Liquidity Facility beyond the scheduled expiration thereof.

As provided herein under the caption “RATINGS,” the initial rating on the 2023C Subordinated Bonds is dependent on the ratings of the Bank. The Initial Liquidity Provider’s current short-term ratings are predicated upon, among other things, a level of reserves required by banking institutions. The level of reserves maintained by the Initial Liquidity Provider could change over time and this could result in a downgrading of the short-term ratings on the 2023C Subordinated Bonds. The Initial Liquidity Provider is not contractually bound to maintain its present level of reserves in the future nor is it contractually bound to maintain its current credit rating. No provision has been made for replacement of or substitution for the Liquidity Facility in the event of any deterioration in the financial condition of the Initial Liquidity Provider.

The Initial Liquidity Provider is subject to regulation and supervision by the Federal Deposit Insurance Corporation, the Federal Reserve Board and other regulatory bodies. New regulations could impose restrictions upon the Initial Liquidity Provider that would restrict its ability to respond to competitive pressures. Various legislative or regulatory changes could dramatically impact the banking industry as a whole and the Initial Liquidity Provider specifically. The banking industry is highly competitive in many of the markets in which the Initial Liquidity Provider operates. Such competition directly impacts the financial performance of the Initial Liquidity Provider. Any significant increase in such competition could adversely impact the Initial Liquidity Provider.

See APPENDIX H – “INFORMATION CONCERNING THE INITIAL LIQUIDITY PROVIDER” for more information related to the Initial Liquidity Provider.

### **Bankruptcy or Insolvency of the Initial Liquidity Provider**

The obligations of the Initial Liquidity Provider under the Initial Liquidity Facility are general obligations of the Initial Liquidity Provider and rank equally in priority of payment and in all other respects with all other unsecured obligations of the Initial Liquidity Provider. In the event of a bankruptcy or insolvency or if for any other reason the Initial Liquidity Provider fails or is unable to honor a draw on the Initial Liquidity Facility, SMUD has no obligation to pay the Purchase Price of 2023C Subordinated Bonds upon their optional or mandatory tender if the Initial Liquidity Provider fails or is unable to honor a draw on the Initial Liquidity Facility and failure to pay the Purchase Price of such 2023C Subordinated Bonds is not an Event of Default.

### **Mandatory Tender upon Default under Initial Liquidity Facility**

The occurrence of an event of default under the Initial Liquidity facility may cause the mandatory tender of the 2023C Subordinated Bonds. In such event, a Bondholder whose 2023C Subordinated Bonds are required to be tendered may not have the opportunity to hold such 2023C Subordinated Bonds for a time period consistent with such Bondholder’s original investment intentions.

### **The Remarketing Agent is Paid by SMUD**

The Remarketing Agent’s responsibilities include determining the interest rate from time to time and remarketing the 2023C Subordinated Bonds that are optionally or mandatorily tendered by the owners thereof (subject, in each case, to the terms of the Subordinate Resolution and the Remarketing Agreement), all as further described in this Official Statement. The Remarketing Agent is appointed by SMUD and is paid by SMUD for its services. As a result, the interests of the Remarketing Agent may differ from those of existing Holders and potential purchasers of 2023C Subordinated Bonds.



## **The Remarketing Agent Routinely Purchases Bonds for its Own Account**

The Remarketing Agent is permitted, but not obligated, to purchase Tendered Bonds for its own account. The Remarketing Agent, in its sole discretion, routinely acquires tendered bonds for its own inventory in order to achieve a successful remarketing of such bonds (i.e., because there otherwise are not enough buyers to purchase such bonds) or for other reasons. However, the Remarketing Agent is not obligated to purchase bonds, including the 2023C Subordinated Bonds, and may cease doing so at any time without notice. The Remarketing Agent may also make a market in the 2023C Subordinated Bonds by routinely purchasing and selling 2023C Subordinated Bonds other than in connection with an optional tender and remarketing. Such purchases and sales may be at or below par. However, the Remarketing Agent is not required to make a market in the 2023C Subordinated Bonds. If the Remarketing Agent purchases 2023C Subordinated Bonds for its own account, it may offer those 2023C Subordinated Bonds at a discount to par to some investors. The Remarketing Agent may also sell any 2023C Subordinated Bonds it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others in order to reduce its exposure to the 2023C Subordinated Bonds. The purchase of 2023C Subordinated Bonds by the Remarketing Agent may create the appearance that there is greater third party demand for the 2023C Subordinated Bonds in the market than is actually the case. The practices described above also may reduce the supply of 2023C Subordinated Bonds that may be tendered in a remarketing.

## **2023C Subordinated Bonds May be Offered at Different Prices on Any Date**

The Remarketing Agent is required to determine on the Rate Determination Date the applicable rate of interest that, in its judgment, is the lowest rate that would permit the sale of 2023C Subordinated Bonds at par plus accrued interest, if any, on the date the rate becomes effective (the “Effective Date”). The interest rate will reflect, among other factors, the level of market demand for the 2023C Subordinated Bonds (including whether the Remarketing Agent is willing to purchase 2023C Subordinated Bonds for its own account). The Remarketing Agreement requires that the related Remarketing Agent use its best efforts to sell Tendered Bonds at par, plus accrued interest. There may or may not be 2023C Subordinated Bonds tendered and remarketed on a Rate Determination Date. As an owner of 2023C Subordinated Bonds, the Remarketing Agent may sell 2023C Subordinated Bonds at varying prices, including at a discount to par, to different investors on a Rate Determination Date or any other date. The Remarketing Agent is not obligated to advise purchasers in a remarketing if it does not have third party buyers for all of its respective Series of 2023C Subordinated Bonds at the remarketing price.

## **The Ability to Sell the 2023C Subordinated Bonds Other Than Through the Tender Process May Be Limited**

While the Remarketing Agent may buy and sell 2023C Subordinated Bonds, it is not obligated to do so and may cease doing so at any time without notice. Thus, investors who purchase the 2023C Subordinated Bonds, whether in a remarketing or otherwise, should not assume that they will be able to sell their 2023C Subordinated Bonds other than by tendering through the Trustee in accordance with the tender process.

The Initial Liquidity Provider may fail to purchase Tendered Bonds even though it is obligated to do so. In such an event, Tendered Bonds would be returned to the Holders thereof and bear interest at the Maximum Rate until such 2023C Subordinated Bonds can be remarketed. It is not certain that following a failure to purchase 2023C Subordinated Bonds, a secondary market for the 2023C Subordinated Bonds will develop.

## **Under Certain Circumstances, The Remarketing Agent May Be Removed, Resign or Cease Remarketing the 2023C Subordinated Bonds, Without a Successor Being Named.**

Under certain circumstances the Remarketing Agent may be removed or have the ability to resign or cease its remarketing efforts, without a successor having been named, subject to the terms of the Remarketing Agreement.

## **SECURITY FOR THE SUBORDINATED BONDS**

### **Limited Obligations; Pledge of Revenues**

The Subordinated Bonds, including the 2023C Subordinated Bonds, are revenue bonds and are not secured by the taxing power of SMUD. The principal of and premium, if any, and interest on the Subordinated Bonds (including the 2023C Subordinated Bonds), together with other Parity Subordinated Debt, are payable exclusively from the Net Subordinated Revenues of the Electric System of SMUD. The Subordinated Bonds and all other Parity Subordinated Debt are secured by a pledge of Revenues, subject to the condition that out of Revenues:

First: There shall be applied all sums required for maintenance and operation costs of the Electric System and all Energy Payments not included in maintenance and operation costs.

Second: There shall be applied all sums required for the payment of the principal of (including any premium thereon) and interest on the Senior Bonds and all other Parity Bonds, together with any sinking fund or reserve fund payments on the Senior Bonds and all other Parity Bonds.

Third: There shall be applied all sums required for the payment of the principal of (including any premium thereon) and interest on the Subordinated Bonds and all other Parity Subordinated Debt, together with any sinking fund or reserve fund payments on the Subordinated Bonds and all other Parity Subordinated Debt.

All remaining Revenues, after making the foregoing allocations, will be available to SMUD for all lawful SMUD purposes.

From time to time, SMUD may deposit in the Rate Stabilization Fund from such remaining Revenues such amounts as SMUD shall determine, provided that deposits in the Rate Stabilization Fund from remaining Revenues in any fiscal year may be made until (but not after) the date 120 days after the end of such fiscal year. SMUD may withdraw amounts from the Rate Stabilization Fund only for inclusion in Revenues for any fiscal year, such withdrawals to be made until (but not after) 120 days after the end of such fiscal year. All interest or other earnings upon deposits in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as Revenues. No deposit of Revenues to the Rate Stabilization Fund may be made to the extent such Revenues were included in any certificate submitted in connection with the issuance of additional bonds and withdrawal of the Revenues from the Revenues employed in rendering said certificate would have caused noncompliance with the additional bond provisions. See APPENDIX A – “RATES AND CUSTOMER BASE – Rates and Charges” for a description of the balance in the Rate Stabilization Fund.

Neither the credit nor the taxing power of SMUD is pledged to the payment of the Subordinated Bonds and the general fund of SMUD is not liable for the payment thereof. The owners of the Subordinated Bonds cannot compel the exercise of any taxing power of SMUD or the forfeiture of any of its property. The Subordinated Bonds are not a legal or equitable pledge, charge, lien or encumbrance upon any of SMUD’s property (including the Electric System) or upon any of its income, receipts or revenues except the Net Subordinated Revenues of the Electric System to the extent of the pledge thereof contained in the Subordinate Resolution.

## **Subordinate Pledge**

The Subordinated Bonds are subordinate in right of payment to the Senior Bonds and other Parity Bonds. As of May 1, 2023, Senior Bonds in the aggregate principal amount of \$1,841,715,000 were outstanding. [Immediately following the issuance of the 2023C Subordinated Bonds and the refunding of the 2013A Refunded Senior Bonds, Senior Bonds in the aggregate principal amount of \$[\_\_\_\_\_] will be outstanding.] The Senior Bonds are issued pursuant to the Senior Bond Resolution. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION” for a description of certain provisions of the Senior Bond Resolution.

## **The Initial Liquidity Facility**

The Initial Liquidity Facility does not provide security for the payment of principal or Redemption Price of or interest on the 2023C Subordinated Bonds and only provides for the purchase of tendered 2023C Subordinated Bonds.

## **No Reserve Fund**

No reserve fund will be established or funded for the benefit of the 2023C Subordinated Bonds.

## **Rates and Charges**

SMUD has covenanted in the Subordinate Resolution to establish and at all times maintain and collect rates and charges for the sale or use of electric energy generated, transmitted, distributed or furnished by SMUD which, together with certain items of other income permitted under the Subordinate Resolution, will yield Revenues at least sufficient, with respect to the ensuing 12 months, to pay and provide for (1) all sums required for Maintenance and Operation Costs and Energy Payments not included in Maintenance and Operation Costs, (2) all payments with respect to Parity Bonds, and (3) the total amount required for the payment of principal and interest, together with any sinking fund or reserve fund payments, on the Subordinated Bonds and all Parity Subordinated Debt, in each case during such 12 months.

For purposes of the calculations of payments to be made pursuant to the Subordinate Resolution, the interest rates on Parity Bonds and Parity Subordinated Debt which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Parity Bonds and Parity Subordinated Debt bear a rate or rates of interest for a known period or periods of time, such rate or rates of interest for such period or periods and thereafter, for the portion of the calculation period not covered by such known period or periods, the Assumed Interest Rate.

For purposes of the above calculations of principal of and interest on Parity Bonds or Parity Subordinated Debt, if a Financial Products Agreement has been entered into by SMUD with respect to any Parity Bonds or Parity Subordinated Debt, interest on such Parity Bonds or Parity Subordinated Debt shall be included in the calculation of such principal and interest by including for each fiscal year or period an amount equal to the amount of interest payable on such Parity Bonds or Parity Subordinated Debt in such fiscal year or period at the rate or rates stated in such Parity Bonds or Parity Subordinated Debt plus any Financial Product Payments payable in such fiscal year or period minus any Financial Product Receipts receivable in such fiscal year or period; provided that in no event shall any calculation made pursuant to this clause result in a number less than zero being included in the calculation of such principal and interest.

For purposes of the above calculations of principal of and interest on Parity Bonds and Parity Subordinated Debt, Excluded Principal Payments shall be disregarded (but interest on the Parity Bonds

and Parity Subordinated Debt to which such Excluded Principal Payments relate shall be included until but not after the stated due date when principal payments on such Parity Bonds and Parity Subordinated Debt are scheduled by their terms to commence) and Assumed Principal Payments and Assumed Interest Payments shall be included.

SMUD has full power to establish rates and charges for all SMUD services, and the levels of such rates are not subject to review or regulation by any other governmental agency, either federal or state.

See Appendix D hereto for the definitions of certain capitalized terms used in this section.

### **Limitations on Additional Obligations Payable from Net Subordinated Revenues**

The Subordinate Resolution provides that SMUD will not, so long as any Subordinated Bonds are outstanding, issue any obligations payable in whole or in part from Net Subordinated Revenues except the following:

(a) Refunding Subordinated Bonds issued to refund all or part of the Parity Bonds or Subordinated Bonds;

(b) Additional Parity Subordinated Debt (including additional Subordinated Bonds under the Subordinate Resolution and additional Parity Subordinated Debt), with an equal lien and charge upon the Net Subordinated Revenues, but only subject to the following conditions:

(1) SMUD shall not then be in default under the Senior Bond Resolution, the Subordinate Resolution or other resolutions authorizing the issuance of Parity Bonds or Parity Subordinated Debt payable out of Revenues; and

(2) SMUD shall certify to the Trustee (i) that Net Revenues, after completion of any improvements proposed to be financed by such additional Parity Subordinated Debt, will be sufficient to pay the principal of and interest (and bond reserve fund requirements, if any) on all Parity Bonds and Parity Subordinated Debt then outstanding and on such additional Parity Subordinated Debt; and (ii) that Net Revenues, for a period of 12 consecutive months during the 24 months immediately preceding the date upon which such Parity Subordinated Debt shall become outstanding, shall have been at least equal to 1.10 times the sum of (i) the annual interest on Parity Bonds and Parity Subordinated Debt, (ii) the principal amount of Parity Bonds and Parity Subordinated Debt falling due, and (iii) the amount of minimum sinking fund payments falling due on Parity Bonds and Parity Subordinated Debt, all as computed for the year in which such sum shall then be a maximum, including both then outstanding Parity Bonds and Parity Subordinated Debt and the Parity Subordinated Debt then proposed to be issued.

The calculation described above shall be made by taking the following into consideration:

(A) if rates and charges in effect on the date upon which such Parity Subordinated Debt will become outstanding will be greater than those in effect during the entire twelve months elected for the foregoing computation, then the Net Revenues for said period of twelve months may be augmented by the estimated increase in Net Revenues computed to accrue to the Electric System in the first twelve months during which such rates and charges shall be in effect;

(B) if such Parity Subordinated Debt or any portion thereof shall be issued for the purpose of acquiring an existing revenue-producing electric system, the estimated pro forma net revenues of such existing system (calculated on the basis of assumed SMUD ownership and operation during such period but otherwise on the basis of actual gross revenues of such existing

system at the rates actually charged therefor) for the preceding twelve months may be added to the actual Net Revenues of the Electric System for the twelve months elected for said computation and treated as if actually received by the Electric System during those twelve months;

(C) for purposes of the above calculations of principal of and interest on Parity Subordinated Debt, Excluded Principal Payments shall be disregarded (but interest on the Parity Subordinated Debt to which such Excluded Principal Payments relate shall be included until but not after the stated due date when principal payments on such Parity Subordinated Debt are scheduled by their terms to commence) and Assumed Principal Payments and Assumed Interest Payments shall be included;

(D) for purposes of the above calculations, the interest rates on Parity Bonds and Parity Subordinated Debt which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Parity Bonds and Parity Subordinated Debt bear a rate or rates of interest for a known period or periods of time, such interest rate or rates for such period or periods, and thereafter, for the portion of the calculation period not covered by such known period or periods, the Assumed Interest Rate; and

(E) For purposes of the above calculations of principal of and interest on Parity Bonds and Parity Subordinated Debt, if a Financial Products Agreement has been or is being entered into by SMUD with respect to any Parity Bonds or Parity Subordinated Debt, interest on such Parity Bonds or Parity Subordinated Debt shall be included in the calculation of such principal and interest by including for each fiscal year or period an amount equal to the amount of interest payable on such Parity Bonds or Parity Subordinated Debt in such fiscal year or period at the rate or rates stated in such Parity Bonds or Parity Subordinated Debt plus any Financial Product Payments payable in such fiscal year or period minus any Financial Product Receipts receivable in such fiscal year or period; provided that in no event shall any calculation made pursuant to this clause result in a number less than zero being included in the calculation of such principal and interest.

(c) Revenue bonds which are junior and subordinate to the payment of the principal, premium, interest and reserve fund requirements for the Subordinated Bonds and all Parity Subordinated Debt and which subordinated revenue bonds are payable as to principal, premium, and interest, and also reserve fund requirements, if any, only out of Net Subordinated Revenues after the prior payment of all amounts required to be paid under the Subordinate Resolution from Net Subordinated Revenues for principal, premium, interest and reserve fund requirements for the Subordinated Bonds and all Parity Subordinated Debt, as the same become due and payable.

## **THE INITIAL LIQUIDITY FACILITY**

*The following is a summary of certain provisions of the Initial Liquidity Facility. This summary does not purport to be comprehensive. Reference should be made to the Initial Liquidity Facility for the complete text thereof, and the discussion herein is qualified by such reference. Unless otherwise noted in this Official Statement, all defined terms in this summary have the meanings ascribed to them in the Initial Liquidity Facility. For information regarding the Initial Liquidity Provider, see APPENDIX H – “THE INITIAL LIQUIDITY PROVIDER.”*

[summary of provisions to be provided by bank counsel for review and insertion]

## **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

SMUD owns and operates an electric system that has provided retail electric service since 1946. SMUD's current service area is approximately 900 square miles, and includes the principal parts of Sacramento County and small portions of Placer and Yolo counties. For a full description of SMUD, its history, organization, operations, and financial performance, certain developments in the energy markets, certain factors affecting the electric utility industry, including impacts from the COVID-19 pandemic, and certain regulatory and other matters, see APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT."

### **ABSENCE OF LITIGATION REGARDING THE 2023C SUBORDINATED BONDS**

SMUD is not aware of any action, suit or proceeding, threatened or pending, to restrain or enjoin the issuance, sale or delivery of the 2023C Subordinated Bonds, or in any way contesting or affecting the validity of the 2023C Subordinated Bonds or any of the proceedings of SMUD taken with respect to the 2023C Subordinated Bonds. SMUD is not aware of any action, suit or proceeding, threatened or pending, questioning the corporate existence of SMUD, or the title of the officers of SMUD to their respective offices, or the power and authority of SMUD to execute and deliver the 2023C Subordinated Bonds. For a description of certain litigation in which SMUD is involved, see APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – LEGAL PROCEEDINGS."

### **UNDERWRITING**

Barclays Capital Inc. (the "Underwriter") has agreed, subject to certain customary conditions to closing, to purchase the 2023C Subordinated Bonds from SMUD at an aggregate purchase price of \$\_\_\_\_\_ (being the aggregate principal amount of the 2023C Subordinated Bonds, [less Underwriter's discount of \$\_\_\_\_\_]). The Underwriter will be obligated to purchase all 2023C Subordinated Bonds if any 2023C Subordinated Bonds are purchased. The Underwriter has agreed to make a public offering of the 2023C Subordinated Bonds at the initial offering price set forth on the inside cover page hereof. The 2023C Subordinated Bonds may be offered and sold to certain dealers (including underwriters and other dealers depositing such bonds into investment trusts) at prices lower than such public offering price, and such public offering price may be changed, from time to time, by the Underwriter.

The Underwriter and its affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. The Underwriter and its affiliates have, from time to time, performed, and may in the future perform, various investment banking services for SMUD for which they received or will receive customary fees and expenses.

In the ordinary course of its various business activities, the Underwriter and its affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of, or issued for the benefit of, SMUD.

### **MUNICIPAL ADVISOR**

SMUD has retained PFM Financial Advisors LLC, as Municipal Advisor in connection with various matters relating to the delivery of the 2023C Subordinated Bonds. The Municipal Advisor assumes no responsibility for the accuracy, completeness or fairness of the information contained in this

Official Statement. The Municipal Advisor is an independent advisory firm and is not engaged in underwriting or distribution of securities. The Municipal Advisor will receive compensation that is contingent upon the sale, issuance and delivery of the 2023C Subordinated Bonds.

### **APPROVAL OF LEGAL PROCEEDINGS**

The validity of the 2023C Subordinated Bonds and certain other legal matters are subject to the approval of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD. The approving opinion of Bond Counsel will be delivered with the 2023C Subordinated Bonds in substantially the form appearing in APPENDIX F. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed on for the Underwriter by Nixon Peabody LLP, San Francisco, California, counsel to the Underwriter, and for the Initial Liquidity Provider by Chapman and Cutler, LLP, counsel to the Initial Liquidity Provider.

### **FINANCIAL STATEMENTS**

SMUD's audited, consolidated financial statements for the years ended December 31, 2022 and December 31, 2021 are included in APPENDIX B attached to this Official Statement. These financial statements have been audited by Baker Tilly Virchow Krause, LLP, Madison, Wisconsin (the "Auditor"), for the periods indicated and to the extent set forth in their report thereon and should be read in their entirety. SMUD has not requested nor did it obtain permission from the Auditor to include the audited, consolidated financial statements as an appendix to this Official Statement. Accordingly, the Auditor has not performed any procedures to review the financial condition or operations of SMUD subsequent to the date of its report included therein, nor has it reviewed any information contained in this Official Statement.

### **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD ("Bond Counsel"), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2023C Subordinated Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the 2023C Subordinated Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the 2023C Subordinated Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023C Subordinated Bonds. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX F hereto.

[To the extent the issue price of any maturity of the 2023C Subordinated Bonds is less than the amount to be paid at maturity of such 2023C Subordinated Bonds (excluding amounts stated to be interest and payable at least annually over the term of such 2023C Subordinated Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the 2023C Subordinated Bonds which is excluded from gross income for federal income tax purposes and exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the 2023C Subordinated Bonds is the first price at which a substantial amount of such maturity of the 2023C Subordinated Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity

of the 2023C Subordinated Bonds accrues daily over the term to maturity of such 2023C Subordinated Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such 2023C Subordinated Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such 2023C Subordinated Bonds. Beneficial Owners of the 2023C Subordinated Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2023C Subordinated Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such 2023C Subordinated Bonds in the original offering to the public at the first price at which a substantial amount of such 2023C Subordinated Bonds is sold to the public.]

2023C Subordinated Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a Beneficial Owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such Beneficial Owner. Beneficial Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the 2023C Subordinated Bonds. SMUD has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the 2023C Subordinated Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the 2023C Subordinated Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2023C Subordinated Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel’s attention after the date of issuance of the 2023C Subordinated Bonds may adversely affect the value of, or the tax status of interest on, the 2023C Subordinated Bonds. Accordingly, the opinion of Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Bond Counsel is of the opinion that interest on the 2023C Subordinated Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of amounts treated as interest on, the 2023C Subordinated Bonds may otherwise affect a Beneficial Owner’s federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner’s other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the 2023C Subordinated Bonds to be subject, directly or indirectly, in whole or in part, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals or clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the 2023C Subordinated Bonds. Prospective purchasers of the 2023C Subordinated Bonds should consult their own



tax advisors regarding the potential impact of any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the 2023C Subordinated Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of SMUD, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. SMUD has covenanted, however, to comply with the requirements of the Code.

Bond Counsel's engagement with respect to the 2023C Subordinated Bonds ends with the issuance of the 2023C Subordinated Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend SMUD or the Beneficial Owners regarding the tax-exempt status of the 2023C Subordinated Bonds in the event of an audit examination by the IRS. Under current procedures, Beneficial Owners would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which SMUD legitimately disagrees may not be practicable. Any action of the IRS, including but not limited to selection of the 2023C Subordinated Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the 2023C Subordinated Bonds, and may cause SMUD or the Beneficial Owners to incur significant expense.

Payments on the 2023C Subordinated Bonds generally will be subject to U.S. information reporting and possibly to "backup withholding." Under Section 3406 of the Code and applicable U.S. Treasury Regulations issued thereunder, a non-corporate Beneficial Owner of 2023C Subordinated Bonds may be subject to backup withholding with respect to "reportable payments," which include interest paid on the 2023C Subordinated Bonds and the gross proceeds of a sale, exchange, redemption, retirement or other disposition of the 2023C Subordinated Bonds. The payor will be required to deduct and withhold the prescribed amounts if (i) the payee fails to furnish a U.S. taxpayer identification number ("TIN") to the payor in the manner required, (ii) the IRS notifies the payor that the TIN furnished by the payee is incorrect, (iii) there has been a "notified payee underreporting" described in Section 3406(c) of the Code or (iv) the payee fails to certify under penalty of perjury that the payee is not subject to withholding under Section 3406(a)(1)(C) of the Code. Amounts withheld under the backup withholding rules may be refunded or credited against a Beneficial Owner's federal income tax liability, if any, provided that the required information is timely furnished to the IRS. Certain Beneficial Owners (including among others, corporations and certain tax-exempt organizations) are not subject to backup withholding. The failure to comply with the backup withholding rules may result in the imposition of penalties by the IRS.

## **CONTINUING DISCLOSURE UNDERTAKING**

Pursuant to the Continuing Disclosure Agreement, SMUD will covenant for the benefit of the holders and the "Beneficial Owners" (as defined in the Continuing Disclosure Agreement) of the 2023C Subordinated Bonds to provide certain financial information and operating data relating to SMUD by not later than 180 days after the end of each of SMUD's fiscal years (presently, each December 31), commencing with the report for the year ending December 31, 2023 (the "Annual Report"), and to provide notices of the occurrence of certain listed events with respect to the 2023C Subordinated Bonds. The Annual Report will be filed by or on behalf of SMUD with the Municipal Securities Rulemaking Board (the "MSRB") through its Electronic Municipal Market Access system ("EMMA") and any notices of such listed events will be filed by or on behalf of SMUD with the MSRB through EMMA. The specific nature of the information to be contained in the Annual Report and the notices of listed events are set forth in the form of the Continuing Disclosure Agreement which is included in its entirety in

APPENDIX G hereto. SMUD's covenant will be made in order to assist the Underwriter in complying with Securities and Exchange Commission Rule 15c2-12.

[In a limited number of circumstances, certain of the annual reports, audited financial statements or listed event filings required to be made by SMUD during the last five years under its continuing disclosure undertakings were not connected to all of the CUSIP numbers of the bonds subject to the continuing disclosure undertakings. In addition, SMUD entered into two subordinated forward starting interest rate swaps in December 2019 and filed a notice of the interest rate swaps with the MSRB through EMMA in April 2020. A notice of rating upgrade on October 6, 2020, by Moody's Investors Service of the Northern California Gas Authority No. 1 Gas Project Revenue Bonds, Series 2007B, was also not filed until October 28, 2020.]

## **RATINGS**

Fitch Ratings, Inc. ("Fitch") and S&P Global Ratings ("S&P") have assigned the 2023C Subordinated Bonds short-term ratings of "[ ]" and "[ ]," respectively, based on the delivery of the Initial Liquidity Facility by the Initial Liquidity Provider on the date of delivery of the 2023C Bonds, and underlying long-term ratings of "[AA (stable outlook)]" and "[AA (stable outlook)]."

Such ratings reflect only the views of such organizations and are not a recommendation to buy, sell or hold the 2023C Subordinated Bonds. Explanations of the significance of such ratings may be obtained only from the respective rating agencies. SMUD has furnished to Fitch and S&P certain information and materials concerning the 2023C Subordinated Bonds and itself. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that such ratings will continue for any given period or that they will not be revised downward, suspended or withdrawn entirely by the respective rating agencies, if in the judgment of such rating agency, circumstances so warrant. SMUD has not, other than as described under "CONTINUING DISCLOSURE UNDERTAKING" above, and the Underwriter has not undertaken any responsibility either to bring to the attention of the holders or beneficial owners of the 2023C Subordinated Bonds any proposed revision, suspension or withdrawal of any rating on the 2023C Subordinated Bonds or to oppose any such proposed revision, suspension or withdrawal. Any such downward revision, suspension or withdrawal of such ratings may have an adverse effect on the market price or marketability of the 2023C Subordinated Bonds.

## **VERIFICATION**

Upon delivery of the 2023C Subordinated Bonds, [ ] (the "Verification Agent") will verify, from the information provided to it, the mathematical accuracy as of the date of the closing of the 2023C Subordinated Bonds of the computations contained in the provided schedules to determine that the anticipated receipts from the securities and cash deposits listed in the Underwriter's schedules, to be held in escrow, will be sufficient to pay, when due, the interest on and redemption requirements of the 2013A Refunded Senior Bonds. The Verification Agent will express no opinion on the assumptions provided to them.

## **MISCELLANEOUS**

This Official Statement includes descriptions of the terms of the 2023C Subordinated Bonds, power purchase agreements with certain other parties, pooling and other agreements, the Subordinate Resolution and certain provisions of the Act. Such descriptions do not purport to be complete, and all such descriptions and references thereto are qualified in their entirety by reference to each such document.

Copies of the Subordinate Resolution, which forms a contract with the Holders of the 2023C Subordinated Bonds, will be made available upon request.

This Official Statement has been duly authorized by the Board of Directors of SMUD.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Chief Executive Officer and General Manager

**APPENDIX A**

**INFORMATION REGARDING  
SACRAMENTO MUNICIPAL UTILITY DISTRICT**

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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
*Sacramento, California*

**BOARD OF DIRECTORS**

Heidi Sanborn, President  
Rosanna Herber, Vice President  
Brandon Rose  
Nancy Bui-Thompson  
Gregg Fishman  
Rob Kerth  
Dave Tamayo

**OFFICERS AND EXECUTIVES**

Paul Lau, Chief Executive Officer and General Manager  
Frankie McDermott, Chief Operating Officer  
Jennifer Davidson, Chief Financial Officer  
Brandy Bolden, Chief Customer Officer  
Suresh Kotha, Chief Information Officer  
Jose Bodipo-Memba, Chief Diversity Officer  
Scott Martin, Chief Strategy Officer  
Laura Lewis, Chief Legal and Government Affairs Officer and General Counsel  
Lora Anguay, Chief Zero Carbon Officer  
Farres Everly, Chief Marketing & Communications Officer  
Russell Mills, Treasurer  
Lisa Limcaco, Controller



## INTRODUCTION

### General

The Sacramento Municipal Utility District (“SMUD”) owns and operates an electric system that has provided retail electric service since 1946. SMUD’s current service area is approximately 900 square miles, and includes the principal parts of Sacramento County and small portions of Placer and Yolo counties. See “THE SERVICE AREA AND ELECTRIC SYSTEM – The Service Area.”

### Independent Governance

SMUD is an independently run community-owned organization. SMUD is not required by law to transfer any portion of its collections from customers to any local government.

SMUD is governed by a Board of Directors (the “Board”), which consists of seven directors elected by ward for staggered four-year terms. The Board determines policy and appoints the Chief Executive Officer and General Manager, who is responsible for SMUD’s overall management and day-to-day operations. The Chief Executive Officer and General Manager is responsible for the hiring and removal of all employees, other than the Chief Legal and Government Affairs Officer and General Counsel, the Internal Auditor and the Special Assistant to the Board, who are hired and may be removed only by the Board. The employment status of nearly all SMUD employees is governed by a civil service system administered by the Chief Executive Officer and General Manager.

The Board elects its President and Vice President annually to take office in January. The current members of the Board are as follows:

Name	Occupation	Ward	Term Expires
Brandon Rose.....	Air Pollution Specialist, California Environmental Protection Agency	Ward 1	December 31, 2024
Nancy Bui-Thompson.....	Chief Information Officer, Wellspace Health	Ward 2	December 31, 2024
Gregg Fishman .....	Communications Specialist	Ward 3	December 31, 2026
Rosanna Herber, Vice-President...	Retired Utility Director	Ward 4	December 31, 2026
Rob Kerth .....	Business Owner	Ward 5	December 31, 2024
Dave Tamayo.....	Retired Environmental Specialist	Ward 6	December 31, 2026
Heidi Sanborn, President .....	Executive Director, National Stewardship Action Council	Ward 7	December 31, 2026

SMUD’s senior management consists of the following executives:

**Chief Executive Officer & General Manager.** Paul Lau was named chief executive officer and general manager (“CEO & GM”) of SMUD in October 2020. He reports to the SMUD Board of Directors. As CEO & GM, he leads the sixth largest community-owned electric utility in the nation, serving a population of approximately 1.5 million residents and managing a \$2.1 billion budget. Mr. Lau previously served as SMUD’s Chief Grid Strategy & Operations Officer and has held several other executive leadership positions during his 41-year career at SMUD. He serves on several national and local boards, including the Large Public Power Council, California Municipal Utilities Association, American Public Power Association, and Smart Electric Power Alliance, and as a Commissioner of the Balancing Authority of Northern California (“BANC”). A registered professional electrical engineer in the State of California

(the “State”), Mr. Lau received his bachelor’s degree in electrical power engineering from California State University, Sacramento.

**Chief Customer Officer.** Brandy Bolden reports to the CEO & GM and oversees SMUD’s Customer and Community Services business unit. She is responsible for customer experience delivery across our residential and commercial customer segments. She provides leadership and oversight of customer operations including customer care and revenue management, business intelligence, strategic account management, customer experience and segmentation strategy, channel management, customer program and service delivery, and special assistance. She is also responsible for commercial development and business attraction and oversees Community Energy Services, which provides services and support for community choice aggregators. Since joining SMUD in 2003, Brandy has demonstrated strong leadership and held a variety of senior leadership roles, including leading the Customer & Community Services project management office and the dual role of director of Customer Care and Revenue Operations. Ms. Bolden led the team responsible for implementing time-of-day rates, streamlining the meter-to-cash processes, delivering key billing and payment experience enhancements and recognizing operational efficiencies that resulted in sustained annual savings for SMUD. Ms. Bolden holds a Bachelor of Arts in Sociology from University of California, Davis.

**Chief Information Officer.** Suresh Kotha reports to the CEO & GM and is responsible for SMUD’s information technology strategy, operations, infrastructure, IT Project Management Office, enterprise innovation process, and cybersecurity. More recently, Mr. Kotha has been leading many technology efforts that are integral to developing a grid of the future that will help us achieve our zero-carbon goal, including our Advanced Distribution Management System, the software platform that supports the full suite of distribution management and optimization, and next-generation network upgrades. Mr. Kotha joined SMUD in 2002 as a principal technical developer, with responsibility for designing and leading implementation and upgrades of multiple technology systems, including the SAP software platform and our meter-to-cash systems. He holds a Master of Technology in Computer Science from Jawaharlal Nehru Technology University and a Bachelor of Engineering in Electronics & Communications Engineering from Gulbarga University.

**Chief Diversity Officer.** Jose Bodipo-Memba reports to the CEO & GM and is responsible for human resources, workforce diversity and inclusion, workforce business planning and SMUD’s Sustainable Communities program. Mr. Bodipo-Memba joined SMUD in 2010 as an environmental specialist and became manager of Environmental Services in 2016. He most recently served as SMUD’s first director of Sustainable Communities. Mr. Bodipo-Memba holds a Bachelor of Arts degree in history from University of California, Berkley and Masters of Business Administration from Drexel University.

**Chief Strategy Officer.** Scott Martin reports to the CEO & GM and is responsible for looking holistically at all strategies across the company and driving prioritization including zero carbon, rates and pricing, enterprise strategic planning and enterprise prioritization. Mr. Martin is a seasoned executive with more than 30 years of experience. Prior to assuming this role, Mr. Martin was a director for resource planning and new business strategy. Previous experience also includes customer strategy planning supervisor. Mr. Martin joined SMUD in 1999 and holds a Bachelor of Arts degree in economics from the University of California, Berkeley and a master of arts degree in economics from the University of Nevada, Las Vegas.

**Chief Legal & Government Affairs Officer and General Counsel.** Laura Lewis was named general counsel for SMUD in April 2014. In this position she serves as chief lawyer and manages SMUD’s legal office and its staff of eight attorneys. She also serves as the secretary to SMUD’s elected board of directors. She reports to the Board and to the CEO & GM and has responsibility for all legal matters in which SMUD is a party to, or has an interest in. Ms. Lewis also oversees SMUD’s government affairs and

reliability compliance department. In this capacity, she is responsible for management and coordination of all legislative matters and regulatory requirements affecting SMUD at the state and federal level, including the FERC-NERC electric reliability standards. Ms. Lewis joined SMUD in 1997 as a staff attorney, serving in that capacity through 1999, after which she moved to the San Francisco law firm Davis Wright Tremaine. In 2002, she returned to SMUD as a senior attorney. In 2010, she became assistant general counsel and in 2013 was appointed chief assistant general counsel. She holds a juris doctorate from McGeorge School of Law, where she won membership in the Order of the Coif honor society. She holds a bachelor's degree in political science from the University of California, San Diego and is a member of the American Bar Association, the Energy Bar Association, and the State Bar of California.

**Chief Operating Officer.** Frankie McDermott reports to the CEO & GM and is responsible for providing strategic leadership and tactical oversight related to the safe and reliable transmission and delivery of energy to customers, ensuring efficient planning, construction, operation and maintenance of transmission, and distribution facilities. This position has primary responsibility for the processes and functions related to system reliability and operations across SMUD. The Chief Operating Officer is also the safety leader for the enterprise, leader of operational efficiency and responsible for all non-IT capital investments. Prior to this role, Mr. McDermott served as Chief Energy Delivery Officer and Chief Customer Officer, responsible for SMUD's overall retail strategy. From 2010 to 2014, he served as customer services director, which included managing relationships with customer segments as SMUD moved forward with smart-grid technologies. Prior to that, he served as manager of enterprise performance and held positions in supply chain and in general services. Before joining SMUD in 2003, Mr. McDermott served in management roles in the semiconductor industry at NEC Electronics in Roseville, California and in Ireland. After engineering school in Ireland, he earned an MBA from Golden Gate University and completed the Advanced Management Program at the Haas School of Business at the University of California Berkeley.

**Chief Zero Carbon Officer.** Lora Anguay reports to the CEO & GM and is responsible for leadership oversight of SMUD's Energy Supply which includes Energy Trading and Contracts and SMUD's Power Generation Assets. This role is also responsible for the delivery of SMUD's plan to provide 100% carbon free energy resources by 2030. This includes obtaining new grants and partnerships, overseeing research and development, designing distributed energy resource programs, enabling processes to settle distributed energy transactions with SMUD's customers and transitioning SMUD's power generation assets and energy contracts to zero carbon resources. Prior to assuming this role, Ms. Anguay was the director of Distribution Operations & Maintenance and was responsible for the day-to-day operations of SMUD's electric distribution grid. Before that she was an engineering designer, process control supervisor, project manager for smart meter deployment, a senior project manager for smart grid distribution automation and supervisor in Grid Assets. Before SMUD, she worked for Oracle Corporation as a finance manager and is a veteran who served in the United States Coast Guard. Ms. Anguay joined SMUD in 2004 and holds a Bachelor of Science degree in business administration from California State University, Sacramento.

**Chief Financial Officer.** Jennifer Davidson reports to the CEO & GM and is responsible for corporate accounting, procurement, treasury operations, risk management, and planning and budgets functions as well as key corporate services, including facilities, security, emergency operations and warehouse and fleet. Ms. Davidson joined SMUD in 2006 and previously served as director of budget, enterprise performance and risk management. Before joining SMUD, Ms. Davidson held management positions with investor-owned utility Southern California Edison and software and services provider Amdocs. She holds a bachelor's degree in geography from the University of California, Los Angeles.

**Chief Marketing & Communications Officer.** Farres Everly reports to the CEO & GM and since 2009 has been responsible for oversight of the SMUD brand, all external and internal strategic marketing and communications activities and campaigns and SMUD's outreach efforts to the community and the

State's capital region, including volunteerism, events and sponsorships. He previously served as the Director Marketing and Communications. Prior to joining SMUD, Mr. Everly held marketing leadership positions at VSP Vision Care, The Money Store and the Sacramento Metropolitan Chamber of Commerce. He holds a bachelor's degree in Journalism from California State University, Chico.

***Treasurer.*** Russell Mills reports to the CFO. He oversees all treasury operations, including debt and cash management, banking, financial planning and forecasting, enterprise and commodity risk management, property and casualty insurance, and is responsible for developing and implementing capital borrowing strategies. Mr. Mills also serves as treasurer for the Transmission Agency of Northern California ("TANC"), the Central Valley Financing Authority ("CVFA"), the Sacramento Cogeneration Authority ("SCA"), the Sacramento Municipal Utility District Financing Authority ("SFA"), the Sacramento Power Authority ("SPA"), the Northern California Gas Authority No. 1 ("NCGA"), the Northern California Energy Authority ("NCEA") and BANC. Before joining SMUD in 2018 as Treasurer, Mr. Mills served as Chief Financial Officer of Southern California Public Power Authority. He also served as the Chief Financial Officer of the Power Supply Program at the California Department of Water Resources. He holds an MBA from Loyola Marymount University, and a bachelor's degree in economics from Towson University in Baltimore, Maryland. Mr. Mills also holds the Energy Risk Professional (ERP) designation and is a CFA level II candidate.

***Controller.*** Lisa Limcaco reports to the CFO and is responsible for accounting and financial reporting at SMUD. Prior to her appointment as controller in 2020, Ms. Limcaco served as an assistant controller, manager of customer value, performance and projects, senior energy commodity specialist and as principal accountant for SMUD's joint powers authorities. Ms. Limcaco also serves as controller for TANC, CVFA, SCA, SFA, SPA, NCGA, NCEA and BANC. Before joining SMUD in 2010 as a senior accountant, Ms. Limcaco had 12-years' experience as the Director of Accounting and controller for a food service provider in Sacramento and over 13-years' experience in public accounting including audit manager at Price Waterhouse LLP. Ms. Limcaco holds a bachelor's degree in accounting from the University of Hawaii, a Master of Business Administration from Sacramento State University and is a Certified Public Accountant in the State.

## **THE SERVICE AREA AND ELECTRIC SYSTEM**

### **The Service Area**

SMUD is the primary distributor of electric power within an area of approximately 900 square miles in central California. The service area includes the State Capital, Sacramento, the populous areas principally to the northeast and south of the City of Sacramento (the "City" or "Sacramento") and the agricultural areas to the north and south. The City is located 85 miles northeast of San Francisco.

SMUD's electric system supplies power to a population of approximately 1.5 million with a total annual retail load of approximately 10,622 million kilowatt-hours ("kWh") for the year ended December 31, 2022. As the capital of the nation's most populous state, Sacramento benefits from the historically stabilizing influence of a large government sector. Sacramento is home to the State government headquarters, the Sacramento County seat, the City government and various special districts that combine to make government the largest single employment sector in the Sacramento area. Information technology, transportation, education and health services, leisure and hospitality, and construction round out the other major sectors of employment and industry in the area.

SMUD's annual peak load has averaged 3,113 Megawatts ("MW") over the last three years, with SMUD's record peak load of 3,299 MW occurring on July 24, 2006. In 2022, SMUD recorded its second highest peak load of 3,292 MW. SMUD reviews its load forecast, at a minimum, on an annual basis.

## **The Electric System**

SMUD owns and operates an integrated electric system that includes generation, transmission and distribution facilities.

SMUD supplies power to its bulk power substations through a 230 kilovolt (“kV”) and 115 kV transmission system. This system transmits power from SMUD’s generation plants and interconnects with Pacific Gas & Electric (“PG&E”) and the Western Area Power Administration (“WAPA”). Power is distributed throughout Sacramento County via a 69 kV sub-transmission system with the exception of the City’s downtown area, which is served from the 115 kV transmission system. The downtown area is served from 115/12 kV and 115/21 kV substations. The distribution system serving the remainder of SMUD’s service territory is comprised of 69/12 kV substations with overhead and underground 12 kV distribution circuits.

## **BUSINESS STRATEGY**

### **General**

SMUD’s Board of Directors has established the following purpose and vision statements: “SMUD’s purpose is to enhance the quality of life for our customers and community by providing reliable and affordable electricity, and leading the transition to a clean energy future. SMUD’s vision is to be a trusted and powerful partner in achieving an inclusive, zero carbon economy. SMUD will leverage its relationships to accelerate innovation, ensure energy affordability and reliability, protect the environment, eliminate greenhouse gas emissions, catalyze economic and workforce development, promote environmental justice, and enhance community vitality for all.” The Board has adopted a set of Strategic Directions with related metrics, which it considers essential for the success of SMUD and for serving SMUD’s customers. These include competitive rates, access to credit markets, reliability, customer relations, environmental leadership, resource planning, enterprise risk management and safety. Some of the general elements in SMUD’s business strategy are:

- developing and maintaining a sustainable and reliable power supply to meet demand growth consistent with State mandates and the Board’s directions for renewable energy and the reduction of carbon emissions to zero by 2030. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *2030 Zero Carbon Plan*”;
- working closely with customers to provide the information, tools and incentives to assist them to more efficiently manage energy use, which will contribute to meeting greenhouse gas (“GHG”) emission targets and managing needle peak demand requirements (those 40 or so hours of the year with extreme temperatures when customer demand surges by up to 400 additional MW);
- managing price, volumetric and credit risks associated with energy and natural gas procurement;
- attracting, developing and retaining a diverse, skilled and engaged workforce that reflects SMUD’s values and is committed to achieving SMUD’s mission;
- retaining local decision making authority and operational independence; and
- collaborating regionally to attract new businesses and grow existing business to diversify and strengthen the Sacramento economy.

SMUD’s long-range business strategy focuses in part on ensuring financial stability by establishing rates that provide an acceptable fixed charge coverage ratio on a consolidated basis, taking into consideration the impact of capital expenditures and other factors on cash flow. SMUD’s Board policy sets

a minimum fixed charge coverage ratio of 1.50 times for annual budgets, though it generally plans to meet a minimum fixed charge coverage ratio of 1.70 times. Over the past ten years, the actual fixed charge coverage ratio has averaged 2.06 times on a consolidated basis. SMUD also manages its liquidity position by planning for a minimum of 150 days cash on hand and planning to maintain at least \$150 million of available capacity under its commercial paper and line of credit program. SMUD's commercial paper and line of credit program is currently authorized for \$400 million aggregate principal amount outstanding at any one time. As of March 1, 2023, SMUD had \$200 million aggregate principal amount of its commercial paper notes outstanding and \$200 million of the authorized aggregate principal amount of its commercial paper and line of credit program available for use. SMUD uses cash on hand and commercial paper and a line of credit to fund capital expenditures, then issues debt to reimburse itself for cash expended for qualified capital expenditures or to pay down the outstanding principal amount of its commercial paper program and line of credit. Over the past ten years, the days cash on hand has averaged 222. The resolutions securing SMUD's Senior Bonds and Subordinated Bonds (each as defined under the caption "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS" below) do not require SMUD to maintain a minimum fixed charge coverage ratio, minimum days cash on hand or minimum available capacity under its commercial paper program and line of credit.

In addition, SMUD's business strategy focuses on servicing its customers in a progressive, forward-looking manner, addressing current regulatory and legislative issues and potential competitive forces.

### **Serving SMUD's Customers**

SMUD continually looks for ways to better serve and partner with its customers to further strengthen customer loyalty, while providing reasonable product pricing. SMUD also has a focused effort to assist and incentivize customers to manage energy use more efficiently, which will contribute to meeting GHG emission targets and managing peak demand requirements as noted below.

***Digital Enhancements.*** Customers are increasingly turning to digital channels including SMUD's mobile application, SMUD.org, e-mail and social media to interact and do business with SMUD. SMUD has delivered many digital enhancements, including bill pay functionality; online payment arrangements; start/stop/transfer move service; view of energy usage, chat, an enhanced outage map including a newly launched meter test functionality; and the SMUD Energy Store, which is an online marketplace for energy-related products. SMUD plans to continue efforts to provide more personalized digital customer experiences.

***Advanced Metering, Infrastructure and Rate Design.*** As a community-owned organization, SMUD is dedicated to providing the tools and transparency in customer energy usage to enable customers to easily and positively affect energy usage, energy cost, and climate change. In 2012 SMUD installed smart technology, including 617,000 digital communicating smart meters, distribution automation systems and equipment to facilitate load management. The advanced technology has allowed SMUD to deliver tools such as text and e-mail bill alerts and online energy usage comparison charts to help customers manage energy use. SMUD has leveraged smart grid investments to improve reliability, reduce losses, reduce power quality issues and improve customer service through better, more timely information.

***Time-of-Day Rates.*** On June 15, 2017, the Board approved time-of-day ("TOD") rates as the standard rate for residential customers. The residential rate transition began in the fourth quarter of 2018 and was completed in the fourth quarter of 2019.

All of SMUD's business customers are also on time-based rates. On June 24, 2019, the Board approved an update to the commercial TOD rates to improve consistency and better align commercial rates with current energy market prices. Due to the impacts of the COVID-19 pandemic on SMUD's operations

and priorities, on August 20, 2020, the Board postponed the implementation of the commercial rate restructure for one year. The transition was completed in the first quarter of 2022. See “RATES AND CUSTOMER BASE – Rates and Charges.”

**Renewable Options.** SMUD’s customers have been increasingly interested in distributed energy resources, mainly through the installation of solar systems. As of January, 2023, approximately 47,615 of SMUD’s residential and commercial customers, approximately 7% of retail customers, had installed solar systems, representing approximately 324 MW of solar installations.

As the cost of energy storage continues to decline, SMUD anticipates an increase in behind-the-meter energy storage, mainly through the installation of battery storage systems. As of January 2023, approximately 1,183 of SMUD’s residential and commercial customers, approximately [2]% of retail customers, had installed storage systems, representing approximately 8 MW of storage.

As another option for solar, SMUD’s SolarShares® pilot program (the “SolarShares Pilot”) was established as a cost-effective and convenient way for commercial customers to meet their energy needs from solar power. The SolarShares Pilot offered SMUD commercial customers the opportunity to receive solar power without upfront costs or equipment installation through 5-, 10- or 20-year purchase contracts. Customers that entered into purchase contracts under the SolarShares Pilot receive up to half of their power from a utility-scale solar system. SMUD supplies solar power for the SolarShares Pilot either by building and maintaining utility-scale solar systems or by procuring solar power from third parties through power purchase agreements. The SolarShares Pilot generation was approximately 3.0% of retail sales in 2022. As of April 30, 2021, SMUD had completed the SolarShares Pilot and is not entering into new purchase contracts under the SolarShares Pilot.

Since January 2020, the California Building Code has required all newly constructed residential buildings under three stories to be powered by photovoltaic solar systems. A new home satisfies this requirement if it installs on-site solar or participates in an approved community solar or energy storage program. In February 2020, SMUD obtained approval from the California Energy Commission (“CEC”) to administer its own community solar program, called Neighborhood SolarShares® (“Neighborhood SolarShares”). SMUD’s Neighborhood SolarShares program can be used by developers of new low-rise residential buildings to satisfy the mandatory solar requirement. See also “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Rooftop Solar Mandate*.” Starting in 2023, the California Building Code’s mandatory solar requirement extends beyond low-rise residential properties, and other changes to the California Building Code’s community solar regulations took effect. SMUD revised its program to align with the new regulations and, in May 2023, obtained approval from the CEC to continue offering its Neighborhood SolarShares compliance option to newly constructed low rise residential homes in its service territory.

In addition to the SolarShares Pilot and Neighborhood SolarShares, SMUD maintains a voluntary green energy pricing program called Greenergy® (“Greenergy”). The Greenergy program allows customers the opportunity to pay an additional amount per month to ensure that either all or part of their electricity comes from green or carbon free energy sources. In 2022, the program allocated Renewable Energy Credits (“RECs”) equivalent to approximately 4.9% of retail sales to its participating customers.

**Energy Efficiency.** To further assist customers in managing energy usage and reducing regional carbon emissions and air pollution, SMUD offers an extensive array of energy efficiency and building electrification programs and services including financial incentives, loans, energy audits and education. In addition, SMUD has partnered with local developers to incorporate energy efficiency and all-electric construction measures into new residential and commercial construction, which helps developers plan and design efficient, cost-effective and low or zero-emission buildings. As part of SMUD’s 2019 Integrated

Resource Plan (“IRP”), SMUD set a goal for regional carbon emissions through transport and building electrification that aims to reduce carbon emissions in buildings and transport by 64% over the next 20 years. SMUD’s focus on electrification is continued in the Zero Carbon Plan (defined and discussed below). SMUD was the first electric utility in the country to set its efficiency goals based on carbon reductions, allowing building electrification and energy efficiency to both count toward meeting SMUD’s efficiency goals. This is a significant opportunity, as converting a typical home today to all-electric saves more than three times the carbon emissions compared to doing a major energy efficiency upgrade alone to the same building. See “POWER SUPPLY AND TRANSMISSION – Projected Resources.”

## **Sustainable Power Supply and Transmission**

Maintaining a sustainable power supply entails focusing efforts on researching, promoting and implementing new renewable energy technologies and sources to meet SMUD’s long-term commitment to reducing carbon emissions and providing a reliable energy supply. SMUD defines a sustainable power supply as one that reduces SMUD’s GHG emissions to serve retail customer load to zero by 2030. See “– 2030 Zero Carbon Plan” below. SMUD is planning to achieve zero GHG emissions to serve retail customer load through investments in energy efficiency, clean distributed energy resources, renewables portfolio standard (“RPS”) eligible renewables, energy storage, large hydroelectric generation, clean and emissions free fuels, and new technologies and business models. Additionally, SMUD plans to continue pursuing GHG emissions reductions through vehicle, building and equipment electrification. At the same time, SMUD’s plans for maintaining a sustainable power supply include assuring the reliability of SMUD’s electric system, minimizing environmental impacts on land, habitat, water and air quality, and maintaining competitive rates relative to other electricity providers in the State.

A number of bills affecting the electric utility industry have been enacted by the State Legislature. In general, these bills regulate GHG emissions and encourage greater investment in energy efficiency and sustainable generation alternatives, principally through more stringent RPS. See “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings” herein.

**2030 Zero Carbon Plan.** In July 2020, the Board declared a climate emergency and adopted a resolution calling for SMUD to take significant and consequential actions to reduce its carbon footprint by 2030. On April 28, 2021, the Board approved SMUD’s 2030 Zero Carbon Plan (the “Zero Carbon Plan”). The Zero Carbon Plan is intended to be a flexible roadmap for SMUD to eliminate carbon emissions from its electricity production by 2030 while maintaining reliable and affordable service. To achieve these goals the Zero Carbon Plan is focused on four main areas: natural gas generation repurposing, proven clean technologies, new technologies and business models and financial impacts and options. SMUD plans to revisit the Zero Carbon Plan annually.

The natural gas generation repurposing focus of the Zero Carbon Plan calls for exploring the replacement of two of SMUD’s five Local Gas-Fired Plants (as defined herein) and the retooling of the other three Local Gas-Fired Plants. See “POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants*.” Based on SMUD’s studies to date, SMUD estimates that McClellan (as defined herein) and the Campbell Soup Project (as defined herein) can be replaced by mid-decade. Final decisions about the replacement of these two Local Gas-Fired Plants will be based on additional reliability studies and engagement with the community. As part of the Zero Carbon Plan, SMUD is also exploring converting the Carson Project (as defined herein) and the Procter & Gamble Project (as defined herein) to reliability use operations only and investigating the use of alternative fuels like Renewable Natural Gas-biomethane (RNG-biomethane), hydrogen and other biofuels for the Carson Project, the Procter & Gamble Project, and the Consumnes Power Plant (as defined herein). In addition, SMUD is investigating new technologies such as long duration energy storage, carbon capture and sequestration, hydrogen and other



clean fuel alternatives to help support natural gas repurposing. All final generator configurations are subject to reliability assessments.

The proven clean technologies focus of the Zero Carbon Plan calls for SMUD to procure approximately 1,100 to 1,500 MW of utility-scale solar photovoltaic (“PV”) generating capacity, 700 to 1,100 MW of local utility-scale battery storage, 300 to 500 MW of wind generating capacity, and 100 to 220 MW of geothermal generating capacity. The Zero Carbon Plan also estimates that customer installation of approximately 500 to 750 MW of behind-the-meter solar PV generating capacity and approximately 50 to 250 MW of behind-the-meter battery storage will assist SMUD with achieving the Zero Carbon Plan goals.

With respect to new technologies and business models, the Zero Carbon Plan focuses on evaluating, prioritizing and scaling the emerging technologies that SMUD expects will have the largest impact on reducing carbon in SMUD’s 2030 resource mix. SMUD is currently focused on various areas of technology and customer-focused programs, including electrification, education, demand flexibility, virtual power plants, vehicle-to-grid technology, and new grid-scale technologies. The Zero Carbon Plan forecasts that customer-owned resources and SMUD customer-focused programs will contribute between 360 and 1,300 MW of capacity to SMUD’s grid by 2030.

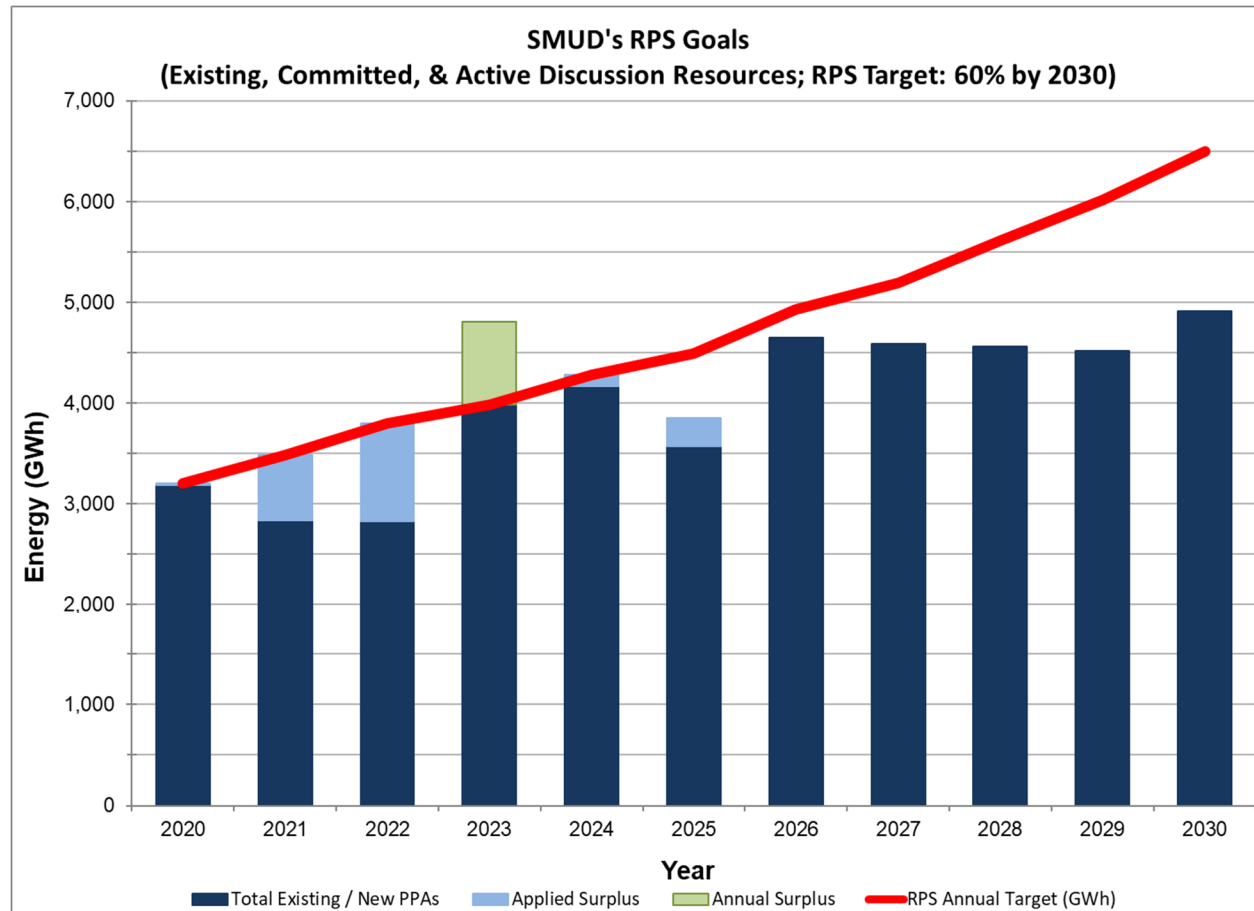
The financial impacts and options focus of the Zero Carbon Plan aims to keep SMUD rate increases at or below the rate of inflation while achieving SMUD’s goal of eliminating carbon emissions from its power supply by 2030. To pay for the expected costs of the Zero Carbon Plan and keep rate increases at or below the rate of inflation, the Zero Carbon Plan estimates the need for SMUD to realize between \$50 million and \$150 million of sustained annual savings. SMUD currently plans to achieve these sustained annual savings by exploring the implementation of operational savings strategies and pursuing partnership and grant opportunities.

While the ultimate impacts of the Zero Carbon Plan on SMUD’s financial results and operations are difficult to predict and are dependent on a variety of factors, such as the relative cost of procuring energy from clean technologies, the availability and relative cost of new technologies, and the adoption and implementation of energy efficiency and other measures by SMUD’s customers, such impacts could be material.

***Renewable Energy and Climate Change.*** The California Renewable Energy Resources Act, established by Senate Bill X1-2 (“SBX1-2”) and the Clean Energy and Pollution Reduction Act of 2015, enacted by Senate Bill 350 (“SB 350”) require that SMUD meets 33% of its retail sales from RPS-eligible renewable resources by 2020 and 50% of its retail sales from RPS-eligible renewable resources by 2030. Senate Bill 100 (“SB 100”), passed by the legislature and approved by then-Governor Brown on September 10, 2018, accelerates the RPS targets and establishes a new 60% target by 2030. The bill also created a planning goal to meet all of the State’s retail electricity supply with a mix of RPS-eligible and zero-carbon resources by December 31, 2045. See “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Renewables Portfolio Standards*” for a discussion of the State RPS requirements.

SMUD’s compliance with State RPS requirements is evaluated over 3 or 4-year compliance periods. SMUD met the State RPS requirements for the first compliance period (2011-2013) and second compliance period (2014-2016). The third compliance period (2017-2020) required SMUD to source one-third of its energy from renewable resources, and SMUD had sufficient RECs to meet the third compliance period requirements. SMUD filed its 2020 and third compliance period RPS compliance report with the CEC in the second quarter of 2021 and is awaiting verification of its submission from the CEC which is expected to occur by the end of 2023. As of the end of the third compliance period (2020), SMUD had

approximately 1.0 million surplus RECs available to help meet future RPS targets. SMUD expects to file its 2022 RPS compliance report by July 1, 2023, and due to increased load compared to forecast in 2022, and a delayed commercial online date for the NTUA solar project, expects to have provided 34.1% of its retail sales from RPS-eligible renewable resources in 2022, which is less than the interim 2022 RPS target of 38.5%. However, RPS compliance is determined by compliance period and not by individual years and SMUD anticipates that it has sufficient surplus procured and/or under contract resources in 2023 and 2024 to offset the 2022 shortfall. Therefore, SMUD expects to be in compliance with the RPS requirements for the fourth compliance period (2021 – 2024). In addition to meeting RPS standards, SMUD serves an additional 7.3% of its customer load with renewable energy through its voluntary SolarShares and Greenergy pricing programs described above. SMUD estimates that it has sufficient renewable energy deliveries, new power supply contract commitments, new power supply commitments under active discussion, and RPS-eligible surplus carryover to meet its RPS requirements through 2024. Additional resources have been identified in solicitations currently under way that are expected to provide sufficient RPS-eligible resources to cover most of SMUD’s RPS requirements through 2030. Future solicitations are expected to provide the additional resources to fill any remaining gaps. The following chart illustrates SMUD’s current RPS requirements through 2030 and its existing and committed resources, and its resources under active discussion that are expected to be utilized to meet those requirements.



In addition to procuring new sources, meeting the RPS requirements will require replacement of certain existing renewable contracts which expire in future years. While SMUD anticipates it will meet much of its renewable resource requirements through purchase contracts with third parties, it continues to explore additional options, including wind, solar, biomass, and geothermal developments, partnering with other utilities on future projects, and local development options. SMUD's resource forecast (see "POWER SUPPLY AND TRANSMISSION – Projected Resources") accounts for future renewable resources as a component of "Uncommitted Purchases." To meet SMUD's Zero Carbon Plan goals, SMUD anticipates meeting loads in 2030 with approximately 70-80% renewable resources, in addition to hydro and other new zero carbon technologies. See "*2030 Zero Carbon Plan*" above.

Given the intermittent nature of power from renewable resources such as wind and solar, SMUD is exploring and investing in options that provide the flexibility to manage the intermittency of such renewable resources. Potential options include energy storage resources, which SMUD has committed to as part of the Zero Carbon Plan, and expanding load management resources. Additionally, on April 3, 2019, SMUD, through its membership in BANC, a joint exercise of powers agency formed in 2009, and currently comprised of SMUD, the Modesto Irrigation District ("MID"), the City of Roseville ("Roseville"), the City of Redding ("Redding"), the City of Shasta Lake and the Trinity Public Utilities District, has commenced its participation in the California Independent System Operator Corporation ("CAISO") western energy imbalance market ("WEIM"). Participation in the WEIM benefits SMUD by providing it with broader access to balancing resources within the region to help manage its expanding renewable portfolio. In addition, other entities within the BANC Balancing Authority Area began participation in the WEIM on March 25, 2021. See "BUSINESS STRATEGY – Serving SMUD's Customers – *Operational Independence and Local Control*" and "POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements."

In 2018, SMUD's Board adopted a new IRP through a comprehensive public process and filed the approved IRP with the CEC on April 29, 2019 pursuant to the CEC's IRP guidelines. The approved IRP calls for a reduction in GHG emissions from SMUD's energy supply by more than 60% by 2030 relative to 1990 levels and a goal of net zero emissions by 2040 due, in part, to a significant investment in electrification of the local building and transportation sectors. The IRP was expected to reduce Sacramento's economy-wide GHG emissions by 70% relative to current levels. SMUD's Zero Carbon Plan, adopted in 2021, built upon the IRP and set a goal of zero carbon emissions by 2030. On September 14, 2022, SMUD submitted an updated IRP filing with the CEC to incorporate the goals set in the Zero Carbon Plan pursuant to the CEC's IRP guidelines. See "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *2030 Zero Carbon Plan*."

The State's carbon cap-and-trade market established pursuant to Assembly Bill 32 ("AB 32") began in 2013. See "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Greenhouse Gas Emissions*" for a discussion of AB 32 and the State's cap-and-trade program. SMUD anticipates that allowances allocated to SMUD will nearly equal SMUD's compliance obligations under normal water year conditions. Under low water year conditions, SMUD may need to purchase additional allowances to cover its compliance obligations, including carbon obligations related to wholesale energy sales from SMUD's natural gas power plants. As SMUD implements its clean power goals, SMUD expects its need for these allowances to decline.

There is scientific consensus that increasing concentrations of GHG have caused and will continue to cause a rise in temperatures in the State and around the world. The change in the earth's average atmospheric temperature, generally referred to as "climate change," is, among other things, expected to result in a wide range of changes in climate patterns, including increases in the frequency and severity of extreme weather events, including droughts and heat waves, more frequent incidences of wildfires, changes in wind patterns, sea level rise and flooding, any of which alone or in combination could materially

adversely affect SMUD's financial results or operations. See also "FACTORS AFFECTING THE REGION" and "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Other Factors." As described above, SMUD is actively working to meet its sustainable power supply goals, reduce its own GHG emissions, and assist the local governments in the territory it serves with their desired GHG reductions. In 2016, SMUD introduced the Pilot Natural Refrigerant Incentive Program, its first customer program providing incentives for GHG reduction in addition to kWh savings. SMUD is a founding member and active participant in the Capital Region Climate Readiness Collaborative, a public private partnership formed to better understand and plan for climate impacts expected in the region. SMUD is also an active member of the United States Department of Energy (the "DOE") Partnership for Energy Sector Climate Resilience. SMUD regularly reviews scientific findings related to climate change and in 2016 published its Climate Readiness Assessment and Action Plan. In 2024, SMUD is planning to update the Climate Readiness Assessment and Action Plan along with other climate resiliency actions.

***Energy Storage Systems.*** Assembly Bill 2514 ("AB 2514") requires the Board to re-evaluate energy storage goals every three years. In compliance with AB 2514, the Board established a target of 9 MW of energy storage procurement by December 31, 2020, which SMUD has procured. See "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Energy Storage Systems*" for further discussion of AB 2514. In September 2020, the Board directed that energy storage forecasts be implemented through SMUD's IRP process going forward. See "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*" above for a discussion of SMUD's IRP. SMUD is also evaluating how to couple utility-scale solar with utility-scale storage to support future system reliability needs and renewable energy goals.

***Meeting Peak Load.*** A significant consideration for SMUD will be how it addresses its system peak load. SMUD has implemented programs and tools, such as advanced metering, energy efficiency options, and TOD rates for residential customers, to help customers manage their costs while helping SMUD reduce its peak load. Analysis of 2021 data showed a reduction of approximately 115 MW, weather adjusted, for residential customers during the TOD peak period (5-8 p.m. local time). SMUD staff will continue to monitor the progress and results of the implementation of TOD rates and will use this information to inform future rate actions and load forecasts. See "BUSINESS STRATEGY – Serving SMUD's Customers – *Time-of-Day Rates.*"

On September 16, 2021, the Board approved an optional residential Critical Peak Pricing rate (the "Peak Pricing Rate"), which went into effect June 1, 2022. The Peak Pricing Rate is designed to reduce load by increasing the price of energy when the grid is most impacted, up to 50 hours per summer. In exchange, customers on the rate will receive a per kWh discount on summer Off-Peak and Mid-Peak rates. SMUD is also exploring the use of more distributed energy resources and demand response programs that could further reduce SMUD's system peak.

***Operational Independence and Local Control.*** A key component of SMUD's business strategy is focused on maintaining its independence in operating and maintaining its resources. As such, SMUD has taken a number of actions to mitigate the potential impacts of various federal and state regulatory actions. For example, in 2002 SMUD established itself as an independent control area (now termed "Balancing Authority") within the Western Electricity Coordinating Council ("WECC") region. By removing itself from CAISO's Balancing Authority area, SMUD became responsible for balancing electric supply and demand within its own service territory. This move substantially reduced fees paid to CAISO, preserved operational flexibility and helped to insulate SMUD from the uncertain regulatory environment and tariff structure of CAISO. In addition to decreased financial risks, this independence also reduced SMUD's exposure to the impacts of capacity and energy shortages in the CAISO Balancing Authority area. Further, as an independent Balancing Authority, SMUD continued to support the statewide electric grid in events of electrical emergencies requiring rotating outages, such as loss of major transmission lines or equipment,

as provided in the statewide emergency plan. By 2006, the SMUD Balancing Authority footprint expanded north to the California-Oregon border and south to Modesto, to include the service areas of the WAPA, MID, Redding and Roseville, and TANC -owned 340-mile 500-kV California-Oregon Transmission Project (“COTP”). In October 2009, SMUD, with the coordination and cooperation of WAPA, joined the Western Power Pool Reserve Sharing Group, which supports reliability and reduces operating costs. In May 2011, BANC assumed the role of the Balancing Authority, though SMUD continues to oversee operation of the grid on behalf of BANC. BANC members share cost responsibility for balancing authority-related compliance obligations, liabilities, and operations. BANC also serves as an important venue for SMUD and other BANC members to collaborate with respect to operational and market improvements inside the BANC footprint and to preserve their operational independence. See “POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements.” On April 3, 2019, SMUD, through its participation in BANC, began operating in the CAISO WEIM, which helps SMUD better manage the integration of renewable energy resources. The CAISO WEIM is a voluntary market, which allows SMUD to maintain its operational independence from the CAISO, while providing SMUD greater access to balancing resources throughout the western region. See “POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements.”

**FERC Order 1000.** In 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order 1000, which mandates regional transmission planning and imposes a regional cost allocation methodology for transmission facilities. FERC states that it has the authority to allocate costs to beneficiaries of transmission services even in the absence of a contractual relationship between the owner of the transmission facilities and the beneficiary. Despite appeals challenging FERC’s authority on a number of grounds, the D.C. Circuit Court of Appeals upheld Order 1000. See “DEVELOPMENTS IN THE ENERGY MARKETS – Federal Legislation and Regulatory Proceedings – *Federal Regulation of Transmission Access*.” Nevertheless, there remains flexibility with respect to SMUD’s participation in regional transmission planning. Specifically, SMUD is voluntarily participating as a Coordinating Transmission Owner (“CTO”) in the WestConnect transmission planning organization, and will rely on its WestConnect membership to keep it Order 1000 compliant. While SMUD opposes any cost allocation methodology that would obligate SMUD to pay for facilities that it does not use or need to maintain reliable operations or serve its load, the FERC-approved WestConnect planning process does provide a CTO the option to not accept an allocation of costs. WestConnect is composed of utility companies providing transmission of electricity in a portion of the western United States, working collaboratively to assess stakeholder and market needs and develop cost-effective enhancements to the western wholesale electricity market. SMUD is unable to predict at this time the full impact that Order 1000 will have on the operations and finances of SMUD’s electric system or the electric industry generally.

### **Electricity, Natural Gas, and Related Hedging**

SMUD continues to utilize a comprehensive and integrated power and fuel supply strategy to acquire a reliable and diversified portfolio of resources to meet existing and future needs. This strategy includes a combination of both physical supply and financial hedging transactions to reduce price risk exposure over a five-year horizon. SMUD’s physical supply arrangements include ownership of power generating resources, as well as a diversified portfolio of power and fuel supply purchase contracts that range in duration, with a mixture of fixed and variable pricing terms.

With regard to the power purchase contracts, SMUD has entered into a series of contracts for the purchase of electricity to supply the portion of its resource needs not already provided by owned resources. SMUD also actively manages its exposure on variable rate electricity purchases, and at times may enter into financial contracts to fix prices by using options to reduce price risk, in each case when warranted by economic conditions. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements.”

With regard to fuel supply contracts, SMUD utilizes a similar strategy of employing financial contracts of various durations to hedge its variable rate fuel supply contracts. As of March 31, 2023, these contracts are forecasted to have hedged the price exposure on approximately 83%, 66% and 55% of SMUD's anticipated natural gas requirements for 2023, 2024 and 2025, respectively. While the financial effects resulting from the unhedged portions of SMUD's natural gas requirements are difficult to predict, SMUD's financial results could be materially impacted. See "POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Supply*."

As provided in SMUD's natural gas contracts, SMUD may be required to post collateral to various counterparties. As of March 28, 2023, SMUD did not have any collateral posting obligations. A decrease in natural gas prices could result in a collateral posting by SMUD. While the posting of collateral is not an expense for SMUD, it does temporarily encumber unrestricted cash balances.

To hedge against hydroelectric production volatility of SMUD-owned hydroelectric facilities, SMUD implemented a pass-through rate component called the Hydro Generation Adjustment (the "HGA"). The HGA and the associated Hydro Rate Stabilization Fund (the "HRSF") help to offset increased power supply or fuel supply costs in years where precipitation levels at SMUD-owned hydroelectric facilities are low. To hedge against variations in the volume of energy received from non-SMUD-owned hydroelectric resources, SMUD uses a rate stabilization fund to help offset increased power supply or fuel supply costs. See "RATES AND CUSTOMER BASE – Rate Stabilization Funds."

## **Managing Risks**

SMUD maintains an Enterprise Risk Management ("ERM") program, a strategic approach to managing enterprise-wide risks as a portfolio, to help reduce the chance of loss, create greater financial stability and protect SMUD resources. It is designed to maintain an early warning system to monitor changes in, and the emergence of, risks that affect the organization's business objectives. Under the purview of the Enterprise Risk Oversight Committee, composed of executive members and chaired by the Chief Financial Officer, ERM conducts ongoing risk identification, assessments, monitoring, mitigation, risk-based budgeting and reporting. To ensure accountability and oversight, each identified risk is assigned to an executive-level risk owner. Risk status and mitigation efforts are reported monthly to the Board.

## **Competitive Challenges**

In the coming decade, utilities like SMUD may face competition from companies in other industries looking to diversify into the energy sector. Examples of developing competitive areas include retail sale of electricity, distributed electric storage resources, renewable distributed generation (mostly solar in Sacramento), customer installation of fuel cells, third-party electric vehicle charging, home or business automation that enables greater customer participation in energy markets, and third-party provision of energy management software and solutions.

SMUD has a wide range of initiatives to monitor and adapt to changing market conditions and new industry participants. Key areas of focus include:

- Enhancing customer experience. Recognizing the importance of meeting customer expectations, SMUD introduced the Customer Experience Strategy in 2016 to provide customers "value for what they pay" and further strengthen customer loyalty. The initiative is focused on ensuring SMUD has the people, systems, technology, programs and services to consistently meet or exceed customers' changing expectations. The customer experience is measured via surveys with the goal of achieving 80% of customers agreeing that SMUD provides them with value for what they pay by 2030.

- Restructuring electric rates. In 2017, the Board approved TOD rates as the standard rate for residential customers. The residential rate transition began in the fourth quarter of 2018, and the full transition was completed in the fourth quarter of 2019. All of SMUD's business customers are also on time-based rates. In 2019, the Board approved a restructuring of commercial rates to collect a greater portion of fixed costs through fixed charges and to better align time periods and prices with energy markets. The commercial rate restructuring was delayed by one year due to the impacts of the COVID-19 pandemic. The transition was completed in the first quarter of 2022. See "RATES AND CUSTOMER BASE – Rates and Charges" and "FACTORS AFFECTING THE REGION – Impacts from COVID-19 Pandemic."
- Ongoing integrated resource planning. SMUD monitors and updates its integrated resource planning to ensure future sources of energy balance cost, reliability and environmental requirements with the flexibility to meet challenges of changing market and regulatory conditions, customer energy resources, and emerging technologies.

### **Leveraging Core Competencies**

In addition to these initiatives, SMUD is leveraging core competencies to improve industry safety and help communities serve their customers' energy needs.

***Sacramento Power Academy.*** SMUD is leveraging its significant experience in training skilled line-workers with the opening of the SMUD Power Academy regional training center in 2016. The academy currently emphasizes training for public power, customer-owned utility employees. There are currently approximately 2,000 customer-owned utilities in the United States that are similar to SMUD, many of which may not have the resources to adequately train their employees. In addition to line-workers, the center will also train substation and network electricians. Other future plans include training electrical, telecom and meter technicians; engineers and designers; construction management inspectors; equipment operators; cable splicers and locators; and support staff.

***Community Energy Services.*** In 2002, Assembly Bill 117 was passed to establish Community Choice Aggregation in the State by authorizing Community Choice Aggregators ("CCAs") to aggregate customer electric load and purchase electricity for customers. SMUD's Community Energy Services department was established in 2017 to support organizations with values closely aligned with SMUD's values, while also generating additional revenue for SMUD. CCA programs are proliferating in the State thanks to support for expanding renewable energy use and desire for local control particularly for electricity procurement. There are numerous CCAs operating in the State, and more are anticipated to launch in the future. CCAs are responsible for procuring wholesale power, setting the generation rate, and staffing a call center to handle opt-outs and questions about the power portfolio. The local investor-owned utility ("IOU") continues to deliver electricity from the electric grid, maintain its electric infrastructure, bill customers and collect payments.

In October 2017, SMUD was selected by the governing board of Valley Clean Energy ("VCE") to provide technical, energy and support services, including data management and call center services, wholesale energy services, and business operations support, to VCE for a five-year term [expiring May 31, 2023. SMUD and VCE are currently negotiating a new contract.] VCE is a joint powers agency formed in 2016 by the City of Woodland, the City of Davis and Yolo County to implement a local CCA program. The service territory expanded to include the City of Winters in 2021. The mission of VCE is to deliver cost-competitive clean electricity, product choice, price stability, energy efficiency, and greenhouse gas emissions reductions to its customers in Yolo County. VCE began electric services to its customers in the summer of 2018, giving Yolo County residents a choice between two electricity providers, VCE and PG&E.

In November 2017, SMUD was selected by the governing board of East Bay Community Energy (“EBCE”) to provide call center and data management services for a three-year term beginning in January 2018. SMUD signed a new contract with EBCE in January 2022 for call center and data management services for an additional three-year term. EBCE is a joint powers agency formed in 2016 by the cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro and Union City in Alameda County to implement a local CCA program. EBCE expanded its territory to the cities of Pleasanton, Newark, and Tracy in April 2021.

In June 2019, SMUD was selected by the governing board of Silicon Valley Clean Energy (“SVCE”) to provide program services to help local SVCE communities reduce carbon pollution while delivering engaging customer experiences. SVCE programs are focused on grid integration, as well as electrifying transportation, buildings and homes. SVCE is a joint powers agency formed in 2016 by the cities of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County to implement a local CCA program.

In July 2022, SMUD was selected by the governing board of Marin Clean Energy (“MCE”) to provide data management, billing, data analytic and system assessment services to MCE. MCE is a joint powers agency formed in 2010 and represents 37 member communities across four Bay Area counties: Contra Costa, Marin, Napa and Solano.

In September 2022, SMUD was selected by the governing board of Sonoma Clean Power (“SCP”) to provide market research services to SCP. SCP is a joint powers agency that serves Sonoma and Mendocino counties.

While CCAs have had success in the State, they are susceptible to business, regulatory and other risks that could lead to a financial loss and/or result in a cessation of operations for the CCA. These risks could extend to a CCA’s counterparties, including SMUD. SMUD has made an effort to identify and mitigate potential counterparty risks to the extent possible in service agreements with the CCAs described above. SMUD may pursue opportunities to provide similar services to additional CCAs in the future. SMUD management does not expect its current arrangements to have a material adverse impact on SMUD’s financial position, liquidity or results of operations.

## **FACTORS AFFECTING THE REGION**

### **Precipitation Variability**

SMUD uses a National Weather Service precipitation station located at Pacific House, California to approximate available water supply to SMUD’s Upper American River Project (the “UARP”) hydropower reservoirs. As of March 31, 2023, precipitation at Pacific House, California totaled 77 inches for the October-September hydropower water supply period. This is 185% of the 50-year rolling median of 42 inches. Total reservoir storage in the UARP hydropower reservoirs was 269 [TAF] as of April 18, 2023, which was about 71% of capacity, approximately 8% below the historical average for this date to accommodate snowpack which was 156% of normal. SMUD manages its reservoirs to maximize water storage going into the summer season, which preserves generating capacity during SMUD’s high load months and ensures that SMUD meets its UARP FERC license requirements, including requirements for recreational and environmental flows.

There can be wide swings in precipitation from year to year. In years with below average rainfall, SMUD may have to generate or purchase replacement energy at additional cost. To hedge against variations in the volume of energy received from SMUD-owned UARP hydroelectric resources, SMUD uses the



HRSF to help offset increased power supply or fuel supply costs. See “RATES AND CUSTOMER BASE – Rate Stabilization Funds.”

SMUD is also exposed to precipitation variability through its contract with the WAPA. In an average water year this contract provides roughly 661 gigawatt hours (“GWh”) of power. WAPA’s actual deliveries are based on hydroelectric generation (minus energy use for pumping) at Central Valley Project reservoirs in Northern California, which varies based on annual precipitation patterns, water deliveries for agriculture, and flow requirements in the Sacramento-San Joaquin River Delta. Unlike the UARP, SMUD does not monitor precipitation stations to approximate power deliveries under the WAPA contract, and instead relies on a forecast of power deliveries from WAPA. As of March 31, 2023, WAPA has forecasted power deliveries of 451 GWh for 2023, down approximately 32% less than an average water year. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – *Western Area Power Administration*.”

## **Wildfires**

**General.** Wildfires in the State have become increasingly common and destructive. Frequent drought conditions and unseasonably warm temperatures have increased, and could further increase, the possibility of wildfires occurring in areas where SMUD maintains generation, transmission and distribution facilities. The number of diseased and dead trees has increased, and could further increase, this possibility. As a result, SMUD faces an increased risk that it may be required to pay for wildfire related property damage or personal injuries, fines and penalties, some of which may not be covered by insurance (including costs in excess of applicable policy limits), or may be disputed by insurers, and could be material. In addition, a significant fire or fires in SMUD’s generation, transmission or service area could result in damage or destruction to SMUD’s facilities, result in a temporary or permanent loss of customers or otherwise materially increase SMUD’s costs or materially adversely affect SMUD’s ability to operate its Electric System or generate revenues.

SMUD’s service territory is located within Sacramento County, which is located outside the California Public Utilities Commission (the “CPUC”) high fire threat areas established in 2018. However, as described below, SMUD’s UARP facilities and certain of SMUD’s and TANC’s transmission facilities are within CPUC high fire threat areas. In addition, as described below, certain portions of SMUD’s service territory are located within the California Department of Forestry and Fire Protection (“Cal Fire”) Fire Protection and Resource Assessment Program (“FRAP”) Moderate, High and Very High Fire Hazard Severity Zones. SMUD’s exposure to liability for damages related to its UARP facilities, which are located within high fire threat areas in El Dorado County, is reduced due to risk mitigation measures adopted by SMUD and the low number of inhabitants and structures near the UARP facilities (See “Wildfire Mitigation” below). SMUD continues to take responsible action to minimize its exposure to liability from wildfires; however, under current State law, utilities can be held liable for damages caused by wildfires sparked by their equipment or other facilities regardless of whether the utility was negligent or otherwise at fault. Therefore, at this time the full extent of SMUD’s potential exposure to wildfire risk is unknown.

**Distribution (SMUD Service Territory).** State law requires Cal Fire to classify areas in the State based on the severity of the fire hazard that is expected to prevail there. These areas or “Fire Hazard Severity Zones” are based on factors such as fuel (material that can burn), slope and the expected chance of burning. There are three Fire Hazard Severity Zones (Moderate, High and Very High) based on increasing fire hazard. Portions of SMUD’s service territory are located within these Fire Hazard Severity Zones. SMUD has assessed its service territory based on Cal Fire’s FRAP map, adopted in 2007; the following table illustrates SMUD’s assessment of the approximate extent of its service territory and retail customer base located within the three Fire Hazard Severity Zones.

<b>Fire Hazard Severity Zone</b>	<b>Moderate</b>	<b>High</b>	<b>Very High</b>
Acres of SMUD Service Area	231,816	2,337	1,061
% of Total SMUD Service Area	40.6%	0.4%	0.2%
Number of Retail Customers	53,621	4,285	148
% of Total Retail Customers	7.7%	0.6%	0.0%

***Transmission (Outside of SMUD Service Territory).*** In 2018, the CPUC approved a new statewide fire map that identifies areas of elevated and extreme wildfire risk from utility-associated assets located throughout the State. SMUD directly participated in the development of the CPUC’s statewide fire map. In connection with the development of the CPUC’s statewide fire map, a peer review and a team of independent nationwide experts led by Cal Fire affirmed that SMUD’s electric service area is properly located outside of these elevated (“Tier 2”) and extreme (“Tier 3”) high fire threat areas; however, SMUD’s UARP facilities are located within both Tier 2 and Tier 3 areas. According to the CPUC, Tier 2 fire-threat areas are areas where there is an elevated wildfire risk from utility assets and Tier 3 fire-threat areas are areas where there is an extreme risk from utility assets. As of June 8, 2021, approximately 37 right-of-way miles of SMUD’s transmission lines are in Tier 2 fire-threat areas and approximately 19 right-of-way miles of SMUD’s transmission lines are in Tier 3 fire-threat areas. SMUD is also a member of TANC. As of July 2022, approximately 116.3 right-of-way miles of TANC’s transmission lines are in Tier 2 fire-threat areas and approximately 4.5 right-of-way miles of TANC’s transmission lines are in Tier 3 fire-threat areas. In accordance with its FERC license, SMUD adheres to a FERC-approved Fire Prevention and Response Plan for its UARP facilities. On May 17, 2018, in accordance with State law, SMUD’s Board of Directors determined that the UARP area may have a “significant risk of catastrophic wildfire” resulting from overhead electric facilities and that SMUD’s FERC-approved UARP Fire Prevention and Response Plan meets requirements for presenting wildfire mitigation measures to the Board for its approval.

***Wildfire Mitigation.*** In response to potential wildfire risk, SMUD has implemented and is continuing to implement a series of measures intended to prevent wildfires from occurring, minimize the spread of any fire that does occur and improve the resiliency of its system. These measures include an increase in the degree of sophistication of fuel reduction inside and adjacent to rights-of-ways; installation of Cal Fire-approved exempt material to reduce the risk of sparking; enhanced inspection and maintenance programs; increased use of ignition-resistant construction, including covered conductors and undergrounding of conductors; increased monitoring of and identified responses to fire conditions, including operational procedures for the de-energization of lines during high fire conditions; and elimination of automatic reclosers on SMUD’s transmission lines and on SMUD’s distribution lines in certain areas during fire season.

SMUD’s proactive approach to vegetation management recently has been expanded to include the use of advanced technologies such as Light Detection and Ranging (“LIDAR”) surveys, ortho and oblique that is used to pinpoint tree health and/or condition that may not yet be visible to the naked eye. In addition, SMUD has installed additional weather stations in transmission corridors and substations for increased situational awareness and has continued coordination and collaboration with local agencies and first responders as well as vulnerable populations.

State legislation enacted in 2018 and 2019 (SB 901 and AB 1054, respectively) requires publicly owned utilities (“POUs”) to prepare and present Wildfire Mitigation Plans to their governing boards by January 1, 2020, and annually thereafter. SMUD assembled an enterprise-wide team of subject-matter experts to prepare its plan in compliance with this legislation. SMUD’s initial Wildfire Mitigation Plan (“WMP”) was adopted by the Board in the fourth quarter of 2019, after circulation for public comment and

review of the comprehensiveness of the plan by a qualified independent evaluator. The WMP and evaluator's report were submitted to the State Wildfire Safety Advisory Board (the "WSAB") in 2020. The WSAB was established pursuant to AB 1054 and is charged, among other things, with providing comments and advisory opinions relating to content and sufficiency of POU wildfire mitigation plans and recommendations on how to mitigate wildfire risk.

SMUD reviews its WMP each year, presenting the updated plan to the Board for adoption at duly noticed public meetings. The updated plans and evaluator reports are submitted to the WSAB for advisory opinion and recommendations. SMUD responds to the WSAB's comments regarding SMUD's Wildfire Mitigation Plan as part of its WMP process. SMUD will continue to annually review and update its WMP, conducting a comprehensive review at least every third year.

[SMUD is currently conducting a comprehensive review and update of its WMP and anticipates presenting its 2023-2025 WMP to the Board in second quarter of 2023, after soliciting public input and independent evaluation.]

***Wildfire Insurance.*** Wildfires in the State have not only increased potential liability for utilities, but have also adversely impacted the insurance markets, leading to higher costs for coverage; coverages becoming prohibitively expensive; limited or restricted coverage to certain types of risks; or coverage at insufficient levels. SMUD most recently renewed its general and wildfire liability insurance coverage on June 15, 2022. SMUD increased the commercially-insured portion of its \$255 million wildfire coverage program from \$176 million to \$192.5 million and reduced the self-insured layers and quota share portions of the insurance tower down to \$62.5 million.

In addition, it is expected that SMUD will have a portion of the \$400 million aggregate principal amount of its commercial paper and line of credit program to provide operational flexibility in the event of the occurrence of a wildfire or other operational event. However, SMUD has not covenanted to maintain the availability of the commercial paper program and line of credit program for these purposes and no assurances can be given that the commercial paper and line of credit program will be available at the time of, or during, such an event.

### **August 2020 Heat Wave**

The State experienced a period of prolonged above average temperatures from August 14, 2020 through August 18, 2020. The CAISO was forced to institute rotating electricity outages in the State during this extreme heat wave. SMUD, as a member of BANC, did not have to implement any planned power disruptions. Additionally, SMUD was able to support the CAISO during some hours of the heat wave with both requested emergency assistance and wholesale market sales. SMUD's peak demand between August 14, 2020 and August 18, 2020, varied between 2,874 MW and 3,057 MW, well below SMUD's record peak of 3,299 MW.

### **September 2022 Heat Wave**

The State experienced a period of prolonged above average temperatures from September 5, 2022 through September 8, 2022. On September 6, 2022, SMUD experienced its second highest peak demand of 3,292 MW. SMUD did not have to implement any planned power disruptions.

### **Storm Damage**

In January 2023, SMUD experienced a series of winter storms that brought heavy rains and high winds causing damage to SMUD's grid and widespread outages for SMUD's customers. By the time the

storm response was complete, SMUD had experienced the largest mobilization of personnel and restoration crews in its history. SMUD incurred costs related to removing downed trees, restoring power from downed poles and broken lines, replenishing inventory, communicating with and providing assistance to customers, maintaining IT systems, and coordinating with local emergency agencies. SMUD is pursuing claims with Federal and State agencies. SMUD currently cannot predict financial impacts from the storm damage however such impacts may be material.

### **Cosumnes Power Plant Outage**

On June 5, 2022, the Cosumnes Power Plant was shut down due to a ground fault in the Steam Turbine Generator (“STG”) stator. The ground fault was caused by delamination of insulation of the through bolt. Damage from the ground fault resulted in a rewind and restack of the stator core, replacement of all stator through bolts, and a full rewind of turbine rotor. The Cosumnes Power Plant repairs were completed in February 2023 and the plant returned to service on March 5, 2023. During the extended outage, SMUD shifted generation to the other Local Gas-Fired Plants and the Sutter Energy Center and procured additional energy and resource adequacy capacity. SMUD also requested and received approval from the California Air Quality Board and California Energy Commission to operate one or both of the gas turbines without the STG. During the September 2022 heatwave, both of the gas turbines at the Cosumnes Power Plant were operated without the STG, providing 270 MW at peak.

To mitigate the financial impact of unplanned outages from its thermal assets, SMUD carries commercial property insurance with a business interruption endorsement that can provide up to \$30.8 million of claims recovery per month, with a sub-limit of \$310 million over any 18-month period. Business interruption claims are subject to a 60-day waiting period. SMUD has begun the property damage and business interruption insurance claim process and received a \$50 million advance in December 2022. SMUD is reviewing and submitting claim expenses and expects to reach claim settlement in the third quarter of 2023. The settlement amount is unknown but is expected to be material.

### **Impacts from COVID-19 Pandemic**

While the impact of the COVID-19 pandemic on SMUD has lessened since the height of the pandemic in 2020, SMUD is still experiencing impacts from the pandemic. Compared to weather adjusted load levels, SMUD’s overall load is near or above pre-pandemic levels. Compared to pre-pandemic loads, residential customer load remains higher and commercial customer load has almost recovered. SMUD anticipates that commercial customer load recovery will continue over the next couple of years resulting in continued movement towards pre-pandemic levels, but not a complete recovery as people continue to work from home long-term.

Part of the governmental response to the economic consequences of the pandemic required utility providers (including SMUD) to provide additional grace periods and flexible payment plans for the payment of utility bills or to refrain from pursuing collection remedies for unpaid bills for a period of time. SMUD also implemented a no-shutoff policy through January 2022 under which SMUD did not disconnect power to a customer for non-payment of its electric bill. Beginning in February 2022, SMUD resumed its normal payment, late fee, and disconnection process and began disconnections of unpaid accounts in late April 2022. As a result, SMUD has experienced an increase in delinquencies for customer electric accounts versus pre-pandemic levels. In December 2021, SMUD received \$41 million from the California Arrearage Payment Program (“CAPP”) initial funding, and an additional \$9.9 million in 2022. All funds were applied to delinquent balances. As of March 31, 2023, the total delinquencies for customer electric accounts were \$50.8 million, after the CAPP credit, which is an increase from the February 2020 balance of total delinquencies for customer electric accounts of \$16.9 million.

SMUD also paused the recertification process for existing customers in SMUD's low-income discount program during the pandemic. The number of customers participating in the low-income assistance program increased by 19,775, or approximately 26% from February 2020 to February 2023. SMUD has resumed the recertification process for existing customers in the low-income discount program in 2023.

While the impacts of the COVID-19 pandemic on SMUD have lessened, if the pandemic and its consequences again become more severe or another similar event occurs, the impacts on SMUD's financial results and operations could be material.

## **RATES AND CUSTOMER BASE**

### **Rates and Charges**

SMUD's Board of Directors has autonomous authority to establish the rates charged for all SMUD services. Unlike IOUs and some other municipal utility systems, retail rate and revenue levels are not subject to review or regulation by any other federal, State or local governmental agencies. Changes to SMUD rates only require formal action by the Board of Directors after two public workshops and a public hearing. SMUD is not required by law to transfer any portion of its collections from customers to any local government. SMUD typically reviews and sets rates on a two-year cycle.

#### ***2019 Rate Action.***

On June 24, 2019, the Board approved a 3.75% rate increase effective January 1, 2020, a 3.00% rate increase effective October 1, 2020, a 2.50% rate increase effective January 1, 2021, and a 2.00% rate increase effective October 1, 2021, for all customer classes. Additionally, the Board approved a restructuring of the commercial rates, including new time periods and an overall increase in the fixed bill components, such as the System Infrastructure Fixed Charge and demand charges, and a corresponding decrease in energy charges, making the restructuring revenue neutral by rate category. To minimize bill impacts, rate categories will be restructured over an 8-year period. Due to the impacts of the COVID-19 pandemic on SMUD's operations and priorities, on August 20, 2020, the Board approved postponing the implementation of the commercial rate restructure for one year. Customers were transitioned to the new rates in the first quarter of 2022. There is currently pending litigation concerning the adoption of the 2020 and 2021 rates. See "LEGAL PROCEEDINGS – Proposition 26 Lawsuit."

#### ***2021 Rate Action.***

On September 16, 2021, the Board approved a 1.5% rate increase effective March 1, 2022 and a 2.0% rate increase effective January 1, 2023 for all customer classes. Additionally, the Board approved the Solar and Storage Rate, the optional residential Peak Pricing Rate, and updates to certain schedules of SMUD's Open Access Transmission Tariff ("OATT"). The Board also approved a new timeline for the commercial rate restructure transition, and all impacted commercial customers were transitioned to the new rates by the end of the first quarter of 2022.

SMUD also implemented a solar interconnection fee based on the size of solar interconnection and supporting programs such as battery incentives, incentives to enroll in SMUD's Peak Pricing Rate, battery incentives for Virtual Power Plants, and a program to bring the benefits of solar to under-resourced multi-family communities. These programs and fees are not subject to Board approval.

## **Rate Stabilization Funds**

The Rate Stabilization Fund (the “RSF”) is maintained by SMUD to reduce the need for future rate increases when costs exceed existing rates. At the direction of the Board, amounts may be either transferred into the RSF (which reduces revenues) or transferred out of the RSF (which increases revenues). The Board authorizes RSF transfers on an event driven basis. The RSF includes funds to hedge variations in the volume of energy received from WAPA hydroelectric generation, variation in AB 32 revenue and variations in Low Carbon Fuel Credit (“LCFS”) revenue. As of April, 2023, the balance in the RSF was \$120.1 million, which is approximately 7.3% of annual retail revenue.

Effective July 2008, SMUD implemented the HGA, which is a pass-through rate component to deal with variations in hydroelectric generation from the UARP (see “POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Hydroelectric*”). The HGA is designed to increase revenues in dry years when SMUD must buy power to replace hydroelectric generation and return money to the HRSF in wet years when SMUD has more hydroelectric generation than expected. Each year SMUD determines the impact of precipitation variances on projected hydroelectric generation from the UARP. When the precipitation variance results in a deficiency of hydroelectric generation from the UARP, transfers from the HRSF, which was created as a component of the RSF, to SMUD’s available cash, will be made in an amount approximating the cost to SMUD of replacement power (up to 4% of revenues) until the balance in the HRSF is zero. When the precipitation variance results in a projected surplus of hydroelectric generation from the UARP, deposits will be made into the HRSF in an amount approximating the positive impact to SMUD from the surplus hydroelectric generation (up to 4% of revenues) until the balance in the HRSF is equal to 6% of budgeted retail revenue. If the balance in the HRSF is not sufficient to cover transfers that would otherwise be made in the event of a projected deficiency in UARP hydroelectric generation, a 12-month HGA surcharge will automatically be included on customers’ electric bills at a level that generates up to 4% of retail revenue. If the balance in the HRSF is equal to 6% of budgeted retail revenue on any precipitation variance calculation date and the precipitation variance results in a projected UARP hydroelectric generation surplus, the positive impact of the surplus may be used for other purposes at staff’s recommendation, with the approval of the Board, including returned to customers through an electric bill discount up to 4% of retail revenue. SMUD calculates HRSF transfers based on an April-March (water year) precipitation period at Pacific House, California. This National Weather Service precipitation station is used to approximate available water supply to SMUD’s UARP hydropower reservoirs. As of March 31, 2023, precipitation at Pacific House, California totaled 90.83 inches which is above the 50-year rolling median of 50.52 inches.

As of April, 2023, the balance in the RSF and HRSF combined was \$216.5 million. SMUD transferred approximately \$65.4 million into of the HRSF from SMUD’s available cash in April 2023 due to above average precipitation, which increased the balance in the HRSF from \$31 million to approximately \$96.4 million. Although the HRSF and the subaccount of the RSF that hedge variations in the volume of energy received from non-SMUD hydroelectric generation currently have positive balances, below average precipitation could deplete the HRSF and RSF balances to zero.

## **Low Income Discount**

As of February 2023, approximately 95,175 customers received the low-income discount offered by SMUD, which represents approximately 17% of all residential customers. SMUD suspended recertification during the pandemic, but continued to monitor the program to ensure participants continue to be eligible for the discount. In 2022, the total discount was approximately \$31.3 million. As a result of the effects of the COVID-19 pandemic and related economic downturn, SMUD experienced an increase in low-income discount applicants. See “FACTORS AFFECTING THE REGION – Impacts from COVID-19 Pandemic.”

SMUD expanded its programs and services starting in 2016 to help customers with energy assistance, home improvement packages and education. SMUD is creating tailored solutions to best meet the needs of low-income customers. These solutions include free solar panels and inspecting homes to identify energy saving and fuel switching opportunities. As of February 2023, SMUD has performed 27,000 energy retrofits and, in partnership with Grid Alternatives (a non-profit organization that focuses on implementing solar power and energy efficiency for low-income families), 196 customers have benefited from free solar installations. Forty-eight additional homes received solar and energy efficiency through a partnership with Habitat for Humanity of Greater Sacramento. As part of SMUD's Zero Carbon Plan and the focus on building electrification, SMUD has also been ramping up electrification investments for low-income customers. Since 2019, SMUD has assisted more than 1,000 households with electrification upgrades.

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## Rate Comparisons

SMUD's rates remain significantly below those of PG&E and other large utilities throughout the State. The following table sets forth the average charges per kWh by customer class for both SMUD and PG&E. PG&E's rates reflect their recently approved rate increase effective March 1, 2023.

### AVERAGE CLASS RATES

	<b>SMUD Rates (cents/kWh)<sup>(1)</sup></b>	<b>PG&amp;E Rates (cents/kWh)<sup>(2)</sup></b>	<b>Percent SMUD is Below PG&amp;E<sup>(3)</sup></b>
Residential – Standard	17.96¢	36.27¢	50.5%
Residential – Low Income	12.53¢	23.11¢	45.7%
<b>All Residential</b>	<b>17.10¢</b>	<b>30.50¢</b>	<b>44.0%</b>
Small Commercial (Less than 20 kW)	17.39¢	34.55¢	49.7%
Small Commercial (21 to 299 kW)	16.07¢	33.90¢	52.6%
Medium Commercial (300 to 499 kW)	15.01¢	32.39¢	53.6%
Medium Commercial (500 to 999 kW)	14.08¢	28.00¢	49.7%
Large Commercial (Greater than 1,000 kW)	12.03¢	22.12¢	45.6%
Lighting – Traffic Signals	13.77¢	33.94¢	59.4%
Lighting – Street Lighting	15.64¢	46.15¢	66.1%
Agriculture	15.25¢	31.49¢	51.6%
<b>System Average</b>	<b>15.65¢</b>	<b>29.83¢</b>	<b>47.6%</b>

<sup>(1)</sup> Projected 2023 average prices for SMUD with rates effective January 1, 2023.

<sup>(2)</sup> PG&E average prices in 2023 reflect rates effective March 1, 2023, per Advice Letter 6863-E- dated February 15, 2023.

<sup>(3)</sup> The rates in the Average Class Rates table are calculated by dividing the total revenue of each class by the total usage of that class in kWh. The actual savings per customer will vary based on their electricity consumption.

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The following table shows a comparison of SMUD’s charges for the average residential usage of 750 kWh per month (based on an average of summer and non-summer) and charges of seven similar neighboring or largest utilities in the State.

**STATEWIDE COMPARISON–RESIDENTIAL SERVICE**

	<b>Monthly Billing Charge 750 kWh<sup>(1)(2)</sup></b>	<b>Percent SMUD is (Below)/Above Utility</b>
Sacramento Municipal Utility District	\$131.40	
Pacific Gas & Electric Company	\$282.25	(53%)
Roseville Electric Utility	\$122.47	7%
Turlock Irrigation District	\$123.70	6%
Modesto Irrigation District	\$144.30	(9%)
Los Angeles Dept. of Water & Power	\$169.76	(23%)
Southern California Edison Company	\$273.21	(52%)
San Diego Gas and Electric Company	\$357.12	(63%)

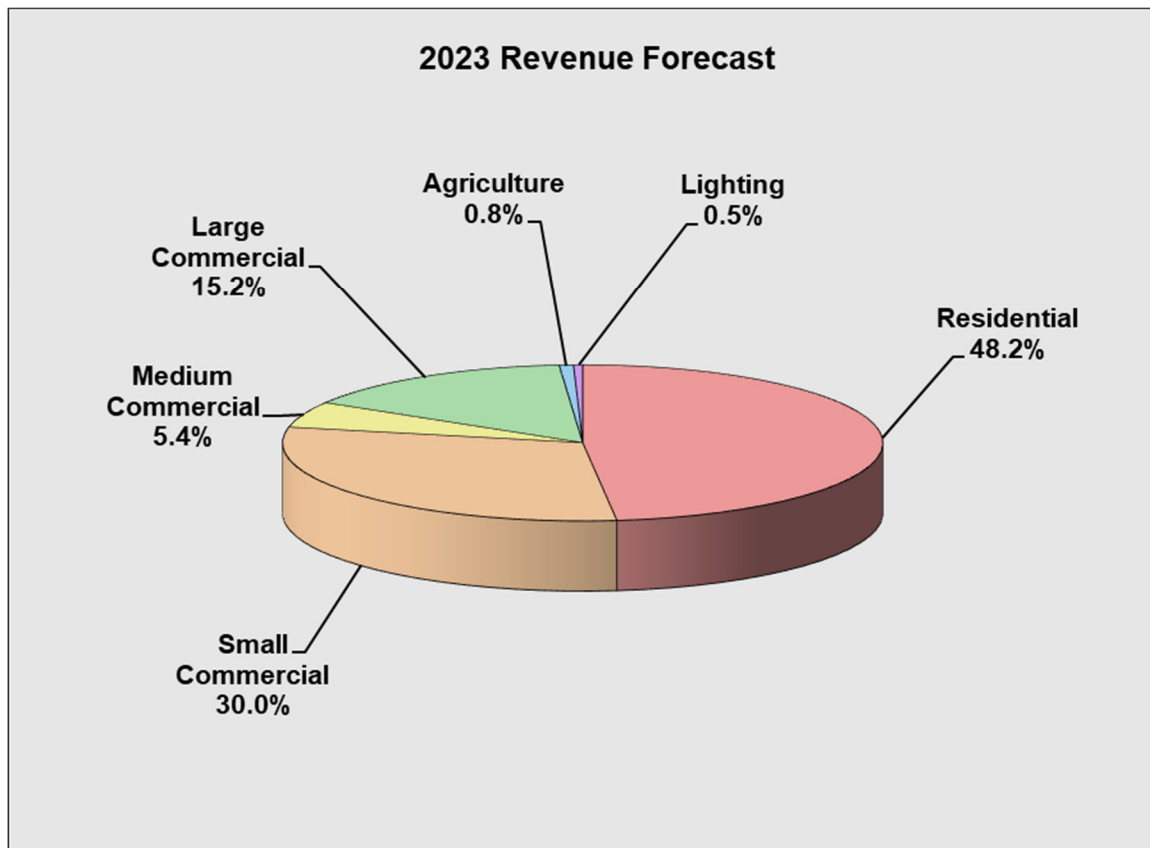
<sup>(1)</sup> Per individual utility’s published schedules as of March 1, 2023.

<sup>(2)</sup> Average usage of theoretical customer using 750kWh per month.

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### Allocation of Revenue by Customer Class

The following chart sets forth the forecast percentage of SMUD revenues from billed sales associated with each customer class.



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## Customer Base; Largest Customers

A stabilizing influence on SMUD's revenues is that a substantial proportion is derived from residential customers (48.9% in 2022). Historically, revenue from commercial and industrial consumption has been more sensitive to economic fluctuation. Furthermore, SMUD has no dominant customers that account for a significant percentage of annual revenues. In 2022, no single customer contributed more than 3% of revenues. The top ten customers generated approximately 11% of revenues and the top 30 generated approximately 17%. The following table presents information on SMUD's top ten customers as of December 31, 2022.

### SMUD'S LARGEST CUSTOMERS (As of December 31, 2022)

Customer Type	Annual Revenue (\$ millions)	% of Total Revenue
Technology	37.56	2.31%
Government	33.02	2.03%
Government	31.59	1.94%
Government	14.58	0.90%
Government	14.11	0.87%
Communications	9.89	0.61%
Industrial Gases	9.12	0.56%
Government	8.04	0.49%
Grocery	7.37	0.45%
Government	7.29	0.45%
<b>Top 10 Total</b>	<b>172.57</b>	<b>10.59%</b>

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## POWER SUPPLY AND TRANSMISSION

### Power Supply Resources

The following table sets forth information concerning SMUD's power supply resources as of March 31, 2023. Capacity availability reflects expected capacities at SMUD's load center, as well as entitlement, firm allocations and contract amounts in the month of July, which is generally SMUD's peak month.

### POWER SUPPLY RESOURCES (As of March 31, 2023)

Source:	Capacity Available (MW) <sup>(1)</sup>
<b>Generating Facilities:</b>	
Upper American River Project – Hydroelectric .....	685
Solano Wind Project – Wind <sup>(2)</sup> .....	94
Hedge Battery <sup>(2)</sup> .....	4
<b>Sub-total:</b> .....	<b>783</b>
<b>Local Gas-Fired Plants:</b>	
Cosumnes Power Plant .....	570
Carson Project.....	103
Procter & Gamble Project.....	166
McClellan .....	72
Campbell Soup Project .....	170
<b>Sub-total:</b> .....	<b>1,081</b>
<b>Purchased Power:</b>	
Western Area Power Administration (WAPA) <sup>(3)</sup> <sup>(4)</sup> .....	351
Grady – Wind <sup>(2)</sup> .....	34
Avangrid (Iberdrola) (PPM) – Wind <sup>(2)</sup> .....	22
Feed-in-Tariff Photovoltaic – Solar <sup>(2)</sup> .....	40
Rancho Seco Solar <sup>(2)</sup> .....	53
NTUA Navajo Drew Solar <sup>(2)</sup> .....	55
Great Valley – Solar <sup>(2)</sup> .....	40
Wildflower Solar <sup>(2)</sup> .....	8
Calpine Geysers – Geothermal .....	95
CalEnergy – Geothermal .....	26
Patua (Gradient/Vulcan) – Geothermal.....	12
Other Long-Term Contracts.....	18
ELCC Portfolio Adjustment <sup>(2)</sup> .....	4
Sutter Calpine Thermal .....	258
Firm Contract Reserves <sup>(4)</sup> .....	18
Committed Short-Term Purchases <sup>(5)</sup> .....	275
Uncommitted Short-Term Purchases .....	8
<b>Sub-total:</b> .....	<b>1,314</b>
<b>Total</b> .....	<b>3,178</b>

<sup>(1)</sup> Available capacity is the net capacity available to serve SMUD's system peak load during the month of July.

<sup>(2)</sup> Capacity values shown are based on resource effective load carrying capability modeling.

<sup>(3)</sup> Total includes SMUD's Base Resource share and WAPA Customer allocations.

<sup>(4)</sup> Assumes firm reserves of 5% are included.

<sup>(5)</sup> Committed Short-Term Purchases are primarily purchased on a year-ahead to season-ahead basis from various sources.

Note: Totals may not add due to rounding.

## Power Generation Facilities

**Hydroelectric.** The UARP consists of three relatively large storage reservoirs (Union Valley, Loon Lake and Ice House) with an aggregate water storage capacity of approximately 400,000 acre-feet and eight small reservoirs. Project facilities also include eight tunnels with a combined length of over 26 miles and eight powerhouses containing 11 turbines. In addition to providing clean hydroelectric power and operating flexibility for SMUD, the UARP area provides habitat for fish and wildlife and a variety of recreational opportunities, including camping, fishing, boating, hiking, horseback riding, mountain biking and cross-country skiing.

The combined capacity of the UARP is approximately 685 MW at SMUD's load center in Sacramento. Under current licensing and mean water conditions, these facilities are expected to generate approximately 1,600 GWh of electric energy annually, which represents approximately 15% of SMUD's current average annual retail energy requirements. In 1957, the Federal Power Commission (predecessor agency to FERC) issued a license to SMUD for the UARP. This 50-year license was subsequently amended to add and upgrade facilities and now includes all segments of SMUD's hydroelectric facilities located on the South Fork of the American River and its tributaries upstream from the Chili Bar Project (described below). On July 23, 2014, FERC issued to SMUD a new 50-year license for the UARP.

On November 9, 2016 FERC issued an Order authorizing SMUD to construct the South Fork Powerhouse downstream of the UARP's Slab Creek Dam. Construction was substantially completed in the fall of 2020, and the new powerhouse was placed into operation on October 25, 2022, adding 1.8 MW of generation to the UARP's overall capacity.

On June 16, 2021, pursuant to Board authorization, SMUD acquired the Chili Bar Hydroelectric Project which consists of a 7 MW powerhouse, reservoir, dam and spillway, north of Placerville on the South Fork of the American River for approximately \$10.4 million (the "Chili Bar Project"). The Chili Bar Project is immediately downstream from the UARP and operates as the regulating reservoir for the UARP's largest powerhouse. Owning the UARP and the Chili Bar Project enables SMUD to operate the two projects with a holistic approach to license compliance and generation efficiency.

**Solano Wind Project.** SMUD owns and operates an 87 MW wind project, located in Solano County, known as Solano 2. Solano 2 consist of 29 wind turbine generators ("WTGs") rated at 3 MW each. Energy from the project is collected at 21 kV and transmitted over a dedicated 3-mile overhead system to the SMUD-owned Russell substation. At the Russell facility, the energy is transformed to 230 kV and interconnected to PG&E's Birds Landing Switching Station. Energy deliveries are scheduled through the CAISO.

**Solano 3 Project.** In 2011 and 2012, SMUD constructed a 128 MW wind project adjacent to Solano Phase 2, known as Solano 3. The Solano 3 project consists of 31 WTGs rated at 1.8 MW and 24 WTGs rated at 3.0 MW. The project interconnects through a 34.5 kV underground collection system to the Russell substation. Like the Solano Phase 2 project, this energy is transformed to 230 kV and delivered through the CAISO.

**Solano 4 Project.** SMUD is developing the Solano 4 Wind Project on SMUD-owned land near the Solano 3 project, known as the Collinsville and Roberts properties, to install 10 WTGs rated at 4.5 MW, and to remove the Solano 1 turbines and replace them with 9 WTGs rated at 4.5 MW. SMUD received the Cluster II Phase I Study results from the CAISO in January 2019, provided the initial security posting in April 2019, and received the Phase II Study Report in November 2019, furthering the process towards a Large Generator Interconnection Agreement ("LGIA"). SMUD has met all of the CAISO requirements and has executed a LGIA as of June 2021 that will allow for 90.8 MW of capacity at the point of

interconnection. WAPA and PG&E identified upgrades needed to interconnect the Solano 4 Wind Project that may not be complete before 2024. The WAPA impacts have been resolved at no cost. PG&E has an approved project and expects to complete the needed upgrades by May of 2025. In April 2021, SMUD submitted an application for advisory review by the Solano County Airport Land Use Commission (the “Solano ALUC”) of the Solano 4 Wind Project’s consistency with the 2015 Travis Air Force Base Land Use Compatibility Plan (the “Travis Plan”). In May 2021, the Solano ALUC purported to resolve that the Solano 4 Wind Project was inconsistent with the Travis Plan. In August 2021, the Board approved the Project Environmental Impact Report, made findings overriding the Solano ALUC’s finding of inconsistency, made findings there was no alternative to the project, and approved the Solano 4 Wind Project. In September 2021, Solano County filed a writ petition challenging SMUD’s approval of the Solano 4 Wind Project based on procedural environmental, zoning and land use grounds. The parties entered into a settlement agreement on December 14, 2022, and the suit was dismissed on January 10, 2023. The settlement agreement allows for the construction of the Solano 4 Wind Project as planned.

In addition, SMUD applied for and obtained extensions of the Federal Aviation Administration Determinations of No Hazard allowing for construction of the turbines. A contract for the construction of the Solano 4 Wind Project was awarded to Vestas Corporation and the Solano 4 Wind Project is currently under construction. The expected operation date for the Solano 4 Wind Project is May 2024. Realization of the full capacity of the Solano 4 Wind Project may be delayed into the first quarter of 2025 due to the timeframe established for the PG&E required upgrades. SMUD has developed a mitigation plan for the limited interconnection capacity for the first year of operation, in coordination with CAISO and PG&E, of using all of the existing SMUD Solano Russell substation interconnection capacity combined for the dispatch of all the Solano Wind Project. SMUD completed a combined LGIA amendment administrative process, which combines all phases of the Solano Wind Project so it may operate as one project. This was fully executed by SMUD, CAISO, and PG&E on February 27, 2023.

***Distributed Solar Photovoltaic.*** SMUD owns and operates approximately 2 MW of solar photovoltaic generating facilities. These facilities include installations at the Hedge Substation property, SMUD Headquarters, the East Campus Operations Center, and other smaller photovoltaic systems throughout the service area on parking lots.

***Hedge Battery.*** SMUD owns and operates a 4 MW, 8 MWh, battery energy storage system located near the Hedge Substation in South Sacramento. The facility reached commercial operation in January 2023.

***Local Gas-Fired Plants.*** SMUD constructed five local natural gas-fired plants in its service area: the Carson Project, the Procter & Gamble Project, the Campbell Soup Project, McClellan and the Cosumnes Power Plant (each defined below). These five plants are referred to collectively as the “Local Gas-Fired Plants.” These plants are a strategic component of SMUD’s resource mix. In addition to providing SMUD a total capacity of approximately 1,139 MW, the Local Gas-Fired Plants provide SMUD with needed voltage support, operational and load following capability, and the reliability inherent in having power resources located close to loads. With the exception of McClellan, these plants were financed through the issuance of project revenue bonds by separate joint powers authorities (collectively, the “Authorities”). In late 2021, ownership of all of the Local Gas-Fired Plants was transferred to one of the Authorities, SFA. SMUD has entered into long-term agreements with SFA providing for the purchase by SMUD of all of the power from each of the Local Gas-Fired Plants on a take-or-pay basis. This consolidation created operational and administrative efficiencies without changing any of the functionality of the power plants. Although the Local Gas-Fired Plants are owned by SFA, SMUD has exclusive control of their dispatch and manages their operations as part of its overall power supply strategy.

Payments under the power purchase agreements are payable from the revenues of SMUD's Electric System prior to the payment of the principal of or interest on SMUD's Senior Bonds and Subordinated Bonds (each as defined under the caption "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS" below), as are other maintenance and operation costs and energy payments. For further discussion of SMUD's obligations to make these payments to SFA, see "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Joint Powers Authorities*."

The following is a brief description of the five Local Gas-Fired Plants:

*The Cosumnes Power Plant (the "Cosumnes Power Plant").* The Cosumnes Power Plant is a 612 MW natural gas-fired, combined cycle plant located in the southern portion of Sacramento County adjacent to SMUD's decommissioned Rancho Seco Nuclear Power Plant. Commercial operation of the Cosumnes Power Plant commenced on February 24, 2006. SFA increased the net generating capacity of the facility by 81 MWs via an Advanced Gas Path ("AGP") upgrade. The additional AGP generation was realized after hardware and software upgrades were completed on both units in March of 2019. The Cosumnes Power Plant is owned by SFA, a joint powers authority formed by SMUD and MID. The existing take-or-pay power purchase agreement between SMUD and SFA expires no earlier than when the related bonds have been paid in full (the outstanding related bonds are scheduled to mature on July 1, 2030). On June 5, 2022, the Cosumnes Power Plant was shut down due to a ground fault in the STG stator. The repair was completed in February 2023 and the plant returned to service on March 5, 2023. See "FACTORS AFFECTING THE REGION – Cosumnes Power Plant Outage".

*The Carson Cogeneration Project (the "Carson Project").* The Carson Project, a 103 MW natural-gas-fired cogeneration project consisting of separate combined cycle and peaking plants, provides steam to the Sacramento Regional County Sanitation District ("SRCSD") wastewater treatment plant adjacent to the site. The Carson Project was originally owned by the CVFA, a joint powers authority formed by SMUD and the SRCSD. Construction of the Carson Project was completed and the plant began commercial operation on October 11, 1995. The CVFA bonds were defeased in September 2019. In late 2021, ownership of the Carson Project was transferred to SFA. The take-or-pay power purchase agreement between SMUD and SFA relating to the Carson Project will be in effect until terminated by SMUD.

*The Procter & Gamble Cogeneration Project (the "Procter & Gamble Project").* The Procter & Gamble Project, a 182 MW natural gas-fired cogeneration facility, is located in an established industrial area of Sacramento. The initial combined cycle portion of the plant began commercial operation on March 1, 1997. Construction of the peaking plant portion of the Procter & Gamble Project commenced during 2000 and the unit achieved commercial status on April 24, 2001. The Procter & Gamble Project produces steam for use in Procter & Gamble Manufacturing Company's oleochemical manufacturing processes and electricity for sale to SMUD. The Procter & Gamble Project was originally owned by the SCA, a joint powers authority formed by SMUD and SFA, a separate joint powers authority. The SCA bonds were defeased in September 2019. In late 2021, ownership of the Procter & Gamble Project was transferred to SFA. The take-or-pay power purchase agreement between SMUD and SFA relating to the Procter & Gamble Project will be in effect until terminated by SMUD.

*The Campbell Soup Cogeneration Project (the "Campbell Soup Project").* The Campbell Soup Project, a 170 MW natural gas-fired cogeneration project, was completed and began commercial operations on December 4, 1997. Upgrades were implemented during 2000, which increased the plant's peaking capacity to 180 MW, well above its net demonstrated capacity of 159.8 MW. The plant is located in south Sacramento adjacent to the Capital Commerce Center (formerly the Campbell Soup Company food processing facility). The Campbell Soup Project was originally owned by SPA, a joint powers authority formed by SMUD and SFA. The SPA bonds were redeemed in July 2015. In late 2021, ownership of the Campbell Soup Project was transferred to SFA. The take-or-pay power purchase agreement between

SMUD and SFA relating to the Campbell Soup Project (the “Campbell Soup/McClellan PPA”) covers both the Campbell Soup Project and McClellan and will be in effect until terminated by SMUD. As part of the Zero Carbon Plan, SMUD is exploring retiring the Campbell Soup Project in 2025, contingent upon SMUD having sufficient other resources available and grid reliability can be maintained. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – 2030 Zero Carbon Plan.”

*The McClellan Gas Turbine (“McClellan”).* McClellan is a 72 MW natural gas-fired simple cycle combustion turbine generating plant at McClellan Business Park in Sacramento. This turbine is connected to SMUD’s electric system and is operated to meet SMUD’s peak-load requirements. McClellan is aligned for remote starting and operation with both black start and fast start capabilities. SMUD constructed the McClellan unit in 1986 as a 50 MW emergency power source for the McClellan Air Force Base. In 2001, following the Air Force Base closure, McClellan was upgraded to 72 MW and converted for SMUD use. In May 2007, SMUD transferred ownership of McClellan to SPA for more efficient operation. SPA did not issue debt related to McClellan. In late 2021, ownership of McClellan was transferred to SFA. SFA passes all costs of operations and maintenance through to SMUD in accordance with the terms of the Campbell Soup/McClellan PPA. In exchange for paying all costs related to McClellan, SMUD receives all of the power generated thereby on a take-or-pay basis. As part of the Zero Carbon Plan, SMUD is exploring retiring McClellan in 2024, contingent upon SMUD having sufficient other resources available and grid reliability can be maintained. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – 2030 Zero Carbon Plan.”

## **Fuel Supply**

**General.** SMUD is obligated to arrange for the purchase and delivery of natural gas to the Local Gas-Fired Plants. Management of the natural gas procurement and delivery process is a key focus of SMUD’s reliability and risk policies. Although the natural gas consumption of the power plants for SMUD’s load can vary significantly depending on the season, precipitation, and the market price of power and natural gas, the plants are forecasted to need, on average in 2023, a total of approximately 97,000 Decatherms per day (“Dth/day”) with a daily peak slightly more than 171,000 Dth/day of natural gas. SMUD has implemented a comprehensive strategy to secure a reliable and diversified fuel supply through a variety of agreements for the supply, transportation, and storage of natural gas.

**Supply.** SMUD hedges a significant portion of its expected gas needs to meet customer power requirements. This includes gas for the Local Gas-Fired Plants and for the Sutter Energy Center. See “Power Purchase Agreements – *Sutter Energy Center*”. This is accomplished through a combination of long-term supply arrangements and an exposure reduction program. The program consists of a primary rolling three-year exposure reduction component, a fuel hedging component on a rolling three-year basis, as well as supplemental fixed calendar year components reaching out up to five calendar years. Long-term arrangements may consist of a combination of physical commodity supply contracts, financial hedges, or options. Natural gas is purchased from a wide variety of producers and marketers at the northern and southern California borders, at Alberta, Canada and from the San Juan and the Rocky Mountain supply basins. SMUD has a number of both fixed-price supply agreements and financial hedging contracts to fix gas costs ranging from one month to several years in duration. Including fixed price biogas contracts as of March 31, 2023, these contracts have hedged the price of approximately 83%, 66% and 55% of SMUD’s forecasted natural gas requirements for 2023, 2024 and 2025, respectively. While the financial effects resulting from the unhedged portions of SMUD’s natural gas requirements are difficult to predict, SMUD’s financial results could be materially impacted.

SMUD has contracted with the Northern California Gas Authority No. 1 (“NCGA”) to purchase an approximate average of 8,700Dth/day over the remaining life of a contract expiring May 31, 2027 (the “NCGA Contract”). Under the NCGA contract, SMUD pays a discounted variable price for the fuel and



anticipates periodically fixing the effective price under separate hedging contracts. Currently the delivery point for the NCGA Contract is the AECO hub in Alberta. SMUD is using its long-term transport capacity to deliver the fuel to the local area plants. To increase delivery efficiencies, SMUD expects to exchange the gas delivered at the AECO hub under the NCGA Contract with gas to be delivered at the Malin receipt point beginning in November 2023.

SMUD has also contracted with the Northern California Energy Authority (“NCEA”) to purchase an approximate average of 22,000 Dth/day or to be converted to the approximate value in Megawatt-hours (“MWh”) of electricity over the remaining life of a contract expiring on May 31, 2049. The gas will be delivered to the SMUD system via the Malin receipt point on the PG&E backbone system. SMUD is using its long-term transport capacity to deliver the fuel to the local area plants. SMUD will pay a discounted variable price for the fuel and anticipates periodically fixing the effective price under separate hedging contracts.

***Renewable Natural Gas Supply.*** As a component of meeting SMUD’s RPS goals, SMUD procures renewable natural gas and digester gas as fuels to generate renewable electricity from the Cosumnes Power Plant. Descriptions of the renewable natural gas supply agreements are provided below.

In March 2009, SMUD entered into a 15-year contract (that qualifies as renewable energy) with Shell Energy North America (US), L.P. (“Shell Energy”) to purchase up to 6,000 Dth/day of renewable natural gas produced from a landfill project in Texas. SMUD began taking deliveries of this supply in April 2009. In March 2012, SMUD amended the contract with Shell Energy to increase the maximum volumes to 7,300 Dth/day and extended the term by 10 years to March 31, 2034. Currently, the delivery point is PG&E Topock and SMUD is using its long-term transport capacity to deliver it to the Cosumnes Power Plant. In 2016, SMUD entered into a 3-year contract with Shell Energy to sell back the entire volume of renewable natural gas purchased, less 500 Dth/day, to be sold into the vehicle transportation markets. Upon expiration of the initial 3-year contract for the sale of biogas to Shell Energy, SMUD extended the sell back of the entire volume of biogas twice for an additional 3 years with Element Markets (now Anew RNG, LLC), starting in 2020 and 2023.

SMUD contracted with Heartland Renewable Energy, LLC (“HRE”) in December 2009 for a 20-year supply of up to 7,000 Dth/day of renewable natural gas from a digester facility in Colorado. Deliveries began in March of 2014. Currently, the delivery point is Opal, Wyoming and SMUD uses its long-term transport capacity to deliver it to the Cosumnes Power Plant. HRE has not delivered volumes from the project to SMUD since December 2016 due to current litigation with Weld County, Colorado regarding odor and permit issues. EDF Renewables, the majority owner of HRE, notified SMUD in August of 2017 that it is in discussions with a short list of bidders to sell its interests in the facility. In June of 2020, the project was purchased and SMUD’s contract was assigned to the new owner, Platte River Biogas, LLC (“PRB”). SMUD and PRB terminated the contract in the third quarter of 2021.

In September 2011, SMUD and CVFA entered into a “Digester Gas Purchase and Sale Agreement” through which the Carson Project cleans nearly all of the digester gas received from Sacramento Regional County Sanitation District (“SRCSD”) and sells it to SMUD for delivery to the Cosumnes Power Plant. In return, SMUD pays all of the Carson Project’s costs in acquiring, cleaning and making the gas available to SMUD. The Digester Gas Purchase and Sale Agreement expires in September 2025. In late 2021, the Digester Gas Purchase and Sale Agreement, along with the Carson Project was transferred to SFA. The Carson Project is currently receiving, processing and selling up to 1,500 Dth/day with provisions for volume increases over time to 2,500 Dth/day. Digester gas, when designated for use in SMUD’s power plants, is counted as renewable generation towards SMUD’s RPS obligations.

In December 2011, SMUD entered into a 20-year agreement with EIF KC Landfill Gas LLC (“EIF”) to purchase up to 7,050 Dth/day of renewable natural gas produced from multiple landfill projects. SMUD began taking deliveries of this supply in January 2014. Currently the delivery point is Kern River – Opal and SMUD uses its long-term transport capacity to deliver it to the Cosumnes Power Plant. Renewable natural gas, when designated for use in SMUD’s power plants, is counted as renewable generation towards SMUD’s RPS obligations. In April 2022 SMUD entered into a transaction to sell the renewable natural gas purchased into the vehicle transportation markets. The transaction expires in March 2025. In 2023, SMUD entered into a 3-year contract with Anew Climate, LLC (“Anew”) to sell back the entire volume of renewable natural gas purchased, to be sold into the vehicle transportation markets.

AB 2196 is a law that defines the criteria by which existing and future renewable natural gas contracts will qualify for the State RPS program. The CEC adopted a RPS Eligibility Guidebook on April 30, 2013, which includes detailed rules for implementation of AB 2196. SMUD received an updated certificate of eligibility from the CEC in July 2014 for the Cosumnes Power Plant that included the quantities of renewable natural gas from all four contracts. The CEC adopted a revised RPS Eligibility Guidebook (Ninth Edition) on April 27, 2017. This latest guidebook did not change the RPS eligibility of any of the above SMUD renewable natural gas and digester gas contracts, but did simplify reporting requirements for these contracts. When fully delivering, these contracts represent roughly 30% of SMUD’s 2020 RPS requirement.

## **Gas Transmission**

SMUD has satisfied its obligation to deliver natural gas to its power plants by constructing a natural gas pipeline, purchasing an equity interest in two PG&E backbone gas transmission lines, and contracting for capacity on a number of existing interstate natural gas transmission lines.

***The Local Pipeline.*** SMUD constructed and owns a 20-inch, 50-mile natural gas pipeline in the greater Sacramento area (the “Local Pipeline”) that transports gas to all of the Local Gas-Fired Plants except McClellan. The Local Pipeline is interconnected with PG&E’s major State gas transmission lines 300 and 401. Additionally, it may be interconnected with one or more private gas gathering pipelines located in the area, a gas storage project and/or other FERC approved pipelines that may be built in the local area. In conjunction with the construction of the Cosumnes Power Plant, SMUD extended the Local Pipeline to the plant site. The 26-mile extension was completed in 2004. The extension is 24 inches in diameter and was designed to serve both the Cosumnes Power Plant and an additional second phase, if constructed.

***PG&E Backbone Gas Transmission Lines 300 and 401.*** In 1996, SMUD purchased an equity interest in PG&E’s backbone gas transmission lines 300 and 401 (referred to as the PG&E backbone). The total capacity acquired at that time was approximately 85,000 Dth/day and consisted of approximately 43,600 Dth/day of firm gas transport from the California–Oregon border at Malin, Oregon and 44,700 Dth/day from the California–Arizona border at Topock, Arizona, to SMUD’s interconnection with the PG&E backbone near Winters, California. SMUD was also entitled to a share of non-firm capacity, which was approximately 4,360 Dth/day; making the total capacity potentially available to SMUD almost 90,000 Dth/day. This purchase made SMUD a co-owner of the PG&E backbone gas transmission lines 300 and 401 and obligated SMUD to pay PG&E to operate the pipelines on its behalf subject to the terms of the purchase agreement and operating protocols. PG&E reduced operating pressures on Line 300 after PG&E suffered a natural gas explosion in San Bruno, CA in September of 2010. Operating pressures and capacity may also fluctuate due to regulatory and other changes. As of December 1, 2021, SMUD holds a total capacity of approximately 87,000 Dth/day, consisting of approximately 47,572 Dth/day of firm gas transport from the California–Oregon border at Malin, and 39,193 Dth/day of firm gas transport from the California–Arizona border at Topock, Arizona, to SMUD’s interconnection with the PG&E backbone near Winters, California.

SMUD also holds additional backbone capacity under tariff service for 5,000 Dth/day of northern path (Redwood) capacity. This contract expires in June 2023. Currently, SMUD is not planning to renew the contract upon expiration.

***Kern River Gas Transmission Company Long Term Agreement.*** SMUD has an agreement with Kern River Gas Transmission Company for 20,000 Dth/day of firm capacity through April 30, 2028. This capacity gives SMUD access to the Rocky Mountain supply basin at Opal, Wyoming, and connects to PG&E Line 300 (owned in part by SMUD) at Daggett, California.

***TransCanada Firm Transmission Service Agreements.*** SMUD has several agreements with TransCanada Corporation that give SMUD access to Canadian supply from the Alberta basin to Kingsgate, British Columbia and the California-Oregon border at Malin. SMUD has agreements for 22,101 Dth/day at the California-Oregon border at Malin via the Gas Transmission Northwest (“GTN”) pipeline that expires in 2023. SMUD has agreements for approximately 12,000 Dth/day from the Alberta ANG/Foothills pipeline, also expiring in 2023. In order to match the Canadian capacity with the takeaway capacity at Malin, SMUD had an agreement with Foothills Pipeline for approximately 10,000 Dth/day that expired on October 31, 2022. Currently, SMUD is not planning to renew the GTN or the Alberta ANG/Foothills agreements.

SMUD’s diversified portfolio of gas transmission arrangements allow for the purchase of gas from a variety of suppliers and locations, and the opportunity to capitalize on regional price differentials where possible. In addition, its ownership interest in the SMUD/PG&E backbone and Local Pipeline enhances the reliability of SMUD’s gas supply.

## **Gas Storage**

SMUD also employs gas storage as part of its overall fuel supply strategy. Gas storage is useful in helping to balance gas supply, mitigate market price volatility, and provide a reliable supply to meet peak day delivery requirements.

SMUD also has a contract with Lodi Gas Storage, LLC, which began in April 2023 and expires in March 2026, for capacity in the Lodi Gas Storage project located near Acampo in northern California. The contract provides SMUD with capacity levels of 1.0 million Dth of storage inventory, 10,000 Dth/day of injection rights and 20,000 Dth/day of withdrawal capacity.

SMUD has a second contract with Lodi Gas Storage, LLC, which began in April 2022 and expires in March 2024, for additional capacity in the Lodi Gas Storage project located near Acampo in northern California. The contract provides SMUD with capacity levels of 1.0 million Dth of storage inventory, 10,000 Dth/day of injection rights and 20,000 Dth/day of withdrawal capacity.

## **Power Purchase Agreements**

SMUD has a number of power purchase agreements to help meet its power requirements. Some of these agreements are described below.

***Western Area Power Administration.*** Effective January 1, 2005, SMUD entered into a 20-year contract with WAPA. SMUD has entered into a replacement agreement extending the term by 30 years for the period of January 1, 2025 through December 31, 2054. Power sold under this contract is generated by the Central Valley Project (“CVP”), a series of federal hydroelectric facilities in northern California operated by the United States Bureau of Reclamation. The contract provides WAPA’s CVP Base Resource customers (including SMUD) delivery of a percentage share of project generation in return for

reimbursement of an equivalent share of project costs. SMUD's CVP Base Resource share is roughly 25% of project generation and costs. This is expected to be approximately 318 MW of capacity and 661 GWh of energy in an average water year but will vary depending on precipitation. Energy available under the contract is determined by water releases required for water supply and flood control and is then shaped into higher value periods within other CVP operating constraints. More capacity and energy are typically available in spring and summer months and less in fall and winter.

SMUD also has a contract with WAPA expiring December 31, 2024, by which WAPA delivers an additional 200-300 MW per hour from projects located in the Pacific Northwest based on certain contractual parameters. In 2022, SMUD received 1,913 GWh of energy under this contract.

***Avangrid (formerly Iberdrola Renewables ("Iberdrola"))***. SMUD has a contract with Iberdrola that provides SMUD with bundled renewable energy (energy plus RECs). The contract agreement is for 126 GWh of wind power generated in Solano County, California. The SMUD Board approved an extension of the wind contract through June 30, 2025.

***Patua Project LLC***. In April 2010, SMUD entered into a power purchase agreement with Patua Project LLC ("Patua"), a subsidiary of Gradient Resources, for the delivery of up to 132 MW (expected to be 120 MW nominal power output) of renewable energy from geothermal generation being developed in north central Nevada, from a Gradient Resources project known as the Patua Project. The Patua Project was to have been developed in three phases. Since 2010, the agreed upon capacity has been reduced several times. In December 2013, Phase 1 of the project, which had been reduced to 30 MW, finally achieved commercial operation. In 2014, the parties concluded negotiations on the fourth amendment to the power purchase agreement with Patua, which reduced the total capacity down to 40 MW, extended the commercial operation date of Phase 2 to January 1, 2016, and allowed Patua to add up to 13 MW of solar photovoltaics to supplement geothermal production. In addition, this amendment shifted responsibility to Patua for a portion of the long-term transmission service agreements that have been underutilized due to the project not meeting its targets. In November 2015, the Patua Project was acquired by TL Power, LLC, a wholly owned subsidiary of Cyrq Energy, Inc. ("Cyrq"). In December 2015, Cyrq terminated Phase 2. Upon termination of Phase 2, the contractual right for Cyrq to add solar photovoltaics to supplement geothermal production was reduced to 10 MW. As a result of poor performance during the first year of operation, SMUD reduced its obligation to take power from 30 MW to 25 MW. Performance continued to lag in 2015 and 2016 and SMUD further reduced its obligation to take power from 25 MW to 19 MW.

***Renewable Energy Feed-In Tariff***. In September 2009, SMUD's Board authorized a feed-in tariff program for the purchase of renewable energy from local renewable energy projects connected to SMUD's distribution system. SMUD's Board authorized connection of up to 100 MW under the feed-in tariff which included standard payment rates and standard purchase terms for power. The feed-in tariff program became effective on January 1, 2010. Under the feed-in tariff, SMUD has executed 20-year term power purchase agreements for solar projects totaling 98.5 MW. Construction and start-up were completed on all projects between 2010 and 2012.

***CalEnergy LLC***. In August 2014, SMUD entered into a 22-year power purchase agreement with CalEnergy LLC for the purchase of 30 MWs per year of renewable energy from its Salton Sea geothermal facilities. As of July 1, 2017, SMUD began receiving up to 10 MWs from the CalEnergy portfolio, which escalated to the full 30 MWs on May 1, 2020.

***Rancho Seco Solar***. In October 2015, SMUD entered into a 20-year power purchase agreement with Rancho Seco Solar LLC for the purchase of energy from a 10.88 MW solar PV project sited on SMUD's property at the closed Rancho Seco Nuclear Generating Station. Commercial operation was achieved in August of 2016. Rancho Seco Solar LLC leased the property from SMUD under a land lease

agreement. The output of this project directly serves two large commercial customers that executed agreements with SMUD for retail supply of solar power.

In May 2019, SMUD entered into a 30-year power purchase agreement for an additional 160 MW solar PV project with Rancho Seco Solar II, LLC. The project is located on SMUD-owned property at the closed Rancho Seco Nuclear Generating Station, adjacent to the existing 10.88 MW solar PV project. Construction began in 2019, and the project became commercially operable in February 2021.

**Grady Wind Energy.** In October 2015, SMUD entered into a 25-year power purchase agreement with Grady Wind Energy LLC (“Grady”) for the purchase of energy from a 200 MW wind project located in New Mexico (the “Grady Project”). The Grady Project began commercial operations on August 5, 2019. Energy from the Grady Project is delivered to CAISO. SMUD purchases 100% of the Grady Project output which includes energy, renewable energy credits, and capacity attributes. SMUD and Grady had a short-term (6-month) agreement spanning the winter 2021-spring 2022 season wherein Grady has the option to pay SMUD to curtail up to 100 MW. This agreement does not affect the remaining term of the agreement.

**Great Valley Solar 2, LLC.** In January 2017, SMUD entered into a 20-year power purchase agreement with Great Valley Solar 2, LLC for the purchase of energy from a 60 MW solar PV project located in Fresno County, California. The project’s commercial operation date was December 28, 2017.

**ARP-Loyalton Cogen LLC.** On September 14, 2016, Senate Bill 859 (“SB 859”) was signed into law. Under SB 859, a POU must procure its proportionate share of 125 MWs of renewable energy from biomass plants burning high hazard forest fuels, subject to terms of at least five years. Seven POUs (SMUD, MID, Turlock Irrigation District (“TID”), Anaheim Public Utilities, Imperial Irrigation District, Los Angeles Department of Water & Power and Riverside Public Utilities, collectively described herein as the “ARP-Loyalton POUs”) jointly solicited proposals for up to 29 MW of contract capacity for renewable energy to meet the requirements of SB 859. In January 2018, SMUD entered into a 5-year power purchase agreement with ARP-Loyalton Cogen LLC to fulfill 18 MWs of the required 29 MWs with SMUD’s share being just over 23 percent (the “ARP-Loyalton PPA”). See “—Roseburg Forest Product Co.” below for a discussion of the remaining SB 859 capacity. The contract became effective on April 1, 2018. On February 18, 2020, ARP-Loyalton Cogen LLC filed for Chapter 11 bankruptcy and stopped producing and selling energy from the biomass plant. On May 7, 2020, the bankruptcy court approved the sale of the Loyalton facility to Sierra Valley Enterprises, LLC (“SVE”). SVE initially expressed interest in bringing the facility back into service; however, the bankruptcy trustee requested repeated extension of the deadline for SVE to accept or reject the ARP-Loyalton PPA. The latest deadline was April 19, 2023, the date of expiration of the ARP-Loyalton PPA term. As SVE did not resume operations before the end of the ARP-Loyalton PPA term, the ARP-Loyalton POUs have negotiated a settlement agreement with the bankruptcy trustee (the “ARP-Loyalton Settlement Agreement”). The ARP-Loyalton Settlement Agreement defines funds from the performance security that the ARP-Loyalton POUs will keep to cover legal and administrative fees, along with a contingency amount to cover potential risk of future damages. Since the ARP-Loyalton POUs entered into a 5-year agreement to procure compliant biomass and provided SVE the opportunity to accept the ARP-Loyalton PPA and restart operations, the ARP-Loyalton POUs consider their statutory obligations to have been fulfilled.

**Roseburg Forest Products Co.** For the remaining SB 859 biomass obligation of 11 MW, SMUD and the other ARP-Loyalton POUs have entered into a five-year power purchase agreement with Roseburg Forest Products Co. SMUD’s share of the contract capacity is 2.5795 MW, and the plant began operating under the contract on February 26, 2021.

**Sutter Energy Center.** SMUD entered into an initial two-year contract (with a third-year exercisable option) with Calpine Energy Services, L.P. (“Calpine”) for the ability to schedule up to 258

MWs of energy from Sutter Energy Center. The Sutter Energy Center is a natural gas-fired, combined-cycle facility located in Yuba City, California. The initial contract became effective on April 1, 2018. SMUD exercised its option to extend the contract, which expired November 1, 2020. SMUD entered into a new contract with Calpine for the same 258 MWs of energy that became effective January 1, 2021, and had an original expiration date of January 1, 2024. In December 2021, SMUD extended this contract through December 31, 2026.

***Drew Solar, LLC.*** In June 2018, SMUD entered into a 30-year power purchase agreement with Drew Solar, LLC for the purchase of energy from a 100 MW solar PV project located in Imperial County, California. The project's scheduled commercial operation date was set to be December 31, 2021. The commercial operation date was delayed due to Force Majeure claims surrounding the COVID pandemic and supply chain constraints caused by changes in Federal regulatory requirements. The project began commercially operating on November 3, 2022.

***Wildflower Solar.*** In October 2018, SMUD entered into a 25-year power purchase agreement with Wildflower Solar I, LLC, for the purchase of energy, capacity, and RECs from a 13 MW solar PV project located in Rio Linda, California. The project began commercially operating on December 18, 2020.

***Coyote Creek (Formerly Sacramento Valley Energy Center, LLC.)*** In August 2021, SMUD entered into a 30-year power purchase agreement with Sacramento Valley Energy Center, LLC for the purchase of energy from a 200 MW solar PV and 100 MW four-hour Battery Energy Storage System ("BESS") capacity project located in Sacramento County, California. The project's commercial operation date was expected to be December 31, 2023. The scheduled commercial operation date has been delayed to 2026 due to ongoing development and permitting delays.

***SloughHouse Solar, LLC.*** In September 2021, SMUD entered into a 30-year power purchase agreement with SloughHouse Solar, LLC for the purchase of energy from a 50 MW solar PV project located in Sacramento County, California. The project's commercial operation date was originally expected to be December 31, 2023, but the commercial operation date has been delayed to 2026 due to ongoing development and permitting delays.

***Country Acres Solar.*** In December 2021, SMUD issued a Request for Offers ("RFO") seeking qualified Power Purchase Agreement offers for a utility scale PV with BESS project under development which will interconnect to SMUD's North Area transmission system. The project site is located on over 1,000 acres in Placer County near the city of Roseville. SMUD selected a developer for the power purchase agreement, which is currently expected to be in place by the third quarter of 2023. Development efforts are underway with an expected commercial operation date in late 2025 to early 2026.

***Geysers Power Company, LLC.*** In March 2021, SMUD executed a 10-year power purchase agreement with Geysers Power Company, LLC for 100 MW of capacity from the Geysers geothermal energy plant located in Lake and Sonoma Counties, California. SMUD started to receive deliveries on January 1, 2023.

## **Transmission Service Agreements**

***TANC California-Oregon Transmission Project.*** The 340-mile COTP is one part of a three 500-kV line coordinated system known as the California-Oregon Intertie ("COI"). The COTP is allocated one-third of the 4,800 MW capability of the COI system (see related agreements below). TANC is entitled to use 1,390 MW and is obligated to pay approximately 80% of the operating costs of the COTP. SMUD is a member of TANC and a party to Project Agreement No. 3 ("PA3"), under which it is entitled to 378 MW and obligated to pay on an unconditional take-or-pay basis about 27.5% of TANC's COTP debt service and

operations costs, subject to a “step-up” obligation of up to 25% of its entitlement share upon the unremedied default of another TANC member-participant. In 2009, SMUD entered into a long-term layoff agreement with certain members that increased SMUD’s entitlement by 35 MW. In 2014, SMUD entered into another long-term layoff agreement with certain other members that increased SMUD’s COTP entitlements by 128 MW and amended the 2009 layoff agreement that returned 13 MW to a member. As of December 31, 2018, SMUD was entitled to approximately 528 MW of TANC’s transfer capability for imports and 405 MW for exports, and is obligated to pay approximately 38.6% of TANC’s COTP debt service and operations costs. SMUD’s payments under this contract, like SMUD’s payments under its other power purchase and transmission service agreements, are treated as “Maintenance and Operation Costs” or “Energy Payments” under the resolutions securing the Senior Bonds and Subordinated Bonds (each as defined under the caption “CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS” below). SMUD relies on its COTP rights to purchase power, access contingency reserves through the Western Power Pool, and obtain renewable resources to supplement its own resources to serve its load. TANC maintains its own property/casualty insurance program. TANC’s budget for COTP costs, support services and advocacy expenses is about \$45.4 million for 2023. SMUD’s obligation of the TANC budget is about \$17.4 million for 2023.

***TANC Tesla-Midway Transmission Service.*** TANC has a long-term contract with PG&E to provide TANC with 300 MW of transmission service between PG&E’s Midway Substation and the electric systems of the TANC Members (the “Tesla-Midway Service”). SMUD’s share of the Tesla-Midway Service had been 46 MW. As part of the 2009 long-term layoff agreement, SMUD acquired an additional 2 MW of South-of Tesla Principles (“SOTP”) transmission rights for 15 years starting February, 2009 from another TANC member, bringing SMUD’s share of the Tesla-Midway Service to 48 MW.

***Bonneville Power Administration.*** In 2009, SMUD entered into a transmission service agreement with the Bonneville Power Administration (“BPA”) for 60 MW of firm point-to-point transmission service from BPA’s Hilltop substation in north eastern California to the Malin substation at the California-Oregon border for the purpose of transmitting power under SMUD’s power purchase agreement with Gradient Resources for Phase 1 of the Patua geothermal project over BPA’s 230kV transmission lines. In early 2013, in accordance with BPA’s transmission tariff, the transmission service was split into two 30 MW services and deferred as appropriate to better fit the timing of expected commercial operation of Phase 1 and Phase 2 of the Patua Project. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – Patua Project LLC.” SMUD submitted another request for the 30 MW of transmission procured for Phase 2 of the Patua Project to split the service into a 10 MW and a 20 MW service, with the 10 MW of service deferred and timed with the originally expected commercial operation date of Phase 2 of the Patua Project. With the termination of Phase 2 of the Patua Project and SMUD’s reduced obligation due to the poor performance of Phase 1 of the Patua Project, much of the transmission reserved for it will no longer be needed. BPA does not have a provision in its transmission tariff for early termination of transmission service. However, the power purchase agreement with Patua requires Patua to cover unused transmission that SMUD has procured for the Patua purchases. On January 1, 2020, SMUD’s transmission rights with BPA were reduced to 19 MW. This now aligns with SMUD’s PacifiCorp transmission rights of 19 MW described in the immediately following paragraph.

***PacifiCorp.*** In 2009, SMUD entered into a transmission service agreement with PacifiCorp for 60 MW of firm point-to-point transmission service across PacifiCorp’s high voltage step-up transformer at the Malin substation at the California-Oregon border for the purpose of transmitting power under SMUD’s power purchase agreement with Gradient Resources for Phase 1 of the Patua Project. In early 2013, in accordance with PacifiCorp’s transmission tariff, the commencement of the 60 MW of transmission service was deferred to fit the timing of first deliveries expected from the 30 MW of Phase 1 of the Patua Project. In 2013, SMUD terminated the 60 MW of transmission service and requested two new transmission services of 30 MW each, with service start dates timed to better fit with the expected start dates of Phase 1

and Phase 2 of the Patua Project. With the reduction in expected output of the Patua Project, SMUD terminated the second 30 MW transmission agreement, and replaced it with a 10 MW transmission service agreement for Phase 2 of the Patua Project. With the termination of Phase 2 of the Patua Project, SMUD terminated the 10 MW Pacificorp transmission service agreement and as a result of the reduced obligation to take power from the Patua Project, SMUD has reduced its remaining Pacificorp transmission service from 30 MW to 19 MW.

***Western Area Power Administration.*** SMUD does not have a direct interconnection of its power system to the COTP. To receive power deliveries that use its COTP rights, SMUD has a long-term transmission service agreement with WAPA for transmission of 342 MW of power from the COTP line (received at WAPA's Tracy or Olinda substations) to SMUD's system. In May of 2011, WAPA completed the Sacramento Voltage Support Transmission Project. Completion of this project has given SMUD an additional 165 MW of transmission service rights on WAPA's system from the COTP at the Olinda Substation to SMUD's system at the Elverta Substation.

## **Projected Resources**

The following tables titled "Projected Requirements and Resources to Meet Load Requirements Energy Requirements and Resources" (the "Energy Table") and "Capacity Requirements and Resources Net Capacity – Megawatts" (the "Capacity Table") describe SMUD's contracted commitments and owned resources available to meet its forecasted load requirements through the year 2032. Resources are shown on an annualized basis with market purchases netted against surplus sales to arrive at a single net position for each year. Because SMUD's available resources do not exactly match its actual load requirements on an hourly basis, there are times during a year when resources available will either exceed or be insufficient to meet SMUD's needs. Expected actual capacity values are included in the tables. These values may differ from measured net demonstrated capacity values of the Local Area Gas-Fired Plants. The table below also includes the impact energy efficiency has on resource requirements as discussed below under "Demand Side Management Programs." See "BUSINESS STRATEGY" and "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants.*"

Resources listed in both the Energy Table and the Capacity Table are listed as either renewable or non-renewable. Generally, SMUD follows the CEC guidelines for eligibility requirements. Some of SMUD's renewable resources listed include solar, wind, geothermal, small hydroelectric facilities with a capacity of 30 MW or less, and biomass (representing generation from a fuel comprised of agricultural wastes and residues, landscape and tree trimmings, wood and wood waste).

As in any forecast, assumptions are made. In both the Energy Table and the Capacity Table the WAPA and UARP forecasts assume average water conditions throughout the period. On the capacity table, WAPA and Cosumnes Power Plant renewable capacity is estimated based on the ratio of renewable energy to total WAPA or Cosumnes Power Plant energy. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Hydroelectric.*"

The Uncommitted Purchases (Sales) on the tables represent either anticipated future needs or surpluses. Future needs are met well in advance of delivery. They also include both renewable and non-renewable resources.

The Transmission Losses represent reductions in the amount of energy or capacity from the location it was purchased to the point of entering SMUD's electrical system. This amount reduces the Total Resources available to meet the Total Projected Energy Requirements of the electrical system.



## **Demand Side Management Programs**

SMUD's demand-side management initiatives represent an integral element of its total resource portfolio, and are organized into two major components: energy efficiency and load management programs. Energy efficiency offerings include a wide variety of programs and services to customers to retrofit or upgrade existing equipment and fixtures and to install new energy efficiency measures in existing and new construction facilities. Load management allows SMUD to reduce the load on the electric system by cycling residential air conditioning, and calling upon commercial/industrial customers to curtail energy usage when energy is constrained during the summer or system emergencies. Load management programs are projected to allow SMUD to shed approximately 60 MW of peak load in an emergency on a hot day, representing about 2% of SMUD's maximum system peak demand.

The customer "smart meter" system with 2-way communication capability provides information regarding customer usage patterns, which is expected to help SMUD tailor rate designs that provide customers with both the information and ability to manage their energy usage around high energy cost periods.

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**PROJECTED REQUIREMENTS AND RESOURCES TO MEET  
LOAD REQUIREMENTS<sup>(1)</sup>  
ENERGY REQUIREMENTS AND RESOURCES (GWh)**

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Renewable Resources</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP - Small Hydro <sup>(2)</sup>	115	93	92	94	94	95	94	94	94	95
Solano Wind	585	738	895	902	902	904	902	902	902	904
Cosumnes-Shell Landfill Gas and Digester Gas <sup>(3)</sup>	48	166	167	582	692	692	692	692	692	692
<b>Total</b>	<b>748</b>	<b>996</b>	<b>1,154</b>	<b>1,578</b>	<b>1,688</b>	<b>1,691</b>	<b>1,688</b>	<b>1,688</b>	<b>1,688</b>	<b>1,691</b>
<u>Purchases</u>										
Western (WAPA) – Small Hydro <sup>(2)</sup>	13	15	15	15	15	15	15	15	15	15
Grady – Wind	933	900	897	897	897	900	897	897	897	900
Avangrid (Iberdrola) (PPM) - Wind	97	98	45	0	0	0	0	0	0	0
Patua (Gradient/Vulcan) – Geothermal	140	147	147	147	147	147	147	147	141	147
Geysers – Geothermal	876	878	876	876	876	878	876	876	876	878
Cal Energy – Geothermal	218	224	223	223	223	224	223	223	223	224
Great Valley SolarShares	167	170	171	171	169	169	169	166	166	167
Rancho Seco PV2	261	332	330	328	327	325	323	322	320	319
Rancho Seco PV	21	22	22	22	22	22	22	22	22	22
Feed-in-Tariff Photovoltaic – Solar	205	209	208	207	206	205	204	203	202	60
Navajo Drew (NTUA) Solar	299	301	298	297	285	276	273	264	271	237
Sloughhouse (Kings Country)	0	0	0	131	124	124	123	122	122	121
Wildflower Solar	31	31	31	31	33	32	33	31	32	32
CoyoteCreek (SVEC) Solar	0	0	0	519	505	502	500	497	495	492
Country Acres	0	0	0	710	706	703	699	696	692	689
Other Long-Term Contracts	145	150	140	29	8	8	6	6	6	6
Future Renewables	0	0	0	0	1,044	1,989	3,351	4,206	4,537	5,870
<b>Total</b>	<b>3,404</b>	<b>3,477</b>	<b>3,403</b>	<b>4,602</b>	<b>5,587</b>	<b>6,521</b>	<b>7,861</b>	<b>8,693</b>	<b>9,018</b>	<b>10,179</b>
<b>Non-Renewable</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP – Large Hydro <sup>(2)</sup>	2,561	1,614	1,627	1,647	1,618	1,625	1,635	1,625	1,617	1,626
Cosumnes Power Plant	3,428	4,173	4,187	3,685	2,511	1,792	675	530	528	525
Procter & Gamble Project	786	859	809	831	123	43	2	3	5	4
Carson Project	423	480	435	401	3	0	1	3	4	4
Campbell Soup Project	776	929	926	0	0	0	0	0	0	0
McClellan	24	61	0	0	0	0	0	0	0	0
<b>Total</b>	<b>7,998</b>	<b>8,116</b>	<b>7,984</b>	<b>6,565</b>	<b>4,256</b>	<b>3,460</b>	<b>2,313</b>	<b>2,160</b>	<b>2,155</b>	<b>2,160</b>
<u>Purchases</u>										
Western (WAPA) – Large Hydro <sup>(2)</sup>	410	482	485	485	485	485	485	485	485	485
Western (WAPA) Customers (Wheeling) <sup>(2)</sup>	25	37	38	38	38	38	38	38	38	38
Calpine Sutter	1,733	1,695	1,660	1,585	0	0	0	0	0	0
Committed Purchases	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>2,168</b>	<b>2,213</b>	<b>2,182</b>	<b>2,108</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>
<b>Total Resources</b>	<b>14,319</b>	<b>14,803</b>	<b>14,723</b>	<b>14,852</b>	<b>12,053</b>	<b>12,195</b>	<b>12,384</b>	<b>13,064</b>	<b>13,383</b>	<b>14,552</b>
Uncommitted Purchases / (Sales)	(3,382)	(3,773)	(3,606)	(3,599)	(1,067)	(920)	(921)	(1,374)	(1,471)	(2,351)
Transmission Losses (COTP/CVP)	(3)	(11)	(11)	(9)	(82)	(102)	(129)	(146)	(152)	(179)
<b>Total Projected Energy Requirements</b>	<b>10,933</b>	<b>11,018</b>	<b>11,106</b>	<b>11,244</b>	<b>10,903</b>	<b>11,174</b>	<b>11,335</b>	<b>11,544</b>	<b>11,759</b>	<b>12,021</b>
Energy Efficiency (EE)	16	30	44	57	69	79	89	99	108	117
Customer PV	63	121	181	238	793	844	894	943	988	1,033
Expected Electric Vehicle (EV) Charging	(34)	(75)	(143)	(228)	(324)	(430)	(545)	(674)	(803)	(947)
Electric Building (EB)	(12)	(28)	(50)	(77)	(108)	(146)	(201)	(267)	(339)	(412)
Battery Storage (Utility)	0	0	0	0	(121)	(142)	(188)	(225)	(232)	(266)
Battery Storage (BTM)	(0)	(0)	(1)	(1)	(7)	(11)	(17)	(23)	(31)	(38)
<b>Total Gross Energy Requirements before EE, PV and EV Charging</b>	<b>10,966</b>	<b>11,066</b>	<b>11,136</b>	<b>11,233</b>	<b>11,205</b>	<b>11,368</b>	<b>11,368</b>	<b>11,396</b>	<b>11,451</b>	<b>11,508</b>

(1) Totals may not sum due to rounding.

(2) [2023 based on current precipitation levels as of March 31, 2023. All other years assume average precipitation.]

(3) Includes a biomethane contract counted as renewable (see “POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Renewable Natural Gas Supply*”).

# CAPACITY REQUIREMENTS AND RESOURCES<sup>(1)</sup>

## NET CAPACITY – MEGAWATTS

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b><u>Load:</u></b>										
<b>Planned Peak</b>	<b>2,806</b>	<b>2,807</b>	<b>2,813</b>	<b>2,820</b>	<b>2,766</b>	<b>2,784</b>	<b>2,790</b>	<b>2,795</b>	<b>2,800</b>	<b>2,808</b>
Transmission Losses	28	28	28	28	28	28	28	28	28	28
Dispatchable Demand Resource	(71)	(71)	(71)	(71)	(165)	(183)	(202)	(165)	(165)	(165)
<b>Adjusted Peak</b>	<b>2,764</b>	<b>2,764</b>	<b>2,770</b>	<b>2,778</b>	<b>2,629</b>	<b>2,629</b>	<b>2,616</b>	<b>2,658</b>	<b>2,663</b>	<b>2,671</b>
Reserve Margin	415	415	416	417	394	394	392	399	399	401
<b>Adjusted Peak with Reserves</b>	<b>3,178</b>	<b>3,179</b>	<b>3,186</b>	<b>3,194</b>	<b>3,023</b>	<b>3,023</b>	<b>3,008</b>	<b>3,057</b>	<b>3,062</b>	<b>3,072</b>
<b><u>Renewable Resources</u></b>										
<b><u>District or Joint Powers Authority Owned:</u></b>										
UARP – Small Hydro	45	45	45	45	45	45	45	45	45	45
Solano Wind	94	97	158	202	204	194	197	198	201	201
Cosumnes – Shell Landfill Gas and Digester Gas <sup>(2)</sup>	7	7	26	94	120	120	120	120	120	120
<b>Total</b>	<b>146</b>	<b>148</b>	<b>229</b>	<b>341</b>	<b>369</b>	<b>359</b>	<b>362</b>	<b>363</b>	<b>365</b>	<b>366</b>
<b><u>Purchases</u></b>										
Western (WAPA) – Small Hydro	10	10	9	9	9	9	9	9	9	9
Grady – Wind	34	33	33	32	32	33	33	33	29	29
Avangrid (Iberdrola) (PPM) - Wind	22	21	--	--	--	--	--	--	--	--
Patua (Gradient/Vulcan) – Geothermal	12	12	12	12	12	12	12	12	12	12
CalEnergy– Geothermal	26	26	26	26	26	26	26	26	26	26
Geysers – Geothermal	95	95	95	95	95	95	95	95	95	95
Great Value Solar Shares	40	35	33	14	14	15	16	15	14	13
Rancho Seco – PV1	3	3	3	0	1	2	1	1	1	1
Rancho Seco – PV2	50	66	61	16	23	26	19	17	14	11
Feed-in-Tariff Photovoltaic - Solar	40	35	31	7	10	13	6	8	5	5
Wildflower Solar	8	4	4	1	1	2	2	1	1	1
Navajo Solar	55	49	45	14	16	19	16	14	11	9
Sloughhouse Solar	--	--	--	14	15	17	15	14	13	12
CoyoteCreek Solar with Storage	--	--	--	154	147	152	147	145	143	141
CountryAcre with Storage	--	--	--	225	214	219	213	209	206	204
Stand-alone Storage	4	4	4	4	521	521	625	664	844	994
Future Renewables Solar, Wind	--	--	--	--	90	209	215	289	333	346
Future Firm Renewables (Geo)	--	--	--	--	--	12	125	125	125	185
Other Long-Term Contracts	18	18	17	2	2	2	2	2	2	2
<b>Total</b>	<b>414</b>	<b>410</b>	<b>371</b>	<b>625</b>	<b>1,228</b>	<b>1,383</b>	<b>1,576</b>	<b>1,678</b>	<b>1,881</b>	<b>2,093</b>
<b><u>Non-Renewable</u></b>										
<b><u>District or Joint Powers Authority Owned:</u></b>										
UARP – Large Hydro	640	640	640	640	640	640	640	640	640	640
Cosumnes Power Plant	563	563	544	476	450	450	450	450	450	450
Carson Project	103	103	103	103	100	100	100	100	100	100
Procter & Gamble Project	166	166	166	166	166	166	166	150	150	150
McClellan	72	72	--	--	--	--	--	--	--	--
Campbell Soup Project	170	170	170	--	--	--	--	--	--	--
<b>Total</b>	<b>1,714</b>	<b>1,714</b>	<b>1,623</b>	<b>1,385</b>	<b>1,356</b>	<b>1,356</b>	<b>1,356</b>	<b>1,340</b>	<b>1,340</b>	<b>1,340</b>
<b><u>Purchases</u></b>										
Western (WAPA) – Large Hydro	323	309	304	304	304	304	304	304	304	304
Western (WAPA) Customers (wheeling)	19	18	18	18	18	18	18	18	18	18
Sutter Energy Center	258	258	258	258	--	--	--	--	--	--
Firm Contract Reserves <sup>(3)</sup>	18	17	17	17	17	17	17	17	17	17
Committed Purchases	275	--	--	--	--	--	--	--	--	--
<b>Total</b>	<b>892</b>	<b>602</b>	<b>596</b>	<b>596</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>
<b>Total Variable Renewal Diversity Benefit/(Risk)</b>	<b>4</b>	<b>107</b>	<b>124</b>	<b>263</b>	<b>164</b>	<b>131</b>	<b>162</b>	<b>178</b>	<b>199</b>	<b>215</b>
Uncommitted Purchases / (Sales)	7	197	242	(16)	(432)	(544)	(787)	(840)	(1,062)	(1,281)
<b>Total Resources</b>	<b>3,178</b>	<b>3,179</b>	<b>3,186</b>	<b>3,194</b>	<b>3,023</b>	<b>3,023</b>	<b>3,008</b>	<b>3,057</b>	<b>3,062</b>	<b>3,072</b>

(1) [Based on information available as of March 31, 2023]. Totals may not sum due to rounding. [Capacity values for wind, solar, storage, and future variable renewable projects shown are based on resource effective load carrying capability (ELCC) modeling.]

(2) [The Cosumnes Power Plant is a 495 MW plant that includes 100 MW capacity attributable to a biogas contract counted as renewable (see “POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Renewable Natural Gas Supply*”) and 395 MW capacity from natural gas.]

(3) [SMUD assumes that for all firm system purchases, the suppliers will be planning 5% reserves.]

## Balancing Authority Area Agreements

**Background.** SMUD began operating as an independent control area, later termed a Balancing Authority, on June 18, 2002 within the WECC reliability organization's region. This reduced SMUD's exposure to the costs and reliability risks of the CAISO's markets. SMUD expanded its operational footprint beyond SMUD's service territory to include WAPA's electric system, including the MID, Roseville, and Redding service areas (on January 1, 2005) and the COTP (on December 1, 2005). As described further below, SMUD ceased to be the Balancing Authority on April 30, 2011, as BANC took SMUD's place as the Balancing Authority. SMUD remains the operator of the Balancing Authority through a contract with BANC. SMUD administers the contracts with WAPA and TANC to provide specified Balancing Authority-related and other services, and is compensated by WAPA and TANC for its added labor expense. TANC recovers such Balancing Authority services costs as a part of its annual operating budget from the COTP Participants and WAPA recovers its Balancing Authority services costs through its rates for power and transmission service. The agreement with WAPA, among other terms, establishes operating reserve obligations between the parties. WAPA in turn has agreements with electric systems connected to it to assure that such systems also operate reliably (i.e., MID, Roseville and Redding). As a result of the transition to BANC as the Balancing Authority, SMUD assigned or terminated its interconnection and operations agreements with other interconnecting Balancing Authority areas (i.e., CAISO, BPA and TID). BANC is now the party to these agreements as they primarily address only Balancing Authority matters required for compliance with the reliability standards issued by the North American Electric Reliability Corporation ("NERC"), such as emergency assistance arrangements. See also "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Western Energy Imbalance Market."

**Reliability Standards.** The Energy Policy Act of 2005 gave FERC authority to enforce reliability standards for the bulk electric system. In June 2007, these standards became mandatory for SMUD and BANC.

In 2022, SMUD and BANC underwent a combined NERC/WECC audit to evaluate compliance with applicable reliability standards. These audits occur every three years. At the conclusion of the audit, regulators determined that neither entity had any compliance violations related to the Operations and Planning or Critical Infrastructure Protection Standards. SMUD and BANC will undergo another NERC/WECC audit sometime in 2025.

**Balancing Authority of Northern California.** SMUD, MID, Redding and Roseville executed a Joint Exercise of Powers Agreement (the "BANC JPA Agreement") creating BANC on May 8, 2009. BANC became operational on May 1, 2011 as a Balancing Authority and replaced SMUD as the entity responsible for Balancing Authority-related reliability standards. Since that time, the Trinity Public Utilities District and the City of Shasta Lake have also become members of BANC. As provided in the BANC member agreement, liability for penalties associated with such Balancing Authority-related reliability standards are shared on a *pro rata* basis among the members of BANC. SMUD is the Balancing Authority operator under contract and performs Balancing Authority operational functions on behalf of BANC, much as it did when it was the Balancing Authority. The BANC JPA Agreement assigns cost responsibility based on member load within the BANC Balancing Authority, with SMUD representing approximately 70% of the total load.

## Power Pool and Other Agreements

**Western Power Pool Agreement.** The Western Power Pool ("WPP") is an agreement among over 30 utilities and public agencies in the western United States to coordinate contingency reserve sharing, referred to as the WPP Reserve Sharing Program ("RSP"). The RSP permits participants to rely on one

another in the event that any participant experiences a generating resource outage. While SMUD became an RSP participant in 2009, participation is limited to Balancing Authorities, which SMUD relinquished to BANC in 2011. Under the RSP, BANC and TID (also a WPP member) share their reserve amounts and when necessary may call upon WPP reserves using BANC member systems and unused COTP rights. The WPP RSP permits members to operate more efficiently by reducing the contingency reserves that they would otherwise need to have available if they could not rely on each other.

***TANC-SMUD OASIS Administration Agreement.*** SMUD entered into an agreement with TANC to provide OASIS services (transmission sales and scheduling related services in the BANC BA of TANC members' COTP rights) on September 29, 2005. SMUD is compensated for performing these services. TANC and SMUD entered into a letter agreement dated October 25, 2010 to clarify each party's role for regulatory reliability standards compliance responsibilities and take into account SMUD's increased efforts related to supporting TANC's compliance requirements. SMUD and TANC entered into an agreement to transition this service to the Western Area Power Administration, effective on May 1, 2023. Going forward SMUD will only have a minor role in receiving payments and distributing revenues to the TANC members.

### **Other Agreements with PG&E**

***Background.*** SMUD's electric system was originally purchased from PG&E in 1947. SMUD's service area is mostly surrounded by PG&E's service area and the two electric systems are interconnected at SMUD's Rancho Seco and Lake 230-kV substations.

***Interconnection Agreement.*** PG&E and SMUD executed a Replacement Interconnection Agreement ("RIA") which became effective on January 1, 2010. The RIA provides that SMUD and PG&E operate their interconnections reliably, plan their electric systems to meet their load requirements, and avoid or mitigate impacts they cause by certain electric system modifications. The new agreement has a termination date of December 31, 2024, subject to FERC approval.

***Generator Interconnection Agreements.*** SMUD signed a LGIA with CAISO and PG&E for the Solano 3 Wind Project, effective December 16, 2008, with a 50-year term. The Solano 2 Wind Project has interconnection rights granted through a LGIA, also with the CAISO and PG&E. The agreement became effective in January 2010 and has a term of 20 years. On June 3, 2021, SMUD entered into a LGIA with the CAISO and PG&E, for the planned 90.8 MW Solano 4 Wind project with a 10-year term and automatic renewal for successive one-year terms thereafter. On February 27, 2023, SMUD completed a combined LGIA amendment administrative process which combines the Solano 2, 3 & 4 projects into one Solano Wind Project. The original agreement conditions for the individual projects are carried forward with a new combined project maximum production limit of 320.8 MW at the point of interconnection at the Russell Substation.

Other generator interconnection agreements include a Small Generator Interconnection Agreement with PG&E for Slab Creek with a 22-year term which became effective on January 14, 2010, and a Small Generator Interconnection Agreement with PG&E for the Chili Bar Project with a 10-year term which became effective on June 2, 2021.

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## SELECTED OPERATING DATA

Selected operating data of SMUD for the four years ended December 31, 2019 through 2022, and for the three months ended March 31, 2023 and March 31, 2022 are presented in the following table.

### SMUD SELECTED OPERATING DATA CUSTOMERS, SALES, SOURCES OF ENERGY AND REVENUES

	Three Months Ended March 31,		Year Ended December 31,			
	2023	2022	2022	2021	2020	2019
<b>Customers at End of Period:</b>						
Residential .....	577,659	573,693	576,471	572,786	568,741	565,103
Commercial and industrial .....	69,503	69,531	69,512	69,426	68,628	68,203
Other .....	7,284	7,331	7,290	7,345	7,354	7,406
Total .....	654,446	650,555	653,273	649,557	644,723	640,712
<b>MWh Sales:</b>						
Residential .....	1,108,861	1,010,095	4,763,277	4,749,079	4,906,566	4,493,548
Commercial and industrial .....	1,234,611	1,313,519	5,805,052	5,649,474	5,453,120	5,616,920
Other .....	14,045	14,272	53,965	54,473	55,590	55,770
Total .....	2,357,517	2,337,886	10,622,294	10,453,026	10,415,276	10,166,238
Surplus power/out of area sales .....	989,530	551,317	2,493,651	2,774,907	2,259,991	1,878,205
Total .....	3,347,047	2,889,203	13,115,945	13,227,933	12,675,267	12,044,443
<b>Sources of Energy Sold MWh:</b>						
Generated by SMUD .....	1,683,465	1,297,158	4,368,126	6,776,244	6,414,380	7,143,944
Purchased or exchanged .....	1,773,658	1,679,188	9,162,576	6,884,003	6,691,279	5,324,217
Total .....	3,457,123	2,976,346	13,530,702	13,660,247	13,105,659	12,468,161
Less System losses and SMUD usage .....	106,194	87,143	414,757	432,314	430,392	423,718
Total .....	3,350,929	2,889,203	13,115,945	13,227,933	12,675,267	12,044,443
Gross System peak demand (kW) <sup>(1)</sup> .....	1,549,000	1,526,000	3,263,000	3,019,000	3,057,000	2,927,000
Average kWh sales per residential customer <sup>(2)</sup> .....	1,921	1,762	8,293	8,316	8,650	7,987
<b>Average Revenue per kWh Sold:</b>						
Residential <sup>(2)</sup> (cents) .....	14.52	14.34	16.73	16.20	15.27	14.90
Commercial & industrial <sup>(2)</sup> (cents) .....	13.91	12.11	13.97	13.95	13.17	12.71

<sup>(1)</sup> Peak system MW values are measured at the four SMUD interconnection points and exclude SMUD's generation losses. Historical values include the impacts of dispatchable, non-dispatchable, and energy efficiency program capacity savings.

<sup>(2)</sup> The average kWh sales per residential customer and the average revenue per kWh sold are calculated based upon billed and unbilled sales.

Source: SMUD

## SELECTED FINANCIAL DATA

### SMUD Financial Information

The following table presents selected financial data of SMUD. Under generally accepted accounting principles, data with respect to SMUD's component units, such as the Authorities, is included with that of SMUD. The following presents data for SMUD only and not its component units, such as the Authorities. SMUD's audited financial statements for the years ended December 31, 2022 and December 31, 2021 are included in APPENDIX B attached to this Official Statement. The following unaudited data for SMUD (excluding its component units) is drawn from SMUD's financial records that have been subjected to the auditing procedures applied in the audits of SMUD's and its component units financial statements for the years ended December 31, 2019 through 2022. The selected financial data for the periods ended March 31, 2023 and March 31, 2022 are derived from SMUD's unaudited financial records, which

have been prepared on the same basis as SMUD's data for the years ended December 31, 2019 through 2022. The selected financial data for the period ended March 31, 2023 are not necessarily indicative of the financial data to be expected for the entire year ending December 31, 2023.

**SMUD FINANCIAL DATA<sup>(1)</sup>**  
(thousands of dollars)

	Three Months Ended March 31,		Year Ended December 31,			
	2023	2022	2022	2021 (Restated)	2020	2019
<b>Summary of Income</b>						
Operating Revenues <sup>(2)</sup> .....	\$ 466,524	\$ 378,404	\$ 2,138,655	\$ 1,784,290	\$1,582,979	\$1,553,167
Operating Expenses .....	(489,270)	(376,017)	(2,102,849)	(1,464,069)	(1,397,845)	(1,412,199)
Operating Income (Loss) .....	(22,746)	2,387	35,806	320,221	185,134	140,968
Interest and Other Income (Expense) ..	32,593	10,777	124,704	108,788	63,014	(21,113)
Interest Expense .....	(18,608)	(19,294)	(74,702)	(81,692)	(80,699)	(66,185)
Change in Net Position .....	\$ (8,761)	\$ (6,130)	\$ 85,808	\$ 347,317	\$ 167,449	\$ 53,670
<b>Selected Statement of Net Position Information</b>						
Net Plant in Service .....	\$ 3,604,649	\$ 3,413,234	\$ 3,654,725	\$ 3,502,335	\$3,234,208	\$3,187,135
Construction Work in Progress .....	343,966	409,932	323,499	365,478	460,155	351,584
Electric Utility Plant – Net.....	\$ 3,948,615	\$ 3,823,166	\$ 3,978,224	\$ 3,867,813	\$3,694,363	\$3,538,719
Unrestricted Cash.....	\$ 554,360	\$ 536,534	\$ 591,410	\$ 569,001	\$ 662,155	\$ 451,800
Rate Stabilization Fund.....	\$ 151,118	\$ 193,608	\$ 156,016	\$ 188,992	\$ 168,726	\$ 143,669
Total Assets .....	\$ 6,297,170	\$ 6,032,532	\$ 6,421,666	\$ 6,096,865	\$5,826,449	\$5,429,137
Net Position .....	\$ 2,368,958	\$ 2,286,511	\$ 2,377,719	\$ 2,291,910	\$1,944,593	\$1,777,145
Long-Term Debt <sup>(3)</sup> .....	\$ 2,228,327	\$ 2,378,960	\$ 2,236,824	\$ 2,387,686	\$2,523,921	\$2,166,389
<b>Debt Service Coverage Ratios</b>						
Parity Debt Service Coverage Ratio ..			2.04x	2.59x	2.25x	2.11x
Parity and Subordinate Debt Service Coverage Ratio.....			1.94x	2.47x	2.14x	2.06x

<sup>(1)</sup> The financial statements of SMUD comprise financial information of SMUD along with its component units, CVFA, SPA, SCA, SFA, NCGA and NCEA. This table includes only financial information of SMUD excluding its component units. Net operating revenues and expenses and Electric Utility Plant and Capitalization of CVFA, SPA, SCA, SFA, NCGA and NCEA are not included in this table, although amounts paid to or received from the Authorities by SMUD are included.

<sup>(2)</sup> Operating Revenues reflect net transfers to (from) the Rate Stabilization Fund for each full year as follows:

2023 (\$4.9) million through March 31, 2023

2022 (\$33.0) million

2021 \$20.3 million

2020 \$25.1 million

2019 \$47.0 million

Transfers to the Rate Stabilization Fund reduce operating revenues in the year transferred; transfers from the Rate Stabilization Fund increase operating revenues. Transfers from the HGA balancing account in the Rate Stabilization Fund are automatic based on the amount of precipitation received. See "RATES AND CUSTOMER BASE – Rates and Charges" above.

<sup>(3)</sup> Long-Term Debt includes Long-Term Debt due within one year and unamortized premiums.

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## Financial Information of SMUD and the Authorities

The following table presents a summary of selected financial information for SMUD and the Authorities.

### SUMMARY OF FINANCIAL INFORMATION OF SMUD AND THE AUTHORITIES FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021 (thousands of dollars)

	Year Ended December 31, 2022			Year Ended December 31, 2021 (Restated)		
	SMUD	Authorities	Total <sup>(1)</sup>	SMUD	Authorities	Total <sup>(1)</sup>
<b>Summary of Income</b>						
Operating Revenues <sup>(2)</sup> .....	\$ 2,138,655	\$ 166,674	\$ 2,147,334	\$ 1,784,290	\$ 270,694	\$ 1,790,276
Operating Expenses .....	(2,102,849)	(120,798)	(2,065,652)	(1,464,069)	(250,980)	(1,450,341)
Operating Income .....	35,806	45,876	81,682	320,221	19,714	339,935
Interest and Other Income	124,704	1,871	90,044	108,788	712	108,114
Interest Expense.....	(74,702)	(26,482)	(101,184)	(81,692)	(27,608)	(109,300)
Change in Net Position.....	<u>\$ 85,808</u>	<u>\$ 21,265</u>	<u>\$ 70,542</u>	<u>\$ 347,317</u>	<u>\$ (7,182)</u>	<u>\$ 338,749</u>
<b>Selected Statement of Net Position Information</b>						
Net Plant in Service .....	\$3,654,725	\$ 285,346	\$3,653,281	\$3,502,335	\$ 307,755	\$3,523,243
Construction Work in Progress.....	323,499	24,259	347,758	365,478	1,819	367,297
Electric Utility Plant – Net ....	<u>\$3,978,224</u>	<u>\$ 309,605</u>	<u>\$4,001,039</u>	<u>\$3,867,813</u>	<u>\$ 309,574</u>	<u>\$3,890,540</u>
Unrestricted Cash .....	\$ 591,410	\$ 36,454	\$ 627,864	\$ 569,001	\$ 61,375	\$ 630,376
Rate Stabilization Fund ....	\$ 156,016	--	\$ 156,016	\$ 188,992	--	\$ 188,992
Total Assets .....	\$6,421,666	\$1,133,461	\$7,191,063	\$6,096,865	\$1,179,848	\$6,916,205
Net Position .....	\$2,377,719	\$ 271,836	\$2,366,803	\$2,291,910	\$ 286,890	\$2,296,261
Long-Term Debt <sup>(3)</sup> .....	\$2,236,824	\$ 787,215	\$3,024,039	\$2,387,686	\$ 826,171	\$3,213,857

<sup>(1)</sup> Financial information for SMUD and the SMUD JPAs (CVFA, SPA, SCA, SFA, NCGA and NCEA) include intercompany balances. The financial information reflects balances after the elimination of intercompany accounts including Authorities distributions to SMUD of \$36.5 million in 2022 and \$1.4 million in 2021.

<sup>(2)</sup> Operating Revenues reflect net transfers to (from) the Rate Stabilization Fund as follows:

2022 (\$33.0) million

2021: \$20.3 million

Transfers to the Rate Stabilization Fund reduce operating revenues in the year transferred; transfers from the Rate Stabilization Fund increase operating revenues. Transfers from the HGA balancing account in the Rate Stabilization Fund are automatic based on the amount of precipitation received. See "RATES AND CUSTOMER BASE – Rates and Charges" above.

<sup>(3)</sup> Long-Term Debt includes Long-Term Debt due within one year and unamortized premiums.

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## Management's Discussion of SMUD's Operating Results

**Three Months Ended March 31, 2023 (Unaudited).** For the three months ended March 31, 2023, SMUD reported a decrease in net position of \$8.8 million as compared to a decrease of \$6.1 million for the three months ended March 31, 2022.

Operating revenues were \$88.1 million higher than 2022. This was primarily due to higher sales of surplus power (\$47.1 million), sales to customers (\$29.0 million), and transfers from the rate stabilization fund (\$9.3 million).

Operating expenses were \$113.3 million higher than 2022. This was primarily due to higher purchased power expenses (\$42.7 million), amortization of pension and OPEB (\$19.5 million), transmission and distribution maintenance expenses (\$12.6 million), administrative and general expenses (\$11.5 million), depreciation expense (\$9.7 million), production expenses (\$4.1 million), production maintenance expenses (\$3.5 million), customer service and information expenses (\$3.3 million), public good expenses (\$2.6 million), and customer accounts expenses (\$2.0 million).

Non-Operating income was \$21.8 million higher than 2022. This was primarily due to a gain on land sale (\$14.3 million), higher interest income (\$6.0 million), and unrealized holding gains (\$2.6 million) offset by investment expenses (\$2 million).

Interest expense decreased \$0.7 million from 2022.

**Year Ended December 31, 2022.** For the year ended December 31, 2022, SMUD reported an increase in net position of \$85.8 million as compared to an increase of \$347.3 million for 2021.

Operating revenues were \$354.4 million higher than 2021. This was primarily due to higher sales to customers (\$130.7 million), sales of surplus gas (\$96.0 million), sales of surplus power (\$62.2 million), transfers from the RSF (\$24.3 million), customer fees (\$9.5 million), AB 32 revenue (\$4.9 million) and LCFS revenue (\$2.2 million), partially offset by lower gain on sale of carbon allowance futures (\$3.7 million) and transfers to the RSF (\$28.9 million).

Operating expenses were \$638.8 million higher than 2021. This was primarily due to higher purchased power expenses (\$369.6 million), amortization of pension and OPEB (\$126.9 million), production operating expenses (\$114.0 million), transmission and distribution maintenance expenses (\$23.3 million), depreciation expenses (\$8.9 million), transmission and distribution operating expenses (\$8.8 million), public good expenses (\$7.7 million), customer service and information expenses (\$4.5 million), and production maintenance expenses (\$2.8 million), partially offset by lower administrative and general expenses (\$30.4 million).

Non-Operating income increased by \$15.9 million primarily due to higher investment income (\$19.7 million), partially offset by unrealized holding losses (\$3.7 million), closeout of escrow account (\$2.8 million), higher fee based product costs (\$1.9 million), and loss on asset retirements (\$1.9 million).

Interest expense decreased \$7.0 million from 2021.

**Year Ended December 31, 2021.** For the year ended December 31, 2021, SMUD reported an increase in net position of \$347.3 million as compared to an increase of \$167.4 million for 2020.

Operating revenues were \$201.3 million higher than 2020. This was primarily due to higher sales to customers (\$70.1 million), sales of surplus gas (\$65.4 million), sales of surplus power (\$47.1 million),

transfers from the RSF (\$18.2 million), AB 32 revenue (\$17.9 million) and gain on sale of carbon allowance futures (\$3.1 million), partially offset by transfers to the RSF (\$13.4 million) and lower public good revenue (\$3.5 million).

Operating expenses were \$66.2 million higher than 2020. This was primarily due to higher production operating expenses (\$89.6 million), purchased power expenses (\$47.0 million), and depreciation expenses (\$37.8 million), partially offset by lower amortization of pension and OPEB (\$84.2 million), public good expenses (\$10.7 million), customer accounts expenses (\$6.8 million) and transmission and distribution maintenance expenses (\$5.5 million).

Non-Operating income increased by \$45.8 million primarily due to California Arrearage Payment Program funding (\$41.4 million), a settlement related to Rancho Seco damages (\$15.0 million), higher investment income (\$11.5 million), higher contributions in aid of construction (\$4.0 million), lower legal settlement costs (\$2.2 million), offset by dissolution of RBC CSCDA gas prepay contract (\$10.9 million), lower insurance proceeds (\$8.6 million), lower interest income (\$6.9 million), lower unrealized holding gains (\$4.0) and lower distributions from the JPAs (\$2.6 million).

Interest expense increased \$1.0 million from 2020.

**Regulatory Assets.** In accordance with Governmental Accounting Standards Board (“GASB”) No. 62, “Regulated Operations,” SMUD defers, as regulatory assets, certain types of expenditures. These assets are amortized and collected through future rates.

As of December 31, 2022, SMUD had a total of \$764.2 million recorded for regulatory assets. Regulatory assets associated with costs related to implementation of GASB No. 68, which requires SMUD to record a net pension liability was \$340.5 million and deferred outflows related to GASB No. 68 was \$86.6 million at December 31, 2022. Regulatory assets associated with costs related to implementation of GASB No. 75, which requires SMUD to record a net Other Post Employment Benefit (OPEB) liability was \$281.0 million and deferred outflows related to GASB No. 75 was \$19.2 million at December 31, 2022. Regulatory assets associated with Rancho Seco decommissioning costs totaled \$83.9 million at December 31, 2022. Nuclear fuel storage costs and non-radiological decommissioning costs have been collected in rates since 2009. For a complete description of these regulatory assets, see Note 8 (Regulatory Deferrals) to SMUD’s financial statements.

The Board has authorized the deferral of any charges or credits that result from the change in valuation of ineffective hedges that should be reported as Investment Revenue/Expense on the Statements of Revenues, Expenses and changes in net position. The Board’s resolution establishes that such charges or credits are not included in rates based on market value changes but are included in rates when the underlying transactions occur. Therefore, under GASB No. 62, “Regulated Operations,” any such changes are included in the Statement of Net Position as regulatory assets or liabilities. For a complete description of these derivative financial instruments, see Note 9 (Derivative Financial Instruments) to SMUD’s financial statements.

## **RANCHO SECO DECOMMISSIONING**

**Overview.** The 913 MW Rancho Seco Nuclear Power Plant (“Rancho Seco”) began Nuclear Regulatory Commission (“NRC”) licensed operations in 1974. In June 1989, the electorate of SMUD voted against allowing SMUD to continue to operate Rancho Seco as a nuclear generating facility, and the plant was shut down. In 1991, SMUD submitted a report (the “Financial Assurance Plan”) providing required financial assurance to the NRC that SMUD will have sufficient funds available to pay for the cost of decommissioning. On March 17, 1992, the NRC granted SMUD a change from an operating to a

possession-only license for Rancho Seco that relieved SMUD from compliance with a number of NRC regulations applicable to operating nuclear power plants. SMUD also filed a proposed decommissioning plan with the NRC (the “Decommissioning Plan”), which was approved in March 1995.

After the decommissioning efforts began, no suitable disposal option was available to SMUD for the Class B and Class C low level radioactive waste generated during the plant decommissioning. With the used nuclear fuel stored onsite requiring oversight staff, SMUD opted to store the Class B and Class C radioactive waste in an existing interim onsite storage building until a suitable disposal option was available. In November 2007, the possession-only license for Rancho Seco was amended to update the Decommissioning Plan to terminate the possession-only license for the Class B and Class C waste in two phases. Phase I of the decommissioning was completed at the end of 2008. Following verification of the site conditions, SMUD submitted a request to the NRC to reduce the licensed facility from 2,480 acres to the interim onsite storage building and about one acre surrounding it. The request was approved by the NRC in September 2009. Phase II of decommissioning included the approximately two-acre interim storage building containing the Class B and Class C radioactive waste and surrounding area. In September 2013, SMUD entered into a contract with the operator of the low-level radioactive waste disposal facility located in Andrews, Texas. Shipment of the Class B and Class C radioactive waste for disposal was completed in November 2014. SMUD conducted additional clean-up activities and radiological surveys, which were followed by NRC confirmatory surveys. The results of these surveys demonstrated unit dose criteria well below NRC release criteria, and the NRC approved the Phase II area for unrestricted use. On September 21, 2017, SMUD formally requested the termination of the possession-only license. On August 31, 2018, the NRC officially terminated SMUD’s possession-only license for the remaining Class B and Class C waste at Rancho Seco.

As part of the Decommissioning Plan, the nuclear fuel and Greater Than Class C (“GTCC”) radioactive waste is being stored in a dry storage facility (the Independent Spent Fuel Storage Installation or “ISFSI”) constructed by SMUD, adjacent to the former reactor facility. The NRC has separately licensed this facility. The DOE, under the Nuclear Waste Policy Act of 1982, is responsible for permanent disposal of used nuclear fuel and GTCC radioactive waste. SMUD has a contract with the DOE for the removal and disposal of this waste. The DOE was to have a waste repository operating by 1998, but has experienced significant and ongoing delays. The Nuclear Waste Policy Act designates Yucca Mountain in Nevada as the final and exclusive repository for the nation’s used nuclear fuel. The DOE discontinued the Yucca Mountain license review activities in 2010, but after a court ordered the NRC to resume its review in 2013, the NRC published its final safety evaluation report in 2015. The final safety report, and the final environmental impact statement, concluded that the proposed repository would be safe and environmentally sound for one million years.

Nevertheless, seeking alternatives to Yucca Mountain, the Blue-Ribbon Commission on America’s Nuclear Future delivered its final report in January 2012 with several recommendations. The Department of Energy (the “DOE”) responded to the recommendations by issuing a report in January 2013 (Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste). Key to both documents is a focus on used fuel from decommissioned sites including Rancho Seco. The DOE report accepts most of the Blue-Ribbon Commission recommendations, and contains timelines for fuel management options which proposed removing the fuel from Rancho Seco as early as 2021. However, any progress on the strategies proposed by the DOE is dependent on legislative action by Congress. With no legislative action taken to date, the 2021 projected date for fuel removal slips year-for-year. Therefore, SMUD cannot determine at this time when the DOE will fulfill its contractual obligations to remove the nuclear fuel and GTCC waste from the Rancho Seco facility. In the meantime, SMUD continues to incur costs of approximately \$5 to \$6 million per year for storage of used nuclear fuel at the ISFSI. SMUD has filed a series of successful lawsuits against the federal government for recovery of past spent fuel costs, with recoveries to date from the DOE in excess of \$104 million. SMUD plans to continue pursuing cost

recovery claims to ensure it is reimbursed for all such costs in the future. The ISFSI will be decommissioned, and its license terminated after the fuel and GTCC is removed.

***Financial Assurance Plan.*** In accordance with the Financial Assurance Plan, SMUD established and funded an external decommissioning trust fund currently held by Wells Fargo Bank (the “Decommissioning Trust Fund”). Pursuant to the Financial Assurance Plan, SMUD made the final deposit into the Decommissioning Trust Fund in 2008. Additional deposits are not expected but will be made if increased cost estimates or reduced fund interest earnings require it. In 2011, the NRC began requiring that SMUD demonstrate financial assurance for decommissioning the ISFSI as well as the former power facility, increasing the overall cost for decommissioning Rancho Seco. The estimated total cost for decommissioning the ISFSI was approximately \$6.5 million on December 31, 2022. The decommissioning cost estimate is required to be updated every three years. As of December 31, 2022, the balance of the Decommissioning Trust Fund was \$8.98 million, excluding unrealized gains and losses. Based on the current decommissioning cost estimate and the value of the fund, SMUD’s existing Decommissioning Trust Fund provides sufficient funds to complete decommissioning and terminate the ISFSI license.

In addition to these costs, SMUD also estimates that it would cost approximately \$13.1 million to restore the site to make it available for other SMUD uses with some major structures remaining intact. Site restoration is not a legal requirement. No site restoration is currently underway.

## **EMPLOYEE RELATIONS**

SMUD has approximately 2,335 employees, most of whom are covered by a civil service system. SMUD is a contracting member of the California Public Employees’ Retirement System (“PERS”). Approximately 50% of SMUD’s work-force is represented as to wages, hours and other terms and conditions of employment, by one of three recognized employee organizations, the International Brotherhood of Electrical Workers (“IBEW”) Local 1245, the Organization of SMUD Employees (“OSE”), and the SMUD Public Safety Officers’ Association (“PSOA”). The remaining 50% of SMUD’s work-force, which includes managers, professional, administrative, supervisory, confidential and security staff, is unrepresented.

SMUD negotiated a four-year Memoranda of Understanding (“MOU”) with IBEW and the OSE, effective January 1, 2022, through December 31, 2025. Both contracts contain a no-strike/no-lockout clause effective during the life of the agreements. SMUD has an MOU with PSOA effective through December 31, 2026. SMUD has experienced only one labor interruption, which occurred in January 1980 that lasted four days.

## **RETIREMENT BENEFITS AND POST-EMPLOYMENT MEDICAL BENEFITS**

### **Pension Plans**

SMUD participates in PERS, an agent multiple-employer public employee defined benefit pension plan. PERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. PERS acts as a common investment and administrative agent for participating public entities within the State. Benefit provisions and all other requirements are established by State statute and SMUD policies. The pension plan provides retirement benefits, survivor benefits, and death and disability benefits based upon employees’ years of credited service, age, and final compensation.

As of June 30, 2021, the last actuarial valuation date for SMUD’s plan within PERS, the market value of the SMUD plan assets was \$2.51 billion. The plan is 100.1% funded on a market value of assets

basis, an increase of 21.0% compared to the June 30, 2020 funded status based on the market value of assets.

As an employer, SMUD is required to contribute a percentage of payroll each year to PERS to fund SMUD's plan based on actuarial valuations performed by PERS. PERS collects the normal cost based on a percentage of payroll and the unfunded liability portion is based on a dollar amount. SMUD also makes partial contributions required of SMUD employees on their behalf and for their account. At the PERS fiscal year ended June 30, 2022, SMUD's required employer contribution rate for normal cost was 9.0% of payroll and the unfunded liability contribution was \$36.3 million. During 2022, SMUD contributed \$52.7 million to PERS (including SMUD's contributions to cover required employee contributions), and SMUD employees paid \$16.5 million for their share of the PERS contribution.

For the fiscal years ending June 30, 2023 and June 30, 2024, SMUD is required to contribute 8.9% and 9.6% of payroll for normal costs and \$22.4 million for fiscal year ending June 30, 2023 for the unfunded liability contribution. There is no estimated employer contribution to the unfunded liability for fiscal year ending June 30, 2024. Assuming no amendments to the plan and no liability gains or losses (which can have a significant impact), PERS has projected that SMUD will be required to contribute 9.5% of payroll to the plan for normal costs and no employer contribution for the unfunded liability for the fiscal year ending June 30, 2025, not including SMUD contributions to cover required employee contributions. The amount SMUD is required to contribute to PERS is expected to increase in the future. The actual amount of such increases will depend on a variety of factors, including but not limited to investment returns, actuarial methods and assumptions, experience and retirement benefit adjustments.

SMUD has the option to prepay an annual lump sum payment to PERS for the unfunded accrued liability portion only (not including SMUD contributions to cover required employee contributions). SMUD made an annual lump sum prepayment of \$35.1 million, and also voluntarily made an additional payment of \$56.3 million, for the unfunded accrued liability for the fiscal year ended June 30, 2022. SMUD also made an annual lump sum prepayment of \$19.5 million, and voluntarily made an additional payment of \$2.9 million for the unfunded accrued liability for the fiscal year ending June 30, 2023.

While SMUD has some ability to adjust the retirement benefits provided to its employees, PERS determines the actuarial methods and assumptions used with respect to assets administered by PERS (including the SMUD plan assets) and makes the investment decisions with respect to such assets. For a description of such actuarial methods and assumptions (including the smoothing conventions used by PERS when setting employer contribution rates) and investments, see the comprehensive annual financial report of PERS (SMUD's plan is part of the Public Employees' Retirement Fund of PERS) available on its website at [www.calpers.ca.gov](http://www.calpers.ca.gov). SMUD cannot guarantee the accuracy of such information and neither the comprehensive annual financial report of PERS nor any other information contained on the PERS website is incorporated by reference in or part of this Official Statement. Actuarial assessments are "forward-looking" information that reflect the judgment of the fiduciaries of the pension plans, and are based upon a variety of assumptions, one or more of which may prove to be inaccurate or be changed in the future. Actuarial assessments will change with the future experience of the pension plans.

GASB issued statement No. 68 "Accounting and Financial Reporting for Pensions – An Amendment of GASB Statement No. 27" ("GASB No. 68"). The primary objective of GASB No. 68 is to improve accounting and financial reporting by state and local governments for pensions. Under GASB No. 68, SMUD is required to report the net pension asset or net pension liability (i.e., the difference between the total pension liability and the pension plan's net position or market value of assets) in its Statement of Net Position. This standard requires shorter amortization periods for recognition of non-investment gains and losses and actuarial assumption changes, as well as for recognition of investment gains and losses. GASB No. 68 separates financial reporting from funding requirements for pension plans. The net pension

liability as of December 31, 2022 is \$235.5 million and the net pension asset as of December 31, 2021 is \$27.7 million.

SMUD provides its employees with two cash deferred compensation plans: one pursuant to Internal Revenue Code (“IRC”) Section 401(k) (the “401(k) Plan”) and one pursuant to IRC Section 457 (the “457 Plan” and collectively, the “Plans”). The Plans are contributory plans in which SMUD’s employees contribute the funds. Each of SMUD’s eligible full-time or permanent part-time employees may participate in either or both Plans, and amounts contributed by employees are vested immediately. Such funds are held by a trustee in trust for the employees upon retirement from SMUD service and, accordingly, are not subject to the general claims of SMUD’s creditors. SMUD makes annual contributions to the 401(k) Plan on behalf of certain employees pursuant to a memorandum of understanding with both of its collective bargaining units. SMUD matches non-represented employee contributions to the 401(k) Plan up to a set amount. SMUD also makes limited discretionary contributions to non-represented employees hired after January 1, 2013, which contributions fully vest after five years. Prior to 2022, SMUD did not match employee contributions, nor make contributions on behalf of its employees to the 457 Plan. Beginning in 2022, SMUD makes annual contributions to the 457 Plan on behalf of certain employees and matches employee contributions up to a set amount pursuant to a memorandum of understanding with one of its collective bargaining units. SMUD made contributions to both Plans of \$7.0 million in 2022 and to the 401(k) Plan of \$6.1 million in 2021. Participating employees made contributions into both Plans totaling \$32.4 million in 2022 and \$30.6 million in 2021.

### **Other Post-Employment Benefits**

SMUD provides post-employment healthcare benefits, in accordance with SMUD policy and negotiated agreements with employee representation groups in a single employer defined benefit plan, to all employees who retire from SMUD, and their dependents. SMUD also provides post-employment healthcare benefits to covered employees who are eligible for disability retirement. SMUD contributes the full cost of coverage for retirees hired before January 1, 1991, and a portion of the cost based on credited years of service for retirees hired after January 1, 1991. SMUD also contributes a portion of the costs of coverage for these retirees’ dependents. Retirees are required to contribute the portion that is not paid by SMUD. The benefits, benefit levels, retiree contributions and employer contributions are governed by SMUD and can be amended by SMUD through its personnel manual and union contracts.

SMUD’s post-employment health care benefits are funded through the PERS California Employers’ Retiree Benefit Trust (“CERBT”), an agent multiple-employer plan. The funding of a plan occurs when the following events take place: the employer makes payments of benefits directly to or on behalf of a retiree or beneficiary; the employer makes premium payments to an insurer; or the employer irrevocably transfers assets to a trust or other third party acting in the role of trustee, where the plan assets are dedicated to the sole purpose of the payments of the plan benefits, and creditors of the government do not have access to those assets.

SMUD has elected to contribute the normal costs to the CERBT but annually receive reimbursement for cash benefit payments from the CERBT. In 2023, SMUD’s contribution for the normal costs to CERBT is \$8.6 million. In 2022 and 2021, SMUD decided to forgo making a contribution for the normal costs to the CERBT because there was a net OPEB asset at December 31, 2021 and December 31, 2020. SMUD can elect to make additional contributions to the trust. During 2022 and 2021, SMUD made healthcare benefit contributions by paying actual medical costs of \$24.5 million and \$24.1 million, respectively. During 2022 and 2021, SMUD received a \$23.3 million reimbursement for cash benefit payments from the CERBT each year.

At June 30, 2022 and 2021, SMUD estimated that the actuarially determined accumulated post-employment benefit obligation was approximately \$381.7 and \$398.2 million, respectively. At June 30, 2022 and 2021, the plan was 97.9% and 113.1% funded, respectively.

SMUD's actuary uses PERS economic and other assumptions as the basis for the calculation of the post-employment benefit obligation. The actual accumulated post-employment benefit obligation will vary substantially if such PERS assumptions, such as interest rate and life expectancy, among others, prove to be inaccurate or different than SMUD's actual experience. Although SMUD believes that such assumptions and estimates are reasonable, no assurance can be given that any such assumptions will prove to be accurate, or that SMUD's actual accumulated post-employment benefit obligation will not materially exceed its estimates. Additional information is available in Note 15 (Other Postemployment Benefits) and "Required Supplementary Information" to SMUD's consolidated financial statements.

GASB previously issued SGAS No. 75 "Accounting and Financial Reporting for Postemployment Benefits Other than Pensions". The primary objective of GASB No. 75 is to improve accounting and financial reporting by state and local governments for post-employment benefits other than pensions ("OPEB"). Under GASB No. 75, SMUD is required to report the net OPEB asset or net OPEB liability (i.e., the difference between the total OPEB liability and the OPEB plan's net position or market value of assets) in its Statement of Net Position. This standard requires shorter amortization periods for recognition of non-investment gains and losses and actuarial assumption changes, as well as for recognition of investment gains and losses. The net OPEB liability as of December 31, 2022 is \$6.8 million and the net OPEB asset as of December 31, 2021 is \$57.5 million.

## **CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS**

### **Estimated Capital Requirements**

SMUD has a projected capital requirement of approximately \$2.70 billion for the period 2023 through 2027 as shown in the table below. Approximately 60% of this requirement is anticipated to be funded with internally generated funds and cash on hand.

Special projects include costs relating to construction of large substations and the potential construction of Solano Phase 4. The Estimated Capital Requirements table below includes \$207 million for Solano Phase 4. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – Solano 4 Project."

### **ESTIMATED CAPITAL REQUIREMENTS (Dollars in Thousands)**

	<b>Service Area and Other System Improvements Including Distribution System</b>	<b>Improvements to Existing Generation Plant</b>	<b>General Plant</b>	<b>Special Projects</b>	<b>Total Capital Requirements</b>
2023	\$150,334	\$57,763	\$78,675	\$207,427	\$494,199
2024	195,581	40,608	97,225	216,229	549,643
2025	247,528	100,303	107,766	94,651	550,248
2026	247,528	100,303	107,766	94,651	550,248
2027	247,528	100,303	107,766	94,651	550,248

## Outstanding Indebtedness

**General.** SMUD typically finances its capital requirements through the sale of revenue bonds, the sale of commercial paper, from draws on its Revolving Credit Facility (as defined below) and from internally generated funds. With the recent passage of the Inflation Reduction Act and the Infrastructure Investment and Jobs Act SMUD is monitoring and exploring new methods of financing, including those afforded under these two programs that provide not-for-profit public power utilities with direct federal incentive payments.

SMUD's Electric Revenue Bonds (the "Senior Bonds") are issued pursuant to Resolution No. 6649 (the "Senior Resolution") adopted in 1971, as amended and supplemented (the "Senior Resolution"). As of May 1, 2023, SMUD had Senior Bonds in the aggregate principal amount of \$1,841,715,000 outstanding. [If the plan of finance described in the forepart of this Official Statement is implemented in whole, Senior Bonds in the aggregate principal amount of \$[\_\_\_\_\_] are expected to be outstanding under the Senior Resolution.] See "PLAN OF FINANCE" in the forepart of this Official Statement. The Senior Bonds are payable solely from the Net Revenues of SMUD's Electric System. The Senior Bonds are subordinate in right of payment to the prior payment of "Maintenance and Operation Costs" and "Energy Payments" as defined in the Master Resolution, including payments by SMUD to TANC under PA3, payments by SMUD under power purchase agreements related to the Authorities and payments by SMUD to NCGA and NCEA under their respective gas supply contracts.

SMUD's Subordinated Electric Revenue Bonds (the "Subordinated Bonds") are issued pursuant to Resolution No. 85-11-1 of SMUD, adopted on November 7, 1985, as amended and supplemented (the "Subordinate Resolution"). As of May 1, 2023, SMUD had Subordinated Bonds in the aggregate principal amount of \$200,000,000 outstanding. [If the plan of finance described in the forepart of this Official Statement is implemented in whole, Subordinate Bonds in the aggregate principal amount of \$[\_\_\_\_\_] are expected to be outstanding under the Subordinate Resolution.] The Subordinated Bonds are payable solely from the Net Subordinated Revenues of SMUD's Electric System. The Subordinated Bonds are subordinate in right of payment to the prior payment of principal of and interest on the Senior Bonds.

SMUD issues commercial paper notes (the "Notes") from time to time. As of May 1, 2023, SMUD's Notes were outstanding in the aggregate principal amount of \$200,000,000. Currently, Notes in the aggregate principal amount of \$300,000,000 may be outstanding at any one time, but SMUD reserves the right to increase or decrease the aggregate principal amount of the Notes that may be outstanding at any one time in the future. The Notes are secured by letters of credit issued by commercial banks. The Notes (and SMUD's obligations to repay drawings under the letters of credit) are payable solely from available revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds. Drawings under the letters of credit, to the extent not repaid immediately from the proceeds of commercial paper or other available SMUD funds, are repayable with interest over a period of five years. The letters of credit currently expire in February and August of 2025. SMUD expects to pay \$200,000,000 of the outstanding principal amount of the Notes with proceeds of the [2023 Bonds] (as defined in the forepart of the Official Statement). See "PLAN OF FINANCE" in the forepart of the Official Statement.

SMUD also entered into a revolving credit agreement with a commercial bank and issued its taxable and tax-exempt revolving notes thereunder (collectively, the "Revolving Credit Facility") in February 2022. As of May 1, 2023, no principal was outstanding under the Revolving Credit Facility. Currently, the aggregate principal amount that can be outstanding under the Revolving Credit Facility at any one time is limited to \$100,000,000. However, SMUD reserves the right to increase or decrease the aggregate principal amount that can be outstanding at any one time under the Revolving Credit Facility in the future. SMUD's payment obligations under the Revolving Credit Facility are payable solely from available



revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds. The current term of the Revolving Credit Facility expires in February 2026.

***Joint Powers Authorities.*** SMUD has entered into long-term take-or-pay power purchase agreements with SFA relating to the Local Gas-Fired Plants. Under such agreements, SMUD has exclusive control of the dispatch of all five of the Local Gas-Fired Plants and takes all of the power produced by the Local Gas-Fired Plants. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants.*" The Authorities are each treated as component units of SMUD for accounting purposes. Only SFA has outstanding debt, which relates solely to the Cosumnes Power Plant and is payable solely from capacity payments made by SMUD under the related power purchase agreement. As of May 1, 2023, bonds issued by SFA to finance the Cosumnes Power Plant were outstanding in the aggregate principal amount of \$89,735,000. SMUD's payments under the power purchase agreements relating to the Local Gas-Fired Plants are payable from revenues of SMUD's Electric System prior to the payment of principal of and interest on the Senior Bonds and Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and Subordinate Resolution.

SMUD and Sacramento Municipal Utility District Financing Authority formed a joint powers authority called the Northern California Gas Authority No. 1 ("NCGA"). NCGA is treated as a component unit of SMUD for accounting purposes. NCGA issued \$757,055,000 in bonds in May 2007 for the purpose of paying Morgan Stanley Capital Group in advance for natural gas to be delivered to NCGA and then sold to SMUD pursuant to a long-term purchase contract. SMUD's obligation under the purchase contract is limited to payment for gas supplies delivered by NCGA. SMUD's payments under the purchase contract are payable from revenues of SMUD's Electric System prior to the payment of principal and interest on the Senior Bonds and the Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and the Subordinate Resolution. SMUD is not obligated to make any payments in respect of debt service on the NCGA bonds. As of May 1, 2023, related bonds in the aggregate principal amount of \$142,935,000 remain outstanding.

SMUD and Sacramento Municipal Utility District Financing Authority formed a joint powers authority called the Northern California Energy Authority ("NCEA"). NCEA is treated as a component unit of SMUD for accounting purposes. NCEA issued \$539,615,000 in bonds in December 2018 for the purpose of paying J. Aron & Company LLC in advance for natural gas or electricity to be delivered to NCEA and then sold to SMUD pursuant to a long-term purchase contract. SMUD's obligation under the purchase contract is limited to payment for gas or electricity supplies delivered by NCEA. SMUD's payments under the purchase contract are payable from revenues of SMUD's Electric System prior to the payment of principal and interest on the Senior Bonds and the Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and the Subordinate Resolution. SMUD is not obligated to make any payments in respect of debt service on the NCEA bonds. As of May 1, 2023, related bonds in the aggregate principal amount of \$539,615,000 remain outstanding.

***Interest Rate Swap Agreements.*** SMUD has two interest rate swap agreements relating to previously or currently outstanding Subordinated Bonds and two forward starting interest rate swap agreements relating to potential refunding bonds to be issued in the future, as shown in the following table. For more information, see Note 9 (Derivative Financial Instruments) to SMUD's consolidated financial statements.

Effective Date	Termination Date	SMUD Pays		SMUD Receives	Notional Amount (000's)	Counterparty
7/2/1997	7/1/2024	Floating	SIFMA	5.154%	\$38,165	J Aron & Company LLC
7/15/2003	8/15/2028	Fixed	2.894%	63% of 1M LIBOR	68,450	Morgan Stanley Capital Services, Inc.
07/12/2023	08/15/2041	Fixed	0.718%	70% of 1M LIBOR	132,020	Barclays Bank
07/12/2023	08/15/2033	Fixed	0.554%	70% of 1M LIBOR	75,680	Barclays Bank

The obligations of SMUD under the swap agreements are not secured by a pledge of revenues of SMUD's electric system or any other property of SMUD. SMUD does not currently have any collateral posting requirements with respect to the interest rate swap agreements, but SMUD may be required to post collateral under certain circumstances. [In connection with the plan of finance described in the forepart of this Official Statement, SMUD expects to terminate the swap with Barclays Bank with a notional amount of \$75,680,000 that would otherwise become effective on July 12, 2023]. See "PLAN OF FINANCE" in the forepart of this Official Statement.

**Build America Bonds Subsidy Payments.** SMUD's Electric Revenue Bonds, 2009 Series V (the "2009 Series V Bonds") and Electric Revenue Bonds, 2010 Series W (the "2010 Series W Bonds") were issued as "Build America Bonds" under the provisions of the American Recovery and Reinvestment Act of 2009. At the time the 2009 Series V Bonds and 2010 Series W Bonds were issued, SMUD expected to receive an annual cash subsidy payment from the United States Treasury equal to 35% of the interest payable on the 2009 Series V Bonds and the 2010 Series W Bonds. However, as a result of the federal budget process, many payments from the federal government, including Build America Bonds subsidy payments, have been reduced. Absent the federal budget reductions, the aggregate annual cash subsidy payable to SMUD with respect to the 2009 Series V Bonds and the 2010 Series W Bonds would be approximately \$9.8 million. With the current federal budget reductions, SMUD has typically been receiving aggregate annual cash subsidy payments with respect to the 2009 Series V Bonds and the 2010 Series W Bonds of approximately \$9.2 million. It is possible that future federal budget actions could further reduce, or eliminate entirely, the annual cash subsidy payments with respect to Build America Bonds, including the annual cash subsidy payments payable to SMUD with respect to the 2009 Series V Bonds and the 2010 Series W Bonds. SMUD cannot predict the likelihood of the further reduction or elimination of the Build America Bonds subsidy payments. A significant reduction or elimination of the cash subsidy payments payable to SMUD with respect to the 2009 Series V Bonds or the 2010 Series W Bonds could be material.

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**Debt Service Requirements.** The following table sets forth SMUD’s debt service requirements with respect to SMUD’s Senior Bonds and Subordinated Bonds.

**DEBT SERVICE REQUIREMENTS[TO BE UPDATED]<sup>(1)</sup>**

<b>Calendar Year</b>	<b>Senior Bonds Debt Service<sup>(2)</sup></b>	<b>Subordinated Bonds Debt Service<sup>(3)</sup></b>	<b>Total Debt Service</b>
2022	\$ 198,841,641	\$ 10,000,000	\$ 208,841,641
2023	208,076,945	10,861,111	218,938,056
2024	176,548,637	7,483,333	184,031,970
2025	177,270,712	8,833,333	186,104,045
2026	177,369,062	5,500,000	182,869,062
2027	177,458,312	6,000,000	183,458,312
2028	177,568,563	6,000,000	183,568,563
2029	126,192,937	6,000,000	132,192,937
2030	136,265,941	6,000,000	142,265,941
2031	141,875,082	6,000,000	147,875,082
2032	141,716,845	6,000,000	147,716,845
2033	141,576,102	6,000,000	147,576,102
2034	144,261,606	6,000,000	150,261,606
2035	144,110,773	6,000,000	150,110,773
2036	143,962,001	6,000,000	149,962,001
2037	83,681,613	6,000,000	89,681,613
2038	83,528,863	6,000,000	89,528,863
2039	80,375,800	6,000,000	86,375,800
2040	80,382,550	6,000,000	86,382,550
2041	85,735,800	6,000,000	91,735,800
2042	31,422,350	28,490,000	59,912,350
2043	31,214,150	28,490,300	59,704,450
2044	31,008,750	28,490,350	59,499,100
2045	30,799,950	28,494,550	59,294,500
2046	25,391,750	28,492,150	53,883,900
2047	25,392,000	28,492,700	53,884,700
2048	25,392,500	28,490,450	53,882,950
2049	25,390,750	28,489,800	53,880,550
2050	25,394,250	-	25,394,250
<b>Total</b>	<b>\$3,078,206,235</b>	<b>\$360,608,077</b>	<b>\$3,438,814,312</b>

(1) Does not include outstanding bonds issued by the Authorities for the Local Gas-Fired Plants. Does not include bonds issued by NCGA, NCEA or SMUD’s portion of bonds issued by TANC. Payments by SMUD which are used by the Authorities, NCGA, NCEA, and TANC to pay debt service on such bonds constitute either “Maintenance and Operation Costs” or “Energy Payments” under the Senior Resolution and the Subordinate Resolution.

(2) Includes debt service for the [ ] Bonds and excludes debt service for the [Refunded Bonds]. Debt service for all Senior Bonds other than the [ ] Bonds calculated as of December 31, 2022. Debt service for the [ ] Bonds calculated assuming the [ ] Bonds are issued on [ ]. Debt service is not reduced by the amount of any subsidy that SMUD currently expects to receive in connection with the 2009 Series V Bonds and 2010 Series W Bonds.

(3) [As of December 31, 2021. Based on an assumed interest rate of 3% per annum following (i) the initial scheduled Mandatory Purchase Date of October 17, 2023 for SMUD’s Subordinated Electric Revenue Bonds, 2019 Series A and (ii) the initial scheduled Mandatory Purchase Date of October 15, 2025 for SMUD’s Subordinated Electric Revenue Bonds, 2019 Series B.]

Note: Amounts may not add due to rounding.

## **INSURANCE**

SMUD maintains a comprehensive property/casualty insurance program designed to protect against catastrophic losses that would have an adverse effect on its financial position or operational capabilities. Insurance programs are continuously reviewed and modified when construction, operational exposures, or developments in the insurance industry so warrant. Long term relationships with a variety of insurers minimize SMUD's susceptibility to the effects of market cycles. SMUD budgets reserves to meet potential insurance deductibles and self-insured liability claims.

SMUD safeguards assets with all-risk property and boiler/machinery insurance with limits of \$800 million per occurrence for physical damage and business interruption combined. Various coverage sublimits and deductibles apply to losses arising from certain perils, such as business interruption, earthquake, or flood, respectively. Liability insurance is in effect to defend and indemnify SMUD against third party claims, including general, automobile and sudden and accidental pollution claims with policy limits of \$140 million, and wildfire coverage with policy limits of \$250 million, all of which include a variety of self-insured retentions.

Nuclear property and liability insurance policies are maintained in accordance with the NRC's requirements for decommissioned nuclear plants that maintain dry storage of spent fuel on-site. This includes \$100 million in first party property damage and decontamination, \$100 million for nuclear liability arising from accidents on-site, \$200 million for supplier's and transporter's nuclear liability, and \$300 million for nuclear worker liability. SMUD is exposed to possible retrospective assessments for nuclear property events occurring at other nuclear facilities in the United States capped at ten times SMUD's annual nuclear property premium (currently the maximum retrospective assessment is approximately \$1,000,000).

Other types of insurance include non-owned aircraft liability, workers' compensation, crime, cyber security, fidelity, fiduciary liability, directors' and officers' liability, professional errors and omissions, transportation, and builder's risk for major facilities under construction.

## **LEGAL PROCEEDINGS**

SMUD is a party to numerous actions arising out of the conduct of its business and affairs, some of which are discussed below. SMUD believes that any losses or adverse financial results it may suffer in these current actions, to the extent not covered by insurance, would not, in the aggregate, have an adverse material impact on SMUD, its business and affairs, the results of its operations, financial position or liquidity.

### **Environmental Litigation**

SMUD was one of many potentially responsible parties that had been named in a number of actions relating to environmental claims and/or complaints. SMUD has resolved these environmental claims and/or complaints and entered into settlement agreements and/or consent orders. These settlement agreements and consent orders have statutory reopener provisions which allow regulatory agencies to seek additional funds for environmental remediation under certain limited circumstances. While SMUD believes it is unlikely that any of the prior settlements or consent orders will be reopened, the possibility exists. If any of the settlements or consent orders were to be reopened, SMUD management does not believe that the outcome will have a material adverse impact on SMUD's financial position, liquidity or results of operations.

## **Claim for Accidental Death**

In February 2020, SMUD received a claim alleging an employee of a gutter company died after he accidentally came into contact with a SMUD electrical line during an installation. The claim is for approximately \$43 million. SMUD concluded the electrical lines at the site of the accident exceeded required clearances and there is no basis for the claim against SMUD. SMUD management believes that SMUD has no potential liability in this matter and that any costs ultimately borne by SMUD will not have a material adverse impact on SMUD's financial position, liquidity or results of operations.

## **Proposition 26 Lawsuit**

Two SMUD customers jointly filed a complaint against SMUD in October 2019, and subsequently one of the plaintiffs removed themselves from the complaint. The complaint states that SMUD violated Proposition 26 (see "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – Proposition 26" for a description of Proposition 26) when SMUD's Board on June 24, 2019 adopted rate increases for 2020 and 2021. The plaintiff contends the rate increases do not reflect SMUD's reasonable cost of service because they include a 9.2% scalar that SMUD applied to its TOD residential rate restructure in the 2017 rate process which SMUD's Board adopted at that time. Therefore, the plaintiff contends SMUD's 2020 and 2021 rates should be decreased by this scalar amount because the scalar exceeded SMUD's cost of service, and refunded to SMUD customers. Because SMUD has a strong evidentiary record supporting the Board's rate decisions in 2017 and 2019, and views the lawsuit as having little merit, SMUD anticipates the court will rule in SMUD's favor. The plaintiff has requested to amend the complaint, which has delayed the court's proceeding until the amended complaint is filed. While SMUD believes the court will rule in its favor, SMUD is unable to predict the outcome of the litigation or, if or to the extent SMUD ultimately is not successful in the litigation, what remedies against SMUD may be available. SMUD management believes that if SMUD is not successful in the litigation, and to the extent the outcome would have a material adverse impact on SMUD's financial position, liquidity, or results of operations, the Board would make appropriate rate modifications based on an evidentiary record consistent with guidance from a judicial decision in the case.

## **Other Litigation Matters**

Currently, SMUD is party to various claims, legal actions and complaints relating to its operations, including but not limited to: property damage and personal injury, contract disputes, torts, and employment matters. SMUD management believes that the ultimate resolution of these matters will not have a material adverse effect on SMUD's financial position, liquidity or results of operation.

## **FERC Administrative Proceedings**

SMUD is involved in a number of FERC administrative proceedings related to the operation of wholesale energy markets, regional transmission planning, gas transportation and NERC reliability standards. These proceedings generally fall into the following categories: (i) filings initiated by the CAISO (or other market participants) to adopt/modify the CAISO Tariff and/or establish market design and behavior rules; (ii) filings initiated by existing transmission owners (i.e., PG&E and the other IOUs) to pass-through costs to their existing wholesale transmission customers; (iii) filings initiated by FERC on market participants to establish market design and behavior rules or investigate market behavior by certain market participants; (iv) filings initiated by transmission owners under their transmission owner tariffs to establish a regional transmission planning process; (v) filings initiated by providers of firm gas transportation services under the Natural Gas Act; and (vi) filings initiated by NERC to develop reliability standards applicable to owners, users, and operators of the bulk electric system. In addition, SMUD is an active participant in other FERC administrative proceedings, including those related to reliability, variable

resource integration and the changing resource mix, and transmission planning and cost allocation. SMUD management believes that determinations of these FERC proceedings will not have a material adverse effect on SMUD's financial position, liquidity or results of operations.

### **CPUC Administrative Proceedings**

Periodically, PG&E seeks to update its gas transmission and storage ("GT&S") revenue requirements and rate designs. These applications are litigated at the CPUC and affect SMUD through several tariff rates SMUD pays to move natural gas along PG&E's backbone transmission lines. In the 2019 GT&S rate case (the "2019 GT&S Case"), the CPUC affirmed the application in GT&S rates of cost causation principles to prevent excessive and unreasonable costs being shifted to electric generator backbone customers like SMUD, either through proposed changes in PG&E's natural gas storage strategy or through cost shifts within the electric generator customer class.

PG&E filed its 2023 General Rate Case ("GRC") in June 2021 which includes its gas transmission and storage revenue requirements. In September 2021, PG&E filed an application for approval of its Gas Cost Allocation and Rate Design Proposals ("CARD"). SMUD is actively participating in PG&E's GRC and CARD proceedings to ensure that costs are fairly allocated to non-core customers, including electric generator backbone customers. Separately, SMUD continues to participate and monitor a proceeding at the CPUC concerning long-term gas system planning. At this point in these proceedings, SMUD management does not anticipate that the ultimate resolution of such cases will have a material adverse effect on SMUD's financial position, liquidity, or results of operation.

## **DEVELOPMENTS IN THE ENERGY SECTOR**

### **Electric Market Deregulation**

In 1996, the State partially deregulated its electric energy market and the CAISO was established in 1998. Since the CAISO's formation, the State has experienced episodes of higher and more volatile prices for natural gas and wholesale electricity. In reaction to such conditions, SMUD made significant changes to its business strategy to mitigate the impacts of the more volatile and unpredictable energy markets. Volatility in energy prices in the State are always a potential risk due to a variety of factors which affect both the supply and demand for electricity in the western United States. These factors include, but are not limited to, the implementation of the CAISO market design changes, insufficient generation resources, the increase in intermittent renewable energy resources, natural gas price volatility, fuel costs and availability, weather and natural disasters, transmission constraints and levels of hydroelectric generation within the region. While SMUD has taken a number of steps to mitigate its exposure to price volatility associated with these factors, this price volatility under extreme conditions may contribute to greater volatility in SMUD's net revenues from the purchase and sale of electric energy and, therefore, could materially adversely affect the financial condition and liquidity of SMUD. For a discussion of SMUD's current resource planning activities and risk management strategies, see "BUSINESS STRATEGY" above.

### **Cybersecurity**

Cybersecurity continues to be a top priority for SMUD. Attacks or threats directed at critical electric or energy sector operations could damage or cause the shut-down of generation, transmission or distribution assets that are essential to SMUD's ability to serve its customers, cause operational malfunctions and outages affecting SMUD's electric system, and result in costly recovery and remediation efforts. The costs of security measures or of remedying breaches could be material.

SMUD participates in sharing and receiving information about cyber security threats in real-time through the Electricity Information Sharing and Analysis Center (“E-ISAC”), the central hub for such data to actively manage risk related to potential cyber intrusion. SMUD also participates in NERC’s development of mandatory, enforceable cyber security standards to address vulnerabilities in electric utility systems. SMUD also adopts voluntary measures suggested as best practices by the National Institute of Standards and Technology (“NIST”) in its national framework.

SMUD’s prudent response to this ever-changing threat requires constant monitoring and frequent updates to implement new regulatory requirements as they are developed. SMUD manages risk related to frequently changing regulatory requirements by participating in the development of standards at NERC and NIST and through active engagement in the cyber security policy dialogue in Congress.

## **Physical Security**

Physical security is a critical concern for electric utilities as they seek to protect their infrastructure from a range of threats. The electric utility infrastructure is complex and consists of multiple components, such as power plants, substations, transmission and distribution lines, and other facilities. SMUD employs a dedicated physical security team that is deployed 24/7 and allows SMUD to respond to emergent events in a safe, coordinated, efficient, and cohesive manner, protecting the lives of its employees, customers, community, properties and assets. SMUD has policies, processes and procedures in place that outline the access controls and restrictions for its properties. SMUD restricts access based on need as it determines, while adhering to applicable laws, regulations and standards such as NERC Reliability Standards and NRC regulations. SMUD also maintains a Utility Security Plan adopted by the Board representing SMUD’s compliance with the CPUC’s Safety and Enforcement Divisions six-step security plan process described in CPUC Decision 19-01-018.

During times of elevated, imminent threats, safety and/or security concerns, SMUD’s Security Operations team, under the direction of the Chief Financial Officer or delegate, reserves the right to deploy additional security measures, controls, and further restrict or limit access to its properties to increase its security posture.

SMUD operates a 24/7 security operations center which monitors and coordinates responses to situations reported by internal and external stakeholders, or which are detected by SMUD’s security technology. The technology includes access control, video surveillance, and various types of intrusion detection solutions. The security operations center is a central hub for initial contact for physical security calls from employees of suspicious events and initiates incident responses as needed.

## **Federal Legislation and Regulatory Proceedings**

***Energy Policy Act of 2005.*** On August 8, 2005, the Energy Policy Act of 2005 (the “EPAAct of 2005”) was signed into law. The law includes a number of energy-related provisions, including among other things limited FERC jurisdiction over interstate transmission assets of municipal utilities, cooperatives and federal utilities to order these entities to provide transmission services on rates and terms comparable to those the entities charge and provide to themselves; the grant of authority to FERC to establish and certify an electric reliability organization to develop and enforce reliability standards for users of the bulk power transmission system; and prohibitions of certain market practices including the provision of false information and related expansion of FERC civil and criminal penalty authority. So far, the most visible impact of the EPAAct of 2005 on SMUD has been the development of mandatory federal reliability standards.

***Federal Regulation of Transmission Access.*** The Energy Policy Act of 1992 (the “Energy Policy Act”) made fundamental changes in the federal regulation of the electric utility industry, particularly in the area of transmission access. The Energy Policy Act provided FERC with the authority to require a transmitting utility to provide transmission services at rates, charges, terms and conditions set by FERC. The purpose of these changes, in part, was to bring about increased competition in the electric utility industry. Under the Energy Policy Act, electric utilities owned by municipalities and other public agencies which own or operate electric power transmission facilities which are used for the sale of electric energy at wholesale are “transmitting utilities” subject to the requirements of the Energy Policy Act.

Since the Energy Policy Act, FERC has adopted a series of rules to implement competitive open access to transmission facilities and regional transmission planning. Order No. 888, issued in 1996, requires the provision of open access transmission services on a nondiscriminatory basis by all “jurisdictional utilities” (which, by definition, does not include municipal entities like SMUD) by requiring all such utilities to file OATTs. Order No. 888 also requires “nonjurisdictional utilities” (which, by definition, does include SMUD) that purchase transmission services from a jurisdictional utility under an open access tariff and that owns or controls transmission facilities to provide open access service to the jurisdictional utility under terms that are comparable to the service that the nonjurisdictional utility provides itself. Section 211A of the EAct of 2005 authorizes, but does not require, FERC to order unregulated transmission utilities to provide transmission services, including rates and terms and conditions, that are comparable to those under which the unregulated transmitting utility provides transmission services to itself that are not unduly discriminatory or preferential.

In Order 890, issued in 2007, FERC stated that it will implement its authority under Section 211A on a case-by-case basis and retain the current reciprocity provisions.

In 2011, FERC issued Order 1000, which among other things requires public utility (jurisdictional) transmission providers to participate in a regional transmission planning process that produces a regional transmission plan and that incorporates a regional and inter-regional cost allocation methodology. Similar to Order 890, FERC states that it will implement its authority under Section 211A on a case-by-case basis. However, in Order 1000, FERC appears to expand upon the current reciprocity provisions and states that it has the authority to allocate costs to beneficiaries of services provided by specific transmission facilities even in the absence of a contractual relationship between the owner of the transmission facilities and the identified beneficiary.

SMUD, individually, and through the Large Public Power Council (“LPPC”), appealed Order 1000, but in 2014 the D.C. Circuit Court of Appeals rejected all of the arguments raised on appeal, upholding the entirety of Order 1000.

The jurisdictional members of WestConnect filed their proposed regional planning process and cost allocation methodology through a series of compliance filings at FERC. FERC accepted binding cost allocation for jurisdictional transmission providers of WestConnect and mandated that non-jurisdictional transmission providers (such as SMUD) identified as beneficiaries of a project have the ability to not accept the cost allocation. WestConnect’s Order 1000 planning process began with the 2016-2017 planning cycle.

However, in response to FERC’s WestConnect orders on compliance, El Paso Electric Company (“El Paso”), a jurisdictional transmission provider, petitioned to the Court of Appeals for the 5th Circuit. El Paso contends that FERC’s WestConnect orders violate Order 1000’s cost causation principle because WestConnect’s binding cost allocation applies only to the jurisdictional transmission providers and thus forces jurisdictional transmission providers to subsidize projects benefitting non-jurisdictional transmission providers that opt-out of projects. The non-jurisdictional transmission providers agreed on a settlement with the jurisdictional transmission providers to resolve the matters on appeal in the 5th Circuit, but FERC



ultimately did not accept the settlement. The court scheduled briefings and oral argument for the case, which took place April 3, 2023. A court decision is expected sometime later in 2023. In the meantime, SMUD continues to participate in the WestConnect process.

SMUD is unable to predict at this time the full impact that Order 1000 will have on the operations and finances of SMUD's electric system or the electric industry generally. However, WestConnect has conducted planning cycles under its Order 1000 planning process and has not identified any project eligible for cost allocation. SMUD will continue to take any action necessary, including withdrawing from a cost allocation determination and engaging in FERC proceedings, to ensure that it is not required to pay for transmission costs in the absence of an agreement or service relationship.

Of note, on April 21, 2022, FERC issued a Notice of Proposed Rulemaking on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection (the "NOPR"). The NOPR seeks input on proposals that would impact the Order 1000 planning and cost allocation process. SMUD has been engaged in the proceeding, providing input and helping draft comments with trade organizations, including LPPC. FERC has not issued any subsequent order. SMUD will continue to monitor and be engaged in any developments at FERC that impact the Order 1000 process and its participation in WestConnect.

***NERC Reliability Standards.*** The EAct of 2005 required FERC to certify an electric reliability organization ("ERO") to develop mandatory and enforceable reliability standards, subject to FERC review and approval. On February 3, 2006, FERC issued Order 672, which certified NERC as the ERO. Many reliability standards have since been approved by FERC, including those aimed at protecting the bulk electric system from physical and cyber threats.

The ERO or the regional entities, such as WECC, may enforce the reliability standards, subject to FERC oversight or FERC may independently enforce reliability standards. Potential monetary sanctions include fines of up to \$1,496,035 per violation per day. Order 693 provides ERO and regional entities with the discretion necessary to assess penalties for such violations, while also having discretion to calculate a penalty without collecting the penalty if circumstances warrant.

***Anti-Market Manipulation Rules.*** EAct of 2005 gave FERC the authority to issue rules to prevent market manipulation in jurisdictional wholesale power and gas markets, and in jurisdictional transmission and transportation services. These anti-market manipulation rules apply to non-jurisdictional entities such as SMUD. Further, EAct of 2005 provided FERC civil penalty authority, which the Commission has stated that it will exercise carefully by assuring that its market manipulation rules are clear.

***Greenhouse Gas Emissions.*** The United States Environmental Protection Agency (the "EPA") has taken steps to regulate GHG emissions under existing law. In 2007, the U.S. Supreme Court held that the Clean Air Act ("CAA") directed EPA to regulate GHG emissions from new motor vehicles if it judged that such emissions contribute to climate change. In 2009, EPA finalized an "Endangerment Finding" under the CAA, declaring that six identified GHGs – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – cause global warming, and that global warming endangers public health and welfare. Subsequently, EPA promulgated GHG standards for passenger cars and light-duty trucks (the so-called "Tailpipe Rule"). Although that rulemaking was later withdrawn by a different administration, prompting litigation and re-proposal of the standards that has only recently been finalized, the original promulgation of the Tailpipe Rule required EPA to also address emissions of the same pollutants from other sources, namely, the electric sector.

In 2014, EPA issued a proposed rule under section 111(d) of the CAA called the Clean Power Plan (the "CPP") that projected power sector emissions reductions of 30% below 2005 levels by 2030. The

proposed CPP would have established a rate-based emissions goal for each state, providing states the responsibility to develop a State Implementation Plan (“SIP”) describing how each will meet the goal assigned by EPA using the “Best System of Emissions Reduction” (“BSER”) established by EPA. The BSER under the CPP featured a suite of emissions reduction measures including fuel switching, emissions trading, and other measures. Significantly for the State and its regulated entities, the proposed CPP included a “state measures” plan that allowed for continued operation of successful state programs that achieve CPP goals. The rule was finalized in October 2015.

In November 2015, 27 states and numerous corporations challenged the CPP in court, alleging that EPA had exceeded its authority under the CAA. The U.S. Supreme Court stayed implementation of the CPP pending disposition of the petitions for review in the D.C. Circuit and any subsequent review by the Supreme Court. The D.C. Circuit Court of Appeals held oral arguments on the petitioner’s claims, but before the court issued a decision, the 2016 presidential election resulted in a change of administration.

The new administration quickly moved for an abeyance (or stay) of the case for as long as the agency needed to review and withdraw the CPP. The court issued a series of 60-day abeyances and ultimately dismissed the case on September 17, 2019. Meanwhile, in August 2018, EPA proceeded to withdraw the CPP and proposed a different rule under the same provision of the CAA. The new rule, known as the Affordable Clean Energy (“ACE”) rule, would establish a BSER that only includes measures that can be undertaken at an individual power plant, rather than the broader suite of measures envisioned under the CPP. The ACE rule would also allow states to decide individually, on a case-by-case basis, the standards to be achieved by the best system of emission reductions, as well as exempt certain upgrades of fossil-fuel power plants from the CAA’s New Source Review program and extend the time to implement SIPs after the ACE rule is finalized. The ACE rule was challenged in court by environmental groups and states alleging that the revised rule inadequately responds to EPA’s responsibility to protect public health and welfare. SMUD joined in this litigation along with other challengers. The D.C. Circuit vacated the ACE rule on January 19, 2021, and remanded it to the EPA for review and revision, just days before a new presidential administration took office. Several states led by West Virginia and coal industry members appealed the decision.

In June 2022, the U.S. Supreme Court issued its opinion in *West Virginia v. EPA*, striking down the CPP and foreclosing any future regulations of “significant political and economic significance” if Congress has not expressly authorized them. While the decision does not restrict EPA to only requiring measures “inside the fence line” at an individual power plant to control GHGs, it appears unlikely that the EPA will be able to require material reductions in GHGs to mitigate climate change through section 111(d) of the CAA.

**Federal Clean Energy Legislation.** SMUD actively participates in discussion at the federal level regarding legislation that would meaningfully impact SMUD’s existing GHG reduction strategies or impose new requirements for electric generators, including a proposed federal clean energy standard. In the 117th Congress, a clean electricity performance program was considered but ultimately lacked support to pass. Instead, Congress extended and expanded clean energy tax credits and created new grant and rebate programs to incentivize clean energy investments in the Inflation Reduction Act of 2022. While it is possible that a future Congress may revisit the concept of a clean energy standard or other GHG reduction regime, it is possible that the passage of the Inflation Reduction Act will diminish the likelihood of a new regulatory framework being enacted in the near future.

SMUD is unable to predict whether any new EPA rulemakings will be undertaken, and what the full impact of the reduction of fossil-based generation over time will have on the operations and finances of SMUD’s electric system or the electric utility industry generally.

## State Legislation and Regulatory Proceedings

A number of bills affecting the electric utility industry have been enacted by the State Legislature. In general, these bills provide for reduced GHG emission standards and greater investment in energy efficient and environmentally friendly generation alternatives through more stringent RPS. Additionally, ongoing regulatory proceedings address water flow and quality issues related to the Sacramento – San Joaquin River Delta. The following is a brief summary of these bills and regulatory proceedings.

***Greenhouse Gas Emissions.*** On September 27, 2006, the Governor of the State signed into law AB 32, the Global Warming Solutions Act of 2006 (“AB 32”). AB 32 requires the California Air Resources Board (“CARB”) to adopt enforceable GHG emission limits and emission reduction measures in order to reduce GHG emissions to 1990 levels by 2020. In addition, AB 32 establishes a mandatory reporting program for all IOUs, local, publicly-owned electric utilities and other load-serving entities (electric utilities providing energy to end-use customers) (“LSEs”). The AB 32 reporting program allows CARB to adopt regulations using market-based compliance mechanisms such as a “cap-and-trade” system.

On December 16, 2010, CARB approved a resolution adopting cap-and-trade regulations for the State. The regulations became effective on January 1, 2012. As adopted, the cap-and-trade program covers sources accounting for 85% of the State’s GHG emissions, the largest program of its type in the United States.

The cap-and-trade program has been implemented in phases. The first phase of the program (through December 31, 2014) introduced a hard emissions cap on the combined electric utility and large industrial sectors, covering all sources emitting more than 25,000 metric tons of carbon dioxide-equivalent greenhouse gases (“CO<sub>2</sub>e”) per year. In 2015, the program was expanded to cover distributors of transportation, natural gas, and other fossil fuels. The cap declined about 2 percent in 2014, and declined 3 percent annually from 2015 to 2020. The cap-and-trade program requires covered entities to retire compliance instruments (allowances and carbon offsets) for each metric ton of CO<sub>2</sub>e they emit. Initially, CARB allocated free allowances to LSEs and most industrial facilities at roughly 90% of their average emissions. SMUD was granted a higher amount because of early action taken to reduce GHG emissions. In the case of electric utilities, the value of allowances must be used to benefit ratepayers and achieve GHG emission reductions. As the program matures, some covered entities will be required to buy an increasing portion of their allowances at auction or on the secondary market. The cap-and-trade program also allows covered entities to use offset credits for compliance purposes (not exceeding 8% of a regulated entity’s compliance obligation through 2020, 4% from 2021 through 2025, and 6% from 2026 through 2030). Offsets must be obtained from certified projects in sectors that are not regulated under the cap-and-trade program and are subject to other restrictions.

In November of 2012, CARB conducted its first allowance auction and auctions now occur on a quarterly schedule. On January 1, 2014, CARB linked the State cap and trade program with a companion program in the Canadian province of Quebec. The first quarterly joint auction for the linked programs occurred in November, 2014. On January 1, 2018, CARB linked the State’s cap-and-trade program with a companion program in the Canadian province of Ontario. Immediately thereafter, an entity in any one of the three jurisdictions was able to purchase allowances on the secondary market in a linked jurisdiction, and as of February 21, 2018 (the date of the first joint auction) could purchase allowances in the joint auction. In June 2018, elections in Ontario changed political parties and the new administration formally withdrew from the Cap-and-Trade linkage. CARB has limited purchase and use of Ontario allowances in response. The August 2018 Cap and Trade auction did not include Ontario. In 2021, the Washington state legislature passed a Cap-and-Trade bill, which [is expected to] interact with the State’s markets. Future potential near-term links to the CARB cap-and-trade program also include the states of Oregon, which has

adopted a cap and trade program, and New Mexico, which is considering the adoption of a cap and trade program.

On October 7, 2015, the Governor of the State signed SB 350 that contained aggressive goals for reducing carbon emissions by 2030, including raising the proportion of renewable energy to 50%, reducing the use of petroleum fuel in cars and trucks by up to 50%, and doubling the energy efficiency of existing buildings. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*” for additional information. In addition, SB 350 established requirements for larger POUs to adopt (by January 1, 2019) and file with the CEC Integrated Resource Plans (“IRPs”) by April 2019 that would show planned procurement to achieve the 50% RPS and State GHG goals established by CARB. The CEC developed “guidelines” for these IRPs for POUs in 2017, updated them in 2018, and proposed additional updates in 2022. CARB established specific GHG target ranges for these IRPs in summer 2018, with SMUD’s planning target set at 1.1 – 1.9 million metric tons of emissions. SMUD developed and adopted an IRP in 2018 through a comprehensive public process and filed the adopted IRP with the CEC in April 2019. SMUD adopted an updated IRP in June 2022 and filed the updated IRP with the CEC in September 2022. SMUD’s updated IRP plans for a greater than 92% reduction in GHG emissions by 2030 relative to 1990 levels, which equals approximately 250,000 metric tons of GHG emissions in 2030. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*.”

On April 29, 2015, the Governor of the State signed Executive Order B-30-15, establishing a goal for the State to reduce GHG emissions to 40% below 1990 levels by 2030. In 2016, the State Legislature passed Senate Bill 32 (“SB 32”), which codified Governor Brown’s goal of reducing the State’s GHG emissions to 40% below 1990 levels by 2030. In 2017, the State Legislature passed Assembly Bill 398 (“AB 398”), explicitly authorizing the continuation of the cap and trade program, with designated changes, through 2030. Subsequently, CARB adopted an initial set of regulatory changes extending the Cap-and-Trade program, including establishing utility sector allowance allocations through 2030. In 2018, CARB completed a rulemaking to implement the cap-and-trade program changes designated by AB 398. These changes include development of a hard price ceiling for the cap-and-trade program and two price-containment points below that ceiling, in an attempt to ensure stable prices in the program. CARB adopted final regulations on December 13, 2018.

In December 2022, CARB approved the agency’s 2022 Scoping Plan, a roadmap to reducing GHG emissions by 85% and achieving economy-wide carbon neutrality by 2045. The Plan does not impose new mandates, but calls for state policymakers and regulatory agencies to implement programs and policies that support the Plan’s goals. In 2023, CARB signaled that they would reopen regulations that govern several programs that SMUD participates in, including Cap and Trade, to align them with the goals set forth in the Scoping Plan. SMUD will monitor and, as appropriate, participate in these forthcoming regulatory proceedings.

In addition, any new projects constructed in the State, including power plants, that may cause a significant adverse impact on the environment must be analyzed under CEQA. Some State agencies have begun using CEQA in novel ways to require mitigation of “significant” GHG emissions caused, either directly or indirectly, by a project. Pursuant to Senate Bill 97 passed in 2007, CARB will assist the Governor’s Office of Planning and Research in setting thresholds of significance under CEQA of GHG impacts from new projects. This is an area of State law that is evolving and untested in the courts. However, there is a risk that any project proponent of an electric system infrastructure project might have to mitigate such potential impacts to a level of less than significance.

On December 3, 2012, the Superior Court issued a ruling in *Cleveland National Forest Foundation v. San Diego Association of Governments* (“SANDAG”), Case No. 2100-00101593, that sided with the

State Attorney General and the other petitioners stating that SANDAG did not follow CEQA when it adopted a \$257 billion regional transportation plan in 2011. The ruling expressly invalidated the certification of the Environmental Impact Report (“EIR”) on the grounds that the EIR should have analyzed the plan’s consistency with the governor’s policy goal to reduce GHG emissions by 80% by 2050 as articulated in the 2005 Executive Order S-03-05. On November 24, 2014, the Fourth Appellate District upheld the trial court in a published decision, and SANDAG appealed to the State Supreme Court. On July 13, 2017, the Supreme Court reversed and held that SANDAG’s decision not to adopt the 2050 goal was not an abuse of discretion. Nevertheless, the Court articulated three clear principles for agencies to follow in their CEQA review of planning documents: 1) agencies must take seriously the significance of even small increases in GHG emissions; 2) they must consider science-based State policy guidance in their decision-making; and 3) they are required to use the best scientific information available to determine whether their planning decisions are consistent with the State’s goals. These principles will apply to SMUD in CEQA reviews of future projects.

On September 29, 2006, the Governor of the State signed into law Senate Bill 1368 (“SB 1368”), the GHG Emissions Performance Standard (“EPS”). SB 1368 limits long-term investments in baseload generation by the State’s utilities to power plants that meet an EPS jointly established by the CEC and the CPUC. The agencies have set the EPS at 1,100 pounds CO<sub>2</sub> per MWh, which is roughly half of the CO<sub>2</sub> emissions rate of a conventional coal-fired power plant. CEC regulations to implement the law for POUs were approved by the Office of Administrative Law on October 16, 2007.

SMUD’s primary supply and demand-side resource needs to meet customers’ electricity usage patterns over the next 10 years are for peaking resources. Currently there is a ban in the State that prohibits the development of nuclear power plants until there is a permanent storage solution for spent fuel rods. With the effective ban on new coal power imports under SB 1368, natural gas-fired, combined cycle power plants would appear to be the primary viable option for fossil fuel-based baseload power plant development absent the implementation of new technologies in connection with other resource options. The reliance on a single fuel source will continue to put pressure on the natural gas market in the United States. SMUD has in place a natural gas procurement plan to mitigate natural gas volatility, see “POWER SUPPLY AND TRANSMISSION – Fuel Supply” above.

On September 16, 2022, the Governor of the State signed into law SB 1158, which requires every retail supplier of electricity to annually report hourly greenhouse gas emissions. The California Energy Commission will establish a process by July 1, 2024, and the implementation date is 2028.

Also on September 16, 2022, the Governor of the State signed into law SB 1020, which creates interim climate targets under which eligible renewable energy resources and zero-carbon resources must supply 90% of all retail sales of electricity to California end-use customers by December 31, 2035, and 95% by December 31, 2040. The bill also requires each State agency to ensure that zero carbon resources and eligible renewable energy resources supply 100 percent of electricity procured on its behalf by December 31, 2035. SMUD provides electricity to a number of State agency buildings and will work with State agencies to comply with this requirement.

**Reliability.** On June 30, 2022, the Governor signed the 2022-23 budget, along with a number of trailer bills, which provide implementing details on the budget line items. Included in AB 205, the energy trailer bill, are a number of reliability programs.

1. CEC Distributed Electricity Backup Assets Program to incentivize the construction of cleaner and more efficient distributed energy assets that would serve as on-call emergency supply or load reduction for the state’s electrical grid during extreme events.

2. CEC Demand Side Grid Support Program to pay customers to reduce demand during stressed grid events this summer. SMUD is actively engaging the CEC on the development of this program.
3. DWR Strategic Reliability Reserve to secure resources for summer reliability or to preserve the option to extend the life of facilities that otherwise would retire, new temporary generators of more than 5 megawatts (MWs), new energy storage systems of at least 20 MWs, generation facilities that use lean, zero-emission fuel technologies, or new zero-emission technologies that can be operational by December 31, 2026.

***Energy Efficiency.*** Senate Bill 1037 (“SB 1037”), signed by Governor Schwarzenegger on September 29, 2005, requires that each municipal electric utility, including SMUD, prior to procuring new energy generation resources, first acquire all available energy efficiency, demand reduction and renewable resources that are cost effective, reliable and feasible. SB 1037 also requires each municipal electric utility to report annually to its customers and to the CEC its investment in energy efficiency and demand reduction programs. Further, State Assembly Bill 2021 (“AB 2021”), signed by the Governor on September 29, 2006 requires that the publicly owned utilities establish energy efficiency and demand reduction targets and report and explain the basis of the targets beginning June 1, 2007 and every three years thereafter for a ten year horizon. Future reporting requirements as set forth in AB 2021 include: (i) the identification of sources of funding for the investment in energy efficiency and demand reduction programs, (ii) the methodologies and input assumptions used to determine cost effectiveness, and (iii) the results of an independent evaluation to measure and verify energy efficiency savings and demand reduction program impacts. The information obtained from local publicly owned utilities will be used by the CEC to present the progress made by the publicly owned utilities on the State’s goal of reducing electrical consumption by 10% in ten years and amelioration with the GHG targets presented in Executive Order S-3-05 enacted by the Governor of the State on June 1, 2005.

In response to SB 1037 and AB 2021, SMUD established a specific goal of reducing energy consumption by 15% by 2018 and adopted annual targets for gigawatt hour and megawatt savings. SMUD revisits its energy efficiency goals and programs on a regular basis to ensure compliance with State policies established by SB 1037 and AB 2021 (as modified by SB 350).

SB 350 (passed in 2015) requires the CEC to develop statewide energy efficiency targets for 2030 aimed at doubling the achieved savings, and requires POUs to establish efficiency targets that are “consistent” with those targets. In 2017, the CEC developed a report on the doubling of energy efficiency targets required by SB 350. Both SB 350 and the CEC report contemplate the use of fuel substitution to meet energy efficiency targets and have a strong focus on carbon reduction. In response, SMUD developed a methodology and carbon tool to count fuel substitution, namely switching natural gas end-uses to efficient electric end uses and measuring savings in carbon emissions. SMUD presented its methodology to the joint state agency working group known as the Fuel Substitution Working Group several times in 2019 and adopted a carbon-based metric in early 2020 to guide overall SMUD carbon targets. This goal is expected to facilitate substantial expansion of building electrification and result in more than double the overall amount of energy efficiency being delivered per year, when measured on a carbon reduction basis. The vast majority of this energy efficiency (more than 85%) is expected to be delivered through efficient electrification by 2030.

Also passed in 2015 was AB 802. This bill directed the CEC to develop a State-wide building energy use benchmarking and public disclosure program for those buildings greater than 50,000 square feet. As set forth in regulations adopted by the CEC, building owners are required to report building characteristic information and energy use data each year. The reporting began in 2018 for buildings without residential utility accounts and in 2019 for buildings with 17 or more residential utility accounts. Energy utilities must provide building-level energy use data to building owners upon request.

In order to support the implementation of SB 350 and AB 802, the CEC opened a rulemaking to amend its Title 20 Data Collection regulations, resulting in an expansion of customer data utilities must report to the CEC. The CEC adopted regulations pursuant to the rulemaking in February 2018, and the regulations were approved and went into effect in the Summer of 2018. SMUD has made several data filings under the new regulations. In 2020, the CEC opened a second phase of Data Collection rulemaking to amend regulations necessary to develop the policy reports and analysis as required by statute to assist in the CEC's energy forecasting and assessment activities. The OAL approved the codifying of the regulations from that proceeding on December 30, 2021.

***Electric Transportation Mandates*** Executive Order B-48-18, enacted January 2018, ordered all state entities to work with the private sector and all appropriate levels of government to put at least 5 million zero-emission vehicles on California roads by 2030, as well as 250,000 zero-emission vehicle chargers by 2025.

In September 2020, Governor Newsom signed Executive Order N-79-20 to accelerate actions to mitigate and adapt to climate change, and to more quickly move toward a low-carbon, sustainable and resilient future. Executive Order N-79-20 states the goal of 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035 and 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks.

CARB has proposed or adopted a suite of regulations to support these State policies, including the Zero Emission Forklift Regulation, Advanced Clean Trucks Rule (the "ACT Rule"), Advanced Clean Cars II ("ACC II"), and the Advanced Clean Fleets Rule (the "ACF Rule"). The ACT Rule and ACC II establish increasing zero-emission vehicle ("ZEV") sales requirements for truck and light-duty vehicle manufacturers, respectively. The ACT Rule, which took effect in March 2021, requires that by 2035, at least 55% of Class 2b-3 truck sales are ZEVs, at least 75% of Class 4-8 straight truck sales, and 40% of truck tractor sales. ACC II, which took effect in November 2022, requires that 100% of light-duty passenger car, truck, and SUV sales in California be ZEV by the 2035 model year.

CARB is expected to adopt the ACF Rule in 2023. The proposed ACF Rule would establish ZEV purchase and fleet composition requirements for on-road medium- and heavy-duty ("MHD") fleets in California. Under the proposed ACF Rule, public fleets like SMUD would have two compliance options. The first is a ZEV purchase requirement: 50% of annual MHD vehicle purchases would need to be ZEVs starting in 2024, and 100% starting in 2027. The second is the optional ZEV milestone option, under which the composition of the MHD fleet meets certain ZEV percentages over time, which would provide SMUD with considerably greater compliance flexibility. The proposed ACF Rule would also accelerate the manufacturer ZEV sales requirement to 100% of all MHD truck sales by the 2036 model year.

Additionally, CARB is developing a regulation to drive greater deployment of zero-emission forklifts within fleets throughout the State. This Zero-Emission Forklift Regulation is scheduled for CARB consideration in 2023.

Increases in ZEV adoption and deployment will result in increased customer usage of electricity. The ACF Rule would also require SMUD, as a fleet owner, to transition SMUD's MHD fleet to ZEVs.

***Rooftop Solar Mandate.*** In February, 2018, the CEC approved updates to the 2019 Building Energy Efficiency Standards to require installation of rooftop photovoltaic solar systems for residential buildings under three stories constructed starting in 2020, with an option to satisfy the requirement through community shared solar electric generation or battery storage systems. This "Community Solar" compliance mechanism permits a program administrator, such as a utility, to provide solar power to participating residential customers instead of rooftop solar. SMUD submitted an application to the CEC to

be a program administrator of SMUD's Community Solar program, Neighborhood SolarShares, in 2019, and the CEC approved SMUD's application in February 2020. In 2021, the CEC revised the Community Solar provisions in the 2022 Building Energy Efficiency Standards to include an "opt-out" provision, which will impact the design and implementation of SMUD's Neighborhood SolarShares program. SMUD updated its Neighborhood SolarShares program materials to incorporate the 2022 revisions, which took effect in January 2023, and has received approval from the CEC to continue serving as a program administrator. See also "BUSINESS STRATEGY – Serving SMUD's Customers – *Renewable Options*."

***Renewables Portfolio Standard.*** Senate Bill 100 was passed by the Legislature and approved by Governor Brown on September 10, 2018. The bill sets a 50% RPS target for 2026 and sets compliance period targets at 44% by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030. The bill also creates a statewide planning goal to meet all of the state's retail electricity supply with a mix of RPS-eligible and zero-carbon resources by December 31, 2045.

***Load Management Standards.*** Sections 25213, 25218(e) and 25403.5 of the Public Resources Code mandate and authorize the CEC to adopt rules and regulations to reduce the uneconomic and unnecessary consumption of energy and to manage energy loads, or demand, to help maintain electrical grid reliability. The original Load Management Standards ("LMS") regulations were adopted in 1979 and required the implementation of marginal cost pricing industrial time-of-use rates, and residential load control programs. In October 2022, the CEC adopted an update to the LMS regulations to require the largest electric service providers in California (including SMUD) to develop retail electricity rates that change at least hourly to reflect locational marginal costs and submit those rates to the utility's governing body for approval. The LMS proposes the following: a) voluntary hourly or sub-hourly rates for each customer class or b) a cost-effective program, to be implemented by the utilities by January 2026. The effective date of the LMS regulation is April 1, 2023. The LMS regulations are intended to increase efficiency and demand flexibility in California's electricity grid. SMUD's Pricing team is leading SMUD's LMS implementation work, including the development of a Compliance Plan to be submitted to SMUD's Board by the fourth quarter of 2023 and then to the CEC.

***Energy Storage Systems.*** In September 2010, the State Legislature enacted, and the Governor signed into law, Assembly Bill 2514 ("AB 2514"). On or before March 1, 2012, the governing board of each POU was required to initiate a process to determine appropriate targets, if any, for the utility to procure viable and cost-effective energy storage systems to be achieved by December 31, 2016, and December 31, 2020. The bill required each POU to report certain information to the CEC. In 2014, SMUD set a 0 MW target for 2017, and in 2017 set a 9 MW target for 2020. In 2018, SMUD identified a potential need for 246 MW of storage by 2030. Following SMUD's 2020 compliance report to the CEC in January 2021, going forward SMUD will evaluate and report energy storage planning as part of its IRP update at least once every five years. See also "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Energy Storage Systems*."

***Sacramento-San Joaquin River Bay-Delta Processes.*** The Sacramento-San Joaquin River Delta is an expansive inland estuary, formed at the western edge of the California Central Valley by the confluence of the Sacramento and San Joaquin rivers ("Delta"). There are two substantial Delta planning processes with the potential to affect (1) energy available for SMUD's purchase from the Central Valley Project ("CVP") and (2) flows within the Upper American River watershed. These processes are called the Bay-Delta Water Quality Control Plan ("Bay-Delta Plan") and the Delta Conveyance Project.

The Bay-Delta Water Quality Control Plan is updated periodically by the State Water Resources Control Board ("SWRCB"), the last time being in 2006. The current Bay-Delta Plan update process is being implemented in four phases. The first phase considered southern Delta water quality, with a significant focus on San Joaquin River tributaries. Phase 2, which is initially being addressed by a



document under development by SWRCB staff, will address Sacramento River tributaries and various flow related issues, including the critically important one of those tributaries' contribution to Delta outflow. Phase 3 will concern changes to water rights needed to implement Phase 2. A substantial change in Delta outflow requirements could have a major impact on the timing of hydroelectric energy generation by the CVP. SMUD has a long-term agreement with WAPA to purchase some of this power (see "POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – *Western Area Power Administration*"). On July 18, 2018, the SWRCB released an updated Framework document signaling its staff's intent to propose Delta outflow requirements of 45–65% unimpaired flows for the Sacramento River tributaries (which includes the American River, the upper portions of which are where the UARP sits), though the report will analyze requirements of 35–75%. If these criteria were implemented, they could cut CVP generation by 50 to 63%. Governor Newsom has urged the SWRCB, other agencies and affected parties to execute voluntary agreements to address species' needs and outflow requirements. Although the negotiations have been slow, it is expected they will eventually result in a reasonable compromise. If the agreements do not come to fruition, SMUD plans to fully participate in all regulatory and legal proceedings to argue for consideration and minimization of impacts to hydropower generation. SMUD will assess the potential impacts of proposed modifications to the present outflow objectives on SMUD's operations once the SWRCB makes those available.

In July 2022, the State Department of Water Resources ("DWR") released a Draft Environmental Impact Report ("EIR") to evaluate the potential impacts of carrying out the Delta Conveyance Project; the U.S. Army Corps of Engineers released a separate Environmental Impact Statement to evaluate the effects of the Project pursuant to the National Environmental Policy Act. The Delta Conveyance Project is expected to entail construction of two intakes on the Sacramento River that will carry water to a main tunnel to the California Aqueduct for delivery south of the Delta. The Delta Conveyance Project may pose the potential to exacerbate impacts to already imperiled aquatic species, and in turn could have indirectly prompted regulatory agencies to require third parties, such as SMUD, to compensate by making changes to their operations. The Bureau of Reclamation is not a party to the Delta Conveyance Project, which should eliminate the potential for CVP power to be used to supply Delta Conveyance Project pumps. SMUD will monitor the proceedings and participate as necessary to ensure any impacts to SMUD interests are minimized.

**Proposition 26.** Proposition 26 was approved by the electorate on November 2, 2010 and amends Article XIII A and Article XIII C of the State Constitution. Proposition 26 imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State, unless the fees and charges are expressly excluded. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes, unless the fees and charges are expressly excluded. The initiative, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters pursuant to Proposition 13, approved in 1978, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product. Proposition 26 is not retroactive as applied to local governments. Although SMUD believes that the initiative was not intended to apply to fees for utility services such as those charged by SMUD and its fees and charges meet the criteria of the exclusion described above, it is possible that Proposition 26 could be interpreted to further limit fees and charges for electric utility services and/or require stricter standards for the allocation of costs among customer classes. SMUD is unable to predict at this time how Proposition 26 will be interpreted by the courts or what its ultimate impact will be. As of the date of this Official Statement, SMUD is unaware of any fees or charges relating to SMUD's service that would have to be reduced or eliminated because of Proposition 26. However, certain of SMUD's adopted rate increases have been challenged. See "LEGAL PROCEEDINGS – Proposition 26 Lawsuit."

**Wildfire Legislation.** In September 2016, Governor Brown signed into law Senate Bill 1028 (“SB 1028”), which requires POU’s (including SMUD), IOUs, and electrical cooperatives to construct, maintain and operate their electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by electrical lines and equipment. SB 1028 also requires the governing board of POU’s to make an initial determination whether any portion of that geographical area has a significant risk of catastrophic wildfire resulting from those electrical lines and equipment, based on historical fire data and local conditions, and in consultation with the fire departments or other entities responsible for control of wildfires within the geographical area.

Senate Bill 901 (“SB 901”), signed into law in September 2018 by Governor Brown, further addresses response, mitigation and prevention of wildfires. The bill requires POU’s, including SMUD, before January 1, 2020, and annually thereafter, to prepare a wildfire mitigation plan and present it in a public meeting to their governing board. SB 901 requires POU’s to accept comments on the wildfire mitigation plan from the public, other local and State agencies, and interested parties, and to verify that the plan complies with all applicable rules, regulations, and standards, as appropriate. The bill requires a qualified independent evaluator to review and assess the comprehensiveness of its wildfire mitigation plan and present its report to the board in a public meeting.

In 2019, Governor Newsom released his comprehensive strategy on wildfires, laying the groundwork for legislative discussions on utility wildfire liability and allocating costs associated with catastrophic wildfires, among other things. While the Governor supported a modification of State’s current inverse condemnation doctrine, under which utilities are held liable for wildfire damage without regard to the fault of the utility, no bill was introduced. AB 1054 (Holden) did pass in 2019 that included several provisions for solvent investor owned utilities, including the development of a fund to help pay victim claims for utility ignited wildfires. The bill also created a new Wildfire Safety Division within the CPUC to prioritize wildfire safety throughout the State, and established an appointed Wildfire Safety Advisory Board to advise and make recommendations relating to wildfire safety to this new Division. For POU’s, the bill requires submittal of annual wildfire mitigation plans to the Advisory Board for review and advisory opinions.

Senate Bill 247 (“SB 247”), signed by Governor Newsom on October 2, 2019, establishes notification, audit and reporting guidelines for electrical corporations relating to vegetation management requirements in the wildfire mitigation plan. SB 247 also specifies the qualifications for electrical line clearance tree trimmers performing work to comply with the vegetation management requirements in an electrical corporation’s wildfire mitigation plan and requires that qualified line clearance tree trimmers be paid no less than a specified prevailing wage rate. POU’s are not required to adhere to SB 247, but the market impacts are projected to significantly increase SMUD’s annual vegetation management costs.

**Nonstock Security.** SMUD sponsored legislation in 2019, Assembly Bill 689, which was signed into law by Governor Newsom on September 5, 2019. This bill expressly allows SMUD the ability to operate a pilot project (effective January 1, 2020, to January 1, 2025), of up to three acquisitions, to hold nonstock security in a corporation or other private entity if acquired as part of a procurement of goods or services from that entity, provided that no separate funding is expended solely for the nonstock security. This will allow SMUD to realize the financial benefits of its investments, partnerships, and intellectual property.

On September 15, 2022, the Board authorized the CEO & GM to enter into a joint collaboration agreement with ESS Tech, Inc. (“ESS”). Under that agreement SMUD would procure from ESS iron flow batteries for utility scale long-duration energy storage applications. The agreement contemplates a multi-year phased deployment of up to 200MW/2GWh of long duration energy storage by 2028. As part of that procurement, SMUD acquired nonstock security in ESS.

## **Future Regulation**

The electric industry is subject to continuing legislative and administrative reform. States and Federal entities routinely consider changes to the way in which they regulate the electric industry. Recently, both further deregulation and forms of additional regulation have been proposed for the industry, which has been highly regulated throughout its history. SMUD is unable to predict at this time the impact any such proposals will have on the operations and finances of SMUD or the electric utility industry generally.

## **OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY**

### **CAISO Market Initiatives**

The CAISO routinely conducts a number of initiatives and stakeholder processes that propose certain operational and market changes that impact SMUD. SMUD does and will continue to monitor the various initiatives proposed by the CAISO and participate in its stakeholder processes to ensure that its interests are protected.

SMUD participates in the CAISO market for only a small percentage of energy needs, however, it continues to benefit from its participation in the CAISO's WEIM and is currently exploring further participation in the CAISO's proposed Extended Day Ahead Market ("EDAM") (both the WEIM and EDAM are described further below). Along with monitoring other key market initiatives at the CAISO which impact wholesale energy markets, SMUD will continue to actively participate in all processes related to EIM and EDAM, to ensure both participation models are beneficial to SMUD's customers. Given its success in EIM and active engagement with the CAISO and CAISO leadership, SMUD has earned a key role in the stakeholder processes related to these important and evolving markets.

### **Resource Adequacy Filing**

In September 2005, the State Legislature enacted and the Governor signed into law Assembly Bill 380 ("AB 380"), which requires the CPUC to establish resource adequacy requirements for all LSEs within the CPUC's jurisdiction. In addition, AB 380 requires publicly owned utilities, including SMUD, to meet the most recent resource adequacy standard as adopted by the WECC. In October 2005, the CPUC issued a decision stating that LSEs under its jurisdiction would be required, by June 2006, to demonstrate that they have acquired capacity sufficient to serve their forecast retail customer load plus a 15-17% planning reserve margin. In March 2021, the CPUC issued a decision requiring the three largest investor owned utilities (PG&E, Southern California Edison, and San Diego Gas & Electric) to target a minimum of 2.5% of incremental resources for their planning reserve margin for 2021 and 2022. Subsequently, in December 2021, the CPUC issued another decision that increased the investor-owned utilities' minimum target by an additional 2.5-5% of incremental resources for 2022 (which creates an effective planning reserve margin of 20-22%) and extended this target to 2023. And in June 2022, the CPUC issued a decision adopting a planning reserve margin of 16% for 2023, and 17% for 2024, for all LSEs under its jurisdiction. The WECC has yet to formally adopt a resource adequacy requirement. However, consistent with current WECC practices, SMUD utilizes a 15% planning reserve margin when assessing the need for future resources.

### **Western Energy Imbalance Market and Extended Day Ahead Market**

Federal and state policymakers have long-promoted the development of organized markets in the west as a means (among other reasons) to better integrate intermittent renewable resources into the electric system, the first of which markets is the Western EIM, operated by the CAISO. The CAISO successfully launched the WEIM, a real time only imbalance market, on October 1, 2014, with PacifiCorp as the first participant. Since this time, the WEIM has grown significantly with the additions of NV Energy, Arizona

Public Service, Puget Sound Energy, Portland General Electric, Idaho Power, Powerex, BANC, the Salt River Project, Seattle City Light, the Turlock Irrigation District, the Los Angeles Department of Water and Power, NorthWestern Energy, the Public Service Company of New Mexico, Avista, Tacoma Power, Bonneville Power Administration, and Tucson Electric Power. Additionally, the WEIM footprint will continue to expand further in 2023 with the additions of Avangrid, WAPA Desert Southwest Region, and El Paso Electric. SMUD expects the WEIM to comprise a significant portion of the Western Interconnection in 2023.

To date, participation in the WEIM by SMUD has shown significant financial and operational benefits, in addition to furthering an already favorable working partnership between SMUD and the CAISO to develop solutions to integrate renewable resources in support of carbon reduction goals.

BANC's participation not only signaled the first public power participant in the EIM, but it was also implemented utilizing a unique phased approach, with SMUD (as the largest member of BANC) implementing so-called WEIM Phase 1 in 2019, while the other BANC members and WAPA (the "Phase 2 Parties") joined after further evaluation and approvals in March of 2021.

Part of the BANC Phase 2 participation included reimbursement to SMUD certain upfront infrastructure costs incurred by SMUD in Phase 1 to establish BANC as an WEIM Entity. This reimbursement to SMUD by the Phase 2 Parties has been completed.

The CAISO and WEIM participants, including SMUD and BANC, have participated in developing a design framework to extend the successful WEIM real time framework to the EDAM. Like WEIM, EDAM would broaden the access to regional resources for the reliable integration of renewable resources, only over a longer (day ahead) time horizon by allowing for a more economic and efficient optimization of regional resources by providing grid operators greater time (day ahead as opposed to real time) to commit or decommit units based on market price signals. Only participants in the WEIM will be allowed to extend their participation to EDAM. The CAISO launched a public stakeholder initiative and utilized most of 2022 developing the EDAM design. On February 1, 2023 the CAISO Board of Governors and EIM Governing Body approved the EDAM proposal. Tariff development, regulatory approvals and implementation activities will take place in 2023 and 2024, with expected market go-live first quarter 2025. SMUD (and BANC) will likely need to consider its participation before 2024 if it wishes to on-board in time for the first phase of EDAM participation in 2025. Similar to the process around WEIM participation, SMUD, along with BANC, are performing cost-benefit studies to ensure EDAM participation will expand on the existing WEIM benefits prior to seeking approvals to proceed.

## **PG&E Bankruptcy**

On January 14, 2019, PG&E and its parent company, PG&E Corporation, announced their intention to file, on or about January 29, 2019, for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") mainly as a result of wildfire liability claims and exposure. On January 29, 2019, PG&E and PG&E Corporation filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Code"). On May 28, 2020, the CPUC approved PG&E's Plan of Reorganization. On June 20, 2020 the United States Bankruptcy Court for the Northern District of California confirmed PG&E's Plan of Reorganization. SMUD does not anticipate any material impacts to SMUD in connection with PG&E's Plan of Reorganization.

In addition, other electric utilities, including the other major IOUs in the State, Southern California Edison and San Diego Gas & Electric Company, have experienced credit rating downgrades as a result of potential wildfire liabilities exposure, which may have implications for the electric market generally.

## Other Factors

The electric utility industry in general has been, or in the future may be, affected by a number of other factors which could impact the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. In addition to the factors discussed above, such factors include, among others, (a) effects of compliance with rapidly changing environmental, safety, licensing, regulatory and legislative requirements other than those described above; (b) changes resulting from conservation and demand side management programs on the timing and use of electric energy; (c) changes resulting from a national energy policy; (d) effects of competition from other electric utilities (including increased competition resulting from mergers, acquisitions, and “strategic alliances” of competing electric and natural gas utilities and from competitors transmitting less expensive electricity from much greater distances over an interconnected system) and new methods of, and new facilities for, producing low cost electricity; (e) the repeal of certain federal statutes that would have the effect of increasing the competitiveness of many IOUs; (f) increased competition from independent power producers and marketers, brokers and federal power marketing agencies; (g) “self-generation” or “distributed generation” (such as solar, microturbines and fuel cells) by industrial and commercial customers and others; (h) issues relating to the ability to issue tax exempt obligations, including severe restrictions on the ability to sell to nongovernmental entities electricity from generation projects and transmission service from transmission line projects financed with tax exempt obligations; (i) effects of inflation on the operating and maintenance costs of an electric utility and its facilities; (j) changes from projected future load requirements; (k) increases in costs and uncertain availability of capital; (l) issues relating to supply chains and the uncertain availability or increased costs of necessary materials; (m) shifts in the availability and relative costs of different fuels (including the cost of natural gas); (n) sudden and dramatic increases in the price of energy purchased on the open market that may occur in times of high peak demand in an area of the country experiencing such high peak demand, such as has occurred in the State; (o) issues relating to risk management procedures and practices with respect to, among other things, the purchase and sale of natural gas, energy and transmission capacity; (p) other legislative changes, voter initiatives, referenda and statewide propositions; (q) effects of changes in the economy; (r) effects of possible manipulation of the electric markets; (s) natural disasters or other physical calamities, including, but not limited to, earthquakes, droughts, severe weather, wildfires and floods; (t) changes to the climate, including increasing volatility in rainfall in the Western United States and a reduction in the depth and duration of the Sierra snowpack; (u) issues relating to cyber-security; and (v) outbreaks of infectious diseases or the occurrence of pandemics. Any of these factors (as well as other factors) could have an adverse effect on the financial condition of any given electric utility, including SMUD’s electric utility, and likely will affect individual utilities in different ways.

SMUD is unable to predict what impact such factors will have on the business operations and financial condition of SMUD’s electric system, but the impact could be significant. SMUD has taken major steps to mitigate the impacts of many of the changes. This Official Statement includes a brief discussion of certain of these factors. This discussion does not purport to be comprehensive or definitive, and these matters are subject to change subsequent to the date hereof. Extensive information on the electric utility industry is available from the legislative and regulatory bodies and other sources in the public domain, and potential purchasers of the [2023 Bonds] should obtain and review such information.

## **APPENDIX B**

### **2022 AND 2021 CONSOLIDATED FINANCIAL STATEMENTS AND REPORT OF INDEPENDENT ACCOUNTANTS**

## APPENDIX C

### BOOK-ENTRY SYSTEM

The information in this Appendix regarding DTC has been provided by DTC, and SMUD takes no responsibility for the accuracy or completeness thereof. SMUD cannot and does not give any assurances that DTC, DTC Participants or Indirect Participants will distribute the Beneficial Owners either (a) payments of interest or principal with respect to the 2023C Subordinated Bonds or (b) certificates representing ownership interest in or other confirmation of ownership interest in the 2023C Subordinated Bonds, or that they will so do on a timely basis or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Official Statement.

The Depository Trust Company (“DTC”) New York, NY, will act as securities depository for the 2023C Subordinated Bonds. The 2023C Subordinated Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for the 2023C Subordinated Bonds in the aggregate principal amount of the 2023C Subordinated Bonds, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others, such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of the 2023C Subordinated Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2023C Subordinated Bonds on DTC’s records. The ownership interest of each actual purchaser of each 2023C Subordinated Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2023C Subordinated Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their beneficial ownership interests in the 2023C

Subordinated Bonds, except in the event that use of the book-entry system for the 2023C Subordinated Bonds is discontinued.

To facilitate subsequent transfers, all 2023C Subordinated Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of the 2023C Subordinated Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2023C Subordinated Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2023C Subordinated Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the 2023C Subordinated Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2023C Subordinated Bonds, such as redemptions, tenders, defaults, and proposed amendments to the bond documents. For example, Beneficial Owners of the 2023C Subordinated Bonds may wish to ascertain that the nominee holding the 2023C Subordinated Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners.

Redemption notices shall be sent to DTC. If less than all of the 2023C Subordinated Bonds are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in the 2023C Subordinated Bonds to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the 2023C Subordinated Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to SMUD as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2023C Subordinated Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, redemption proceeds and interest payments on the 2023C Subordinated Bonds will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from SMUD or the Trustee, on a payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participants and not of DTC, its nominee, the Trustee or SMUD, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, redemption proceeds and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee. Disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of the Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its 2023C Subordinated Bonds purchased or tendered, through its Participant, to the Underwriter, and shall effect delivery of such 2023C Subordinated Bonds by causing the Direct Participant to transfer the Participant's interest in the 2023C Subordinated



Bonds, on DTC's records, to the Underwriter. The requirement of physical delivery of 2023C Subordinated Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the 2023C Subordinated Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered 2023C Subordinated Bonds to the Underwriter's DTC account.

DTC may discontinue providing its services as depository with respect to the 2023C Subordinated Bonds at any time by giving reasonable notice to SMUD or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, bond certificates are required to be printed and delivered.

SMUD may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates for such 2023C Subordinated Bonds will be printed and delivered to DTC.

**Neither SMUD or the Trustee will have any responsibility or obligation to Participants, to Indirect Participants or to any Beneficial Owner with respect to (i) the accuracy of any records maintained by DTC, any Participant, or any Indirect Participant; (ii) the payment by DTC or any Participant or Indirect Participant of any amount with respect to the principal of or premium, if any, or interest on the 2023C Subordinated Bonds; (iii) any notice which is permitted or required to be given to Holders under the Resolution; (iv) the selection by DTC, any Participant or any Indirect Participant of any person to receive payment in the event of a partial redemption of 2023C Subordinated Bonds; (v) any consent given or other action taken by DTC as Bondholder; or (vi) any other procedures or obligations of DTC, Participants or Indirect Participants under the book-entry system.**

## **APPENDIX D**

### **SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION**

The following is a summary of certain provisions of the Subordinate Resolution. Other provisions of the Subordinate Resolution are described under the caption “SECURITY FOR THE SUBORDINATED BONDS.” This summary is not to be considered a full statement of the terms of the Subordinate Resolution and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in the Subordinate Resolution.

#### **Certain Definitions**

“Assumed Interest Payments” means, for any fiscal year or period, interest which would accrue during such fiscal year or period on an amount equal to then unamortized balance of the remaining sum of Assumed Principal Payments and at the interest rate on the date of such calculation on the Parity Subordinated Debt to which such Assumed Principal Payments relate.

“Assumed Interest Rate” for any Parity Bond or Parity Subordinated Debt means, for any fiscal year or period, the interest rate thereon on the date of such calculation.

“Assumed Principal Payments” means for any fiscal year or period the sum of the following amounts falling within such fiscal year or period: each Excluded Principal Payment amortized equally over the years (pro rata in the case of a partial year) in the period commencing on the stated due date for such Excluded Principal Payment and ending on the date 30 years from the date of issuance of the Parity Subordinated Debt to which such Excluded Principal Payment relates.

“Bond Debt Service” means all amounts required to be paid under the Subordinate Resolution from Net Revenues for principal, interest and reserve fund requirements on the Senior Bonds and all Parity Bonds then outstanding, as the same become due and payable.

“Defeasance Securities” shall mean and include any of the following securities, if and to the extent the same are at the time legal for investment of SMUD’s funds:

- (i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

- (ii) any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described in the clause (i) above which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (ii), as appropriate, and (c) as to which the principal of and interest on the bonds and obligations of the character described in the clause (i) above which have been deposited in such fund along with any

cash on deposit in such fund are sufficient to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (ii) on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (ii), as appropriate;

(iii) bonds, debentures, or other evidences of indebtedness issued or guaranteed by any agency or corporation which has been or may thereafter be created pursuant to an Act of Congress as an agency or instrumentality of the United States of America; and

(iv) with respect to the defeasance of any particular series of Bonds, any other securities specified in the Supplemental Resolution providing for their issuance.

“Electric System” and “Enterprise” means the entire electric system of SMUD, together with all additions, betterments, extensions and improvements to said system or any part thereof. The entire electric system of SMUD shall be deemed to be and to constitute a single unified and integrated system for the furnishing of electric energy to consumers of SMUD and a single enterprise. The terms “Electric System” and “Enterprise” shall have the same meaning and may be used interchangeably.

“Energy Payments” means, when used with respect to the Electric System, all actual costs incurred, or charges made therefor, by SMUD in any particular fiscal year or period to which said term is applicable for purchased power (including power purchased from any special district included within the boundaries of SMUD), electric and thermal energy and capacity and under contracts providing for payments by SMUD for electric or thermal energy or capacity whether or not such energy or capacity is delivered or capable of being delivered or otherwise made available to or received by or for the account of SMUD.

“Excluded Principal Payments” shall mean each payment of principal of Parity Subordinated Debt which the Board of Directors of SMUD determines (on a date not later than the date of issuance of such Parity Subordinated Debt) that SMUD intends to pay with moneys which are not Revenues. No such determination shall affect the security for such Parity Subordinated Debt or the obligation of SMUD to pay such payments from Revenues.

“Financial Products Agreement” means an interest rate swap, cap, collar, option, floor, forward or other hedging agreement, arrangement or security, however denominated, entered into by SMUD with a Qualified Provider not for investment purposes but with respect to specific Parity Bonds, Subordinated Bonds or Parity Subordinated Debt for the purpose of (1) reducing or otherwise managing SMUD’s risk of interest rate changes or (2) effectively converting SMUD’s interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, or from a variable rate exposure to a fixed rate exposure.

“Financial Product Payments” means payments periodically required to be paid to a counterparty by SMUD pursuant to a Financial Products Agreement. For the purpose of complying with any coverage test under the Subordinate Resolution, SMUD (or its consultant) may assume, with respect to any prospective Financial Product Payments that may adjust or vary pursuant to the terms of the related Financial Products Agreement, that the index or benchmark upon which the prospective Financial Product Payments are based shall be fixed for the prospective calculation period at the lesser of (a) the index or benchmark in effect as of the date of calculation, or (b) average rate of such index or benchmark over the most recent twelve calendar months preceding the date of calculation. If a twelve-month average index or benchmark as described in clause (b) is not calculable due to insufficient historic data or other reasons, SMUD (or its consultant) shall use the index or benchmark in effect as of the date of calculation.

“Financial Product Receipts” means amounts periodically required to be paid to SMUD by a counterparty pursuant to a Financial Products Agreement. For the purpose of complying with any coverage test under the Subordinate Resolution, SMUD (or its consultant) may assume, with respect to any prospective Financial Product Receipts that may adjust or vary pursuant to the terms of the related Financial Products Agreement, that the index or benchmark upon which the prospective Financial Product Receipts are based shall be fixed for the prospective calculation period at the lesser of (a) the index or benchmark in effect as of the date of calculation, or (b) average rate of such index or benchmark over the most recent twelve calendar months preceding the date of calculation. If a twelve-month average index or benchmark as described in clause (b) is not calculable due to insufficient historic data or other reasons, SMUD (or its consultant) shall use the index or benchmark in effect as of the date of calculation.

“Maintenance and Operation Costs” means, when used with respect to the Electric System, all actual maintenance and operation costs incurred, or charges made therefor, by SMUD in any particular fiscal year or period to which said term is applicable, but only if said charges are made in conformity with generally accepted accounting principles, and exclusive in all cases of depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment of principal, or amortization, of bonded or other indebtedness of SMUD.

Such maintenance and operation costs of the Electric System include, generally, purchased power (including power purchased from any special district included within the boundaries of SMUD), and such part of the cost of fuel of any type or character (including nuclear fuel), taxes, salaries and wages, fees for services, materials and supplies, rents, office supplies and all other costs as are charged directly or apportioned to the operation and maintenance of the generation, transmission and distribution system, customer accounts, sales and administrative functions, or to the general operation of SMUD. Said term does not include costs, or charges made therefor, for capital additions, replacements, betterments, extensions or improvements to or retirements from the Electric System, which under generally accepted accounting principles are properly chargeable to the capital account or the reserve for depreciation, and does not include losses from the sale, abandonment, reclassification, revaluation or other disposition of any properties of SMUD nor such property items, including taxes and fuel, which are capitalized pursuant to then existing accounting practice of SMUD.

“Net Revenues” for any fiscal period means the sum of (a) the Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by SMUD from the Rate Stabilization Fund for treatment as Revenues for such fiscal period, less the sum of (c) all Maintenance and Operation Costs for such fiscal period, (d) all Energy Payments for such fiscal period not included in Maintenance and Operation Costs for such fiscal period, and (e) the amounts, if any, withdrawn by SMUD from Revenues for such fiscal period for deposit in the Rate Stabilization Fund pursuant to the Subordinate Resolution.

“Net Subordinated Revenues” means Net Revenues less Bond Debt Service.

“Parity Bonds” includes the Senior Bonds and all revenue bonds issued on a parity with the Senior Bonds as provided or permitted in the Senior Bond Resolution. No Parity Bonds (other than the Senior Bonds) are currently outstanding.

“Parity Subordinated Debt” means the Subordinated Bonds and all revenue bonds of SMUD having an equal lien and charge upon Net Subordinated Revenues and therefore payable on a parity with the Subordinated Bonds and junior to the Parity Bonds.

“Qualified Provider” means any counterparty to a Financial Products Agreement if the unsecured long-term debt obligations of such counterparty (or of the parent or a subsidiary of such counterparty if such parent or subsidiary unconditionally guarantees the performance of such counterparty under such Financial Products Agreement and the Trustee receives an opinion of counsel to the effect that such guarantee is a valid and binding agreement of such parent or subsidiary), or obligations secured or supported by a letter of credit, contract, guarantee, agreement, insurance policy or surety bond issued by such counterparty (or such guarantor parent or subsidiary), are rated in one of the three highest rating categories of a national rating agency (without regard to any gradation or such rating category) at the time of the execution and delivery of the Financial Products Agreement.

“Revenues” means all charges received for, and all other income and receipts derived by SMUD from, the operation of the Electric System, or arising from the Electric System, including income derived from the sale or use of electric energy generated, transmitted or distributed by any facilities of the Electric System, together with any receipts derived from the sale of any property pertaining to the Electric System or incidental to the operation of the Electric System or from any services performed by SMUD in connection with or incidental to the Electric System, or from any other source whatsoever directly or indirectly derived from the Electric System, but exclusive in every case of any moneys derived from the levy or collection of taxes upon any taxable property in SMUD.

The term “Revenues” also includes any income or revenues derived from the wholesale sale of water developed by the White Rock Project (as defined in Resolution No. 4775), or the Upper American River Project (as defined in Resolution No. 4938), but does not include revenues or income derived from the retail distribution of water through any distribution facility thereafter acquired by SMUD.

The term “Revenues” also includes all interest, profits or other income derived from the investment of any moneys in any fund or account established under the Subordinate Resolution or the Senior Bond Resolution.

### **Additional Covenants**

The Subordinate Resolution contains the following additional covenants, among others:

- (a) That the Electric System will be maintained in good repair, working order and condition at all times, and will be continuously operated in an efficient and economical manner.
- (b) That SMUD will comply with all lawful orders of any governmental agency or authority having jurisdiction in the premises (except while the validity or application thereof is being contested in good faith).
- (c) That proper records and accounts will be maintained of all transactions relating to the Electric System and the Revenues (open to inspection by the Trustee and the Holders of not less than 10 percent in principal amount of the Subordinated Bonds), to be audited annually by an independent certified public accountant within 90 days after close of the fiscal year, and copies of such financial statements supplied to Bondholders on request.

### **Tax Covenants**

SMUD agrees in the Subordinate Resolution not to take any action which would result in interest on the 2023C Subordinated Bonds not being excluded from gross income for federal income tax purposes. SMUD also agrees to establish a separate Rebate Fund for the 2023C Subordinated Bonds and to deposit therein such amounts as are necessary to make the required rebate payments to the United

States Government under the Internal Revenue Code of 1986. Such deposits will be made from any Revenues legally available to SMUD after payment of maintenance and operation costs and Energy Payments, principal of and interest on the Parity Bonds, principal of and interest on the Subordinated Bonds, and any other obligations secured by the Revenues. Amounts in the Rebate Fund, and any earnings thereon, shall be paid to the United States Government as provided in the Tax Certificate.

### **Amendment of the Subordinate Resolution**

The Subordinate Resolution and the rights and obligations of SMUD and of the Holders of the Subordinated Bonds may be modified or amended at any time pursuant to the affirmative vote at a meeting of Bondholders, or with the written consent without a meeting, of the Holders of 60% in aggregate principal amount of the Subordinated Bonds then outstanding, provided that no such modification or amendment shall (i) extend the fixed maturity of any Subordinated Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Subordinated Bond so affected, or (ii) reduce the aforesaid percentage of Subordinated Bonds required for consent to an amendment or modification, without the consent of the Holders of all the Subordinated Bonds then outstanding. Modifications or amendments may be made, without the consent of any Bondholders, to add covenants of SMUD or to surrender rights reserved by SMUD in the Subordinate Resolution, to cure ambiguities or defective or inconsistent provisions or in regard to questions arising under the Subordinate Resolution without adversely affecting the interests of the Bondholders, or to provide for the issuance of a Series of Subordinated Bonds, subject to the provisions contained in the Subordinate Resolution with respect thereto.

### **Events of Default and Remedies of Bondholders**

*Events of Default.* The Subordinate Resolution declares each of the following to be an event of default:

- (a) Failure to pay the principal of and premium on any Subordinated Bond when due and payable;
- (b) failure to pay any installment of interest on any Subordinated Bond when due and payable, if such default continues for a period of 30 days;
- (c) if the principal of any Parity Bonds shall be declared to be due and payable on account of the occurrence of a default under or breach of the terms thereof or the Senior Bond Resolution or a similar instrument; and
- (d) if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of SMUD or of the whole or any substantial part of its property, and such custody or control shall not be terminated or stayed within 60 days.

then and in each and every case during the continuance of such event of default, the Trustee or the Holders of not less than a majority in aggregate principal amount of the Subordinated Bonds at the time outstanding shall be entitled, upon notice in writing to SMUD, to declare the principal of all of the Subordinated Bonds then outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in the Subordinate Resolution or in the Subordinated Bonds contained to the contrary notwithstanding.

*Trustee to Represent Subordinated Bondholders.* The Trustee is appointed as trustee to represent the Subordinated Bondholders in the matter of exercising and prosecuting on their behalf such rights and remedies as may be available to such Holders under the provisions of the Subordinated Bonds and the Subordinate Resolution, as well as under the Act or other provisions of applicable law. Upon any default or other occasion giving rise to a right of the Trustee to represent the Subordinated Bondholders, the Trustee may take such action as may seem appropriate to it, and, upon the request in writing of the Holders of twenty-five percent (25%) in aggregate principal amount of the Subordinated Bonds then outstanding, which request shall specify such default or occasion and the action to be taken by the Trustee, and upon being furnished with indemnity satisfactory to it, the Trustee shall take such action on behalf of the Bondholders as may have been requested.

*Remedies.* In case one or more of the events of default shall happen, then and in every such case the Holder of any Subordinated Bond at the time outstanding shall be entitled to proceed to protect and enforce the rights vested in such Holder by the Subordinate Resolution by such appropriate judicial proceeding as such Holder shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in the Subordinate Resolution, or in aid of the exercise of any powers granted in the Subordinate Resolution, or to enforce any other legal or equitable right vested in the Holders of Subordinated Bonds by the Subordinate Resolution or by law

*Distribution of Assets.* Upon any distribution of assets of SMUD upon any dissolution, winding up, liquidation or reorganization of SMUD, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of SMUD or upon any acceleration of maturity of the Subordinated Bonds by declaration or otherwise,

(a) the holders of all Parity Bonds shall first be entitled to receive payment in full of the principal thereof (and premium, if any) and interest due thereon, or provision shall be made for such payment in cash, before the Holders of the Subordinated Bonds are entitled to receive any payment on account of the principal of (or premium, if any) or interest on the indebtedness evidenced by the Subordinated Bonds;

(b) any payment by, or distribution of assets of, SMUD of any kind or character, whether in cash, property or securities, to which the Holders of the Subordinated Bonds or the Trustee would be entitled except for the provisions of the Subordinate Resolution shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Parity Bonds or their representative or representatives or to the trustee or trustees under the Senior Bond Resolution or any similar instrument under which any instruments evidencing any of such Parity Bonds may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the Parity Bonds held or represented by each, to the extent necessary to make payment in full of all Parity Bonds remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Parity Bonds; and

(c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, SMUD of any kind or character, whether in cash, property or securities shall be received by the Trustee or the Holders of the Subordinated Bonds before all Parity Bonds are paid in full, such payment or distribution shall be held in Trust for the benefit of, and shall be paid over to the holders of such Parity Bonds or their representative or representatives or to the trustee or trustees under the Subordinate Resolution or any similar instrument under which any instruments evidencing any of such Parity Bonds may have been issued, ratably as aforesaid, for application to the payment of all Parity Bonds remaining

unpaid until all such Parity Bonds shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Parity Bonds.

**Discharge of Subordinate Resolution**

The Subordinate Resolution may be discharged by depositing with the Trustee in trust, moneys or Defeasance Securities, in such amount as the Trustee shall determine will, together with the interest to accrue thereon, be fully sufficient to pay and discharge the indebtedness on all Subordinated Bonds at or before their respective maturity dates.



## **APPENDIX E**

### **SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION**

The following is a summary of certain provisions of the Senior Bond Resolution. This summary is not to be considered a full statement of the terms of the Senior Bond Resolution and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in the Senior Bond Resolution.

Between July 1997 and August 2003, SMUD received consents to amend the Senior Bond Resolution from the owners of the requisite percentage of Outstanding Senior Bonds. Pursuant to the authority granted by such consents, SMUD amended the Senior Bond Resolution in October 2003 by adopting the Forty-Eighth Supplemental Resolution and the Forty-Ninth Supplemental Resolution. The following summary of the Senior Bond Resolution reflects such amendments.

#### **Certain Definitions**

“Energy Payments” means, when used with respect to the Electric System, all actual costs incurred, or charges made therefor, by SMUD in any particular fiscal year or period to which said term is applicable for purchased power (including power purchased from any special district included within the boundaries of SMUD), electric and thermal energy and capacity under contracts providing for payments by SMUD for electric or thermal energy or capacity whether or not such energy or capacity is delivered or capable of being delivered or otherwise made available to or received by or for the account of SMUD.

“Net Revenues” for any fiscal period means the sum of (a) the Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by SMUD from the Rate Stabilization Fund for treatment as Revenues for such fiscal period, less the sum of (c) all Maintenance and Operation Costs for such fiscal period, (d) all Energy Payments for such fiscal period not included in Maintenance and Operation Costs for such fiscal period, and (e) the amounts, if any, withdrawn by SMUD from Revenues for such fiscal period for deposit in the Rate Stabilization Fund pursuant to the Senior Bond Resolution.

“Parity Bonds” includes the Senior Bonds and all revenue bonds issued on a parity with the Senior Bonds as provided or permitted in the Senior Bond Resolution. No Parity Bonds (other than the Senior Bonds) are currently outstanding.

“Revenues” means all charges received for, and all other income and receipts derived by SMUD from, the operation of the Electric System, or arising from the Electric System, including income derived from the sale or use of electric energy generated, transmitted or distributed by any facilities of the Electric System, together with any receipts derived from the sale of any property pertaining to the Electric System or incidental to the operation of the Electric System or from any services performed by SMUD in connection with or incidental to the Electric System, or from any other source whatsoever directly or indirectly derived from the Electric System, but exclusive in every case of any moneys derived from the levy or collection of taxes upon any taxable property in SMUD.

The term “Revenues” also includes any income or revenues derived from the wholesale sale of water developed by the White Rock Project (as defined in Resolution No. 4775), or the Upper American River Project (as defined in Resolution No. 4938), but does not include revenues or income derived from the retail distribution of water through any distribution facility thereafter acquired by SMUD. The term “Revenues” also includes all interest, profits or other income derived from the investment of any moneys in any fund or account established under the Senior Bond Resolution.

## **Allocation of Revenues**

After making an allocation of Revenues to Maintenance and Operation Costs and to Energy Payments not included in Maintenance and Operation Costs, the Treasurer of SMUD is required (subject to the last paragraph of this section) to set aside, on an equal priority with sums set aside for all other Parity Bonds, Net Revenues as follows:

First: To the Electric Revenue Bond Interest Fund, in approximately equal monthly installments on or before the first day of each month, an amount equal to at least one-fifth (1/5) of the aggregate amount of interest becoming due on the Senior Bonds on the next succeeding semiannual interest payment date, until an amount sufficient to meet said interest payment is accumulated.

Second: To the Electric Revenue Bond Redemption Fund, to be set aside in the Principal Account and Sinking Fund, respectively, in approximately equal monthly installments on or before the first day of each month, an amount equal to at least one-tenth (1/10) of the aggregate amount of principal becoming due on serial Senior Bonds and the aggregate minimum sinking fund payments required to be made with respect to term Senior Bonds during the next ensuing 12 months, until an amount sufficient to meet the principal and sinking fund requirements on all Senior Bonds outstanding is accumulated in said accounts, respectively.

Third: To the Electric Revenue Bond Reserve Fund, such amounts as any supplemental resolution authorizing the issuance of a series of Senior Bonds may require to build up and maintain said fund.

If interest on Senior Bonds of a series or maturity is payable more frequently than semiannually, the Treasurer of SMUD shall set aside out of Net Revenues in the Interest Fund such amounts as may be required to pay interest on the Senior Bonds of such series or maturity on each interest payment date at least one month prior to such interest payment date. Allocation to the Electric Revenue Bond Redemption Fund and Electric Revenue Bond Reserve Fund shall be made as set forth above.

All remaining Revenues, after making the foregoing allocations, will be available to SMUD for all lawful SMUD purposes. Such remaining Revenues will be used for the purpose of, among other things, making any required deposits to the Rebate Fund. See "Tax Covenants."

## **Reserve Fund**

The Electric Revenue Bond Reserve Fund is a parity reserve fund for the equal benefit of all Parity Bonds outstanding. Moneys in such fund (except any excess over the required balance which may be withdrawn and used for any SMUD use) shall be used solely for the purpose of making good any deficiency in any fund established for the payment of interest, principal or sinking fund payments pursuant to the Senior Bond Resolution or any resolution authorizing the issuance of any Parity Bonds.

The Electric Revenue Bond Reserve Fund is required to be maintained in an amount such that the amount in the combined reserve funds of all Parity Bonds then outstanding will at no time be less than the current annual interest requirements on all then outstanding Parity Bonds (except bonds for which payment has been provided in advance). If SMUD's debt service ratio in any fiscal year (the ratio of Net

Revenues during said fiscal year to maximum annual debt service during the period of three fiscal years next following said fiscal year on all Parity Bonds then outstanding) shall fall below 1.40, there shall be set aside in the reserve funds from the first available Net Revenues not less than 15 percent of the total current monthly interest requirements of all Parity Bonds until the debt service ratio again exceeds 1.40, or until the aggregate amount on deposit in the reserve funds is equal to the maximum annual debt service on all Parity Bonds, whichever occurs first. The combined reserve funds cannot be required to exceed the maximum annual debt service on all outstanding Parity Bonds.

### **Rates and Charges**

SMUD has covenanted in the Senior Bond Resolution to establish and at all times maintain and collect rates and charges for the sale or use of electric energy generated, transmitted, distributed or furnished by SMUD which, together with certain items of other income permitted under the Senior Bond Resolution, will yield Revenues at least sufficient, with respect to the ensuing 12 months, to pay and provide for all sums required for Maintenance and Operation Costs and Energy Payments not included in Maintenance and Operation Costs and, in addition, to provide an aggregate sum equal to at least 1.20 times the total amount required for the payment of principal and interest, together with any sinking fund or reserve fund payments, on all Parity Bonds, in each case during such 12 months.

SMUD has full power to establish rates and charges for all SMUD services, and the levels of such rates are not subject to review or regulation by any other governmental agency, either federal or state.

### **Limitations on Additional Obligations Payable from Revenues**

The Senior Bond Resolution provides that SMUD will not, so long as any Senior Bonds are outstanding, issue any obligations payable in whole or in part from Revenues except the following:

- (a) Senior Bonds of any series authorized pursuant to the Senior Bond Resolution;
- (b) Refunding bonds issued solely to refund all or part of the Parity Bonds;
- (c) General obligation bonds or other securities secured by the full faith and credit of SMUD;
- (d) Additional revenue bonds (including additional Parity Bonds), payable on a parity with the Senior Bonds, with an equal lien and charge upon the Revenues, but only subject to the following conditions:
  - (1) Such additional revenue bonds shall have been authorized;
  - (2) The proceedings for the issuance of such additional revenue bonds shall require SMUD to fix and collect rates and charges in an amount not less, with respect to such bonds, than the amounts required with respect to Senior Bonds issued under the Senior Bond Resolution;
  - (3) SMUD shall not then be in default under the Senior Bond Resolution or other resolutions authorizing the issuance of Parity Bonds; and

(4) A certificate of SMUD, certifying--

(1) that the Net Revenues, after the completion of the additions, betterments, extensions or improvements proposed to be financed from the proceeds of such additional revenue bonds, will be sufficient to pay the principal of and interest (and bond reserve fund requirements, if any) on all Parity Bonds then outstanding and on such additional revenue bonds then proposed to be issued, and

(2) that the Net Revenues, for a period of twelve consecutive months during the twenty-four months immediately preceding the date upon which such additional revenue bonds will become outstanding, have been at least equal to 1.25 times the sum of

- (i) the annual interest,
- (ii) the principal amount of serial bonds falling due, and
- (iii) the amount of minimum sinking fund payments required for the payment of term bonds,

as computed for the year in which such sum shall then be a maximum, including both then outstanding Parity Bonds and the additional revenue bonds then proposed to be issued, provided that--

(A) if rates and charges in effect on the date upon which such additional revenue bonds will become outstanding will be greater than those in effect during the entire twelve months elected for the foregoing computation, then the Net Revenues for said period of twelve months may be augmented by 75% of the estimated increase in Net Revenues computed to accrue to the Electric System in the first twelve months during which such rates and charges shall be in effect; and

(B) if such additional revenue bonds or any thereof shall be issued for the purpose of acquiring an existing revenue-producing electric system, 75% of the estimated pro forma net revenues of such existing system (calculated on the basis of assumed SMUD ownership and operation during such period but otherwise on the basis of actual gross revenues of such existing system at the rates actually charged therefor) for the preceding twelve months may be added to the actual Net Revenues of the Electric System for the twelve months elected for said computation and treated as if actually received by the Electric System during those twelve months; and

(e) Revenue bonds junior and subordinate to the Parity Bonds.

### **Additional Covenants**

The Senior Bond Resolution contains the following additional covenants, among others:

(a) SMUD will cause the Electric System to be maintained in good repair, working order and condition at all times, and will continuously operate the Electric System in an efficient and economical manner, and so that all lawful orders of any governmental agency or authority having jurisdiction in the premises shall be complied with, but SMUD shall not be required to comply with any such orders so long as the validity or application thereof shall be contested in good faith.

SMUD further covenants and agrees that it will at all times, while any of the Bonds are outstanding maintain and comply with all necessary permits and licenses issued by the Atomic Energy Commission.

(b) None of the electric energy owned, controlled or supplied by SMUD shall be furnished or supplied free, but on the contrary shall always be sold or furnished so as to produce Revenues.

If SMUD shall sell water developed or made available by the Electric System, a reasonable charge therefor shall be made and the revenue received by SMUD therefrom shall be Revenues and accounted for as such, except that SMUD may furnish water developed or impounded by the Electric System for any purpose (other than the use of such water for hydroelectric purposes) without charge as SMUD in its discretion deems advisable if such water is so furnished without any distribution cost to SMUD. SMUD may sell any water for consumption for domestic or other purposes (exclusive of the use thereof for hydroelectric purposes), but SMUD shall charge itself a reasonable wholesale rate for any water sold by SMUD. SMUD also may sell water at wholesale to any other person, for distribution by such other person for domestic or other purposes (except use for hydroelectric purposes), and SMUD shall likewise charge a reasonable wholesale rate to any such other person. In each case, all such wholesale rates shall be included in Revenues. The revenue received by SMUD from any retail sale of water distributed by SMUD shall not be deemed Revenues, but shall be available to SMUD for any SMUD purpose.

(c) That all taxes and governmental charges and other lawful claims which might become a lien on the Electric System or the Revenues or impair the security of the Senior Bonds will be paid and discharged when due.

(d) SMUD will not sell or otherwise dispose of any property essential to the proper operation of the Electric System or to the maintenance of the Revenues. SMUD will not enter into any lease or agreement which impairs or impedes the operation of the Electric System or which otherwise impairs or impedes the rights of the Bondholders with respect to Revenues. Nothing contained in the Senior Bond Resolution shall prevent SMUD from entering into sale and leaseback agreements pursuant to which SMUD may acquire the use of property subject to the terms of such sale and leaseback agreements.

(e) That insurance adequate in amounts and as to risks covered will be maintained against such risks as are usually insurable in connection with similar electric systems, and in addition public liability and property damage insurance in amounts not less than \$1,000,000 per accident and adequate fidelity bonds on all officers and employees of SMUD handling or responsible for SMUD funds, subject in each case to the condition that such insurance is obtainable at reasonable rates and upon reasonable terms and conditions. See "Insurance" for a description of SMUD's insurance.

(f) That the net proceeds realized by SMUD in the event all or any part of the Electric System is taken by eminent domain proceedings will be applied to the redemption or retirement of all Parity Bonds if sufficient therefor, and, if not, then pro rata to the redemption or retirement of Parity Bonds or to new facilities if the additional Revenues to be derived therefrom will sufficiently offset the loss of Revenues resulting from such eminent domain so that the ability of SMUD to meet its obligations will not be substantially impaired.

(g) That SMUD will at all times use its best efforts to maintain the powers, functions and duties now reposed in it pursuant to law.

(h) That SMUD will establish and at all times maintain and collect rates and charges for the sale or use of its electric energy sufficient to permit SMUD to purchase power or issue and sell Parity Bonds to finance additions, betterments, extensions and improvements to the Electric System as may be reasonably necessary to satisfy its then projected electric demand upon its Electric System, and that unless the Board determines that SMUD will be able to satisfy such demand through the purchase of electric energy, SMUD will proceed with all reasonable diligence to issue and sell such Parity Bonds.

## **Tax Covenants**

SMUD agrees in the Senior Bond Resolution not to take any action which would result in interest on the Senior Bonds not being excluded from gross income for federal income tax purposes. SMUD also agrees to establish a separate Rebate Fund for the Senior Bonds and to deposit therein such amounts as are necessary to make the required rebate payments to the United States Government under the Internal Revenue Code of 1986. Such deposits will be made from any Revenues legally available to SMUD after payment of maintenance and operation costs and Energy Payments, principal of and interest on the Parity Bonds and any other obligations secured by the Revenues. Amounts in the Rebate Fund, and any earnings thereon, shall be paid to the United States Government as provided in the Tax Certificate.

## **Amendment of the Senior Bond Resolution**

The Senior Bond Resolution and the rights and obligations of SMUD and of the Holders of the Senior Bonds may be modified or amended at any time pursuant to the affirmative vote at a meeting of Bondholders, or with the written consent without a meeting, of the Holders of 60 percent in aggregate principal amount of the Senior Bonds then outstanding, provided that no such modification or amendment shall (i) extend the fixed maturity of any Senior Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Senior Bond so affected, or (ii) reduce the aforesaid percentage of Senior Bonds required for consent to an amendment or modification, without the consent of the Holders of all the Senior Bonds then outstanding. Modifications or amendments may be made, without the consent of any Bondholders, to add covenants of SMUD or to surrender rights reserved by SMUD in the Senior Bond Resolution, to cure ambiguities or defective or inconsistent provisions or in regard to questions arising under the Senior Bond Resolution without adversely affecting the interests of the Bondholders, or to provide for the issuance of a Series of Senior Bonds, subject to the provisions contained in the Senior Bond Resolution with respect thereto.

## **Events of Default and Remedies of Bondholders**

The Senior Bond Resolution declares each of the following to be an event of default:

- (a) Failure to pay the principal of and premium on any Senior Bond when due and payable;
- (b) Failure to pay any installment of interest on any Senior Bond when due and payable, if such default continues for a period of 30 days;
- (c) Default by SMUD in the observance of any of the covenants, agreements or conditions on its part in the Senior Bond Resolution or in the Senior Bonds, if such default continues for a period of 60 days after written notice thereof (specifying such default and requiring the same to be remedied) has been given to SMUD by the Trustee, or to SMUD and the Trustee by the Holders of not less than 25 percent in aggregate principal amount of the Senior Bonds at the time outstanding; and
- (d) If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of SMUD or of the whole or any substantial part of its property, and such custody or control shall not be terminated or stayed within 60 days.

In the event of default, the Trustee or the Holders of not less than a majority in aggregate principal amount of the outstanding Senior Bonds may, upon written notice to SMUD, declare the principal of all outstanding Senior Bonds, and the interest accrued thereon, to be due and payable immediately. The Trustee is appointed as trustee to represent Bondholders and may take such action as

may seem appropriate to it, and, upon the written request of the Holders of 25 percent in aggregate principal amount of the outstanding Senior Bonds, and upon being furnished with indemnity satisfactory to it, will take such action on behalf of Bondholders as is specified in such written request. Each Bondholder is entitled to proceed to protect and enforce the rights vested in such Holder by the Senior Bond Resolution by such appropriate judicial proceedings as such Holder deems most effectual.

The rights of Bondholders are limited and restricted to the use and application of Revenues as provided in the Senior Bond Resolution and do not extend to the levy of any attachment or execution upon or forfeiture of any of the properties of SMUD or to any moneys derived by SMUD from the levy or collection of taxes.

In addition to the limitations on remedies contained in the Senior Bond Resolution, the rights and remedies provided by the Senior Bonds and the Senior Bond Resolution, as well as the enforcement by SMUD of contracts with customers of the Electric System, may be limited by and are subject to bankruptcy, insolvency, reorganization and other laws affecting the enforcement of creditors' rights.

### **Discharge of Senior Bond Resolution**

The Senior Bond Resolution may be discharged by depositing with the Trustee in trust, moneys or Federal Securities or general obligation bonds of the State of California, in such amount as the Trustee shall determine will, together with the interest to accrue thereon, be fully sufficient to pay and discharge the indebtedness on all Senior Bonds at or before their respective maturity dates.

## APPENDIX F

### PROPOSED FORM OF LEGAL OPINION FOR 2023C SUBORDINATED BONDS

[subject to internal review]  
[Closing Date]

Sacramento Municipal Utility District  
Sacramento, California

Sacramento Municipal Utility District  
Subordinated Electric Revenue Refunding Bonds, 2023 Series C  
(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel to the Sacramento Municipal Utility District (“SMUD”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023C Subordinated Bonds”), issued pursuant to Resolution No. 85-11-1 of the Board of Directors of SMUD, adopted November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted June 21, 2001 (the “Subordinate Master Resolution”), as supplemented and amended by later resolutions of said Board of Directors (as so supplemented and amended, the “Resolution”), including Resolution No. 22-05-[ ], adopted May 19, 2023 (the “Fourteenth Supplemental Resolution”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

In such connection, we have reviewed the Resolution; the Tax Certificate, dated the date hereof (the “Tax Certificate”), executed by SMUD; opinions of counsel to SMUD and the Trustee; certificates of SMUD, the Trustee and others; and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after original delivery of the 2023C Subordinated Bonds on the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after original delivery of the 2023C Subordinated Bonds on the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the 2023C Subordinated Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures provided to us and the due and legal execution and delivery thereof by, and validity against, any parties other than SMUD. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Resolution and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the 2023C Subordinated Bonds to be included in gross income for federal income tax purposes.



We call attention to the fact that the rights and obligations under the 2023C Subordinated Bonds, the Resolution and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against governmental entities such as SMUD. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Resolution or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement, dated \_\_\_\_\_, 2023, or other offering material relating to the 2023C Subordinated Bonds and express no opinion or view with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The 2023C Subordinated Bonds constitute the valid and binding limited obligations of SMUD.
2. The Resolution, including the Fourteenth Supplemental Resolution, has been duly adopted by, and constitutes the valid and binding obligation of, SMUD. The Resolution creates a valid pledge, to secure the payment of the principal of and interest on the 2023C Subordinated Bonds, of the Net Subordinated Revenues, subject to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution.
3. Interest on the 2023C Subordinated Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the 2023C Subordinated Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. We observe that, for tax years beginning after December 31, 2022, interest on the 2023C Subordinated Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023C Subordinated Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

per

## APPENDIX G

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by the Sacramento Municipal Utility District (the “Issuer”) and U.S. Bank Trust Company, National Association in its capacity as Dissemination Agent (the “Dissemination Agent”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023C Subordinated Bonds”). The 2023C Subordinated Bonds are being issued pursuant to the Issuer’s Resolution No. 85-11-1, adopted on November 7, 1985, as amended and restated by Resolution No. 01-06-10 (the “Subordinate Master Resolution”), as supplemented by supplemental resolutions, including Resolution No. 23-05-[ ], adopted on May 18, 2023 (the “Fourteenth Supplemental Resolution”). The Subordinate Master Resolution and all supplemental resolutions, including the Fourteenth Supplemental Resolution, are collectively referred to herein as the “Subordinate Resolution.” Pursuant to Section 86.11 of the Subordinate Resolution, the Issuer and the Dissemination Agent covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Issuer and the Dissemination Agent for the benefit of the Holders and Beneficial Owners of the 2023C Subordinated Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

**SECTION 2. Definitions.** In addition to the definitions set forth in the Subordinate Resolution, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023C Subordinated Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the Treasurer of the Issuer or his or her designee, or such other officer or employee as the Issuer shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean U.S. Bank Trust Company, National Association, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access system.

“Financial Obligation” shall mean, for purposes of the Listed Events set out in Section 5(a)(15) and Section 5(a)(16), a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “Financial Obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board.

“Participating Underwriter” shall mean any of the original underwriters of the 2023C Subordinated Bonds required to comply with the Rule in connection with offering of the 2023C Subordinated Bonds.

“Repository” shall mean the MSRB through EMMA or any other entity or system designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of California.

### **SECTION 3. Provision of Annual Reports.**

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than one hundred eighty (180) days after the end of the Issuer’s fiscal year (presently December 31), commencing with the report for the 2023 Fiscal Year, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the fiscal year changes for the Issuer, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5 hereof.

(b) Not later than fifteen (15) Business Days prior to the dates specified in subsection (a) for providing the Annual Report to each Repository, the Issuer shall provide its respective Annual Report to the Dissemination Agent. If by such date, the Dissemination Agent has not received a copy of the Annual Report from the Issuer, the Dissemination Agent shall contact the Issuer to determine if the Issuer is in compliance with the first sentence of this subsection (b).

(c) If the Dissemination Agent is unable to verify that an Annual Report of the Issuer has been provided to each Repository by the date required in subsection (a), the Dissemination Agent shall send a notice to each Repository and the MSRB (if the MSRB is not a Repository) in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of each Repository and then-applicable rules and procedures for filing the Annual Report with each Repository, if any; and

(2) file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing each Repository to which it was provided.

### **SECTION 4. Content of Annual Reports.**

(a) The Issuer’s Annual Report shall contain or include by reference the following:

(1) The audited financial statements of the Issuer for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board and where not in conflict with the Financial Accounting Standards Board (“FASB”) pronouncements or accounting principles prescribed by FASB. If the Issuer’s audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(2) An update of the following types of information contained in Appendix A to the official statement, dated \_\_\_\_\_, 2023 and related to the 2023C Subordinated Bonds:

(i) The table entitled “Power Supply Resources.”

(ii) The table entitled “Projected Requirements and Resources to Meet Load Requirements.”

(iii) The table entitled “Average Class Rates” (to the extent such table relates to rates and revenues of the Issuer).

(iv) The table entitled “Selected Operating Data.”

(v) The table entitled “Unconsolidated Financial Data.”

(vi) The balance in the Decommissioning Trust Fund, the current estimate of decommissioning costs, the decommissioning costs to date, and the annual contribution level to the Decommissioning Trust Fund, all relating to the Rancho Seco Nuclear Power Plant.

(vii) The table entitled “Estimated Capital Requirements.”

(b) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or public entities related thereto, which have been submitted to each Repository or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

## **SECTION 5. Reporting of Listed Events.**

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the 2023C Subordinated Bonds not later than ten (10) business days after the occurrence of the event:

(1) principal and interest payment delinquencies;

(2) non-payment related defaults, if material;

(3) unscheduled draws on any applicable debt service reserves reflecting financial difficulties;

- (4) unscheduled draws on credit enhancement reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the 2023C Subordinated Bonds or other material events adversely affecting the tax status of the 2023C Subordinated Bonds;
- (7) modifications to rights of Bondholders, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the 2023C Subordinated Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Issuer;
- (13) the consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of the Trustee, if material;
- (15) incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect Bondholders, if material; and
- (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

(b) For the purpose of the event identified in Section 5(a)(12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, the Issuer shall as soon as possible determine if such event is required to be reported pursuant to this Section 5.

(d) If the Issuer has determined that such event is required to be reported pursuant to this Section 5, the Issuer shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (e).

(e) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB (if the MSRB is not a Repository) and each Repository.

**SECTION 6. Termination of Reporting Obligation.** The obligations of the Issuer and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the 2023C Subordinated Bonds. If such termination occurs prior to the final maturity of the 2023C Subordinated Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event under Section 5.

**SECTION 7. Dissemination Agent; Filings.**

(a) The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Agreement. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent shall be U.S. Bank Trust Company, National Association.

(b) Unless and until one or more different or additional Repositories are designated or authorized by the Securities and Exchange Commission, all filings with a Repository which are required by this Disclosure Agreement shall be filed with the MSRB through EMMA and shall be in an electronic format and accompanied by such identifying information as prescribed by the MSRB in accordance with the Rule.

**SECTION 8. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the Issuer and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the 2023C Subordinated Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the 2023C Subordinated Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (1) is approved by the Holders of 60% of the 2023C Subordinated Bonds, or (2) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the 2023C Subordinated Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in its next respective Annual Report, and shall include, as applicable, a

narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles from those described in Section 4(a)(1), on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (1) notice of such change shall be given in the same manner as for a Listed Event under Section 5, and (2) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**SECTION 9. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. Default.** In the event of a failure of the Issuer or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee shall, at the request of any Participating Underwriter or the Holders of at least 25% aggregate principal amount of Outstanding Bonds and upon being indemnified to its satisfaction from and against any costs, liability, expenses and fees of the Trustee, including, without limitation fees and expenses of its attorneys, or any Holder or Beneficial Owner of the 2023C Subordinated Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Subordinate Resolution, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

**SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.** The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Issuer agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement and no implied duties for obligation shall be read into this Disclosure Agreement against the Dissemination Agent. The Dissemination Agent has no power to enforce nonperformance on the part of the Issuer. The Dissemination Agent shall be paid compensation by the Issuer for its services provided hereunder in accordance with its schedule of fees provided to the Issuer and all expenses, legal fees and costs of the Dissemination Agent made or incurred by the Dissemination Agent in the performance of its duties hereunder. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the 2023C Subordinated Bonds.

**SECTION 12. Notices.** Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the Issuer: Sacramento Municipal Utility District  
6201 S Street, MS B405  
Sacramento, California 95817  
Attention: Treasurer  
Telephone: (916) 732-6509  
Fax: (916) 732-5835

To the Dissemination Agent: U.S. Bank Trust Company, National Association  
Global Corporate Trust  
One California Street, Suite 1000  
San Francisco, California 94111  
Telephone: (415) 677-3699  
Fax: (415) 677-3769

To the Trustee: U.S. Bank Trust Company, National Association  
Global Corporate Trust  
One California Street, Suite 1000  
San Francisco, California 94111  
Telephone: (415) 677-3699  
Fax: (415) 677-3769

The Issuer, the Dissemination Agent and the Trustee may, by giving written notice hereunder to the other person listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent. Unless specifically otherwise required by the context of this Disclosure Agreement, a party may give notice by any form of electronic transmission capable of producing a written record. Each such party shall file with the Trustee and Dissemination Agent information appropriate to receiving such form of electronic transmission.

**SECTION 13. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriter and Holders and Beneficial Owners from time to time of the 2023C Subordinated Bonds, and shall create no rights in any other person or entity.



**SECTION 14. Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated: \_\_\_\_\_, 2023.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
Treasurer

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Dissemination Agent

By \_\_\_\_\_  
Authorized Officer

ACKNOWLEDGED:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Sacramento Municipal Utility District

Name of Bond Issue: Subordinated Electric Revenue Refunding Bonds, 2023 Series C

Name of Borrower: Sacramento Municipal Utility District

Date of Issuance: \_\_\_\_\_, 2023

NOTICE IS HEREBY GIVEN that the Sacramento Municipal Utility District (the “Issuer”) has not provided an Annual Report with respect to the above-named Bonds as required by Section 80.11 of Resolution No. 23-05-[\_\_\_\_], each adopted May 18, 2023, by the Issuer. [The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
on behalf of Sacramento Municipal Utility District

\_\_\_\_\_

cc: Sacramento Municipal Utility District

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**OFFICIAL STATEMENT**

**[\$[PAR]]\***

**SUBORDINATED ELECTRIC REVENUE BONDS  
2023 SERIES D**

**[\$[PAR]]\***

**SUBORDINATED ELECTRIC REVENUE BONDS  
2023 SERIES E**

**\$100,000,000\***

**SUBORDINATED ELECTRIC REVENUE REFUNDING  
BONDS  
2023 SERIES F**

**PRELIMINARY OFFICIAL STATEMENT DATED [ ], 2023**

**NEW ISSUE- FULL BOOK-ENTRY**

**Ratings: See “RATINGS” herein**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD, based upon an analysis of existing laws, regulations, rulings and court decisions and, assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2023 Subordinated Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Bond Counsel, interest on the 2023 Subordinated Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the 2023 Subordinated Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023 Subordinated Bonds. See “TAX MATTERS.”*



**\$[PAR]\*  
Subordinated Electric Revenue  
Bonds  
2023 Series D**

**\$[PAR]\*  
Subordinated Electric Revenue  
Bonds  
2023 Series E**

**\$100,000,000\*  
Subordinated Electric Revenue  
Refunding Bonds  
2023 Series F**

**Dated: Date of Delivery**

**Due: See “SUMMARY OF THE OFFERING” herein**

The Subordinated Electric Revenue Bonds, 2023 Series D (the “2023D Subordinated Bonds”), the Subordinated Electric Revenue Bonds, 2023 Series E (the “2023E Subordinated Bonds”) and the Subordinated Electric Revenue Refunding Bonds, 2023 Series F (the “2023F Subordinated Bonds”) and, together with the 2023D Subordinated Bonds and the 2023E Subordinated Bonds, the “2023 Subordinated Bonds”) will be issued pursuant to Resolution No. 85-11-1 of the Sacramento Municipal Utility District (“SMUD”), adopted November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted June 21, 2001, as supplemented and amended, and will be payable from the Net Subordinated Revenues of the Electric System of SMUD, as described herein. The 2023 Subordinated Bonds are being issued to (i) finance and refinance certain improvements and additions to SMUD’s Electric System, including through the refunding of SMUD’s commercial paper notes, (ii) refund the Subordinated Electric Revenue Bonds, 2019 Series A, and (iii) pay certain costs associated with the issuance of the 2023 Subordinated Bonds. See “PLAN OF FINANCE.”

The 2023 Subordinated Bonds will initially be issued in the Term Rate Mode and will mature on the dates, bear interest initially at the initial Term Rates, for the initial Term Rate Periods ending on the dates and be subject to mandatory purchase on the initial scheduled Mandatory Purchase Dates as described in the “SUMMARY OF THE OFFERING” following this cover page. Each series of the 2023 Subordinated Bonds may, under certain circumstances, be converted to a Daily Mode, Weekly Mode, Flexible Mode, Index Mode, Direct Purchase Index Mode or Fixed Rate Mode, and may be converted from one Term Rate Period to another Term Rate Period. Each series of 2023 Subordinated Bonds is subject to mandatory tender in the event of any such conversion related thereto. See “THE 2023 SUBORDINATED BONDS – Conversion Between Modes” and “– Mandatory Purchase on the Mandatory Purchase Date”. *This Official Statement provides information as of its date concerning the 2023 Subordinated Bonds while bearing interest in the Term Rate Mode in the initial Term Rate Periods. Owners and prospective purchasers of the 2023 Subordinated Bonds should not rely on this Official Statement for information concerning the 2023 Subordinated Bonds in connection with any conversion of the 2023 Subordinated Bonds to an Interest Rate Mode other than the Term Rate Mode or to a new Term Rate Period, but should look solely to the offering document to be used in connection with any such conversion.*

The 2023 Subordinated Bonds are also subject to mandatory tender, and optional and mandatory redemption prior to maturity as set forth herein. See “THE 2023 SUBORDINATED BONDS – Mandatory Purchase on the Mandatory Purchase Date,” “– Optional Redemption” and “– Mandatory Sinking Fund Redemption” herein.

While in the Term Rate Mode, interest on the 2023 Subordinated Bonds shall be payable semiannually on each [February 15] and [August 15], commencing on [August 15, 2023], on any Mandatory Purchase Date therefor and on the maturity date thereof.

The 2023 Subordinated Bonds of each Series in the Term Rate Mode are being issued in denominations of \$5,000 and any integral multiple thereof as fully registered bonds and, when issued, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the 2023

Subordinated Bonds, and individual purchases of the 2023 Subordinated Bonds will be made in book-entry form only. Principal or Redemption Price or Purchase Price of, and interest on the 2023 Subordinated Bonds will be payable by U.S. Bank Trust Company, National Association, as trustee (the “Trustee”) to DTC, which is obligated in turn to remit such principal or Redemption Price or Purchase Price, and interest to its DTC Participants for subsequent disbursement to the beneficial owners of the 2023 Subordinated Bonds, as described herein.

**The principal of and interest on the 2023 Subordinated Bonds, together with the debt service on other Subordinated Bonds and Parity Subordinated Debt (as defined herein), are payable exclusively from and secured by a pledge of the Net Subordinated Revenues of the Electric System of SMUD. Neither the credit nor the taxing power of SMUD or the State of California is pledged to the payment of the 2023 Subordinated Bonds. Payment of the principal of and interest on the Subordinated Bonds, including the 2023 Subordinated Bonds, is subordinated to the payment of principal and interest on SMUD’s Electric Revenue Bonds and other Parity Bonds (as defined herein).**

The information presented on this cover page is for general reference only and is qualified in its entirety by reference to the entire Official Statement and the documents summarized and described herein.

The 2023 Subordinated Bonds are offered when, as and if issued and received by the Underwriters, subject to the approval of the validity of the 2023 Subordinated Bonds and certain other legal matters by Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD. Certain legal matters will be passed on for the Underwriters by their counsel, Nixon Peabody LLP, San Francisco, California. It is expected that the 2023 Subordinated Bonds will be available for delivery through the facilities of DTC on or about \_\_\_\_\_, 2023.

**BofA Securities**

**(as lead underwriter for the 2023D Subordinated Bonds  
and 2023E Subordinated Bonds)**

**Barclays**

**(as lead underwriter for the 2023F Subordinated Bonds)**

\_\_\_\_\_, 2023

\* Preliminary, subject to change.

## SUMMARY OF THE OFFERING

### **\$[PAR]<sup>\*</sup> Subordinated Electric Revenue Bonds 2023 Series D**

Maturity Date:	[August 15], 20[ ] <sup>*</sup>
Initial Interest Rate Mode:	Term Rate Mode
End of Initial Term Rate Period:	[ ] <sup>*</sup>
Initial Scheduled Mandatory Purchase Date:	[ ] <sup>*</sup>
Call Protection Date for Initial Term Rate Period:	[ ], 20[ ] <sup>*</sup>
Initial Interest Rate:	%
Price:	%
Yield for Initial Term Rate Period:	%
CUSIP <sup>†</sup> :	

### **\$[PAR]<sup>\*</sup> Subordinated Electric Revenue Bonds 2023 Series E**

Maturity Date:	[August 15], 20[ ] <sup>*</sup>
Initial Interest Rate Mode:	Term Rate Mode
End of Initial Term Rate Period:	[ ] <sup>*</sup>
Initial Scheduled Mandatory Purchase Date:	[ ] <sup>*</sup>
Call Protection Date for Initial Term Rate Period:	[ ], 20[ ] <sup>*</sup>
Initial Interest Rate:	%
Price:	%
Yield for Initial Term Rate Period:	%
CUSIP <sup>†</sup> :	

### **\$[PAR]<sup>\*</sup> Subordinated Electric Revenue Refunding Bonds 2023 Series F**

Maturity Date:	[August 15], 20[ ] <sup>*</sup>
Initial Interest Rate Mode:	Term Rate Mode
End of Initial Term Rate Period:	[ ] <sup>*</sup>
Initial Scheduled Mandatory Purchase Date:	[ ] <sup>*</sup>
Call Protection Date for Initial Term Rate Period:	[ ], 20[ ] <sup>*</sup>
Initial Interest Rate:	%
Price:	%
Yield for Initial Term Rate Period:	%
CUSIP <sup>†</sup> :	

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<sup>\*</sup> Preliminary, subject to change.

<sup>†</sup> CUSIP® is a registered trademark of the American Bankers Association. CUSIP® data herein is provided by CUSIP Global Services (CGS), which is managed on behalf of the American Bankers Association by FactSet Research Systems Inc. This data is not intended to create a database and does not serve in any way as a substitute for the CGS database. CUSIP® numbers have been assigned by an independent company not affiliated with SMUD or the Underwriters and are included solely for the convenience of the registered owners of the 2023 Subordinated Bonds. Neither SMUD nor the Underwriters are responsible for the selection or uses of these CUSIP® numbers, and no representation is made as to their correctness on the 2023 Subordinated Bonds or as included herein. The CUSIP® number for a specific maturity is subject to being changed after the execution and delivery of the 2023 Subordinated Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of the 2023 Subordinated Bonds.

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
*Sacramento, California*

**BOARD OF DIRECTORS**

Heidi Sanborn, President  
Rosanna Herber, Vice President  
Brandon Rose  
Nancy Bui-Thompson  
Gregg Fishman  
Rob Kerth  
Dave Tamayo

**OFFICERS AND EXECUTIVES**

Paul Lau, Chief Executive Officer and General Manager  
Frankie McDermott, Chief Operating Officer  
Jennifer Davidson, Chief Financial Officer  
Brandy Bolden, Chief Customer Officer  
Suresh Kotha, Chief Information Officer  
Jose Bodipo-Memba, Chief Diversity Officer  
Scott Martin, Chief Strategy Officer  
Laura Lewis, Chief Legal and Government Affairs Officer and General Counsel  
Lora Anguay, Chief Zero Carbon Officer  
Farres Everly, Director, Communications, Marketing and Community Relations  
Russell Mills, Treasurer  
Lisa Limcaco, Controller

**SPECIAL SERVICES**

ORRICK, HERRINGTON & SUTCLIFFE LLP  
Bond Counsel

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION  
Trustee and Paying Agent

BAKER TILLY VIRCHOW KRAUSE, LLP, Madison, Wisconsin  
Independent Accountants

PFM FINANCIAL ADVISORS LLC, Philadelphia, Pennsylvania  
Municipal Advisor

No dealer, broker, salesperson or other person has been authorized by SMUD or the Underwriters to give any information or to make any representations with respect to the 2023 Subordinated Bonds other than those contained in this Official Statement and, if given or made, such information or representations must not be relied upon as having been authorized by any of the foregoing. This Official Statement does not constitute an offer to sell nor the solicitation of an offer to buy, nor shall there be any sale of the 2023 Subordinated Bonds by any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. The information set forth herein has been obtained from SMUD and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by, and is not to be construed as a representation of, the Underwriters. The information and expressions of opinion stated herein are subject to change without notice. The delivery of this Official Statement shall not, under any circumstances, create any implication that there has been no change in the affairs of SMUD since the date hereof. The Underwriters have provided the following sentence for inclusion in this Official Statement: The Underwriters have reviewed the information in this Official Statement in accordance with and as part of their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

The 2023 Subordinated Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon an exemption from the registration requirements contained in such Act. The 2023 Subordinated Bonds have not been registered or qualified under the securities laws of any state.

#### **CAUTIONARY STATEMENTS REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT**

Certain statements included or incorporated by reference in this Official Statement constitute “forward-looking statements.” Such statements generally are identifiable by the terminology used, such as “plan,” “expect,” “estimate,” “budget” or other similar words.

The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. SMUD does not plan to issue any updates or revisions to those forward-looking statements if or when its expectations or events, conditions or circumstances on which such statements are based occur.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Market Access website. SMUD maintains a website. However, the information presented therein is not part of this Official Statement and should not be relied upon in making investment decisions with respect to the 2023 Subordinated Bonds. The references to internet websites in this Official Statement are shown for reference and convenience only; unless explicitly stated to the contrary, the information contained within the websites is not incorporated herein by reference and does not constitute part of this Official Statement.



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## OFFICIAL STATEMENT

Relating to

### SACRAMENTO MUNICIPAL UTILITY DISTRICT

**\$(PAR)\*  
Subordinated Electric Revenue Bonds  
2023 Series D**

**\$(PAR)\*  
Subordinated Electric Revenue Bonds  
2023 Series E**

**\$100,000,000\***

**Subordinated Electric Revenue Refunding Bonds  
2023 Series F**

### INTRODUCTION

This Official Statement, including the cover page and Appendices attached hereto, describes the Sacramento Municipal Utility District (“SMUD”), a political subdivision of the State of California (the “State”), its \$(PAR)\* Subordinated Electric Revenue Bonds, 2023 Series D (the “2023D Subordinated Bonds”), its \$(PAR)\* Subordinated Electric Revenue Bonds, 2023 Series E (the “2023E Subordinated Bonds”) and its \$100,000,000\* Subordinated Electric Revenue Bonds, 2023 Series F (the “2023F Subordinated Bonds” and, together with the 2023D Subordinated Bonds and the 2023E Subordinated Bonds, the “2023 Subordinated Bonds”), in connection with the sale by SMUD of the 2023 Subordinated Bonds. The 2023 Subordinated Bonds are being issued to (i) finance and refinance certain improvements and additions to SMUD’s Electric System, including through the refunding of SMUD’s commercial paper notes, (ii) refund the Subordinated Electric Revenue Bonds, 2019 Series A (the “2019A Refunded Subordinated Bonds”), and (iii) pay certain costs associated with the issuance of the 2023 Subordinated Bonds. See “PLAN OF FINANCE.”

The 2023 Subordinated Bonds are being issued pursuant to Resolution No. 85-11-1 of SMUD, adopted November 7, 1985, as amended and restated by Resolution No. 01-06-10 (the “Subordinate Master Resolution”), as supplemented and amended, and pursuant to applicable California law, including the Municipal Utility District Act (Public Utilities Code Sections 12850 to 12860) (the “Act”), the Revenue Bond Law of 1941 (Government Code Section 54300 *et seq.*) and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (Government Code Section 53580 *et seq.*). The issuance of the 2023 Subordinated Bonds was authorized on May 18, 2023, by three separate resolutions of the Board of Directors of SMUD (the “2023 Supplemental Resolutions”). The Subordinate Master Resolution and all supplemental resolutions, including the 2023 Supplemental Resolutions, are collectively referred to herein as the Subordinate Resolution. See APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION.”

U.S. Bank Trust Company, National Association serves as trustee and paying agent under the Subordinate Resolution (the “Trustee”).

The 2023 Subordinated Bonds and other bonds issued on a parity therewith pursuant to the Subordinate Resolution are collectively referred to herein as the “Subordinated Bonds.” As of May 1, 2023, Subordinated Bonds (including the 2019A Refunded Subordinated Bonds) in the aggregate principal amount of \$200,000,000 were outstanding under the Subordinate Resolution.

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\* Preliminary, subject to change.

The payment of the principal of and interest on the Subordinated Bonds, including the 2023 Subordinated Bonds, is subordinate to the payment of the principal of and interest on SMUD's Electric Revenue Bonds (the "Senior Bonds") and other Parity Bonds. As of May 1, 2023, Senior Bonds in the aggregate principal amount of \$1,841,715,000 were outstanding. Senior Bonds are issued pursuant to Resolution No. 6649 (the "Senior Bond Resolution") adopted in 1971, as amended and supplemented. See APPENDIX E – "SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION."

The issuance of the 2023 Subordinated Bonds for the purposes described herein, including for the refunding of the 2019A Refunded Subordinated Bonds, is a component of a plan of finance (the "Plan of Finance") that includes the issuance of SMUD's Electric Revenue Refunding Bonds, 2023 Series K (the "2023K Senior Bonds") to refund SMUD's Electric Revenue Refunding Bonds, 2013 Series B (the "2013B Refunded Senior Bonds") and the issuance of SMUD's Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the "2023C Subordinated Bonds") to refund SMUD's Electric Revenue Refunding Bonds, 2013 Series A (the "2013A Refunded Senior Bonds"). The issuance of any one or more series of the 2023 Subordinated Bonds is not contingent upon the implementation of the other components of the Plan of Finance and SMUD is not obligated to issue all series of the 2023 Subordinated Bonds or implement any of the components of the Plan of Finance. Upon the issuance of the 2023 Subordinated Bonds and the refunding of the 2019A Refunded Subordinated Bonds, Subordinated Bonds in the aggregate principal amount of \$[ ]\* will be outstanding. If the Plan of Finance is implemented in whole, upon completion of the Plan of Finance, Senior Bonds in the aggregate principal amount of approximately \$[ ]\* and Subordinated Bonds in the aggregate principal amount of approximately \$[ ]\* are expected to be outstanding. See "PLAN OF FINANCE."

SMUD also issues commercial paper notes (the "Notes") from time to time. As of May 1, 2023, Notes in the principal amount of \$200,000,000 were outstanding. Currently, Notes in the aggregate principal amount of \$300,000,000 may be outstanding at any one time, but SMUD reserves the right to increase or decrease the aggregate principal amount of the Notes that may be outstanding at any one time in the future. The Notes are secured by letters of credit issued by commercial banks. The Notes (and SMUD's obligations to repay drawings under the letters of credit) are payable solely from available revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds (including the 2023 Subordinated Bonds). Drawings under the letters of credit, to the extent not repaid immediately from the proceeds of commercial paper or other available SMUD funds, are repayable with interest over a period of five years. The letters of credit currently expire in February and August of 2025. SMUD intends to pay all of the outstanding principal amount of the Notes with the proceeds of the 2023D Subordinated Bonds and the 2023E Subordinated Bonds. See "PLAN OF FINANCE."

SMUD has also previously issued its taxable and tax-exempt revolving notes pursuant to a revolving credit agreement with a commercial bank (collectively, the "Revolving Credit Facility"). As of May 1, 2023, no principal was outstanding under the Revolving Credit Facility. Currently, the aggregate principal amount that can be outstanding under the Revolving Credit Facility at any one time is limited to \$100,000,000. However, SMUD reserves the right to increase or decrease the aggregate principal amount that can be outstanding at any one time under the Revolving Credit Facility in the future. SMUD's payment obligations under the Revolving Credit Facility are payable solely from available revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds (including the 2023 Subordinated Bonds). The current term of the Revolving Credit Facility expires in February 2026.

SMUD is responsible for the acquisition, generation, transmission and distribution of electric power to its service area, which includes most of Sacramento County and small portions of Placer and Yolo

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\* Preliminary, subject to change.

counties. For the year ended December 31, 2022, SMUD served a population of approximately 1.5 million with a total annual retail load of approximately 10,622 million kilowatt hours (“kWh”). SMUD owns and operates an electric system which, as of March 31, 2023, included generating facilities owned and operated by SMUD with an aggregate generating capacity of approximately 783 megawatts (“MW”), local gas-fired plants owned and operated by a joint powers authority and managed by SMUD with an aggregate generating capacity of approximately 1,081 MW, over which SMUD has exclusive control of dispatch, and purchased power with an aggregate generating capacity of approximately 1,314 MW and transmission and distribution facilities. SMUD’s power requirements exceed its generating capacity and thus SMUD has agreements with others (including the Local Gas-Fired Plants as defined in APPENDIX A) for the purchase of a portion of its power requirements. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – POWER SUPPLY AND TRANSMISSION – Power Supply Resources.” Continuing development of SMUD’s business strategy in response to changing environmental and regulatory requirements has had, and is expected to continue to have, a major effect on SMUD’s power supply planning. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – BUSINESS STRATEGY.”

Pursuant to a Continuing Disclosure Agreement, dated the date of issuance of the 2023 Subordinated Bonds (the “Continuing Disclosure Agreement”) between SMUD and the Trustee, SMUD will covenant for the benefit for the holders of the 2023 Subordinated Bonds and owners of beneficial interest in the 2023 Subordinated Bonds to provide certain financial information and operating data and to provide certain notices. See “CONTINUING DISCLOSURE UNDERTAKING” and APPENDIX G – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

The information presented in this Introduction is qualified in its entirety by reference to this entire Official Statement and the documents summarized or described herein. This Official Statement, including the Appendices, summarizes the terms of the 2023 Subordinated Bonds, the Subordinate Resolution and certain agreements, contracts and other arrangements, some of which currently exist and others of which may exist in the future. The summaries of and references to all documents, statutes, regulations and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary and reference is qualified in its entirety by reference to each such document, statute, regulation or instrument.

Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in APPENDIX D – “SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION – Certain Definitions” or in the Subordinate Resolution.

## **PLAN OF FINANCE**

SMUD intends to use the proceeds of the 2023D Subordinated Bonds and the 2023E Subordinated Bonds to finance and refinance certain improvements and additions to SMUD’s Electric System, including by reimbursing itself for expenditures previously made for such purposes and by paying Notes in the outstanding principal amount of \$200,000,000\* that were issued for such purposes. SMUD intends to use the proceeds of the 2023F Subordinated Bonds to redeem the 2019A Refunded Subordinated Bonds, currently outstanding in the principal amount of \$100,000,000, on the date of delivery of the 2023F Subordinated Bonds. SMUD also intends to use a portion of the proceeds of the 2023 Subordinated Bonds to pay certain costs associated with the issuance of the 2023 Subordinated Bonds.

The issuance of any one series of the 2023 Subordinated Bonds is not conditioned on the issuance of any other series of the 2023 Subordinated Bonds. SMUD is not obligated to issue any series of the 2023 Subordinated Bonds. The issuance of any one series of the 2023 Subordinated Bonds is also not contingent

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\* Preliminary, subject to change.

upon the implementation of the other components of the Plan of Finance, and SMUD is not obligated to implement any of the components of the Plan of Finance.

### **Issuance of 2023K Senior Bonds and Refunding of 2013B Refunded Senior Bonds**

[Concurrently with the issuance of the 2023 Subordinated Bonds,] SMUD expects to issue approximately \$[ ]\* in principal amount of the 2023K Senior Bonds. The 2023K Senior Bonds are expected to be issued as fixed rate bonds with a final maturity of 2033\*. The proceeds of the 2023K Senior Bonds are expected to be used to refund the 2013B Refunded Senior Bonds. In connection with the refunding of the 2013B Refunded Senior Bonds, SMUD expects to terminate a forward starting interest rate swap agreement that was executed in June 2020 to hedge potential interest rate exposure relating to the future refunding of the 2013B Refunded Senior Bonds. SMUD expects that it will receive a termination payment for the termination of the interest rate swap agreement. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Interest Rate Swap Agreements.*”

A portion of the proceeds of the 2023K Senior Bonds, together with other available funds, will be deposited in trust in an escrow fund (the “2013B Escrow Fund”) established under an escrow agreement between SMUD and the Trustee. The moneys so deposited will be invested in direct obligations of the United States of America, the interest on and principal of which will be sufficient to pay the interest on the 2013B Refunded Bonds due on August 15, 2023 (the “2013B Redemption Date”) and to redeem the 2013B Refunded Bonds on the 2013B Redemption Date. The securities and moneys in the 2013B Escrow Fund will not secure the 2023 Subordinated Bonds and will not be available to pay the principal of or interest on the 2023 Subordinated Bonds.

### **Issuance of 2023C Subordinated Bonds and Refunding of 2013A Refunded Senior Bonds**

[Concurrently with the issuance of the 2023C Subordinated Bonds,] SMUD expects to issue approximately \$132,020,000\* in principal amount of the 2023C Subordinated Bonds. The 2023C Subordinated Bonds are expected to be issued as variable rate demand bonds bearing interest at daily rates, and supported by a liquidity facility in the form of a standby bond purchase agreement with TD Bank, N.A. The proceeds of the 2023C Subordinated Bonds are expected to be used to refund the 2013A Refunded Senior Bonds. A portion of the proceeds of the 2023C Subordinated Bonds, together with other available funds, will be deposited in trust in an escrow fund (the “2013A Escrow Fund”) established under an escrow agreement between SMUD and the Trustee, in an amount sufficient to pay the interest on the 2013A Refunded Bonds due on August 15, 2023 (the “2013A Redemption Date”) and to redeem the 2013A Refunded Bonds on the 2013A Redemption Date. The moneys so deposited will be invested in direct obligations of the United States of America. The moneys and securities in the 2013A Escrow Fund will not secure the 2023 Subordinated Bonds and will not be available to pay the principal of or interest on the 2023 Subordinated Bonds.

In June 2020, SMUD had entered into a forward starting interest rate swap agreement to hedge potential interest rate exposure relating to the future refunding of the 2013A Refunded Senior Bonds. The swap will become effective on July 12, 2023. See APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Interest Rate Swap Agreements.*”

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\* Preliminary, subject to change.

## ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the 2023 Subordinated Bonds are as follows:

### Sources of Funds:

Par Amount of 2023 Subordinated Bonds	\$
Original Issue [Premium/Discount]	
SMUD Contribution	
Total Sources of Funds	<u>\$</u>

### Uses of Funds:

Project Costs (including payment of Notes)	
Refunding of 2019A Refunded Subordinated Bonds	\$
Costs of Issuance (including Underwriters' Discount)	
Total Uses of Funds	<u>\$</u>

## THE 2023 SUBORDINATED BONDS

The following is a summary of certain provisions of the 2023 Subordinated Bonds. Reference is made to the 2023 Subordinated Bonds for the complete text thereof and to the Subordinate Resolution for a more detailed description of such provisions. The discussion herein is qualified by such reference. *This Official Statement provides information as of its date with respect to 2023 Subordinated Bonds bearing interest in the Term Rate Mode for the initial Term Rate Period only. Owners and prospective purchasers of the 2023 Subordinated Bonds should not rely on this Official Statement for information concerning the 2023 Subordinated Bonds in connection with any conversion of the 2023 Subordinated Bonds to different Interest Rate Mode or to a new Term Rate Period, but should look solely to the offering document to be used in connection with any such conversion.*

### General

The 2023D Subordinated Bonds, the 2023E Subordinated Bonds and the 2023F Subordinated Bonds are being issued in the respective principal amounts shown on the cover of this Official Statement. The 2023 Subordinated Bonds will be issued under a book-entry only system, and will be registered in the name of Cede & Co., as nominee for The Depository Trust Company ("DTC"), New York, New York, which will act as bond depository for the 2023 Subordinated Bonds. Principal or Redemption Price of, and interest on the 2023 Subordinated Bonds or the Purchase Price thereof are payable by the Trustee to DTC, which is obligated in turn to remit such principal, Redemption Price, and interest or Purchase Price to its DTC Participants for subsequent disbursement to the beneficial owners of the 2023 Subordinated Bonds. See APPENDIX C – "BOOK-ENTRY SYSTEM".

The 2023 Subordinated Bonds will be dated the date of initial delivery. The 2023 Subordinated Bonds will initially be issued in the Term Rate Mode and will mature on the dates, bear interest initially at the initial Term Rates, for the initial Term Rate Periods ending on the dates and be subject to mandatory purchase on the initial scheduled Mandatory Purchase Dates as described in the "SUMMARY OF THE OFFERING" following the cover page of this Official Statement. The 2023 Subordinated Bonds will be issued initially only as fully registered 2023 Subordinated Bonds in the denominations of \$5,000 or any integral multiple thereof (the "Authorized Denominations") while in the Term Rate Mode.

At the option of SMUD and upon certain conditions provided in the Subordinate Resolution, any series of the 2023 Subordinated Bonds may be converted to the Daily Mode, Weekly Mode, Flexible Mode, Index Mode, Direct Purchase Index Mode or Fixed Rate Mode, or may be converted from one Term Rate Period to another Term Rate Period. The 2023 Subordinated Bonds are subject to mandatory tender in the

event of any such conversion related thereto. See “Conversion Between Modes” and “Mandatory Purchase on the Mandatory Purchase Date” herein.

While any series of 2023 Subordinated Bonds may, under certain circumstances, be converted to a Daily Mode, Weekly Mode, Flexible Mode, Index Mode, Direct Purchase Index Mode or Fixed Rate Mode, or from one Term Rate Period to another Term Rate Period, this Official Statement describes the 2023 Subordinated Bonds only during the period in which they bear interest in the Term Rate Mode in the initial Term Rate Periods. Each series of 2023 Subordinated Bonds is subject to mandatory tender in the event of any such conversion related thereto. See “Conversion Between Modes” and “Mandatory Purchase on the Mandatory Purchase Date” herein.

The Term Rate for the initial Term Rate Period for each series of 2023 Subordinated Bonds will be determined prior to the issuance of the 2023 Subordinated Bonds. The Term Rate for any other Term Rate Period for a series of 2023 Subordinated Bonds shall be determined by the applicable remarketing agent no later than the Business Day next preceding the first day of such Term Rate Period for such series of 2023 Subordinated Bonds.

While in the Term Rate Mode, interest on the 2023 Subordinated Bonds shall be payable semiannually on each [February 15] and [August 15], commencing on [August 15], 2023, on any Mandatory Purchase Date therefor and on the Maturity Dates thereof. Interest on the 2023 Subordinated Bonds shall be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Record Date for the payment of interest while a 2023 Subordinated Bond is in the Term Rate Mode is the fifteenth (15th) day (whether or not a Business Day) next preceding each Interest Payment Date.

Subject to the provisions discussed in APPENDIX C – “BOOK-ENTRY SYSTEM,” Principal or Redemption Price will be payable upon surrender of the 2023 Subordinated Bonds at the principal corporate trust office of the Trustee. Interest on the 2023 Subordinated Bonds will be paid by wire transfer within the continental United States of immediately available funds from the Trustee to the registered owner, determined as of the close of business on the applicable Record Date, at its address as shown on the registration books maintained by the Trustee.

### **Conversion Between Modes**

While a series of 2023 Subordinated Bonds is in the Term Rate Mode, conversions to any other Interest Rate Mode or from one Term Rate Period to another Term Rate Period may take place on (i) any day that 2023 Subordinated Bonds of the applicable series are subject to optional redemption if the conversion did not occur, or (ii) the day immediately following the last day of the then-current Term Rate Period, in each case upon not less than 10 days’ prior written notice from the Trustee to the Holders of such 2023 Subordinated Bonds. However, the Trustee need not provide notice to Holders for a Conversion Date occurring on the Business Day following the last day of a Term Rate Period.

Upon such conversion, a series of 2023 Subordinated Bonds will be subject to mandatory purchase on the Mandatory Purchase Date as described herein under “Mandatory Purchase on the Mandatory Purchase Date.” Each conversion of a series of 2023 Subordinated Bonds from one Interest Rate Mode to another Interest Rate Mode or from one Term Rate Period to a new Term Rate Period shall be subject to the conditions set forth in the Subordinate Resolution, including delivery of a Favorable Opinion of Bond Counsel. In addition, SMUD may rescind any election to convert to another Interest Rate Mode or from one Term Rate Period to another Term Rate Period up to 10:00 a.m., New York City time, on the Business Day preceding the proposed conversion date. In the event that the conditions for a proposed conversion to a new Interest Rate Mode or from one Term Rate Period to another Term Rate Period are not met or SMUD

rescinds the direction to convert, (i) such new Interest Rate Mode or new Term Rate Period shall not take effect on the proposed conversion date, notwithstanding any prior notice to the registered owners of such conversion, (ii) such series of 2023 Subordinated Bonds shall remain in its prior Interest Rate Mode or Term Rate Period, and (iii) such series of the 2023 Subordinated Bonds shall be subject to mandatory purchase on the Mandatory Purchase Date as described in the Subordinate Resolution if notice has been sent to the registered owners stating that such Series of 2023 Subordinated Bonds would be subject to mandatory purchase on such date. In no event shall the failure of such series of 2023 Subordinated Bonds to be converted to another Interest Rate Mode or to a new Term Rate Period be deemed to be a default or an Event of Default.

### **Mandatory Purchase on the Mandatory Purchase Date**

While in the Term Rate Mode, each series of 2023 Subordinated Bonds is subject to mandatory purchase at the Purchase Price (as defined below) on (i) the first Business Day following the last day of the Term Rate Period applicable to such series of 2023 Subordinated Bonds and (ii) any Conversion Date applicable to such series of 2023 Subordinated Bonds or the date that otherwise would have been a Conversion Date for such series of 2023 Subordinated Bonds had one of the conditions precedent to such Conversion Date not failed to occur (each a “Mandatory Purchase Date”).

“Purchase Price” means an amount equal to the principal amount of any 2023 Subordinated Bonds purchased on the applicable Mandatory Purchase Date, plus accrued interest to but excluding such Mandatory Purchase Date; provided, however, that (i) if the applicable Mandatory Purchase Date for any 2023 Subordinated Bond is an Interest Payment Date for such 2023 Subordinated Bond, in which case the Purchase Price thereof shall be the principal amount thereof, and interest on such 2023 Subordinated Bond shall be paid to the Holder of such 2023 Subordinated Bond in the normal course and (ii) in the case of a purchase on a Conversion Date or proposed Conversion Date which is preceded by a Term Rate Period and which occurs prior to the day originally established as the last day of such preceding Term Rate Period, the Purchase Price thereof shall be the Redemption Price which would have been applicable to such 2023 Subordinated Bond if the preceding Term Rate Period had continued to the day originally established as its last day, plus accrued interest, if any.

Notice of mandatory tender shall be given by the Trustee in writing to the Holders of such 2023 Subordinated Bonds subject to mandatory purchase no less than 10 days prior to the applicable Mandatory Purchase Date. From and after the Mandatory Purchase Date, interest on such series of 2023 Subordinated Bonds subject to mandatory purchase will cease to accrue.

### **Source of Funds for Purchase of 2023 Subordinated Bonds**

The Trustee shall purchase 2023 Subordinated Bonds subject to mandatory tender for purchase on each Mandatory Purchase Date pursuant to the Subordinate Resolution (“Tendered Bonds”) from the tendering owners at the applicable Purchase Price by wire transfer in immediately available funds. Funds for the payment of such Purchase Price shall be derived solely from the following sources in the order of priority indicated and the Trustee shall not be obligated to provide funds from any other source:

- (i) immediately available funds on deposit in the Remarketing Proceeds Account established for the applicable series of 2023 Subordinated Bonds under the Subordinate Resolution; and
- (ii) moneys of SMUD on deposit in the District Purchase Account established for the applicable series of 2023 Subordinated Bonds under the Subordinate Resolution.

On each Mandatory Purchase Date for a series of 2023 Subordinated Bonds, if the Trustee has not received an amount of remarketing proceeds sufficient to pay the Purchase Price of such Series of 2023



Subordinated Bonds by 12:00 noon, New York City time, on such Purchase Date, the Trustee shall request funds from SMUD in an amount equal to the Purchase Price of all 2023 Subordinated Bonds of such series which have not been successfully remarketed.

Under the Subordinate Resolution, SMUD is obligated to deposit amounts into the District Purchase Account established for the applicable series of 2023 Subordinated Bonds sufficient to pay the Purchase Price of the 2023 Subordinated Bonds of such series to the extent that amounts on deposit in the Remarketing Proceeds Account established for the applicable series of 2023 Subordinated Bonds are insufficient therefor. The failure of SMUD to deposit amounts into the District Purchase Account established for the applicable series of 2023 Subordinated Bonds when SMUD is obligated to deposit such amounts under the Subordinate Resolution will constitute an Event of Default under the Subordinate Resolution.

### **Inadequate Funds for Tenders**

If moneys sufficient to pay the Purchase Price of all Tendered Bonds of a series of 2023 Subordinated Bonds to be purchased on any Mandatory Purchase Date are not available (1) no purchase shall be consummated of Tendered Bonds of such series of 2023 Subordinated Bonds on such Mandatory Purchase Date; (2) all Tendered Bonds of such series of 2023 Subordinated Bonds shall be returned to the Holders thereof; and (3) all remarketing proceeds with respect to such series of 2023 Subordinated Bonds will be returned to the applicable remarketing agent for return to the Persons providing such moneys. All Tendered Bonds of a series will bear interest at a rate of interest of [ ]% per annum during the period of time from and including the applicable Mandatory Purchase Date to (but not including) the date that all such Tendered Bonds are successfully remarketed, redeemed, purchased or paid (the “Delayed Remarketing Period”).

During this period of time, SMUD may (1) direct the conversion of Tendered Bonds without complying with the applicable notice requirements for such conversion, and (2) upon five Business Days’ notice, redeem Tendered Bonds as a whole or in part on any Business Day at a redemption price equal to the principal amount thereof, together with accrued interest thereon to the date fixed for redemption, without premium. During the Delayed Remarketing Period, interest on Tendered Bonds will be paid to the Holders thereof (i) on the first Business Day of each calendar month and (ii) on the last day of such Delayed Remarketing Period.

### **Optional Redemption**

The 2023 Subordinated Bonds of a series in the Term Rate Mode are subject to redemption at the option of SMUD in whole or in part (provided that no 2023 Subordinated Bonds shall remain Outstanding except in Authorized Denominations) on any date on or after the Call Protection Date for each Term Rate Period applicable to such series of 2023 Subordinated Bonds at a Redemption Price equal to the principal amount, or portions thereof, of the 2023 Subordinated Bonds of such series to be redeemed, without premium, plus accrued interest, if any, to the Redemption Date.

### **Mandatory Sinking Fund Redemption**

The 2023D Subordinated Bonds are subject to mandatory redemption in part, by lot, on [August 15] in the years shown in the following table, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the date of redemption in an amount equal to the Sinking Fund Installments for such 2023D Subordinated Bonds for such date:

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\* Preliminary, subject to change.

Years* ([August 15])	Sinking Fund Installment*	Years* ([August 15])	Sinking Fund Installment*
	\$		\$

†

† Stated Maturity

The 2023E Subordinated Bonds are subject to mandatory redemption in part, by lot, on [August 15] in the years shown in the following table, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the date of redemption in an amount equal to the Sinking Fund Installments for such 2023E Subordinated Bonds for such date:

Years* ([August 15])	Sinking Fund Installment*	Years* ([August 15])	Sinking Fund Installment*
	\$		\$

†

† Stated Maturity

The 2023F Subordinated Bonds are subject to mandatory redemption in part, by lot, on [August 15] in the years shown in the following table, at a Redemption Price equal to the principal amount thereof, plus accrued interest, if any, to the date of redemption in an amount equal to the Sinking Fund Installments for such 2023F Subordinated Bonds for such date:

Years* ([August 15])	Sinking Fund Installment*	Years* ([August 15])	Sinking Fund Installment*
2042	\$11,245,000	2046	\$12,655,000
2043	11,585,000	2047	13,035,000
2044	11,930,000	2048	13,430,000
2045	12,290,000	2049†	13,830,000

† Stated Maturity

### Selection of Bonds to be Redeemed; Notice of Redemption

Whenever provision is made for the redemption of less than all of the 2023 Subordinated Bonds of a series, the Trustee shall select the 2023 Subordinated Bonds of such series to be redeemed, from the outstanding 2023 Subordinated Bonds of such series not previously called for redemption, by lot in any manner which the Trustee deems fair.

Notice of redemption shall be mailed by first-class mail by the Trustee, not less than 20 nor more than 60 days prior to the redemption date, to the Holder of any 2023 Subordinated Bond called for redemption, but neither failure to receive such notice nor any defect in any notice so mailed shall affect the sufficiency of the proceedings for the redemption of any of the 2023 Subordinated Bonds. Each notice of

\* Preliminary, subject to change.

redemption shall state the redemption date, the place of redemption, the principal amount to be redeemed, and shall also state that the interest on the 2023 Subordinated Bonds in such notice designated for redemption shall cease to accrue from and after such redemption date and that on said date there will become due and payable on each of said 2023 Subordinated Bonds the principal amount thereof to be redeemed, interest accrued thereon to the redemption date and the premium, if any, thereon (such premium to be specified). Each notice of optional redemption shall also state that redemption is conditioned upon receipt by the Trustee of sufficient funds on the applicable redemption date to pay the applicable redemption price of the 2023 Subordinated Bonds to be redeemed.

Any notice of optional redemption may be rescinded by written notice given to the Trustee by SMUD no later than two Business Days prior to the dated specified for redemption.

Notwithstanding the foregoing, notice of redemption shall not be required for 2023 Subordinated Bonds redeemed on a Mandatory Purchase Date.

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## DEBT SERVICE SCHEDULE

The following table sets forth the debt service requirements with respect to the 2023 Subordinated Bonds assuming no early redemptions. See also APPENDIX A – “INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Debt Service Requirements*.”

Calendar Year	2023D Subordinated Bonds Principal	2023D Subordinated Bonds Interest <sup>(1)</sup>	2023E Subordinated Bonds Principal	2023E Subordinated Bonds Interest <sup>(2)</sup>	2023F Subordinated Bonds Principal	2023F Subordinated Bonds Interest <sup>(3)</sup>	Total
	\$	\$	\$	\$			\$

\$	\$					\$
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<sup>(1)</sup> Based on an assumed interest rate of \_\_\_% per annum.

<sup>(2)</sup> Based on an assumed interest rate of \_\_\_% per annum.

<sup>(3)</sup> Based on an assumed interest rate of \_\_\_% per annum.

## SECURITY FOR THE SUBORDINATED BONDS

### Limited Obligations; Pledge of Revenues

The Subordinated Bonds, including the 2023 Subordinated Bonds, are revenue bonds and are not secured by the taxing power of SMUD. The principal of and premium, if any, and interest on the Subordinated Bonds (including the 2023 Subordinated Bonds), together with other Parity Subordinated Debt, are payable exclusively from the Net Subordinated Revenues of the Electric System of SMUD. The

Subordinated Bonds and all other Parity Subordinated Debt are secured by a pledge of Revenues, subject to the condition that out of Revenues:

First: There shall be applied all sums required for maintenance and operation costs of the Electric System and all Energy Payments not included in maintenance and operation costs.

Second: There shall be applied all sums required for the payment of the principal of (including any premium thereon) and interest on the Senior Bonds and all other Parity Bonds, together with any sinking fund or reserve fund payments on the Senior Bonds and all other Parity Bonds.

Third: There shall be applied all sums required for the payment of the principal of (including any premium thereon) and interest on the Subordinated Bonds and all other Parity Subordinated Debt, together with any sinking fund or reserve fund payments on the Subordinated Bonds and all other Parity Subordinated Debt.

All remaining Revenues, after making the foregoing allocations, will be available to SMUD for all lawful SMUD purposes.

From time to time, SMUD may deposit in the Rate Stabilization Fund from such remaining Revenues such amounts as SMUD shall determine, provided that deposits in the Rate Stabilization Fund from remaining Revenues in any fiscal year may be made until (but not after) the date 120 days after the end of such fiscal year. SMUD may withdraw amounts from the Rate Stabilization Fund only for inclusion in Revenues for any fiscal year, such withdrawals to be made until (but not after) 120 days after the end of such fiscal year. All interest or other earnings upon deposits in the Rate Stabilization Fund shall be withdrawn therefrom and accounted for as Revenues. No deposit of Revenues to the Rate Stabilization Fund may be made to the extent such Revenues were included in any certificate submitted in connection with the issuance of additional bonds and withdrawal of the Revenues from the Revenues employed in rendering said certificate would have caused noncompliance with the additional bond provisions. See APPENDIX A – “RATES AND CUSTOMER BASE – Rates and Charges” for a description of the balance in the Rate Stabilization Fund.

Neither the credit nor the taxing power of SMUD is pledged to the payment of the Subordinated Bonds and the general fund of SMUD is not liable for the payment thereof. The owners of the Subordinated Bonds cannot compel the exercise of any taxing power of SMUD or the forfeiture of any of its property. The Subordinated Bonds are not a legal or equitable pledge, charge, lien or encumbrance upon any of SMUD’s property (including the Electric System) or upon any of its income, receipts or revenues except the Net Subordinated Revenues of the Electric System to the extent of the pledge thereof contained in the Subordinate Resolution.

### **Subordinate Pledge**

The Subordinated Bonds are subordinate in right of payment to the Senior Bonds and other Parity Bonds. As of May 1, 2023, Senior Bonds in the aggregate principal amount of \$1,841,715,000 were outstanding. Upon completion of the Plan of Finance, \$[ ]\* aggregate principal amount of Senior Bonds will be outstanding. The Senior Bonds are issued pursuant to the Senior Bond Resolution. See APPENDIX E – “SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION” for a description of certain provisions of the Senior Bond Resolution.

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\* Preliminary, subject to change.

## **No Reserve Fund**

No reserve fund will be established or funded for the benefit of the 2023 Subordinated Bonds.

## **Rates and Charges**

SMUD has covenanted in the Subordinate Resolution to establish and at all times maintain and collect rates and charges for the sale or use of electric energy generated, transmitted, distributed or furnished by SMUD which, together with certain items of other income permitted under the Subordinate Resolution, will yield Revenues at least sufficient, with respect to the ensuing 12 months, to pay and provide for (1) all sums required for Maintenance and Operation Costs and Energy Payments not included in Maintenance and Operation Costs, (2) all payments with respect to Parity Bonds, and (3) the total amount required for the payment of principal and interest, together with any sinking fund or reserve fund payments, on the Subordinated Bonds and all Parity Subordinated Debt, in each case during such 12 months.

For purposes of the calculations of payments to be made pursuant to the Subordinate Resolution, the interest rates on Parity Bonds and Parity Subordinated Debt which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Parity Bonds and Parity Subordinated Debt bear a rate or rates of interest for a known period or periods of time, such rate or rates of interest for such period or periods and thereafter, for the portion of the calculation period not covered by such known period or periods, the Assumed Interest Rate.

For purposes of the above calculations of principal of and interest on Parity Bonds or Parity Subordinated Debt, if a Financial Products Agreement has been entered into by SMUD with respect to any Parity Bonds or Parity Subordinated Debt, interest on such Parity Bonds or Parity Subordinated Debt shall be included in the calculation of such principal and interest by including for each fiscal year or period an amount equal to the amount of interest payable on such Parity Bonds or Parity Subordinated Debt in such fiscal year or period at the rate or rates stated in such Parity Bonds or Parity Subordinated Debt plus any Financial Product Payments payable in such fiscal year or period minus any Financial Product Receipts receivable in such fiscal year or period; provided that in no event shall any calculation made pursuant to this clause result in a number less than zero being included in the calculation of such principal and interest.

For purposes of the above calculations of principal of and interest on Parity Bonds and Parity Subordinated Debt, Excluded Principal Payments shall be disregarded (but interest on the Parity Bonds and Parity Subordinated Debt to which such Excluded Principal Payments relate shall be included until but not after the stated due date when principal payments on such Parity Bonds and Parity Subordinated Debt are scheduled by their terms to commence) and Assumed Principal Payments and Assumed Interest Payments shall be included.

SMUD has full power to establish rates and charges for all SMUD services, and the levels of such rates are not subject to review or regulation by any other governmental agency, either federal or state.

See Appendix D hereto for the definitions of certain capitalized terms used in this section.

## **Limitations on Additional Obligations Payable from Net Subordinated Revenues**

The Subordinate Resolution provides that SMUD will not, so long as any Subordinated Bonds are outstanding, issue any obligations payable in whole or in part from Net Subordinated Revenues except the following:

(a) Refunding Subordinated Bonds issued to refund all or part of the Parity Bonds or Subordinated Bonds;

(b) Additional Parity Subordinated Debt (including additional Subordinated Bonds under the Subordinate Resolution and additional Parity Subordinated Debt), with an equal lien and charge upon the Net Subordinated Revenues, but only subject to the following conditions:

(1) SMUD shall not then be in default under the Senior Bond Resolution, the Subordinate Resolution or other resolutions authorizing the issuance of Parity Bonds or Parity Subordinated Debt payable out of Revenues; and

(2) SMUD shall certify to the Trustee (i) that Net Revenues, after completion of any improvements proposed to be financed by such additional Parity Subordinated Debt, will be sufficient to pay the principal of and interest (and bond reserve fund requirements, if any) on all Parity Bonds and Parity Subordinated Debt then outstanding and on such additional Parity Subordinated Debt; and (ii) that Net Revenues, for a period of 12 consecutive months during the 24 months immediately preceding the date upon which such Parity Subordinated Debt shall become outstanding, shall have been at least equal to 1.10 times the sum of (i) the annual interest on Parity Bonds and Parity Subordinated Debt, (ii) the principal amount of Parity Bonds and Parity Subordinated Debt falling due, and (iii) the amount of minimum sinking fund payments falling due on Parity Bonds and Parity Subordinated Debt, all as computed for the year in which such sum shall then be a maximum, including both the then outstanding Parity Bonds and Parity Subordinated Debt and the Parity Subordinated Debt then proposed to be issued.

The calculation described above shall be made by taking the following into consideration:

(A) if rates and charges in effect on the date upon which such Parity Subordinated Debt will become outstanding will be greater than those in effect during the entire twelve months elected for the foregoing computation, then the Net Revenues for said period of twelve months may be augmented by the estimated increase in Net Revenues computed to accrue to the Electric System in the first twelve months during which such rates and charges shall be in effect;

(B) if such Parity Subordinated Debt or any portion thereof shall be issued for the purpose of acquiring an existing revenue-producing electric system, the estimated pro forma net revenues of such existing system (calculated on the basis of assumed SMUD ownership and operation during such period but otherwise on the basis of actual gross revenues of such existing system at the rates actually charged therefor) for the preceding twelve months may be added to the actual Net Revenues of the Electric System for the twelve months elected for said computation and treated as if actually received by the Electric System during those twelve months;

(C) for purposes of the above calculations of principal of and interest on Parity Subordinated Debt, Excluded Principal Payments shall be disregarded (but interest on the Parity Subordinated Debt to which such Excluded Principal Payments relate shall be included until but not after the stated due date when principal payments on such Parity Subordinated Debt are scheduled by their terms to commence) and Assumed Principal Payments and Assumed Interest Payments shall be included;

(D) for purposes of the above calculations, the interest rates on Parity Bonds and Parity Subordinated Debt which bear a variable rate of interest or a rate subject to periodic adjustment or to being fixed at some date after issuance shall be, if such Parity Bonds and Parity Subordinated Debt bear a rate or rates of interest for a known period or periods of time, such interest rate or rates for such period or periods, and thereafter, for the portion of the calculation period not covered by such known period or periods, the Assumed Interest Rate; and

(E) For purposes of the above calculations of principal of and interest on Parity Bonds and Parity Subordinated Debt, if a Financial Products Agreement has been or is being entered into by SMUD with respect to any Parity Bonds or Parity Subordinated Debt, interest on such Parity Bonds or Parity Subordinated Debt shall be included in the calculation of such principal and interest by including for each fiscal year or period an amount equal to the amount of interest payable on such Parity Bonds or Parity Subordinated Debt in such fiscal year or period at the rate or rates stated in such Parity Bonds or Parity Subordinated Debt plus any Financial Product Payments payable in such fiscal year or period minus any Financial Product Receipts receivable in such fiscal year or period; provided that in no event shall any calculation made pursuant to this clause result in a number less than zero being included in the calculation of such principal and interest.

(c) Revenue bonds which are junior and subordinate to the payment of the principal, premium, interest and reserve fund requirements for the Subordinated Bonds and all Parity Subordinated Debt and which subordinated revenue bonds are payable as to principal, premium, and interest, and also reserve fund requirements, if any, only out of Net Subordinated Revenues after the prior payment of all amounts required to be paid under the Subordinate Resolution from Net Subordinated Revenues for principal, premium, interest and reserve fund requirements for the Subordinated Bonds and all Parity Subordinated Debt, as the same become due and payable.

### **SACRAMENTO MUNICIPAL UTILITY DISTRICT**

SMUD owns and operates an electric system that has provided retail electric service since 1946. SMUD's current service area is approximately 900 square miles, and includes the principal parts of Sacramento County and small portions of Placer and Yolo counties. For a full description of SMUD, its history, organization, operations, and financial performance, certain developments in the energy markets, certain factors affecting the electric utility industry, including impacts from the COVID-19 pandemic, and certain regulatory and other matters, see APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT."

### **ABSENCE OF LITIGATION REGARDING THE 2023 SUBORDINATED BONDS**

SMUD is not aware of any action, suit or proceeding, threatened or pending, to restrain or enjoin the issuance, sale or delivery of the 2023 Subordinated Bonds, or in any way contesting or affecting the validity of the 2023 Subordinated Bonds or any of the proceedings of SMUD taken with respect to the 2023 Subordinated Bonds. SMUD is not aware of any action, suit or proceeding, threatened or pending, questioning the corporate existence of SMUD, or the title of the officers of SMUD to their respective offices, or the power and authority of SMUD to execute and deliver the 2023 Subordinated Bonds. For a description of certain litigation in which SMUD is involved, see APPENDIX A – "INFORMATION REGARDING SACRAMENTO MUNICIPAL UTILITY DISTRICT – LEGAL PROCEEDINGS."

### **UNDERWRITING**

BofA Securities, Inc. ("BofA") has agreed, subject to certain customary conditions to closing, to purchase the 2023D Subordinated Bonds and the 2023E Subordinated Bonds from SMUD at an aggregate purchase price of \$\_\_\_\_\_ (being the aggregate principal amount of the 2023D Subordinated Bonds and the 2023E Subordinated Bonds, plus original issue premium of \$\_\_\_\_\_, and less an underwriter's discount of \$\_\_\_\_\_). BofA will be obligated to purchase all 2023D Subordinated Bonds and 2023E Subordinated Bonds if any of the 2023D Subordinated Bonds or 2023E Subordinated Bonds are purchased.

Barclays Capital Inc. ("Barclays") has agreed, subject to certain customary conditions to closing, to purchase the 2023F Subordinated Bonds from SMUD at a purchase price of \$\_\_\_\_\_ (being the aggregate principal amount of the 2023F Bonds, plus original issue premium of \$\_\_\_\_\_, and less an



underwriter's discount of \$ \_\_\_\_\_). Barclays will be obligated to purchase all 2023F Subordinated Bonds if any 2023F Subordinated Bonds are purchased.

BofA and Barclays (collectively, the "Underwriters" and each an "Underwriter") have agreed to make a public offering of the 2023 Subordinated Bonds at the initial offering price set forth on the cover page hereof. The 2023 Subordinated Bonds may be offered and sold to certain dealers (including underwriters and other dealers depositing such bonds into investment trusts) at prices lower than such public offering price, and such public offering price may be changed, from time to time, by the Underwriters.

BofA, an Underwriter, has entered into a distribution agreement with its affiliate Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"). As part of this arrangement, BofA may distribute securities to MLPF&S, which may in turn distribute such securities to investors through the financial advisor network of MLPF&S. As part of this arrangement, BofA may compensate MLPF&S as a dealer for its selling efforts with respect to the 2023 Subordinated Bonds.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriters and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for SMUD for which they received or will receive customary fees and expenses.

In the ordinary course of their various business activities, the Underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (which may include bank loans and/or credit default swaps) for their own account and for the accounts of their customers and may at any time hold long and short positions in such securities and instruments. Such investment and securities activities may involve securities and instruments of, or issued for the benefit of, SMUD.

BofA Securities, Inc. is an affiliate of Bank of America, N.A. which has extended credit in other transactions to SMUD.

### **MUNICIPAL ADVISOR**

SMUD has retained PFM Financial Advisors LLC, as Municipal Advisor in connection with various matters relating to the delivery of the 2023 Subordinated Bonds. The Municipal Advisor assumes no responsibility for the accuracy, completeness or fairness of the information contained in this Official Statement. The Municipal Advisor is an independent advisory firm and is not engaged in underwriting or distribution of securities. The Municipal Advisor will receive compensation that is contingent upon the sale, issuance and delivery of the 2023 Subordinated Bonds.

### **APPROVAL OF LEGAL PROCEEDINGS**

The validity of the 2023 Subordinated Bonds and certain other legal matters are subject to the approval of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD. The approving opinion of Bond Counsel will be delivered with the 2023 Subordinated Bonds in substantially the form appearing in APPENDIX F. Bond Counsel undertakes no responsibility for the accuracy, completeness or fairness of this Official Statement. Certain legal matters will be passed on for the Underwriters by Nixon Peabody LLP, San Francisco, California, counsel to the Underwriters.

## **FINANCIAL STATEMENTS**

SMUD's audited, consolidated financial statements for the years ended December 31, 2022 and December 31, 2021 are included in APPENDIX B attached to this Official Statement. These financial statements have been audited by Baker Tilly Virchow Krause, LLP, Madison, Wisconsin (the "Auditor"), for the periods indicated and to the extent set forth in their report thereon and should be read in their entirety. SMUD has not requested nor did it obtain permission from the Auditor to include the audited, consolidated financial statements as an appendix to this Official Statement. Accordingly, the Auditor has not performed any procedures to review the financial condition or operations of SMUD subsequent to the date of its report included therein, nor has it reviewed any information contained in this Official Statement.

## **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Bond Counsel to SMUD ("Bond Counsel"), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the 2023 Subordinated Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and is exempt from State of California personal income taxes. Bond Counsel is of the further opinion that interest on the 2023 Subordinated Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. Bond Counsel observes that, for tax years beginning after December 31, 2022, interest on the 2023 Subordinated Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. Bond Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023 Subordinated Bonds. A complete copy of the proposed form of opinion of Bond Counsel is set forth in APPENDIX F hereto.

To the extent the issue price of any maturity of the 2023 Subordinated Bonds is less than the amount to be paid at maturity of such 2023 Subordinated Bonds (excluding amounts stated to be interest and payable at least annually over the term of such 2023 Subordinated Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each Beneficial Owner thereof, is treated as interest on the 2023 Subordinated Bonds which is excluded from gross income for federal income tax purposes and exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the 2023 Subordinated Bonds is the first price at which a substantial amount of such maturity of the 2023 Subordinated Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers). The original issue discount with respect to any maturity of the 2023 Subordinated Bonds accrues daily over the term to maturity of such 2023 Subordinated Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such 2023 Subordinated Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such 2023 Subordinated Bonds. Beneficial Owners of the 2023 Subordinated Bonds should consult their own tax advisors with respect to the tax consequences of ownership of 2023 Subordinated Bonds with original issue discount, including the treatment of Beneficial Owners who do not purchase such 2023 Subordinated Bonds in the original offering to the public at the first price at which a substantial amount of such 2023 Subordinated Bonds is sold to the public.

2023 Subordinated Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) ("Premium Bonds") will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest

received, and a Beneficial Owner's basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such Beneficial Owner. Beneficial Owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the 2023 Subordinated Bonds. SMUD has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the 2023 Subordinated Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the 2023 Subordinated Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the 2023 Subordinated Bonds. The opinion of Bond Counsel assumes the accuracy of these representations and compliance with these covenants. Bond Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Bond Counsel's attention after the date of issuance of the 2023 Subordinated Bonds may adversely affect the value of, or the tax status of interest on, the 2023 Subordinated Bonds. Accordingly, the opinion of Bond Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Bond Counsel is of the opinion that interest on the 2023 Subordinated Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of amounts treated as interest on, the 2023 Subordinated Bonds may otherwise affect a Beneficial Owner's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the Beneficial Owner or the Beneficial Owner's other items of income or deduction. Bond Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the 2023 Subordinated Bonds to be subject, directly or indirectly, in whole or in part, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent Beneficial Owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals or clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the 2023 Subordinated Bonds. Prospective purchasers of the 2023 Subordinated Bonds should consult their own tax advisors regarding the potential impact of any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

The opinion of Bond Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Bond Counsel's judgment as to the proper treatment of the 2023 Subordinated Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Bond Counsel cannot give and has not given any opinion or assurance about the future activities of SMUD, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. SMUD has covenanted, however, to comply with the requirements of the Code.

Bond Counsel's engagement with respect to the 2023 Subordinated Bonds ends with the issuance of the 2023 Subordinated Bonds, and, unless separately engaged, Bond Counsel is not obligated to defend SMUD or the Beneficial Owners regarding the tax-exempt status of the 2023 Subordinated Bonds in the event of an audit examination by the IRS. Under current procedures, Beneficial Owners would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which SMUD legitimately disagrees may not be practicable. Any action of the IRS,

including but not limited to selection of the 2023 Subordinated Bonds for audit, or the course or result of such audit, or an audit of bonds presenting similar tax issues may affect the market price for, or the marketability of, the 2023 Subordinated Bonds, and may cause SMUD or the Beneficial Owners to incur significant expense.

Payments on the 2023 Subordinated Bonds generally will be subject to U.S. information reporting and possibly to “backup withholding.” Under Section 3406 of the Code and applicable U.S. Treasury Regulations issued thereunder, a non-corporate Beneficial Owner of 2023 Subordinated Bonds may be subject to backup withholding with respect to “reportable payments,” which include interest paid on the 2023 Subordinated Bonds and the gross proceeds of a sale, exchange, redemption, retirement or other disposition of the 2023 Subordinated Bonds. The payor will be required to deduct and withhold the prescribed amounts if (i) the payee fails to furnish a U.S. taxpayer identification number (“TIN”) to the payor in the manner required, (ii) the IRS notifies the payor that the TIN furnished by the payee is incorrect, (iii) there has been a “notified payee underreporting” described in Section 3406(c) of the Code or (iv) the payee fails to certify under penalty of perjury that the payee is not subject to withholding under Section 3406(a)(1)(C) of the Code. Amounts withheld under the backup withholding rules may be refunded or credited against a Beneficial Owner’s federal income tax liability, if any, provided that the required information is timely furnished to the IRS. Certain Beneficial Owners (including among others, corporations and certain tax-exempt organizations) are not subject to backup withholding. The failure to comply with the backup withholding rules may result in the imposition of penalties by the IRS.

## **CONTINUING DISCLOSURE UNDERTAKING**

Pursuant to the Continuing Disclosure Agreement, SMUD will covenant for the benefit of the holders and the “Beneficial Owners” (as defined in the Continuing Disclosure Agreement) of the 2023 Subordinated Bonds to provide certain financial information and operating data relating to SMUD by not later than 180 days after the end of each of SMUD’s fiscal years (presently, each December 31), commencing with the report for the year ending December 31, 2023 (the “Annual Report”), and to provide notices of the occurrence of certain listed events with respect to the 2023 Subordinated Bonds. The Annual Report will be filed by or on behalf of SMUD with the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access system (“EMMA”) and any notices of such listed events will be filed by or on behalf of SMUD with the MSRB through EMMA. The specific nature of the information to be contained in the Annual Report and the notices of listed events are set forth in the form of the Continuing Disclosure Agreement which is included in its entirety in APPENDIX G hereto. SMUD’s covenant will be made in order to assist the Underwriters in complying with Securities and Exchange Commission Rule 15c2-12.

[In a limited number of circumstances, certain of the annual reports, audited financial statements or listed event filings required to be made by SMUD during the last five years under its continuing disclosure undertakings were not connected to all of the CUSIP numbers of the bonds subject to the continuing disclosure undertakings. In addition, SMUD entered into two subordinated forward starting interest rate swaps in [December 2019][March 2020] and filed a notice of the interest rate swaps with the MSRB through EMMA in April 2020. A notice of rating upgrade on October 6, 2020, by Moody’s Investors Service of the Northern California Gas Authority No. 1 Gas Project Revenue Bonds, Series 2007B, was also not filed until October 28, 2020.]

## **RATINGS**

Fitch Ratings, Inc. (“Fitch”) and S&P Global Ratings (“S&P”) have assigned ratings of “[AA (stable outlook)]” and “[AA (stable outlook)],” respectively, to the 2023 Subordinated Bonds. Such ratings reflect only the views of such organizations and are not a recommendation to buy, sell or hold the 2023 Subordinated Bonds. Explanations of the significance of such ratings may be obtained only from the

respective rating agencies. SMUD has furnished to Fitch and S&P certain information and materials concerning the 2023 Subordinated Bonds and itself. Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that such ratings will continue for any given period or that they will not be revised downward, suspended or withdrawn entirely by the respective rating agencies, if in the judgment of such rating agency, circumstances so warrant. SMUD has not, other than as described under “CONTINUING DISCLOSURE UNDERTAKING” above, and the Underwriters have not undertaken any responsibility either to bring to the attention of the holders or beneficial owners of the 2023 Subordinated Bonds any proposed revision, suspension or withdrawal of any rating on the 2023 Subordinated Bonds or to oppose any such proposed revision, suspension or withdrawal. Any such downward revision, suspension or withdrawal of such ratings may have an adverse effect on the market price or marketability of the 2023 Subordinated Bonds.

### **MISCELLANEOUS**

This Official Statement includes descriptions of the terms of the 2023 Subordinated Bonds, power purchase agreements with certain other parties, pooling and other agreements, the Subordinate Resolution and certain provisions of the Act. Such descriptions do not purport to be complete, and all such descriptions and references thereto are qualified in their entirety by reference to each such document.

Copies of the Subordinate Resolution, which forms a contract with the Holders of the 2023 Subordinated Bonds, will be made available upon request.

This Official Statement has been duly authorized by the Board of Directors of SMUD.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Chief Executive Officer and General Manager

**APPENDIX A**

**INFORMATION REGARDING  
SACRAMENTO MUNICIPAL UTILITY DISTRICT**

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**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
*Sacramento, California*

**BOARD OF DIRECTORS**

Heidi Sanborn, President  
Rosanna Herber, Vice President  
Brandon Rose  
Nancy Bui-Thompson  
Gregg Fishman  
Rob Kerth  
Dave Tamayo

**OFFICERS AND EXECUTIVES**

Paul Lau, Chief Executive Officer and General Manager  
Frankie McDermott, Chief Operating Officer  
Jennifer Davidson, Chief Financial Officer  
Brandy Bolden, Chief Customer Officer  
Suresh Kotha, Chief Information Officer  
Jose Bodipo-Memba, Chief Diversity Officer  
Scott Martin, Chief Strategy Officer  
Laura Lewis, Chief Legal and Government Affairs Officer and General Counsel  
Lora Anguay, Chief Zero Carbon Officer  
Farres Everly, Chief Marketing & Communications Officer  
Russell Mills, Treasurer  
Lisa Limcaco, Controller

## INTRODUCTION

### General

The Sacramento Municipal Utility District (“SMUD”) owns and operates an electric system that has provided retail electric service since 1946. SMUD’s current service area is approximately 900 square miles, and includes the principal parts of Sacramento County and small portions of Placer and Yolo counties. See “THE SERVICE AREA AND ELECTRIC SYSTEM – The Service Area.”

### Independent Governance

SMUD is an independently run community-owned organization. SMUD is not required by law to transfer any portion of its collections from customers to any local government.

SMUD is governed by a Board of Directors (the “Board”), which consists of seven directors elected by ward for staggered four-year terms. The Board determines policy and appoints the Chief Executive Officer and General Manager, who is responsible for SMUD’s overall management and day-to-day operations. The Chief Executive Officer and General Manager is responsible for the hiring and removal of all employees, other than the Chief Legal and Government Affairs Officer and General Counsel, the Internal Auditor and the Special Assistant to the Board, who are hired and may be removed only by the Board. The employment status of nearly all SMUD employees is governed by a civil service system administered by the Chief Executive Officer and General Manager.

The Board elects its President and Vice President annually to take office in January. The current members of the Board are as follows:

Name	Occupation	Ward	Term Expires
Brandon Rose.....	Air Pollution Specialist, California Environmental Protection Agency	Ward 1	December 31, 2024
Nancy Bui-Thompson.....	Chief Information Officer, Wellspace Health	Ward 2	December 31, 2024
Gregg Fishman .....	Communications Specialist	Ward 3	December 31, 2026
Rosanna Herber, Vice-President...	Retired Utility Director	Ward 4	December 31, 2026
Rob Kerth .....	Business Owner	Ward 5	December 31, 2024
Dave Tamayo.....	Retired Environmental Specialist	Ward 6	December 31, 2026
Heidi Sanborn, President .....	Executive Director, National Stewardship Action Council	Ward 7	December 31, 2026

SMUD’s senior management consists of the following executives:

**Chief Executive Officer & General Manager.** Paul Lau was named chief executive officer and general manager (“CEO & GM”) of SMUD in October 2020. He reports to the SMUD Board of Directors. As CEO & GM, he leads the sixth largest community-owned electric utility in the nation, serving a population of approximately 1.5 million residents and managing a \$2.1 billion budget. Mr. Lau previously served as SMUD’s Chief Grid Strategy & Operations Officer and has held several other executive leadership positions during his 41-year career at SMUD. He serves on several national and local boards, including the Large Public Power Council, California Municipal Utilities Association, American Public Power Association, and Smart Electric Power Alliance, and as a Commissioner of the Balancing Authority of Northern California (“BANC”). A registered professional electrical engineer in the State of California

(the “State”), Mr. Lau received his bachelor’s degree in electrical power engineering from California State University, Sacramento.

**Chief Customer Officer.** Brandy Bolden reports to the CEO & GM and oversees SMUD’s Customer and Community Services business unit. She is responsible for customer experience delivery across our residential and commercial customer segments. She provides leadership and oversight of customer operations including customer care and revenue management, business intelligence, strategic account management, customer experience and segmentation strategy, channel management, customer program and service delivery, and special assistance. She is also responsible for commercial development and business attraction and oversees Community Energy Services, which provides services and support for community choice aggregators. Since joining SMUD in 2003, Brandy has demonstrated strong leadership and held a variety of senior leadership roles, including leading the Customer & Community Services project management office and the dual role of director of Customer Care and Revenue Operations. Ms. Bolden led the team responsible for implementing time-of-day rates, streamlining the meter-to-cash processes, delivering key billing and payment experience enhancements and recognizing operational efficiencies that resulted in sustained annual savings for SMUD. Ms. Bolden holds a Bachelor of Arts in Sociology from University of California, Davis.

**Chief Information Officer.** Suresh Kotha reports to the CEO & GM and is responsible for SMUD’s information technology strategy, operations, infrastructure, IT Project Management Office, enterprise innovation process, and cybersecurity. More recently, Mr. Kotha has been leading many technology efforts that are integral to developing a grid of the future that will help us achieve our zero-carbon goal, including our Advanced Distribution Management System, the software platform that supports the full suite of distribution management and optimization, and next-generation network upgrades. Mr. Kotha joined SMUD in 2002 as a principal technical developer, with responsibility for designing and leading implementation and upgrades of multiple technology systems, including the SAP software platform and our meter-to-cash systems. He holds a Master of Technology in Computer Science from Jawaharlal Nehru Technology University and a Bachelor of Engineering in Electronics & Communications Engineering from Gulbarga University.

**Chief Diversity Officer.** Jose Bodipo-Memba reports to the CEO & GM and is responsible for human resources, workforce diversity and inclusion, workforce business planning and SMUD’s Sustainable Communities program. Mr. Bodipo-Memba joined SMUD in 2010 as an environmental specialist and became manager of Environmental Services in 2016. He most recently served as SMUD’s first director of Sustainable Communities. Mr. Bodipo-Memba holds a Bachelor of Arts degree in history from University of California, Berkley and Masters of Business Administration from Drexel University.

**Chief Strategy Officer.** Scott Martin reports to the CEO & GM and is responsible for looking holistically at all strategies across the company and driving prioritization including zero carbon, rates and pricing, enterprise strategic planning and enterprise prioritization. Mr. Martin is a seasoned executive with more than 30 years of experience. Prior to assuming this role, Mr. Martin was a director for resource planning and new business strategy. Previous experience also includes customer strategy planning supervisor. Mr. Martin joined SMUD in 1999 and holds a Bachelor of Arts degree in economics from the University of California, Berkeley and a master of arts degree in economics from the University of Nevada, Las Vegas.

**Chief Legal & Government Affairs Officer and General Counsel.** Laura Lewis was named general counsel for SMUD in April 2014. In this position she serves as chief lawyer and manages SMUD’s legal office and its staff of eight attorneys. She also serves as the secretary to SMUD’s elected board of directors. She reports to the Board and to the CEO & GM and has responsibility for all legal matters in which SMUD is a party to, or has an interest in. Ms. Lewis also oversees SMUD’s government affairs and

reliability compliance department. In this capacity, she is responsible for management and coordination of all legislative matters and regulatory requirements affecting SMUD at the state and federal level, including the FERC-NERC electric reliability standards. Ms. Lewis joined SMUD in 1997 as a staff attorney, serving in that capacity through 1999, after which she moved to the San Francisco law firm Davis Wright Tremaine. In 2002, she returned to SMUD as a senior attorney. In 2010, she became assistant general counsel and in 2013 was appointed chief assistant general counsel. She holds a juris doctorate from McGeorge School of Law, where she won membership in the Order of the Coif honor society. She holds a bachelor's degree in political science from the University of California, San Diego and is a member of the American Bar Association, the Energy Bar Association, and the State Bar of California.

***Chief Operating Officer.*** Frankie McDermott reports to the CEO & GM and is responsible for providing strategic leadership and tactical oversight related to the safe and reliable transmission and delivery of energy to customers, ensuring efficient planning, construction, operation and maintenance of transmission, and distribution facilities. This position has primary responsibility for the processes and functions related to system reliability and operations across SMUD. The Chief Operating Officer is also the safety leader for the enterprise, leader of operational efficiency and responsible for all non-IT capital investments. Prior to this role, Mr. McDermott served as Chief Energy Delivery Officer and Chief Customer Officer, responsible for SMUD's overall retail strategy. From 2010 to 2014, he served as customer services director, which included managing relationships with customer segments as SMUD moved forward with smart-grid technologies. Prior to that, he served as manager of enterprise performance and held positions in supply chain and in general services. Before joining SMUD in 2003, Mr. McDermott served in management roles in the semiconductor industry at NEC Electronics in Roseville, California and in Ireland. After engineering school in Ireland, he earned an MBA from Golden Gate University and completed the Advanced Management Program at the Haas School of Business at the University of California Berkeley.

***Chief Zero Carbon Officer.*** Lora Anguay reports to the CEO & GM and is responsible for leadership oversight of SMUD's Energy Supply which includes Energy Trading and Contracts and SMUD's Power Generation Assets. This role is also responsible for the delivery of SMUD's plan to provide 100% carbon free energy resources by 2030. This includes obtaining new grants and partnerships, overseeing research and development, designing distributed energy resource programs, enabling processes to settle distributed energy transactions with SMUD's customers and transitioning SMUD's power generation assets and energy contracts to zero carbon resources. Prior to assuming this role, Ms. Anguay was the director of Distribution Operations & Maintenance and was responsible for the day-to-day operations of SMUD's electric distribution grid. Before that she was an engineering designer, process control supervisor, project manager for smart meter deployment, a senior project manager for smart grid distribution automation and supervisor in Grid Assets. Before SMUD, she worked for Oracle Corporation as a finance manager and is a veteran who served in the United States Coast Guard. Ms. Anguay joined SMUD in 2004 and holds a Bachelor of Science degree in business administration from California State University, Sacramento.

***Chief Financial Officer.*** Jennifer Davidson reports to the CEO & GM and is responsible for corporate accounting, procurement, treasury operations, risk management, and planning and budgets functions as well as key corporate services, including facilities, security, emergency operations and warehouse and fleet. Ms. Davidson joined SMUD in 2006 and previously served as director of budget, enterprise performance and risk management. Before joining SMUD, Ms. Davidson held management positions with investor-owned utility Southern California Edison and software and services provider Amdocs. She holds a bachelor's degree in geography from the University of California, Los Angeles.

***Chief Marketing & Communications Officer.*** Farres Everly reports to the CEO & GM and since 2009 has been responsible for oversight of the SMUD brand, all external and internal strategic marketing and communications activities and campaigns and SMUD's outreach efforts to the community and the

State's capital region, including volunteerism, events and sponsorships. He previously served as the Director Marketing and Communications. Prior to joining SMUD, Mr. Everly held marketing leadership positions at VSP Vision Care, The Money Store and the Sacramento Metropolitan Chamber of Commerce. He holds a bachelor's degree in Journalism from California State University, Chico.

***Treasurer.*** Russell Mills reports to the CFO. He oversees all treasury operations, including debt and cash management, banking, financial planning and forecasting, enterprise and commodity risk management, property and casualty insurance, and is responsible for developing and implementing capital borrowing strategies. Mr. Mills also serves as treasurer for the Transmission Agency of Northern California ("TANC"), the Central Valley Financing Authority ("CVFA"), the Sacramento Cogeneration Authority ("SCA"), the Sacramento Municipal Utility District Financing Authority ("SFA"), the Sacramento Power Authority ("SPA"), the Northern California Gas Authority No. 1 ("NCGA"), the Northern California Energy Authority ("NCEA") and BANC. Before joining SMUD in 2018 as Treasurer, Mr. Mills served as Chief Financial Officer of Southern California Public Power Authority. He also served as the Chief Financial Officer of the Power Supply Program at the California Department of Water Resources. He holds an MBA from Loyola Marymount University, and a bachelor's degree in economics from Towson University in Baltimore, Maryland. Mr. Mills also holds the Energy Risk Professional (ERP) designation and is a CFA level II candidate.

***Controller.*** Lisa Limcaco reports to the CFO and is responsible for accounting and financial reporting at SMUD. Prior to her appointment as controller in 2020, Ms. Limcaco served as an assistant controller, manager of customer value, performance and projects, senior energy commodity specialist and as principal accountant for SMUD's joint powers authorities. Ms. Limcaco also serves as controller for TANC, CVFA, SCA, SFA, SPA, NCGA, NCEA and BANC. Before joining SMUD in 2010 as a senior accountant, Ms. Limcaco had 12-years' experience as the Director of Accounting and controller for a food service provider in Sacramento and over 13-years' experience in public accounting including audit manager at Price Waterhouse LLP. Ms. Limcaco holds a bachelor's degree in accounting from the University of Hawaii, a Master of Business Administration from Sacramento State University and is a Certified Public Accountant in the State.

## **THE SERVICE AREA AND ELECTRIC SYSTEM**

### **The Service Area**

SMUD is the primary distributor of electric power within an area of approximately 900 square miles in central California. The service area includes the State Capital, Sacramento, the populous areas principally to the northeast and south of the City of Sacramento (the "City" or "Sacramento") and the agricultural areas to the north and south. The City is located 85 miles northeast of San Francisco.

SMUD's electric system supplies power to a population of approximately 1.5 million with a total annual retail load of approximately 10,622 million kilowatt-hours ("kWh") for the year ended December 31, 2022. As the capital of the nation's most populous state, Sacramento benefits from the historically stabilizing influence of a large government sector. Sacramento is home to the State government headquarters, the Sacramento County seat, the City government and various special districts that combine to make government the largest single employment sector in the Sacramento area. Information technology, transportation, education and health services, leisure and hospitality, and construction round out the other major sectors of employment and industry in the area.

SMUD's annual peak load has averaged 3,113 Megawatts ("MW") over the last three years, with SMUD's record peak load of 3,299 MW occurring on July 24, 2006. In 2022, SMUD recorded its second highest peak load of 3,292 MW. SMUD reviews its load forecast, at a minimum, on an annual basis.

## **The Electric System**

SMUD owns and operates an integrated electric system that includes generation, transmission and distribution facilities.

SMUD supplies power to its bulk power substations through a 230 kilovolt (“kV”) and 115 kV transmission system. This system transmits power from SMUD’s generation plants and interconnects with Pacific Gas & Electric (“PG&E”) and the Western Area Power Administration (“WAPA”). Power is distributed throughout Sacramento County via a 69 kV sub-transmission system with the exception of the City’s downtown area, which is served from the 115 kV transmission system. The downtown area is served from 115/12 kV and 115/21 kV substations. The distribution system serving the remainder of SMUD’s service territory is comprised of 69/12 kV substations with overhead and underground 12 kV distribution circuits.

## **BUSINESS STRATEGY**

### **General**

SMUD’s Board of Directors has established the following purpose and vision statements: “SMUD’s purpose is to enhance the quality of life for our customers and community by providing reliable and affordable electricity, and leading the transition to a clean energy future. SMUD’s vision is to be a trusted and powerful partner in achieving an inclusive, zero carbon economy. SMUD will leverage its relationships to accelerate innovation, ensure energy affordability and reliability, protect the environment, eliminate greenhouse gas emissions, catalyze economic and workforce development, promote environmental justice, and enhance community vitality for all.” The Board has adopted a set of Strategic Directions with related metrics, which it considers essential for the success of SMUD and for serving SMUD’s customers. These include competitive rates, access to credit markets, reliability, customer relations, environmental leadership, resource planning, enterprise risk management and safety. Some of the general elements in SMUD’s business strategy are:

- developing and maintaining a sustainable and reliable power supply to meet demand growth consistent with State mandates and the Board’s directions for renewable energy and the reduction of carbon emissions to zero by 2030. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *2030 Zero Carbon Plan*”;
- working closely with customers to provide the information, tools and incentives to assist them to more efficiently manage energy use, which will contribute to meeting greenhouse gas (“GHG”) emission targets and managing needle peak demand requirements (those 40 or so hours of the year with extreme temperatures when customer demand surges by up to 400 additional MW);
- managing price, volumetric and credit risks associated with energy and natural gas procurement;
- attracting, developing and retaining a diverse, skilled and engaged workforce that reflects SMUD’s values and is committed to achieving SMUD’s mission;
- retaining local decision making authority and operational independence; and
- collaborating regionally to attract new businesses and grow existing business to diversify and strengthen the Sacramento economy.

SMUD’s long-range business strategy focuses in part on ensuring financial stability by establishing rates that provide an acceptable fixed charge coverage ratio on a consolidated basis, taking into consideration the impact of capital expenditures and other factors on cash flow. SMUD’s Board policy sets

a minimum fixed charge coverage ratio of 1.50 times for annual budgets, though it generally plans to meet a minimum fixed charge coverage ratio of 1.70 times. Over the past ten years, the actual fixed charge coverage ratio has averaged 2.06 times on a consolidated basis. SMUD also manages its liquidity position by planning for a minimum of 150 days cash on hand and planning to maintain at least \$150 million of available capacity under its commercial paper and line of credit program. SMUD's commercial paper and line of credit program is currently authorized for \$400 million aggregate principal amount outstanding at any one time. As of March 1, 2023, SMUD had \$200 million aggregate principal amount of its commercial paper notes outstanding and \$200 million of the authorized aggregate principal amount of its commercial paper and line of credit program available for use. SMUD uses cash on hand and commercial paper and a line of credit to fund capital expenditures, then issues debt to reimburse itself for cash expended for qualified capital expenditures or to pay down the outstanding principal amount of its commercial paper program and line of credit. Over the past ten years, the days cash on hand has averaged 222. The resolutions securing SMUD's Senior Bonds and Subordinated Bonds (each as defined under the caption "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS" below) do not require SMUD to maintain a minimum fixed charge coverage ratio, minimum days cash on hand or minimum available capacity under its commercial paper program and line of credit.

In addition, SMUD's business strategy focuses on servicing its customers in a progressive, forward-looking manner, addressing current regulatory and legislative issues and potential competitive forces.

### **Serving SMUD's Customers**

SMUD continually looks for ways to better serve and partner with its customers to further strengthen customer loyalty, while providing reasonable product pricing. SMUD also has a focused effort to assist and incentivize customers to manage energy use more efficiently, which will contribute to meeting GHG emission targets and managing peak demand requirements as noted below.

***Digital Enhancements.*** Customers are increasingly turning to digital channels including SMUD's mobile application, SMUD.org, e-mail and social media to interact and do business with SMUD. SMUD has delivered many digital enhancements, including bill pay functionality; online payment arrangements; start/stop/transfer move service; view of energy usage, chat, an enhanced outage map including a newly launched meter test functionality; and the SMUD Energy Store, which is an online marketplace for energy-related products. SMUD plans to continue efforts to provide more personalized digital customer experiences.

***Advanced Metering, Infrastructure and Rate Design.*** As a community-owned organization, SMUD is dedicated to providing the tools and transparency in customer energy usage to enable customers to easily and positively affect energy usage, energy cost, and climate change. In 2012 SMUD installed smart technology, including 617,000 digital communicating smart meters, distribution automation systems and equipment to facilitate load management. The advanced technology has allowed SMUD to deliver tools such as text and e-mail bill alerts and online energy usage comparison charts to help customers manage energy use. SMUD has leveraged smart grid investments to improve reliability, reduce losses, reduce power quality issues and improve customer service through better, more timely information.

***Time-of-Day Rates.*** On June 15, 2017, the Board approved time-of-day ("TOD") rates as the standard rate for residential customers. The residential rate transition began in the fourth quarter of 2018 and was completed in the fourth quarter of 2019.

All of SMUD's business customers are also on time-based rates. On June 24, 2019, the Board approved an update to the commercial TOD rates to improve consistency and better align commercial rates with current energy market prices. Due to the impacts of the COVID-19 pandemic on SMUD's operations



and priorities, on August 20, 2020, the Board postponed the implementation of the commercial rate restructure for one year. The transition was completed in the first quarter of 2022. See “RATES AND CUSTOMER BASE – Rates and Charges.”

**Renewable Options.** SMUD’s customers have been increasingly interested in distributed energy resources, mainly through the installation of solar systems. As of January, 2023, approximately 47,615 of SMUD’s residential and commercial customers, approximately 7% of retail customers, had installed solar systems, representing approximately 324 MW of solar installations.

As the cost of energy storage continues to decline, SMUD anticipates an increase in behind-the-meter energy storage, mainly through the installation of battery storage systems. As of January 2023, approximately 1,183 of SMUD’s residential and commercial customers, approximately [2]% of retail customers, had installed storage systems, representing approximately 8 MW of storage.

As another option for solar, SMUD’s SolarShares® pilot program (the “SolarShares Pilot”) was established as a cost-effective and convenient way for commercial customers to meet their energy needs from solar power. The SolarShares Pilot offered SMUD commercial customers the opportunity to receive solar power without upfront costs or equipment installation through 5-, 10- or 20-year purchase contracts. Customers that entered into purchase contracts under the SolarShares Pilot receive up to half of their power from a utility-scale solar system. SMUD supplies solar power for the SolarShares Pilot either by building and maintaining utility-scale solar systems or by procuring solar power from third parties through power purchase agreements. The SolarShares Pilot generation was approximately 3.0% of retail sales in 2022. As of April 30, 2021, SMUD had completed the SolarShares Pilot and is not entering into new purchase contracts under the SolarShares Pilot.

Since January 2020, the California Building Code has required all newly constructed residential buildings under three stories to be powered by photovoltaic solar systems. A new home satisfies this requirement if it installs on-site solar or participates in an approved community solar or energy storage program. In February 2020, SMUD obtained approval from the California Energy Commission (“CEC”) to administer its own community solar program, called Neighborhood SolarShares® (“Neighborhood SolarShares”). SMUD’s Neighborhood SolarShares program can be used by developers of new low-rise residential buildings to satisfy the mandatory solar requirement. See also “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Rooftop Solar Mandate*.” Starting in 2023, the California Building Code’s mandatory solar requirement extends beyond low-rise residential properties, and other changes to the California Building Code’s community solar regulations took effect. SMUD revised its program to align with the new regulations and, in May 2023, obtained approval from the CEC to continue offering its Neighborhood SolarShares compliance option to newly constructed low rise residential homes in its service territory.

In addition to the SolarShares Pilot and Neighborhood SolarShares, SMUD maintains a voluntary green energy pricing program called Greenergy® (“Greenergy”). The Greenergy program allows customers the opportunity to pay an additional amount per month to ensure that either all or part of their electricity comes from green or carbon free energy sources. In 2022, the program allocated Renewable Energy Credits (“RECs”) equivalent to approximately 4.9% of retail sales to its participating customers.

**Energy Efficiency.** To further assist customers in managing energy usage and reducing regional carbon emissions and air pollution, SMUD offers an extensive array of energy efficiency and building electrification programs and services including financial incentives, loans, energy audits and education. In addition, SMUD has partnered with local developers to incorporate energy efficiency and all-electric construction measures into new residential and commercial construction, which helps developers plan and design efficient, cost-effective and low or zero-emission buildings. As part of SMUD’s 2019 Integrated

Resource Plan (“IRP”), SMUD set a goal for regional carbon emissions through transport and building electrification that aims to reduce carbon emissions in buildings and transport by 64% over the next 20 years. SMUD’s focus on electrification is continued in the Zero Carbon Plan (defined and discussed below). SMUD was the first electric utility in the country to set its efficiency goals based on carbon reductions, allowing building electrification and energy efficiency to both count toward meeting SMUD’s efficiency goals. This is a significant opportunity, as converting a typical home today to all-electric saves more than three times the carbon emissions compared to doing a major energy efficiency upgrade alone to the same building. See “POWER SUPPLY AND TRANSMISSION – Projected Resources.”

## **Sustainable Power Supply and Transmission**

Maintaining a sustainable power supply entails focusing efforts on researching, promoting and implementing new renewable energy technologies and sources to meet SMUD’s long-term commitment to reducing carbon emissions and providing a reliable energy supply. SMUD defines a sustainable power supply as one that reduces SMUD’s GHG emissions to serve retail customer load to zero by 2030. See “– 2030 Zero Carbon Plan” below. SMUD is planning to achieve zero GHG emissions to serve retail customer load through investments in energy efficiency, clean distributed energy resources, renewables portfolio standard (“RPS”) eligible renewables, energy storage, large hydroelectric generation, clean and emissions free fuels, and new technologies and business models. Additionally, SMUD plans to continue pursuing GHG emissions reductions through vehicle, building and equipment electrification. At the same time, SMUD’s plans for maintaining a sustainable power supply include assuring the reliability of SMUD’s electric system, minimizing environmental impacts on land, habitat, water and air quality, and maintaining competitive rates relative to other electricity providers in the State.

A number of bills affecting the electric utility industry have been enacted by the State Legislature. In general, these bills regulate GHG emissions and encourage greater investment in energy efficiency and sustainable generation alternatives, principally through more stringent RPS. See “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings” herein.

**2030 Zero Carbon Plan.** In July 2020, the Board declared a climate emergency and adopted a resolution calling for SMUD to take significant and consequential actions to reduce its carbon footprint by 2030. On April 28, 2021, the Board approved SMUD’s 2030 Zero Carbon Plan (the “Zero Carbon Plan”). The Zero Carbon Plan is intended to be a flexible roadmap for SMUD to eliminate carbon emissions from its electricity production by 2030 while maintaining reliable and affordable service. To achieve these goals the Zero Carbon Plan is focused on four main areas: natural gas generation repurposing, proven clean technologies, new technologies and business models and financial impacts and options. SMUD plans to revisit the Zero Carbon Plan annually.

The natural gas generation repurposing focus of the Zero Carbon Plan calls for exploring the replacement of two of SMUD’s five Local Gas-Fired Plants (as defined herein) and the retooling of the other three Local Gas-Fired Plants. See “POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants*.” Based on SMUD’s studies to date, SMUD estimates that McClellan (as defined herein) and the Campbell Soup Project (as defined herein) can be replaced by mid-decade. Final decisions about the replacement of these two Local Gas-Fired Plants will be based on additional reliability studies and engagement with the community. As part of the Zero Carbon Plan, SMUD is also exploring converting the Carson Project (as defined herein) and the Procter & Gamble Project (as defined herein) to reliability use operations only and investigating the use of alternative fuels like Renewable Natural Gas-biomethane (RNG-biomethane), hydrogen and other biofuels for the Carson Project, the Procter & Gamble Project, and the Consumnes Power Plant (as defined herein). In addition, SMUD is investigating new technologies such as long duration energy storage, carbon capture and sequestration, hydrogen and other

clean fuel alternatives to help support natural gas repurposing. All final generator configurations are subject to reliability assessments.

The proven clean technologies focus of the Zero Carbon Plan calls for SMUD to procure approximately 1,100 to 1,500 MW of utility-scale solar photovoltaic (“PV”) generating capacity, 700 to 1,100 MW of local utility-scale battery storage, 300 to 500 MW of wind generating capacity, and 100 to 220 MW of geothermal generating capacity. The Zero Carbon Plan also estimates that customer installation of approximately 500 to 750 MW of behind-the-meter solar PV generating capacity and approximately 50 to 250 MW of behind-the-meter battery storage will assist SMUD with achieving the Zero Carbon Plan goals.

With respect to new technologies and business models, the Zero Carbon Plan focuses on evaluating, prioritizing and scaling the emerging technologies that SMUD expects will have the largest impact on reducing carbon in SMUD’s 2030 resource mix. SMUD is currently focused on various areas of technology and customer-focused programs, including electrification, education, demand flexibility, virtual power plants, vehicle-to-grid technology, and new grid-scale technologies. The Zero Carbon Plan forecasts that customer-owned resources and SMUD customer-focused programs will contribute between 360 and 1,300 MW of capacity to SMUD’s grid by 2030.

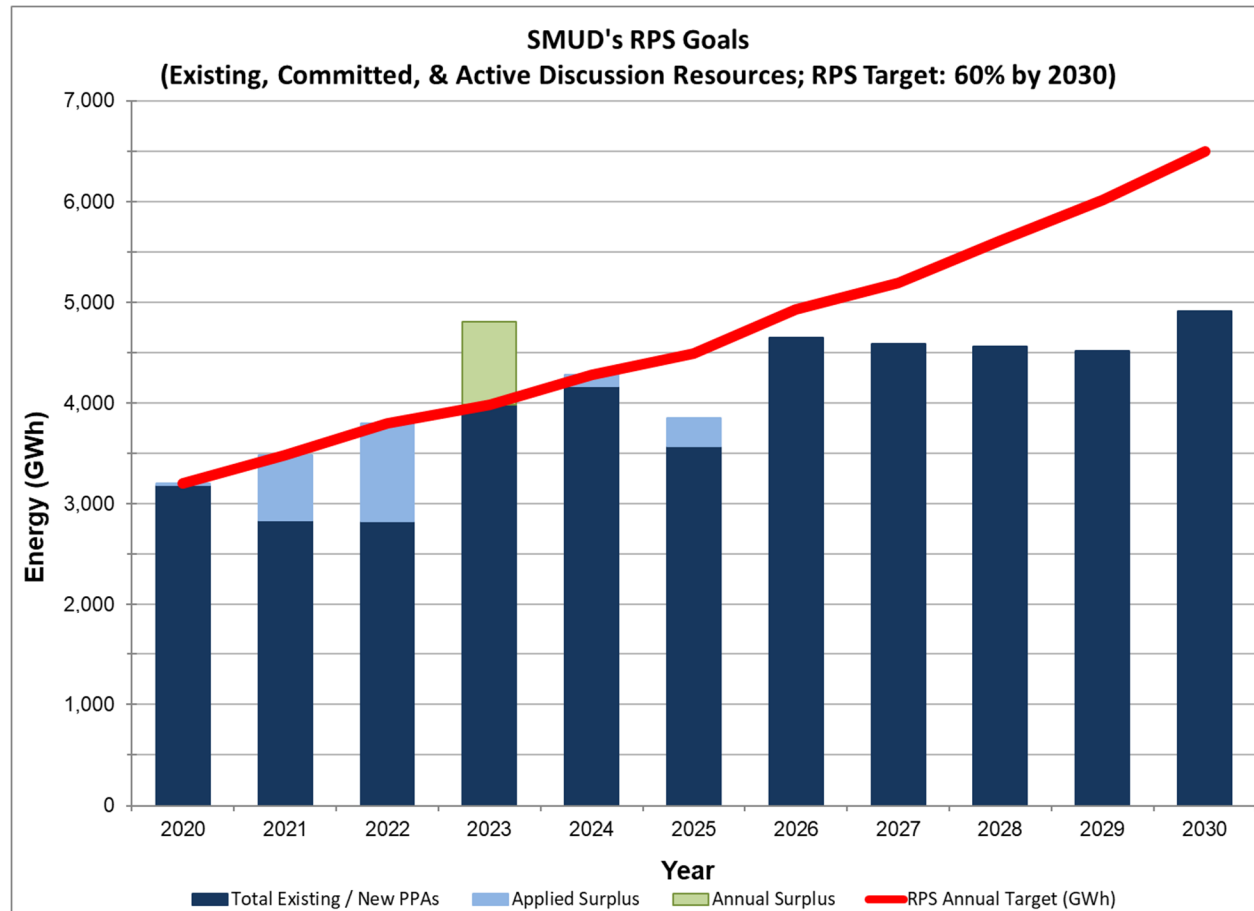
The financial impacts and options focus of the Zero Carbon Plan aims to keep SMUD rate increases at or below the rate of inflation while achieving SMUD’s goal of eliminating carbon emissions from its power supply by 2030. To pay for the expected costs of the Zero Carbon Plan and keep rate increases at or below the rate of inflation, the Zero Carbon Plan estimates the need for SMUD to realize between \$50 million and \$150 million of sustained annual savings. SMUD currently plans to achieve these sustained annual savings by exploring the implementation of operational savings strategies and pursuing partnership and grant opportunities.

While the ultimate impacts of the Zero Carbon Plan on SMUD’s financial results and operations are difficult to predict and are dependent on a variety of factors, such as the relative cost of procuring energy from clean technologies, the availability and relative cost of new technologies, and the adoption and implementation of energy efficiency and other measures by SMUD’s customers, such impacts could be material.

***Renewable Energy and Climate Change.*** The California Renewable Energy Resources Act, established by Senate Bill X1-2 (“SBX1-2”) and the Clean Energy and Pollution Reduction Act of 2015, enacted by Senate Bill 350 (“SB 350”) require that SMUD meets 33% of its retail sales from RPS-eligible renewable resources by 2020 and 50% of its retail sales from RPS-eligible renewable resources by 2030. Senate Bill 100 (“SB 100”), passed by the legislature and approved by then-Governor Brown on September 10, 2018, accelerates the RPS targets and establishes a new 60% target by 2030. The bill also created a planning goal to meet all of the State’s retail electricity supply with a mix of RPS-eligible and zero-carbon resources by December 31, 2045. See “DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Renewables Portfolio Standards*” for a discussion of the State RPS requirements.

SMUD’s compliance with State RPS requirements is evaluated over 3 or 4-year compliance periods. SMUD met the State RPS requirements for the first compliance period (2011-2013) and second compliance period (2014-2016). The third compliance period (2017-2020) required SMUD to source one-third of its energy from renewable resources, and SMUD had sufficient RECs to meet the third compliance period requirements. SMUD filed its 2020 and third compliance period RPS compliance report with the CEC in the second quarter of 2021 and is awaiting verification of its submission from the CEC which is expected to occur by the end of 2023. As of the end of the third compliance period (2020), SMUD had

approximately 1.0 million surplus RECs available to help meet future RPS targets. SMUD expects to file its 2022 RPS compliance report by July 1, 2023, and due to increased load compared to forecast in 2022, and a delayed commercial online date for the NTUA solar project, expects to have provided 34.1% of its retail sales from RPS-eligible renewable resources in 2022, which is less than the interim 2022 RPS target of 38.5%. However, RPS compliance is determined by compliance period and not by individual years and SMUD anticipates that it has sufficient surplus procured and/or under contract resources in 2023 and 2024 to offset the 2022 shortfall. Therefore, SMUD expects to be in compliance with the RPS requirements for the fourth compliance period (2021 – 2024). In addition to meeting RPS standards, SMUD serves an additional 7.3% of its customer load with renewable energy through its voluntary SolarShares and Greenergy pricing programs described above. SMUD estimates that it has sufficient renewable energy deliveries, new power supply contract commitments, new power supply commitments under active discussion, and RPS-eligible surplus carryover to meet its RPS requirements through 2024. Additional resources have been identified in solicitations currently under way that are expected to provide sufficient RPS-eligible resources to cover most of SMUD’s RPS requirements through 2030. Future solicitations are expected to provide the additional resources to fill any remaining gaps. The following chart illustrates SMUD’s current RPS requirements through 2030 and its existing and committed resources, and its resources under active discussion that are expected to be utilized to meet those requirements.



In addition to procuring new sources, meeting the RPS requirements will require replacement of certain existing renewable contracts which expire in future years. While SMUD anticipates it will meet much of its renewable resource requirements through purchase contracts with third parties, it continues to explore additional options, including wind, solar, biomass, and geothermal developments, partnering with other utilities on future projects, and local development options. SMUD's resource forecast (see "POWER SUPPLY AND TRANSMISSION – Projected Resources") accounts for future renewable resources as a component of "Uncommitted Purchases." To meet SMUD's Zero Carbon Plan goals, SMUD anticipates meeting loads in 2030 with approximately 70-80% renewable resources, in addition to hydro and other new zero carbon technologies. See "*2030 Zero Carbon Plan*" above.

Given the intermittent nature of power from renewable resources such as wind and solar, SMUD is exploring and investing in options that provide the flexibility to manage the intermittency of such renewable resources. Potential options include energy storage resources, which SMUD has committed to as part of the Zero Carbon Plan, and expanding load management resources. Additionally, on April 3, 2019, SMUD, through its membership in BANC, a joint exercise of powers agency formed in 2009, and currently comprised of SMUD, the Modesto Irrigation District ("MID"), the City of Roseville ("Roseville"), the City of Redding ("Redding"), the City of Shasta Lake and the Trinity Public Utilities District, has commenced its participation in the California Independent System Operator Corporation ("CAISO") western energy imbalance market ("WEIM"). Participation in the WEIM benefits SMUD by providing it with broader access to balancing resources within the region to help manage its expanding renewable portfolio. In addition, other entities within the BANC Balancing Authority Area began participation in the WEIM on March 25, 2021. See "BUSINESS STRATEGY – Serving SMUD's Customers – *Operational Independence and Local Control*" and "POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements."

In 2018, SMUD's Board adopted a new IRP through a comprehensive public process and filed the approved IRP with the CEC on April 29, 2019 pursuant to the CEC's IRP guidelines. The approved IRP calls for a reduction in GHG emissions from SMUD's energy supply by more than 60% by 2030 relative to 1990 levels and a goal of net zero emissions by 2040 due, in part, to a significant investment in electrification of the local building and transportation sectors. The IRP was expected to reduce Sacramento's economy-wide GHG emissions by 70% relative to current levels. SMUD's Zero Carbon Plan, adopted in 2021, built upon the IRP and set a goal of zero carbon emissions by 2030. On September 14, 2022, SMUD submitted an updated IRP filing with the CEC to incorporate the goals set in the Zero Carbon Plan pursuant to the CEC's IRP guidelines. See "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *2030 Zero Carbon Plan*."

The State's carbon cap-and-trade market established pursuant to Assembly Bill 32 ("AB 32") began in 2013. See "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Greenhouse Gas Emissions*" for a discussion of AB 32 and the State's cap-and-trade program. SMUD anticipates that allowances allocated to SMUD will nearly equal SMUD's compliance obligations under normal water year conditions. Under low water year conditions, SMUD may need to purchase additional allowances to cover its compliance obligations, including carbon obligations related to wholesale energy sales from SMUD's natural gas power plants. As SMUD implements its clean power goals, SMUD expects its need for these allowances to decline.

There is scientific consensus that increasing concentrations of GHG have caused and will continue to cause a rise in temperatures in the State and around the world. The change in the earth's average atmospheric temperature, generally referred to as "climate change," is, among other things, expected to result in a wide range of changes in climate patterns, including increases in the frequency and severity of extreme weather events, including droughts and heat waves, more frequent incidences of wildfires, changes in wind patterns, sea level rise and flooding, any of which alone or in combination could materially

adversely affect SMUD's financial results or operations. See also "FACTORS AFFECTING THE REGION" and "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Other Factors." As described above, SMUD is actively working to meet its sustainable power supply goals, reduce its own GHG emissions, and assist the local governments in the territory it serves with their desired GHG reductions. In 2016, SMUD introduced the Pilot Natural Refrigerant Incentive Program, its first customer program providing incentives for GHG reduction in addition to kWh savings. SMUD is a founding member and active participant in the Capital Region Climate Readiness Collaborative, a public private partnership formed to better understand and plan for climate impacts expected in the region. SMUD is also an active member of the United States Department of Energy (the "DOE") Partnership for Energy Sector Climate Resilience. SMUD regularly reviews scientific findings related to climate change and in 2016 published its Climate Readiness Assessment and Action Plan. In 2024, SMUD is planning to update the Climate Readiness Assessment and Action Plan along with other climate resiliency actions.

***Energy Storage Systems.*** Assembly Bill 2514 ("AB 2514") requires the Board to re-evaluate energy storage goals every three years. In compliance with AB 2514, the Board established a target of 9 MW of energy storage procurement by December 31, 2020, which SMUD has procured. See "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – *Energy Storage Systems*" for further discussion of AB 2514. In September 2020, the Board directed that energy storage forecasts be implemented through SMUD's IRP process going forward. See "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*" above for a discussion of SMUD's IRP. SMUD is also evaluating how to couple utility-scale solar with utility-scale storage to support future system reliability needs and renewable energy goals.

***Meeting Peak Load.*** A significant consideration for SMUD will be how it addresses its system peak load. SMUD has implemented programs and tools, such as advanced metering, energy efficiency options, and TOD rates for residential customers, to help customers manage their costs while helping SMUD reduce its peak load. Analysis of 2021 data showed a reduction of approximately 115 MW, weather adjusted, for residential customers during the TOD peak period (5-8 p.m. local time). SMUD staff will continue to monitor the progress and results of the implementation of TOD rates and will use this information to inform future rate actions and load forecasts. See "BUSINESS STRATEGY – Serving SMUD's Customers – *Time-of-Day Rates.*"

On September 16, 2021, the Board approved an optional residential Critical Peak Pricing rate (the "Peak Pricing Rate"), which went into effect June 1, 2022. The Peak Pricing Rate is designed to reduce load by increasing the price of energy when the grid is most impacted, up to 50 hours per summer. In exchange, customers on the rate will receive a per kWh discount on summer Off-Peak and Mid-Peak rates. SMUD is also exploring the use of more distributed energy resources and demand response programs that could further reduce SMUD's system peak.

***Operational Independence and Local Control.*** A key component of SMUD's business strategy is focused on maintaining its independence in operating and maintaining its resources. As such, SMUD has taken a number of actions to mitigate the potential impacts of various federal and state regulatory actions. For example, in 2002 SMUD established itself as an independent control area (now termed "Balancing Authority") within the Western Electricity Coordinating Council ("WECC") region. By removing itself from CAISO's Balancing Authority area, SMUD became responsible for balancing electric supply and demand within its own service territory. This move substantially reduced fees paid to CAISO, preserved operational flexibility and helped to insulate SMUD from the uncertain regulatory environment and tariff structure of CAISO. In addition to decreased financial risks, this independence also reduced SMUD's exposure to the impacts of capacity and energy shortages in the CAISO Balancing Authority area. Further, as an independent Balancing Authority, SMUD continued to support the statewide electric grid in events of electrical emergencies requiring rotating outages, such as loss of major transmission lines or equipment,

as provided in the statewide emergency plan. By 2006, the SMUD Balancing Authority footprint expanded north to the California-Oregon border and south to Modesto, to include the service areas of the WAPA, MID, Redding and Roseville, and TANC -owned 340-mile 500-kV California-Oregon Transmission Project (“COTP”). In October 2009, SMUD, with the coordination and cooperation of WAPA, joined the Western Power Pool Reserve Sharing Group, which supports reliability and reduces operating costs. In May 2011, BANC assumed the role of the Balancing Authority, though SMUD continues to oversee operation of the grid on behalf of BANC. BANC members share cost responsibility for balancing authority-related compliance obligations, liabilities, and operations. BANC also serves as an important venue for SMUD and other BANC members to collaborate with respect to operational and market improvements inside the BANC footprint and to preserve their operational independence. See “POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements.” On April 3, 2019, SMUD, through its participation in BANC, began operating in the CAISO WEIM, which helps SMUD better manage the integration of renewable energy resources. The CAISO WEIM is a voluntary market, which allows SMUD to maintain its operational independence from the CAISO, while providing SMUD greater access to balancing resources throughout the western region. See “POWER SUPPLY AND TRANSMISSION – Balancing Authority Area Agreements.”

**FERC Order 1000.** In 2011, the Federal Energy Regulatory Commission (“FERC”) issued Order 1000, which mandates regional transmission planning and imposes a regional cost allocation methodology for transmission facilities. FERC states that it has the authority to allocate costs to beneficiaries of transmission services even in the absence of a contractual relationship between the owner of the transmission facilities and the beneficiary. Despite appeals challenging FERC’s authority on a number of grounds, the D.C. Circuit Court of Appeals upheld Order 1000. See “DEVELOPMENTS IN THE ENERGY MARKETS – Federal Legislation and Regulatory Proceedings – *Federal Regulation of Transmission Access*.” Nevertheless, there remains flexibility with respect to SMUD’s participation in regional transmission planning. Specifically, SMUD is voluntarily participating as a Coordinating Transmission Owner (“CTO”) in the WestConnect transmission planning organization, and will rely on its WestConnect membership to keep it Order 1000 compliant. While SMUD opposes any cost allocation methodology that would obligate SMUD to pay for facilities that it does not use or need to maintain reliable operations or serve its load, the FERC-approved WestConnect planning process does provide a CTO the option to not accept an allocation of costs. WestConnect is composed of utility companies providing transmission of electricity in a portion of the western United States, working collaboratively to assess stakeholder and market needs and develop cost-effective enhancements to the western wholesale electricity market. SMUD is unable to predict at this time the full impact that Order 1000 will have on the operations and finances of SMUD’s electric system or the electric industry generally.

### **Electricity, Natural Gas, and Related Hedging**

SMUD continues to utilize a comprehensive and integrated power and fuel supply strategy to acquire a reliable and diversified portfolio of resources to meet existing and future needs. This strategy includes a combination of both physical supply and financial hedging transactions to reduce price risk exposure over a five-year horizon. SMUD’s physical supply arrangements include ownership of power generating resources, as well as a diversified portfolio of power and fuel supply purchase contracts that range in duration, with a mixture of fixed and variable pricing terms.

With regard to the power purchase contracts, SMUD has entered into a series of contracts for the purchase of electricity to supply the portion of its resource needs not already provided by owned resources. SMUD also actively manages its exposure on variable rate electricity purchases, and at times may enter into financial contracts to fix prices by using options to reduce price risk, in each case when warranted by economic conditions. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements.”

With regard to fuel supply contracts, SMUD utilizes a similar strategy of employing financial contracts of various durations to hedge its variable rate fuel supply contracts. As of March 31, 2023, these contracts are forecasted to have hedged the price exposure on approximately 83%, 66% and 55% of SMUD's anticipated natural gas requirements for 2023, 2024 and 2025, respectively. While the financial effects resulting from the unhedged portions of SMUD's natural gas requirements are difficult to predict, SMUD's financial results could be materially impacted. See "POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Supply*."

As provided in SMUD's natural gas contracts, SMUD may be required to post collateral to various counterparties. As of March 28, 2023, SMUD did not have any collateral posting obligations. A decrease in natural gas prices could result in a collateral posting by SMUD. While the posting of collateral is not an expense for SMUD, it does temporarily encumber unrestricted cash balances.

To hedge against hydroelectric production volatility of SMUD-owned hydroelectric facilities, SMUD implemented a pass-through rate component called the Hydro Generation Adjustment (the "HGA"). The HGA and the associated Hydro Rate Stabilization Fund (the "HRSF") help to offset increased power supply or fuel supply costs in years where precipitation levels at SMUD-owned hydroelectric facilities are low. To hedge against variations in the volume of energy received from non-SMUD-owned hydroelectric resources, SMUD uses a rate stabilization fund to help offset increased power supply or fuel supply costs. See "RATES AND CUSTOMER BASE – Rate Stabilization Funds."

## **Managing Risks**

SMUD maintains an Enterprise Risk Management ("ERM") program, a strategic approach to managing enterprise-wide risks as a portfolio, to help reduce the chance of loss, create greater financial stability and protect SMUD resources. It is designed to maintain an early warning system to monitor changes in, and the emergence of, risks that affect the organization's business objectives. Under the purview of the Enterprise Risk Oversight Committee, composed of executive members and chaired by the Chief Financial Officer, ERM conducts ongoing risk identification, assessments, monitoring, mitigation, risk-based budgeting and reporting. To ensure accountability and oversight, each identified risk is assigned to an executive-level risk owner. Risk status and mitigation efforts are reported monthly to the Board.

## **Competitive Challenges**

In the coming decade, utilities like SMUD may face competition from companies in other industries looking to diversify into the energy sector. Examples of developing competitive areas include retail sale of electricity, distributed electric storage resources, renewable distributed generation (mostly solar in Sacramento), customer installation of fuel cells, third-party electric vehicle charging, home or business automation that enables greater customer participation in energy markets, and third-party provision of energy management software and solutions.

SMUD has a wide range of initiatives to monitor and adapt to changing market conditions and new industry participants. Key areas of focus include:

- Enhancing customer experience. Recognizing the importance of meeting customer expectations, SMUD introduced the Customer Experience Strategy in 2016 to provide customers "value for what they pay" and further strengthen customer loyalty. The initiative is focused on ensuring SMUD has the people, systems, technology, programs and services to consistently meet or exceed customers' changing expectations. The customer experience is measured via surveys with the goal of achieving 80% of customers agreeing that SMUD provides them with value for what they pay by 2030.



- Restructuring electric rates. In 2017, the Board approved TOD rates as the standard rate for residential customers. The residential rate transition began in the fourth quarter of 2018, and the full transition was completed in the fourth quarter of 2019. All of SMUD's business customers are also on time-based rates. In 2019, the Board approved a restructuring of commercial rates to collect a greater portion of fixed costs through fixed charges and to better align time periods and prices with energy markets. The commercial rate restructuring was delayed by one year due to the impacts of the COVID-19 pandemic. The transition was completed in the first quarter of 2022. See "RATES AND CUSTOMER BASE – Rates and Charges" and "FACTORS AFFECTING THE REGION – Impacts from COVID-19 Pandemic."
- Ongoing integrated resource planning. SMUD monitors and updates its integrated resource planning to ensure future sources of energy balance cost, reliability and environmental requirements with the flexibility to meet challenges of changing market and regulatory conditions, customer energy resources, and emerging technologies.

### **Leveraging Core Competencies**

In addition to these initiatives, SMUD is leveraging core competencies to improve industry safety and help communities serve their customers' energy needs.

***Sacramento Power Academy.*** SMUD is leveraging its significant experience in training skilled line-workers with the opening of the SMUD Power Academy regional training center in 2016. The academy currently emphasizes training for public power, customer-owned utility employees. There are currently approximately 2,000 customer-owned utilities in the United States that are similar to SMUD, many of which may not have the resources to adequately train their employees. In addition to line-workers, the center will also train substation and network electricians. Other future plans include training electrical, telecom and meter technicians; engineers and designers; construction management inspectors; equipment operators; cable splicers and locators; and support staff.

***Community Energy Services.*** In 2002, Assembly Bill 117 was passed to establish Community Choice Aggregation in the State by authorizing Community Choice Aggregators ("CCAs") to aggregate customer electric load and purchase electricity for customers. SMUD's Community Energy Services department was established in 2017 to support organizations with values closely aligned with SMUD's values, while also generating additional revenue for SMUD. CCA programs are proliferating in the State thanks to support for expanding renewable energy use and desire for local control particularly for electricity procurement. There are numerous CCAs operating in the State, and more are anticipated to launch in the future. CCAs are responsible for procuring wholesale power, setting the generation rate, and staffing a call center to handle opt-outs and questions about the power portfolio. The local investor-owned utility ("IOU") continues to deliver electricity from the electric grid, maintain its electric infrastructure, bill customers and collect payments.

In October 2017, SMUD was selected by the governing board of Valley Clean Energy ("VCE") to provide technical, energy and support services, including data management and call center services, wholesale energy services, and business operations support, to VCE for a five-year term [expiring May 31, 2023. SMUD and VCE are currently negotiating a new contract.] VCE is a joint powers agency formed in 2016 by the City of Woodland, the City of Davis and Yolo County to implement a local CCA program. The service territory expanded to include the City of Winters in 2021. The mission of VCE is to deliver cost-competitive clean electricity, product choice, price stability, energy efficiency, and greenhouse gas emissions reductions to its customers in Yolo County. VCE began electric services to its customers in the summer of 2018, giving Yolo County residents a choice between two electricity providers, VCE and PG&E.

In November 2017, SMUD was selected by the governing board of East Bay Community Energy (“EBCE”) to provide call center and data management services for a three-year term beginning in January 2018. SMUD signed a new contract with EBCE in January 2022 for call center and data management services for an additional three-year term. EBCE is a joint powers agency formed in 2016 by the cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro and Union City in Alameda County to implement a local CCA program. EBCE expanded its territory to the cities of Pleasanton, Newark, and Tracy in April 2021.

In June 2019, SMUD was selected by the governing board of Silicon Valley Clean Energy (“SVCE”) to provide program services to help local SVCE communities reduce carbon pollution while delivering engaging customer experiences. SVCE programs are focused on grid integration, as well as electrifying transportation, buildings and homes. SVCE is a joint powers agency formed in 2016 by the cities of Campbell, Cupertino, Gilroy, Los Altos, Los Altos Hills, Los Gatos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Saratoga, Sunnyvale and Unincorporated Santa Clara County to implement a local CCA program.

In July 2022, SMUD was selected by the governing board of Marin Clean Energy (“MCE”) to provide data management, billing, data analytic and system assessment services to MCE. MCE is a joint powers agency formed in 2010 and represents 37 member communities across four Bay Area counties: Contra Costa, Marin, Napa and Solano.

In September 2022, SMUD was selected by the governing board of Sonoma Clean Power (“SCP”) to provide market research services to SCP. SCP is a joint powers agency that serves Sonoma and Mendocino counties.

While CCAs have had success in the State, they are susceptible to business, regulatory and other risks that could lead to a financial loss and/or result in a cessation of operations for the CCA. These risks could extend to a CCA’s counterparties, including SMUD. SMUD has made an effort to identify and mitigate potential counterparty risks to the extent possible in service agreements with the CCAs described above. SMUD may pursue opportunities to provide similar services to additional CCAs in the future. SMUD management does not expect its current arrangements to have a material adverse impact on SMUD’s financial position, liquidity or results of operations.

## **FACTORS AFFECTING THE REGION**

### **Precipitation Variability**

SMUD uses a National Weather Service precipitation station located at Pacific House, California to approximate available water supply to SMUD’s Upper American River Project (the “UARP”) hydropower reservoirs. As of March 31, 2023, precipitation at Pacific House, California totaled 77 inches for the October-September hydropower water supply period. This is 185% of the 50-year rolling median of 42 inches. Total reservoir storage in the UARP hydropower reservoirs was 269 [TAF] as of April 18, 2023, which was about 71% of capacity, approximately 8% below the historical average for this date to accommodate snowpack which was 156% of normal. SMUD manages its reservoirs to maximize water storage going into the summer season, which preserves generating capacity during SMUD’s high load months and ensures that SMUD meets its UARP FERC license requirements, including requirements for recreational and environmental flows.

There can be wide swings in precipitation from year to year. In years with below average rainfall, SMUD may have to generate or purchase replacement energy at additional cost. To hedge against variations in the volume of energy received from SMUD-owned UARP hydroelectric resources, SMUD uses the

HRSF to help offset increased power supply or fuel supply costs. See “RATES AND CUSTOMER BASE – Rate Stabilization Funds.”

SMUD is also exposed to precipitation variability through its contract with the WAPA. In an average water year this contract provides roughly 661 gigawatt hours (“GWh”) of power. WAPA’s actual deliveries are based on hydroelectric generation (minus energy use for pumping) at Central Valley Project reservoirs in Northern California, which varies based on annual precipitation patterns, water deliveries for agriculture, and flow requirements in the Sacramento-San Joaquin River Delta. Unlike the UARP, SMUD does not monitor precipitation stations to approximate power deliveries under the WAPA contract, and instead relies on a forecast of power deliveries from WAPA. As of March 31, 2023, WAPA has forecasted power deliveries of 451 GWh for 2023, down approximately 32% less than an average water year. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – *Western Area Power Administration*.”

## **Wildfires**

**General.** Wildfires in the State have become increasingly common and destructive. Frequent drought conditions and unseasonably warm temperatures have increased, and could further increase, the possibility of wildfires occurring in areas where SMUD maintains generation, transmission and distribution facilities. The number of diseased and dead trees has increased, and could further increase, this possibility. As a result, SMUD faces an increased risk that it may be required to pay for wildfire related property damage or personal injuries, fines and penalties, some of which may not be covered by insurance (including costs in excess of applicable policy limits), or may be disputed by insurers, and could be material. In addition, a significant fire or fires in SMUD’s generation, transmission or service area could result in damage or destruction to SMUD’s facilities, result in a temporary or permanent loss of customers or otherwise materially increase SMUD’s costs or materially adversely affect SMUD’s ability to operate its Electric System or generate revenues.

SMUD’s service territory is located within Sacramento County, which is located outside the California Public Utilities Commission (the “CPUC”) high fire threat areas established in 2018. However, as described below, SMUD’s UARP facilities and certain of SMUD’s and TANC’s transmission facilities are within CPUC high fire threat areas. In addition, as described below, certain portions of SMUD’s service territory are located within the California Department of Forestry and Fire Protection (“Cal Fire”) Fire Protection and Resource Assessment Program (“FRAP”) Moderate, High and Very High Fire Hazard Severity Zones. SMUD’s exposure to liability for damages related to its UARP facilities, which are located within high fire threat areas in El Dorado County, is reduced due to risk mitigation measures adopted by SMUD and the low number of inhabitants and structures near the UARP facilities (See “Wildfire Mitigation” below). SMUD continues to take responsible action to minimize its exposure to liability from wildfires; however, under current State law, utilities can be held liable for damages caused by wildfires sparked by their equipment or other facilities regardless of whether the utility was negligent or otherwise at fault. Therefore, at this time the full extent of SMUD’s potential exposure to wildfire risk is unknown.

**Distribution (SMUD Service Territory).** State law requires Cal Fire to classify areas in the State based on the severity of the fire hazard that is expected to prevail there. These areas or “Fire Hazard Severity Zones” are based on factors such as fuel (material that can burn), slope and the expected chance of burning. There are three Fire Hazard Severity Zones (Moderate, High and Very High) based on increasing fire hazard. Portions of SMUD’s service territory are located within these Fire Hazard Severity Zones. SMUD has assessed its service territory based on Cal Fire’s FRAP map, adopted in 2007; the following table illustrates SMUD’s assessment of the approximate extent of its service territory and retail customer base located within the three Fire Hazard Severity Zones.

<b>Fire Hazard Severity Zone</b>	<b>Moderate</b>	<b>High</b>	<b>Very High</b>
Acres of SMUD Service Area	231,816	2,337	1,061
% of Total SMUD Service Area	40.6%	0.4%	0.2%
Number of Retail Customers	53,621	4,285	148
% of Total Retail Customers	7.7%	0.6%	0.0%

**Transmission (Outside of SMUD Service Territory).** In 2018, the CPUC approved a new statewide fire map that identifies areas of elevated and extreme wildfire risk from utility-associated assets located throughout the State. SMUD directly participated in the development of the CPUC’s statewide fire map. In connection with the development of the CPUC’s statewide fire map, a peer review and a team of independent nationwide experts led by Cal Fire affirmed that SMUD’s electric service area is properly located outside of these elevated (“Tier 2”) and extreme (“Tier 3”) high fire threat areas; however, SMUD’s UARP facilities are located within both Tier 2 and Tier 3 areas. According to the CPUC, Tier 2 fire-threat areas are areas where there is an elevated wildfire risk from utility assets and Tier 3 fire-threat areas are areas where there is an extreme risk from utility assets. As of June 8, 2021, approximately 37 right-of-way miles of SMUD’s transmission lines are in Tier 2 fire-threat areas and approximately 19 right-of-way miles of SMUD’s transmission lines are in Tier 3 fire-threat areas. SMUD is also a member of TANC. As of July 2022, approximately 116.3 right-of-way miles of TANC’s transmission lines are in Tier 2 fire-threat areas and approximately 4.5 right-of-way miles of TANC’s transmission lines are in Tier 3 fire-threat areas. In accordance with its FERC license, SMUD adheres to a FERC-approved Fire Prevention and Response Plan for its UARP facilities. On May 17, 2018, in accordance with State law, SMUD’s Board of Directors determined that the UARP area may have a “significant risk of catastrophic wildfire” resulting from overhead electric facilities and that SMUD’s FERC-approved UARP Fire Prevention and Response Plan meets requirements for presenting wildfire mitigation measures to the Board for its approval.

**Wildfire Mitigation.** In response to potential wildfire risk, SMUD has implemented and is continuing to implement a series of measures intended to prevent wildfires from occurring, minimize the spread of any fire that does occur and improve the resiliency of its system. These measures include an increase in the degree of sophistication of fuel reduction inside and adjacent to rights-of-ways; installation of Cal Fire-approved exempt material to reduce the risk of sparking; enhanced inspection and maintenance programs; increased use of ignition-resistant construction, including covered conductors and undergrounding of conductors; increased monitoring of and identified responses to fire conditions, including operational procedures for the de-energization of lines during high fire conditions; and elimination of automatic reclosers on SMUD’s transmission lines and on SMUD’s distribution lines in certain areas during fire season.

SMUD’s proactive approach to vegetation management recently has been expanded to include the use of advanced technologies such as Light Detection and Ranging (“LIDAR”) surveys, ortho and oblique that is used to pinpoint tree health and/or condition that may not yet be visible to the naked eye. In addition, SMUD has installed additional weather stations in transmission corridors and substations for increased situational awareness and has continued coordination and collaboration with local agencies and first responders as well as vulnerable populations.

State legislation enacted in 2018 and 2019 (SB 901 and AB 1054, respectively) requires publicly owned utilities (“POUs”) to prepare and present Wildfire Mitigation Plans to their governing boards by January 1, 2020, and annually thereafter. SMUD assembled an enterprise-wide team of subject-matter experts to prepare its plan in compliance with this legislation. SMUD’s initial Wildfire Mitigation Plan (“WMP”) was adopted by the Board in the fourth quarter of 2019, after circulation for public comment and

review of the comprehensiveness of the plan by a qualified independent evaluator. The WMP and evaluator's report were submitted to the State Wildfire Safety Advisory Board (the "WSAB") in 2020. The WSAB was established pursuant to AB 1054 and is charged, among other things, with providing comments and advisory opinions relating to content and sufficiency of POU wildfire mitigation plans and recommendations on how to mitigate wildfire risk.

SMUD reviews its WMP each year, presenting the updated plan to the Board for adoption at duly noticed public meetings. The updated plans and evaluator reports are submitted to the WSAB for advisory opinion and recommendations. SMUD responds to the WSAB's comments regarding SMUD's Wildfire Mitigation Plan as part of its WMP process. SMUD will continue to annually review and update its WMP, conducting a comprehensive review at least every third year.

[SMUD is currently conducting a comprehensive review and update of its WMP and anticipates presenting its 2023-2025 WMP to the Board in second quarter of 2023, after soliciting public input and independent evaluation.]

***Wildfire Insurance.*** Wildfires in the State have not only increased potential liability for utilities, but have also adversely impacted the insurance markets, leading to higher costs for coverage; coverages becoming prohibitively expensive; limited or restricted coverage to certain types of risks; or coverage at insufficient levels. SMUD most recently renewed its general and wildfire liability insurance coverage on June 15, 2022. SMUD increased the commercially-insured portion of its \$255 million wildfire coverage program from \$176 million to \$192.5 million and reduced the self-insured layers and quota share portions of the insurance tower down to \$62.5 million.

In addition, it is expected that SMUD will have a portion of the \$400 million aggregate principal amount of its commercial paper and line of credit program to provide operational flexibility in the event of the occurrence of a wildfire or other operational event. However, SMUD has not covenanted to maintain the availability of the commercial paper program and line of credit program for these purposes and no assurances can be given that the commercial paper and line of credit program will be available at the time of, or during, such an event.

### **August 2020 Heat Wave**

The State experienced a period of prolonged above average temperatures from August 14, 2020 through August 18, 2020. The CAISO was forced to institute rotating electricity outages in the State during this extreme heat wave. SMUD, as a member of BANC, did not have to implement any planned power disruptions. Additionally, SMUD was able to support the CAISO during some hours of the heat wave with both requested emergency assistance and wholesale market sales. SMUD's peak demand between August 14, 2020 and August 18, 2020, varied between 2,874 MW and 3,057 MW, well below SMUD's record peak of 3,299 MW.

### **September 2022 Heat Wave**

The State experienced a period of prolonged above average temperatures from September 5, 2022 through September 8, 2022. On September 6, 2022, SMUD experienced its second highest peak demand of 3,292 MW. SMUD did not have to implement any planned power disruptions.

### **Storm Damage**

In January 2023, SMUD experienced a series of winter storms that brought heavy rains and high winds causing damage to SMUD's grid and widespread outages for SMUD's customers. By the time the

storm response was complete, SMUD had experienced the largest mobilization of personnel and restoration crews in its history. SMUD incurred costs related to removing downed trees, restoring power from downed poles and broken lines, replenishing inventory, communicating with and providing assistance to customers, maintaining IT systems, and coordinating with local emergency agencies. SMUD is pursuing claims with Federal and State agencies. SMUD currently cannot predict financial impacts from the storm damage however such impacts may be material.

### **Cosumnes Power Plant Outage**

On June 5, 2022, the Cosumnes Power Plant was shut down due to a ground fault in the Steam Turbine Generator (“STG”) stator. The ground fault was caused by delamination of insulation of the through bolt. Damage from the ground fault resulted in a rewind and restack of the stator core, replacement of all stator through bolts, and a full rewind of turbine rotor. The Cosumnes Power Plant repairs were completed in February 2023 and the plant returned to service on March 5, 2023. During the extended outage, SMUD shifted generation to the other Local Gas-Fired Plants and the Sutter Energy Center and procured additional energy and resource adequacy capacity. SMUD also requested and received approval from the California Air Quality Board and California Energy Commission to operate one or both of the gas turbines without the STG. During the September 2022 heatwave, both of the gas turbines at the Cosumnes Power Plant were operated without the STG, providing 270 MW at peak.

To mitigate the financial impact of unplanned outages from its thermal assets, SMUD carries commercial property insurance with a business interruption endorsement that can provide up to \$30.8 million of claims recovery per month, with a sub-limit of \$310 million over any 18-month period. Business interruption claims are subject to a 60-day waiting period. SMUD has begun the property damage and business interruption insurance claim process and received a \$50 million advance in December 2022. SMUD is reviewing and submitting claim expenses and expects to reach claim settlement in the third quarter of 2023. The settlement amount is unknown but is expected to be material.

### **Impacts from COVID-19 Pandemic**

While the impact of the COVID-19 pandemic on SMUD has lessened since the height of the pandemic in 2020, SMUD is still experiencing impacts from the pandemic. Compared to weather adjusted load levels, SMUD’s overall load is near or above pre-pandemic levels. Compared to pre-pandemic loads, residential customer load remains higher and commercial customer load has almost recovered. SMUD anticipates that commercial customer load recovery will continue over the next couple of years resulting in continued movement towards pre-pandemic levels, but not a complete recovery as people continue to work from home long-term.

Part of the governmental response to the economic consequences of the pandemic required utility providers (including SMUD) to provide additional grace periods and flexible payment plans for the payment of utility bills or to refrain from pursuing collection remedies for unpaid bills for a period of time. SMUD also implemented a no-shutoff policy through January 2022 under which SMUD did not disconnect power to a customer for non-payment of its electric bill. Beginning in February 2022, SMUD resumed its normal payment, late fee, and disconnection process and began disconnections of unpaid accounts in late April 2022. As a result, SMUD has experienced an increase in delinquencies for customer electric accounts versus pre-pandemic levels. In December 2021, SMUD received \$41 million from the California Arrearage Payment Program (“CAPP”) initial funding, and an additional \$9.9 million in 2022. All funds were applied to delinquent balances. As of March 31, 2023, the total delinquencies for customer electric accounts were \$50.8 million, after the CAPP credit, which is an increase from the February 2020 balance of total delinquencies for customer electric accounts of \$16.9 million.

SMUD also paused the recertification process for existing customers in SMUD's low-income discount program during the pandemic. The number of customers participating in the low-income assistance program increased by 19,775, or approximately 26% from February 2020 to February 2023. SMUD has resumed the recertification process for existing customers in the low-income discount program in 2023.

While the impacts of the COVID-19 pandemic on SMUD have lessened, if the pandemic and its consequences again become more severe or another similar event occurs, the impacts on SMUD's financial results and operations could be material.

## **RATES AND CUSTOMER BASE**

### **Rates and Charges**

SMUD's Board of Directors has autonomous authority to establish the rates charged for all SMUD services. Unlike IOUs and some other municipal utility systems, retail rate and revenue levels are not subject to review or regulation by any other federal, State or local governmental agencies. Changes to SMUD rates only require formal action by the Board of Directors after two public workshops and a public hearing. SMUD is not required by law to transfer any portion of its collections from customers to any local government. SMUD typically reviews and sets rates on a two-year cycle.

#### ***2019 Rate Action.***

On June 24, 2019, the Board approved a 3.75% rate increase effective January 1, 2020, a 3.00% rate increase effective October 1, 2020, a 2.50% rate increase effective January 1, 2021, and a 2.00% rate increase effective October 1, 2021, for all customer classes. Additionally, the Board approved a restructuring of the commercial rates, including new time periods and an overall increase in the fixed bill components, such as the System Infrastructure Fixed Charge and demand charges, and a corresponding decrease in energy charges, making the restructuring revenue neutral by rate category. To minimize bill impacts, rate categories will be restructured over an 8-year period. Due to the impacts of the COVID-19 pandemic on SMUD's operations and priorities, on August 20, 2020, the Board approved postponing the implementation of the commercial rate restructure for one year. Customers were transitioned to the new rates in the first quarter of 2022. There is currently pending litigation concerning the adoption of the 2020 and 2021 rates. See "LEGAL PROCEEDINGS – Proposition 26 Lawsuit."

#### ***2021 Rate Action.***

On September 16, 2021, the Board approved a 1.5% rate increase effective March 1, 2022 and a 2.0% rate increase effective January 1, 2023 for all customer classes. Additionally, the Board approved the Solar and Storage Rate, the optional residential Peak Pricing Rate, and updates to certain schedules of SMUD's Open Access Transmission Tariff ("OATT"). The Board also approved a new timeline for the commercial rate restructure transition, and all impacted commercial customers were transitioned to the new rates by the end of the first quarter of 2022.

SMUD also implemented a solar interconnection fee based on the size of solar interconnection and supporting programs such as battery incentives, incentives to enroll in SMUD's Peak Pricing Rate, battery incentives for Virtual Power Plants, and a program to bring the benefits of solar to under-resourced multi-family communities. These programs and fees are not subject to Board approval.

## **Rate Stabilization Funds**

The Rate Stabilization Fund (the “RSF”) is maintained by SMUD to reduce the need for future rate increases when costs exceed existing rates. At the direction of the Board, amounts may be either transferred into the RSF (which reduces revenues) or transferred out of the RSF (which increases revenues). The Board authorizes RSF transfers on an event driven basis. The RSF includes funds to hedge variations in the volume of energy received from WAPA hydroelectric generation, variation in AB 32 revenue and variations in Low Carbon Fuel Credit (“LCFS”) revenue. As of April, 2023, the balance in the RSF was \$120.1 million, which is approximately 7.3% of annual retail revenue.

Effective July 2008, SMUD implemented the HGA, which is a pass-through rate component to deal with variations in hydroelectric generation from the UARP (see “POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Hydroelectric*”). The HGA is designed to increase revenues in dry years when SMUD must buy power to replace hydroelectric generation and return money to the HRSF in wet years when SMUD has more hydroelectric generation than expected. Each year SMUD determines the impact of precipitation variances on projected hydroelectric generation from the UARP. When the precipitation variance results in a deficiency of hydroelectric generation from the UARP, transfers from the HRSF, which was created as a component of the RSF, to SMUD’s available cash, will be made in an amount approximating the cost to SMUD of replacement power (up to 4% of revenues) until the balance in the HRSF is zero. When the precipitation variance results in a projected surplus of hydroelectric generation from the UARP, deposits will be made into the HRSF in an amount approximating the positive impact to SMUD from the surplus hydroelectric generation (up to 4% of revenues) until the balance in the HRSF is equal to 6% of budgeted retail revenue. If the balance in the HRSF is not sufficient to cover transfers that would otherwise be made in the event of a projected deficiency in UARP hydroelectric generation, a 12-month HGA surcharge will automatically be included on customers’ electric bills at a level that generates up to 4% of retail revenue. If the balance in the HRSF is equal to 6% of budgeted retail revenue on any precipitation variance calculation date and the precipitation variance results in a projected UARP hydroelectric generation surplus, the positive impact of the surplus may be used for other purposes at staff’s recommendation, with the approval of the Board, including returned to customers through an electric bill discount up to 4% of retail revenue. SMUD calculates HRSF transfers based on an April-March (water year) precipitation period at Pacific House, California. This National Weather Service precipitation station is used to approximate available water supply to SMUD’s UARP hydropower reservoirs. As of March 31, 2023, precipitation at Pacific House, California totaled 90.83 inches which is above the 50-year rolling median of 50.52 inches.

As of April, 2023, the balance in the RSF and HRSF combined was \$216.5 million. SMUD transferred approximately \$65.4 million into of the HRSF from SMUD’s available cash in April 2023 due to above average precipitation, which increased the balance in the HRSF from \$31 million to approximately \$96.4 million. Although the HRSF and the subaccount of the RSF that hedge variations in the volume of energy received from non-SMUD hydroelectric generation currently have positive balances, below average precipitation could deplete the HRSF and RSF balances to zero.

## **Low Income Discount**

As of February 2023, approximately 95,175 customers received the low-income discount offered by SMUD, which represents approximately 17% of all residential customers. SMUD suspended recertification during the pandemic, but continued to monitor the program to ensure participants continue to be eligible for the discount. In 2022, the total discount was approximately \$31.3 million. As a result of the effects of the COVID-19 pandemic and related economic downturn, SMUD experienced an increase in low-income discount applicants. See “FACTORS AFFECTING THE REGION – Impacts from COVID-19 Pandemic.”



SMUD expanded its programs and services starting in 2016 to help customers with energy assistance, home improvement packages and education. SMUD is creating tailored solutions to best meet the needs of low-income customers. These solutions include free solar panels and inspecting homes to identify energy saving and fuel switching opportunities. As of February 2023, SMUD has performed 27,000 energy retrofits and, in partnership with Grid Alternatives (a non-profit organization that focuses on implementing solar power and energy efficiency for low-income families), 196 customers have benefited from free solar installations. Forty-eight additional homes received solar and energy efficiency through a partnership with Habitat for Humanity of Greater Sacramento. As part of SMUD's Zero Carbon Plan and the focus on building electrification, SMUD has also been ramping up electrification investments for low-income customers. Since 2019, SMUD has assisted more than 1,000 households with electrification upgrades.

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## Rate Comparisons

SMUD's rates remain significantly below those of PG&E and other large utilities throughout the State. The following table sets forth the average charges per kWh by customer class for both SMUD and PG&E. PG&E's rates reflect their recently approved rate increase effective March 1, 2023.

### AVERAGE CLASS RATES

	<b>SMUD Rates (cents/kWh)<sup>(1)</sup></b>	<b>PG&amp;E Rates (cents/kWh)<sup>(2)</sup></b>	<b>Percent SMUD is Below PG&amp;E<sup>(3)</sup></b>
Residential – Standard	17.96¢	36.27¢	50.5%
Residential – Low Income	12.53¢	23.11¢	45.7%
<b>All Residential</b>	<b>17.10¢</b>	<b>30.50¢</b>	<b>44.0%</b>
Small Commercial (Less than 20 kW)	17.39¢	34.55¢	49.7%
Small Commercial (21 to 299 kW)	16.07¢	33.90¢	52.6%
Medium Commercial (300 to 499 kW)	15.01¢	32.39¢	53.6%
Medium Commercial (500 to 999 kW)	14.08¢	28.00¢	49.7%
Large Commercial (Greater than 1,000 kW)	12.03¢	22.12¢	45.6%
Lighting – Traffic Signals	13.77¢	33.94¢	59.4%
Lighting – Street Lighting	15.64¢	46.15¢	66.1%
Agriculture	15.25¢	31.49¢	51.6%
<b>System Average</b>	<b>15.65¢</b>	<b>29.83¢</b>	<b>47.6%</b>

<sup>(1)</sup> Projected 2023 average prices for SMUD with rates effective January 1, 2023.

<sup>(2)</sup> PG&E average prices in 2023 reflect rates effective March 1, 2023, per Advice Letter 6863-E- dated February 15, 2023.

<sup>(3)</sup> The rates in the Average Class Rates table are calculated by dividing the total revenue of each class by the total usage of that class in kWh. The actual savings per customer will vary based on their electricity consumption.

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The following table shows a comparison of SMUD's charges for the average residential usage of 750 kWh per month (based on an average of summer and non-summer) and charges of seven similar neighboring or largest utilities in the State.

#### STATEWIDE COMPARISON—RESIDENTIAL SERVICE

	<b>Monthly Billing Charge 750 kWh<sup>(1)(2)</sup></b>	<b>Percent SMUD is (Below)/Above Utility</b>
Sacramento Municipal Utility District	\$131.40	
Pacific Gas & Electric Company	\$282.25	(53%)
Roseville Electric Utility	\$122.47	7%
Turlock Irrigation District	\$123.70	6%
Modesto Irrigation District	\$144.30	(9%)
Los Angeles Dept. of Water & Power	\$169.76	(23%)
Southern California Edison Company	\$273.21	(52%)
San Diego Gas and Electric Company	\$357.12	(63%)

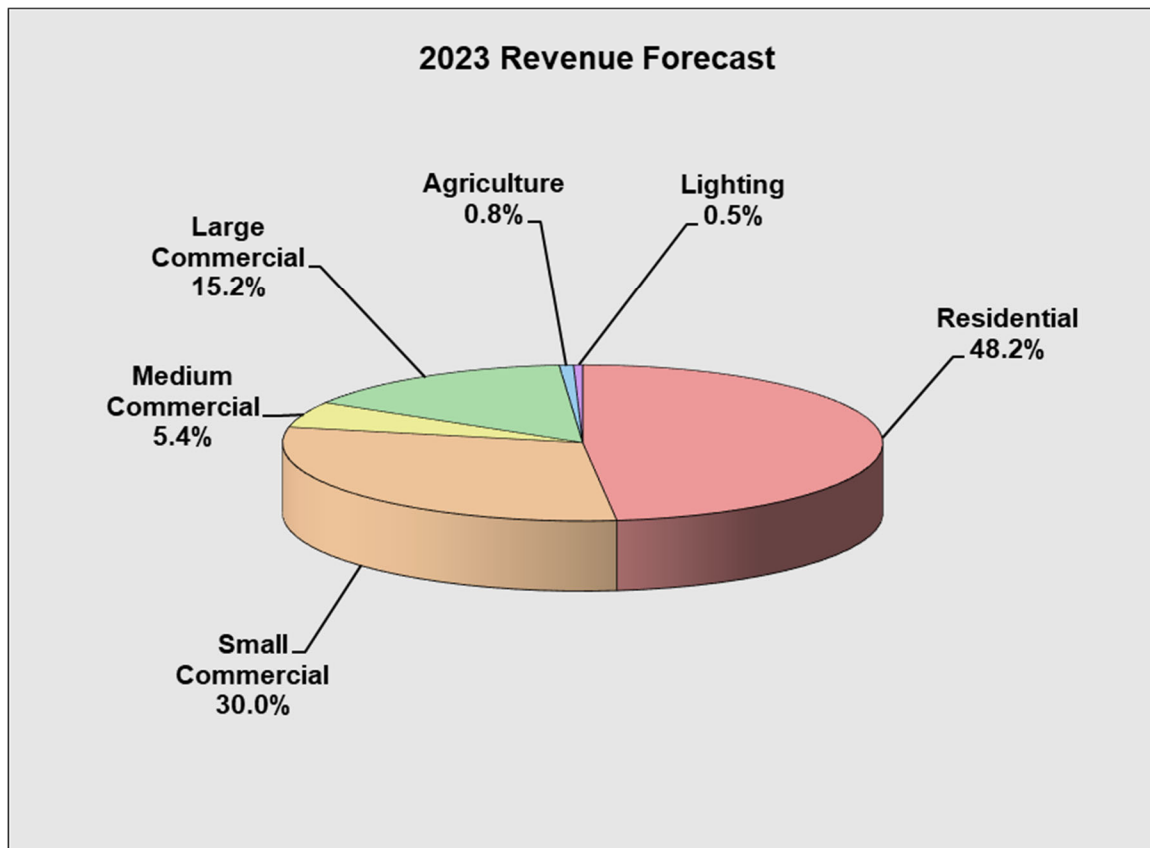
<sup>(1)</sup> Per individual utility's published schedules as of March 1, 2023.

<sup>(2)</sup> Average usage of theoretical customer using 750kWh per month.

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### Allocation of Revenue by Customer Class

The following chart sets forth the forecast percentage of SMUD revenues from billed sales associated with each customer class.



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## Customer Base; Largest Customers

A stabilizing influence on SMUD's revenues is that a substantial proportion is derived from residential customers (48.9% in 2022). Historically, revenue from commercial and industrial consumption has been more sensitive to economic fluctuation. Furthermore, SMUD has no dominant customers that account for a significant percentage of annual revenues. In 2022, no single customer contributed more than 3% of revenues. The top ten customers generated approximately 11% of revenues and the top 30 generated approximately 17%. The following table presents information on SMUD's top ten customers as of December 31, 2022.

### SMUD'S LARGEST CUSTOMERS (As of December 31, 2022)

Customer Type	Annual Revenue (\$ millions)	% of Total Revenue
Technology	37.56	2.31%
Government	33.02	2.03%
Government	31.59	1.94%
Government	14.58	0.90%
Government	14.11	0.87%
Communications	9.89	0.61%
Industrial Gases	9.12	0.56%
Government	8.04	0.49%
Grocery	7.37	0.45%
Government	7.29	0.45%
<b>Top 10 Total</b>	<b>172.57</b>	<b>10.59%</b>

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## POWER SUPPLY AND TRANSMISSION

### Power Supply Resources

The following table sets forth information concerning SMUD's power supply resources as of March 31, 2023. Capacity availability reflects expected capacities at SMUD's load center, as well as entitlement, firm allocations and contract amounts in the month of July, which is generally SMUD's peak month.

### POWER SUPPLY RESOURCES (As of March 31, 2023)

Source:	Capacity Available (MW) <sup>(1)</sup>
<b>Generating Facilities:</b>	
Upper American River Project – Hydroelectric .....	685
Solano Wind Project – Wind <sup>(2)</sup> .....	94
Hedge Battery <sup>(2)</sup> .....	4
<b>Sub-total:</b> .....	<b>783</b>
<b>Local Gas-Fired Plants:</b>	
Cosumnes Power Plant .....	570
Carson Project.....	103
Procter & Gamble Project.....	166
McClellan .....	72
Campbell Soup Project .....	170
<b>Sub-total:</b> .....	<b>1,081</b>
<b>Purchased Power:</b>	
Western Area Power Administration (WAPA) <sup>(3)</sup> <sup>(4)</sup> .....	351
Grady – Wind <sup>(2)</sup> .....	34
Avangrid (Iberdrola) (PPM) – Wind <sup>(2)</sup> .....	22
Feed-in-Tariff Photovoltaic – Solar <sup>(2)</sup> .....	40
Rancho Seco Solar <sup>(2)</sup> .....	53
NTUA Navajo Drew Solar <sup>(2)</sup> .....	55
Great Valley – Solar <sup>(2)</sup> .....	40
Wildflower Solar <sup>(2)</sup> .....	8
Calpine Geysers – Geothermal .....	95
CalEnergy – Geothermal .....	26
Patua (Gradient/Vulcan) – Geothermal.....	12
Other Long-Term Contracts.....	18
ELCC Portfolio Adjustment <sup>(2)</sup> .....	4
Sutter Calpine Thermal .....	258
Firm Contract Reserves <sup>(4)</sup> .....	18
Committed Short-Term Purchases <sup>(5)</sup> .....	275
Uncommitted Short-Term Purchases .....	8
<b>Sub-total:</b> .....	<b>1,314</b>
<b>Total</b> .....	<b>3,178</b>

<sup>(1)</sup> Available capacity is the net capacity available to serve SMUD's system peak load during the month of July.

<sup>(2)</sup> Capacity values shown are based on resource effective load carrying capability modeling.

<sup>(3)</sup> Total includes SMUD's Base Resource share and WAPA Customer allocations.

<sup>(4)</sup> Assumes firm reserves of 5% are included.

<sup>(5)</sup> Committed Short-Term Purchases are primarily purchased on a year-ahead to season-ahead basis from various sources.

Note: Totals may not add due to rounding.

## Power Generation Facilities

**Hydroelectric.** The UARP consists of three relatively large storage reservoirs (Union Valley, Loon Lake and Ice House) with an aggregate water storage capacity of approximately 400,000 acre-feet and eight small reservoirs. Project facilities also include eight tunnels with a combined length of over 26 miles and eight powerhouses containing 11 turbines. In addition to providing clean hydroelectric power and operating flexibility for SMUD, the UARP area provides habitat for fish and wildlife and a variety of recreational opportunities, including camping, fishing, boating, hiking, horseback riding, mountain biking and cross-country skiing.

The combined capacity of the UARP is approximately 685 MW at SMUD's load center in Sacramento. Under current licensing and mean water conditions, these facilities are expected to generate approximately 1,600 GWh of electric energy annually, which represents approximately 15% of SMUD's current average annual retail energy requirements. In 1957, the Federal Power Commission (predecessor agency to FERC) issued a license to SMUD for the UARP. This 50-year license was subsequently amended to add and upgrade facilities and now includes all segments of SMUD's hydroelectric facilities located on the South Fork of the American River and its tributaries upstream from the Chili Bar Project (described below). On July 23, 2014, FERC issued to SMUD a new 50-year license for the UARP.

On November 9, 2016 FERC issued an Order authorizing SMUD to construct the South Fork Powerhouse downstream of the UARP's Slab Creek Dam. Construction was substantially completed in the fall of 2020, and the new powerhouse was placed into operation on October 25, 2022, adding 1.8 MW of generation to the UARP's overall capacity.

On June 16, 2021, pursuant to Board authorization, SMUD acquired the Chili Bar Hydroelectric Project which consists of a 7 MW powerhouse, reservoir, dam and spillway, north of Placerville on the South Fork of the American River for approximately \$10.4 million (the "Chili Bar Project"). The Chili Bar Project is immediately downstream from the UARP and operates as the regulating reservoir for the UARP's largest powerhouse. Owning the UARP and the Chili Bar Project enables SMUD to operate the two projects with a holistic approach to license compliance and generation efficiency.

**Solano Wind Project.** SMUD owns and operates an 87 MW wind project, located in Solano County, known as Solano 2. Solano 2 consist of 29 wind turbine generators ("WTGs") rated at 3 MW each. Energy from the project is collected at 21 kV and transmitted over a dedicated 3-mile overhead system to the SMUD-owned Russell substation. At the Russell facility, the energy is transformed to 230 kV and interconnected to PG&E's Birds Landing Switching Station. Energy deliveries are scheduled through the CAISO.

**Solano 3 Project.** In 2011 and 2012, SMUD constructed a 128 MW wind project adjacent to Solano Phase 2, known as Solano 3. The Solano 3 project consists of 31 WTGs rated at 1.8 MW and 24 WTGs rated at 3.0 MW. The project interconnects through a 34.5 kV underground collection system to the Russell substation. Like the Solano Phase 2 project, this energy is transformed to 230 kV and delivered through the CAISO.

**Solano 4 Project.** SMUD is developing the Solano 4 Wind Project on SMUD-owned land near the Solano 3 project, known as the Collinsville and Roberts properties, to install 10 WTGs rated at 4.5 MW, and to remove the Solano 1 turbines and replace them with 9 WTGs rated at 4.5 MW. SMUD received the Cluster II Phase I Study results from the CAISO in January 2019, provided the initial security posting in April 2019, and received the Phase II Study Report in November 2019, furthering the process towards a Large Generator Interconnection Agreement ("LGIA"). SMUD has met all of the CAISO requirements and has executed a LGIA as of June 2021 that will allow for 90.8 MW of capacity at the point of

interconnection. WAPA and PG&E identified upgrades needed to interconnect the Solano 4 Wind Project that may not be complete before 2024. The WAPA impacts have been resolved at no cost. PG&E has an approved project and expects to complete the needed upgrades by May of 2025. In April 2021, SMUD submitted an application for advisory review by the Solano County Airport Land Use Commission (the “Solano ALUC”) of the Solano 4 Wind Project’s consistency with the 2015 Travis Air Force Base Land Use Compatibility Plan (the “Travis Plan”). In May 2021, the Solano ALUC purported to resolve that the Solano 4 Wind Project was inconsistent with the Travis Plan. In August 2021, the Board approved the Project Environmental Impact Report, made findings overriding the Solano ALUC’s finding of inconsistency, made findings there was no alternative to the project, and approved the Solano 4 Wind Project. In September 2021, Solano County filed a writ petition challenging SMUD’s approval of the Solano 4 Wind Project based on procedural environmental, zoning and land use grounds. The parties entered into a settlement agreement on December 14, 2022, and the suit was dismissed on January 10, 2023. The settlement agreement allows for the construction of the Solano 4 Wind Project as planned.

In addition, SMUD applied for and obtained extensions of the Federal Aviation Administration Determinations of No Hazard allowing for construction of the turbines. A contract for the construction of the Solano 4 Wind Project was awarded to Vestas Corporation and the Solano 4 Wind Project is currently under construction. The expected operation date for the Solano 4 Wind Project is May 2024. Realization of the full capacity of the Solano 4 Wind Project may be delayed into the first quarter of 2025 due to the timeframe established for the PG&E required upgrades. SMUD has developed a mitigation plan for the limited interconnection capacity for the first year of operation, in coordination with CAISO and PG&E, of using all of the existing SMUD Solano Russell substation interconnection capacity combined for the dispatch of all the Solano Wind Project. SMUD completed a combined LGIA amendment administrative process, which combines all phases of the Solano Wind Project so it may operate as one project. This was fully executed by SMUD, CAISO, and PG&E on February 27, 2023.

***Distributed Solar Photovoltaic.*** SMUD owns and operates approximately 2 MW of solar photovoltaic generating facilities. These facilities include installations at the Hedge Substation property, SMUD Headquarters, the East Campus Operations Center, and other smaller photovoltaic systems throughout the service area on parking lots.

***Hedge Battery.*** SMUD owns and operates a 4 MW, 8 MWh, battery energy storage system located near the Hedge Substation in South Sacramento. The facility reached commercial operation in January 2023.

***Local Gas-Fired Plants.*** SMUD constructed five local natural gas-fired plants in its service area: the Carson Project, the Procter & Gamble Project, the Campbell Soup Project, McClellan and the Cosumnes Power Plant (each defined below). These five plants are referred to collectively as the “Local Gas-Fired Plants.” These plants are a strategic component of SMUD’s resource mix. In addition to providing SMUD a total capacity of approximately 1,139 MW, the Local Gas-Fired Plants provide SMUD with needed voltage support, operational and load following capability, and the reliability inherent in having power resources located close to loads. With the exception of McClellan, these plants were financed through the issuance of project revenue bonds by separate joint powers authorities (collectively, the “Authorities”). In late 2021, ownership of all of the Local Gas-Fired Plants was transferred to one of the Authorities, SFA. SMUD has entered into long-term agreements with SFA providing for the purchase by SMUD of all of the power from each of the Local Gas-Fired Plants on a take-or-pay basis. This consolidation created operational and administrative efficiencies without changing any of the functionality of the power plants. Although the Local Gas-Fired Plants are owned by SFA, SMUD has exclusive control of their dispatch and manages their operations as part of its overall power supply strategy.



Payments under the power purchase agreements are payable from the revenues of SMUD's Electric System prior to the payment of the principal of or interest on SMUD's Senior Bonds and Subordinated Bonds (each as defined under the caption "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS" below), as are other maintenance and operation costs and energy payments. For further discussion of SMUD's obligations to make these payments to SFA, see "CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS – Outstanding Indebtedness – *Joint Powers Authorities*."

The following is a brief description of the five Local Gas-Fired Plants:

*The Cosumnes Power Plant (the "Cosumnes Power Plant").* The Cosumnes Power Plant is a 612 MW natural gas-fired, combined cycle plant located in the southern portion of Sacramento County adjacent to SMUD's decommissioned Rancho Seco Nuclear Power Plant. Commercial operation of the Cosumnes Power Plant commenced on February 24, 2006. SFA increased the net generating capacity of the facility by 81 MWs via an Advanced Gas Path ("AGP") upgrade. The additional AGP generation was realized after hardware and software upgrades were completed on both units in March of 2019. The Cosumnes Power Plant is owned by SFA, a joint powers authority formed by SMUD and MID. The existing take-or-pay power purchase agreement between SMUD and SFA expires no earlier than when the related bonds have been paid in full (the outstanding related bonds are scheduled to mature on July 1, 2030). On June 5, 2022, the Cosumnes Power Plant was shut down due to a ground fault in the STG stator. The repair was completed in February 2023 and the plant returned to service on March 5, 2023. See "FACTORS AFFECTING THE REGION – Cosumnes Power Plant Outage".

*The Carson Cogeneration Project (the "Carson Project").* The Carson Project, a 103 MW natural-gas-fired cogeneration project consisting of separate combined cycle and peaking plants, provides steam to the Sacramento Regional County Sanitation District ("SRCSD") wastewater treatment plant adjacent to the site. The Carson Project was originally owned by the CVFA, a joint powers authority formed by SMUD and the SRCSD. Construction of the Carson Project was completed and the plant began commercial operation on October 11, 1995. The CVFA bonds were defeased in September 2019. In late 2021, ownership of the Carson Project was transferred to SFA. The take-or-pay power purchase agreement between SMUD and SFA relating to the Carson Project will be in effect until terminated by SMUD.

*The Procter & Gamble Cogeneration Project (the "Procter & Gamble Project").* The Procter & Gamble Project, a 182 MW natural gas-fired cogeneration facility, is located in an established industrial area of Sacramento. The initial combined cycle portion of the plant began commercial operation on March 1, 1997. Construction of the peaking plant portion of the Procter & Gamble Project commenced during 2000 and the unit achieved commercial status on April 24, 2001. The Procter & Gamble Project produces steam for use in Procter & Gamble Manufacturing Company's oleochemical manufacturing processes and electricity for sale to SMUD. The Procter & Gamble Project was originally owned by the SCA, a joint powers authority formed by SMUD and SFA, a separate joint powers authority. The SCA bonds were defeased in September 2019. In late 2021, ownership of the Procter & Gamble Project was transferred to SFA. The take-or-pay power purchase agreement between SMUD and SFA relating to the Procter & Gamble Project will be in effect until terminated by SMUD.

*The Campbell Soup Cogeneration Project (the "Campbell Soup Project").* The Campbell Soup Project, a 170 MW natural gas-fired cogeneration project, was completed and began commercial operations on December 4, 1997. Upgrades were implemented during 2000, which increased the plant's peaking capacity to 180 MW, well above its net demonstrated capacity of 159.8 MW. The plant is located in south Sacramento adjacent to the Capital Commerce Center (formerly the Campbell Soup Company food processing facility). The Campbell Soup Project was originally owned by SPA, a joint powers authority formed by SMUD and SFA. The SPA bonds were redeemed in July 2015. In late 2021, ownership of the Campbell Soup Project was transferred to SFA. The take-or-pay power purchase agreement between

SMUD and SFA relating to the Campbell Soup Project (the “Campbell Soup/McClellan PPA”) covers both the Campbell Soup Project and McClellan and will be in effect until terminated by SMUD. As part of the Zero Carbon Plan, SMUD is exploring retiring the Campbell Soup Project in 2025, contingent upon SMUD having sufficient other resources available and grid reliability can be maintained. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – 2030 Zero Carbon Plan.”

*The McClellan Gas Turbine (“McClellan”).* McClellan is a 72 MW natural gas-fired simple cycle combustion turbine generating plant at McClellan Business Park in Sacramento. This turbine is connected to SMUD’s electric system and is operated to meet SMUD’s peak-load requirements. McClellan is aligned for remote starting and operation with both black start and fast start capabilities. SMUD constructed the McClellan unit in 1986 as a 50 MW emergency power source for the McClellan Air Force Base. In 2001, following the Air Force Base closure, McClellan was upgraded to 72 MW and converted for SMUD use. In May 2007, SMUD transferred ownership of McClellan to SPA for more efficient operation. SPA did not issue debt related to McClellan. In late 2021, ownership of McClellan was transferred to SFA. SFA passes all costs of operations and maintenance through to SMUD in accordance with the terms of the Campbell Soup/McClellan PPA. In exchange for paying all costs related to McClellan, SMUD receives all of the power generated thereby on a take-or-pay basis. As part of the Zero Carbon Plan, SMUD is exploring retiring McClellan in 2024, contingent upon SMUD having sufficient other resources available and grid reliability can be maintained. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – 2030 Zero Carbon Plan.”

## **Fuel Supply**

**General.** SMUD is obligated to arrange for the purchase and delivery of natural gas to the Local Gas-Fired Plants. Management of the natural gas procurement and delivery process is a key focus of SMUD’s reliability and risk policies. Although the natural gas consumption of the power plants for SMUD’s load can vary significantly depending on the season, precipitation, and the market price of power and natural gas, the plants are forecasted to need, on average in 2023, a total of approximately 97,000 Decatherms per day (“Dth/day”) with a daily peak slightly more than 171,000 Dth/day of natural gas. SMUD has implemented a comprehensive strategy to secure a reliable and diversified fuel supply through a variety of agreements for the supply, transportation, and storage of natural gas.

**Supply.** SMUD hedges a significant portion of its expected gas needs to meet customer power requirements. This includes gas for the Local Gas-Fired Plants and for the Sutter Energy Center. See “Power Purchase Agreements – *Sutter Energy Center*”. This is accomplished through a combination of long-term supply arrangements and an exposure reduction program. The program consists of a primary rolling three-year exposure reduction component, a fuel hedging component on a rolling three-year basis, as well as supplemental fixed calendar year components reaching out up to five calendar years. Long-term arrangements may consist of a combination of physical commodity supply contracts, financial hedges, or options. Natural gas is purchased from a wide variety of producers and marketers at the northern and southern California borders, at Alberta, Canada and from the San Juan and the Rocky Mountain supply basins. SMUD has a number of both fixed-price supply agreements and financial hedging contracts to fix gas costs ranging from one month to several years in duration. Including fixed price biogas contracts as of March 31, 2023, these contracts have hedged the price of approximately 83%, 66% and 55% of SMUD’s forecasted natural gas requirements for 2023, 2024 and 2025, respectively. While the financial effects resulting from the unhedged portions of SMUD’s natural gas requirements are difficult to predict, SMUD’s financial results could be materially impacted.

SMUD has contracted with the Northern California Gas Authority No. 1 (“NCGA”) to purchase an approximate average of 8,700Dth/day over the remaining life of a contract expiring May 31, 2027 (the “NCGA Contract”). Under the NCGA contract, SMUD pays a discounted variable price for the fuel and

anticipates periodically fixing the effective price under separate hedging contracts. Currently the delivery point for the NCGA Contract is the AECO hub in Alberta. SMUD is using its long-term transport capacity to deliver the fuel to the local area plants. To increase delivery efficiencies, SMUD expects to exchange the gas delivered at the AECO hub under the NCGA Contract with gas to be delivered at the Malin receipt point beginning in November 2023.

SMUD has also contracted with the Northern California Energy Authority (“NCEA”) to purchase an approximate average of 22,000 Dth/day or to be converted to the approximate value in Megawatt-hours (“MWh”) of electricity over the remaining life of a contract expiring on May 31, 2049. The gas will be delivered to the SMUD system via the Malin receipt point on the PG&E backbone system. SMUD is using its long-term transport capacity to deliver the fuel to the local area plants. SMUD will pay a discounted variable price for the fuel and anticipates periodically fixing the effective price under separate hedging contracts.

***Renewable Natural Gas Supply.*** As a component of meeting SMUD’s RPS goals, SMUD procures renewable natural gas and digester gas as fuels to generate renewable electricity from the Cosumnes Power Plant. Descriptions of the renewable natural gas supply agreements are provided below.

In March 2009, SMUD entered into a 15-year contract (that qualifies as renewable energy) with Shell Energy North America (US), L.P. (“Shell Energy”) to purchase up to 6,000 Dth/day of renewable natural gas produced from a landfill project in Texas. SMUD began taking deliveries of this supply in April 2009. In March 2012, SMUD amended the contract with Shell Energy to increase the maximum volumes to 7,300 Dth/day and extended the term by 10 years to March 31, 2034. Currently, the delivery point is PG&E Topock and SMUD is using its long-term transport capacity to deliver it to the Cosumnes Power Plant. In 2016, SMUD entered into a 3-year contract with Shell Energy to sell back the entire volume of renewable natural gas purchased, less 500 Dth/day, to be sold into the vehicle transportation markets. Upon expiration of the initial 3-year contract for the sale of biogas to Shell Energy, SMUD extended the sell back of the entire volume of biogas twice for an additional 3 years with Element Markets (now Anew RNG, LLC), starting in 2020 and 2023.

SMUD contracted with Heartland Renewable Energy, LLC (“HRE”) in December 2009 for a 20-year supply of up to 7,000 Dth/day of renewable natural gas from a digester facility in Colorado. Deliveries began in March of 2014. Currently, the delivery point is Opal, Wyoming and SMUD uses its long-term transport capacity to deliver it to the Cosumnes Power Plant. HRE has not delivered volumes from the project to SMUD since December 2016 due to current litigation with Weld County, Colorado regarding odor and permit issues. EDF Renewables, the majority owner of HRE, notified SMUD in August of 2017 that it is in discussions with a short list of bidders to sell its interests in the facility. In June of 2020, the project was purchased and SMUD’s contract was assigned to the new owner, Platte River Biogas, LLC (“PRB”). SMUD and PRB terminated the contract in the third quarter of 2021.

In September 2011, SMUD and CVFA entered into a “Digester Gas Purchase and Sale Agreement” through which the Carson Project cleans nearly all of the digester gas received from Sacramento Regional County Sanitation District (“SRCSD”) and sells it to SMUD for delivery to the Cosumnes Power Plant. In return, SMUD pays all of the Carson Project’s costs in acquiring, cleaning and making the gas available to SMUD. The Digester Gas Purchase and Sale Agreement expires in September 2025. In late 2021, the Digester Gas Purchase and Sale Agreement, along with the Carson Project was transferred to SFA. The Carson Project is currently receiving, processing and selling up to 1,500 Dth/day with provisions for volume increases over time to 2,500 Dth/day. Digester gas, when designated for use in SMUD’s power plants, is counted as renewable generation towards SMUD’s RPS obligations.

In December 2011, SMUD entered into a 20-year agreement with EIF KC Landfill Gas LLC (“EIF”) to purchase up to 7,050 Dth/day of renewable natural gas produced from multiple landfill projects. SMUD began taking deliveries of this supply in January 2014. Currently the delivery point is Kern River – Opal and SMUD uses its long-term transport capacity to deliver it to the Cosumnes Power Plant. Renewable natural gas, when designated for use in SMUD’s power plants, is counted as renewable generation towards SMUD’s RPS obligations. In April 2022 SMUD entered into a transaction to sell the renewable natural gas purchased into the vehicle transportation markets. The transaction expires in March 2025. In 2023, SMUD entered into a 3-year contract with Anew Climate, LLC (“Anew”) to sell back the entire volume of renewable natural gas purchased, to be sold into the vehicle transportation markets.

AB 2196 is a law that defines the criteria by which existing and future renewable natural gas contracts will qualify for the State RPS program. The CEC adopted a RPS Eligibility Guidebook on April 30, 2013, which includes detailed rules for implementation of AB 2196. SMUD received an updated certificate of eligibility from the CEC in July 2014 for the Cosumnes Power Plant that included the quantities of renewable natural gas from all four contracts. The CEC adopted a revised RPS Eligibility Guidebook (Ninth Edition) on April 27, 2017. This latest guidebook did not change the RPS eligibility of any of the above SMUD renewable natural gas and digester gas contracts, but did simplify reporting requirements for these contracts. When fully delivering, these contracts represent roughly 30% of SMUD’s 2020 RPS requirement.

## **Gas Transmission**

SMUD has satisfied its obligation to deliver natural gas to its power plants by constructing a natural gas pipeline, purchasing an equity interest in two PG&E backbone gas transmission lines, and contracting for capacity on a number of existing interstate natural gas transmission lines.

***The Local Pipeline.*** SMUD constructed and owns a 20-inch, 50-mile natural gas pipeline in the greater Sacramento area (the “Local Pipeline”) that transports gas to all of the Local Gas-Fired Plants except McClellan. The Local Pipeline is interconnected with PG&E’s major State gas transmission lines 300 and 401. Additionally, it may be interconnected with one or more private gas gathering pipelines located in the area, a gas storage project and/or other FERC approved pipelines that may be built in the local area. In conjunction with the construction of the Cosumnes Power Plant, SMUD extended the Local Pipeline to the plant site. The 26-mile extension was completed in 2004. The extension is 24 inches in diameter and was designed to serve both the Cosumnes Power Plant and an additional second phase, if constructed.

***PG&E Backbone Gas Transmission Lines 300 and 401.*** In 1996, SMUD purchased an equity interest in PG&E’s backbone gas transmission lines 300 and 401 (referred to as the PG&E backbone). The total capacity acquired at that time was approximately 85,000 Dth/day and consisted of approximately 43,600 Dth/day of firm gas transport from the California–Oregon border at Malin, Oregon and 44,700 Dth/day from the California–Arizona border at Topock, Arizona, to SMUD’s interconnection with the PG&E backbone near Winters, California. SMUD was also entitled to a share of non-firm capacity, which was approximately 4,360 Dth/day; making the total capacity potentially available to SMUD almost 90,000 Dth/day. This purchase made SMUD a co-owner of the PG&E backbone gas transmission lines 300 and 401 and obligated SMUD to pay PG&E to operate the pipelines on its behalf subject to the terms of the purchase agreement and operating protocols. PG&E reduced operating pressures on Line 300 after PG&E suffered a natural gas explosion in San Bruno, CA in September of 2010. Operating pressures and capacity may also fluctuate due to regulatory and other changes. As of December 1, 2021, SMUD holds a total capacity of approximately 87,000 Dth/day, consisting of approximately 47,572 Dth/day of firm gas transport from the California–Oregon border at Malin, and 39,193 Dth/day of firm gas transport from the California–Arizona border at Topock, Arizona, to SMUD’s interconnection with the PG&E backbone near Winters, California.

SMUD also holds additional backbone capacity under tariff service for 5,000 Dth/day of northern path (Redwood) capacity. This contract expires in June 2023. Currently, SMUD is not planning to renew the contract upon expiration.

***Kern River Gas Transmission Company Long Term Agreement.*** SMUD has an agreement with Kern River Gas Transmission Company for 20,000 Dth/day of firm capacity through April 30, 2028. This capacity gives SMUD access to the Rocky Mountain supply basin at Opal, Wyoming, and connects to PG&E Line 300 (owned in part by SMUD) at Daggett, California.

***TransCanada Firm Transmission Service Agreements.*** SMUD has several agreements with TransCanada Corporation that give SMUD access to Canadian supply from the Alberta basin to Kingsgate, British Columbia and the California-Oregon border at Malin. SMUD has agreements for 22,101 Dth/day at the California-Oregon border at Malin via the Gas Transmission Northwest (“GTN”) pipeline that expires in 2023. SMUD has agreements for approximately 12,000 Dth/day from the Alberta ANG/Foothills pipeline, also expiring in 2023. In order to match the Canadian capacity with the takeaway capacity at Malin, SMUD had an agreement with Foothills Pipeline for approximately 10,000 Dth/day that expired on October 31, 2022. Currently, SMUD is not planning to renew the GTN or the Alberta ANG/Foothills agreements.

SMUD’s diversified portfolio of gas transmission arrangements allow for the purchase of gas from a variety of suppliers and locations, and the opportunity to capitalize on regional price differentials where possible. In addition, its ownership interest in the SMUD/PG&E backbone and Local Pipeline enhances the reliability of SMUD’s gas supply.

## **Gas Storage**

SMUD also employs gas storage as part of its overall fuel supply strategy. Gas storage is useful in helping to balance gas supply, mitigate market price volatility, and provide a reliable supply to meet peak day delivery requirements.

SMUD also has a contract with Lodi Gas Storage, LLC, which began in April 2023 and expires in March 2026, for capacity in the Lodi Gas Storage project located near Acampo in northern California. The contract provides SMUD with capacity levels of 1.0 million Dth of storage inventory, 10,000 Dth/day of injection rights and 20,000 Dth/day of withdrawal capacity.

SMUD has a second contract with Lodi Gas Storage, LLC, which began in April 2022 and expires in March 2024, for additional capacity in the Lodi Gas Storage project located near Acampo in northern California. The contract provides SMUD with capacity levels of 1.0 million Dth of storage inventory, 10,000 Dth/day of injection rights and 20,000 Dth/day of withdrawal capacity.

## **Power Purchase Agreements**

SMUD has a number of power purchase agreements to help meet its power requirements. Some of these agreements are described below.

***Western Area Power Administration.*** Effective January 1, 2005, SMUD entered into a 20-year contract with WAPA. SMUD has entered into a replacement agreement extending the term by 30 years for the period of January 1, 2025 through December 31, 2054. Power sold under this contract is generated by the Central Valley Project (“CVP”), a series of federal hydroelectric facilities in northern California operated by the United States Bureau of Reclamation. The contract provides WAPA’s CVP Base Resource customers (including SMUD) delivery of a percentage share of project generation in return for

reimbursement of an equivalent share of project costs. SMUD's CVP Base Resource share is roughly 25% of project generation and costs. This is expected to be approximately 318 MW of capacity and 661 GWh of energy in an average water year but will vary depending on precipitation. Energy available under the contract is determined by water releases required for water supply and flood control and is then shaped into higher value periods within other CVP operating constraints. More capacity and energy are typically available in spring and summer months and less in fall and winter.

SMUD also has a contract with WAPA expiring December 31, 2024, by which WAPA delivers an additional 200-300 MW per hour from projects located in the Pacific Northwest based on certain contractual parameters. In 2022, SMUD received 1,913 GWh of energy under this contract.

***Avangrid (formerly Iberdrola Renewables ("Iberdrola"))***. SMUD has a contract with Iberdrola that provides SMUD with bundled renewable energy (energy plus RECs). The contract agreement is for 126 GWh of wind power generated in Solano County, California. The SMUD Board approved an extension of the wind contract through June 30, 2025.

***Patua Project LLC***. In April 2010, SMUD entered into a power purchase agreement with Patua Project LLC ("Patua"), a subsidiary of Gradient Resources, for the delivery of up to 132 MW (expected to be 120 MW nominal power output) of renewable energy from geothermal generation being developed in north central Nevada, from a Gradient Resources project known as the Patua Project. The Patua Project was to have been developed in three phases. Since 2010, the agreed upon capacity has been reduced several times. In December 2013, Phase 1 of the project, which had been reduced to 30 MW, finally achieved commercial operation. In 2014, the parties concluded negotiations on the fourth amendment to the power purchase agreement with Patua, which reduced the total capacity down to 40 MW, extended the commercial operation date of Phase 2 to January 1, 2016, and allowed Patua to add up to 13 MW of solar photovoltaics to supplement geothermal production. In addition, this amendment shifted responsibility to Patua for a portion of the long-term transmission service agreements that have been underutilized due to the project not meeting its targets. In November 2015, the Patua Project was acquired by TL Power, LLC, a wholly owned subsidiary of Cyrq Energy, Inc. ("Cyrq"). In December 2015, Cyrq terminated Phase 2. Upon termination of Phase 2, the contractual right for Cyrq to add solar photovoltaics to supplement geothermal production was reduced to 10 MW. As a result of poor performance during the first year of operation, SMUD reduced its obligation to take power from 30 MW to 25 MW. Performance continued to lag in 2015 and 2016 and SMUD further reduced its obligation to take power from 25 MW to 19 MW.

***Renewable Energy Feed-In Tariff***. In September 2009, SMUD's Board authorized a feed-in tariff program for the purchase of renewable energy from local renewable energy projects connected to SMUD's distribution system. SMUD's Board authorized connection of up to 100 MW under the feed-in tariff which included standard payment rates and standard purchase terms for power. The feed-in tariff program became effective on January 1, 2010. Under the feed-in tariff, SMUD has executed 20-year term power purchase agreements for solar projects totaling 98.5 MW. Construction and start-up were completed on all projects between 2010 and 2012.

***CalEnergy LLC***. In August 2014, SMUD entered into a 22-year power purchase agreement with CalEnergy LLC for the purchase of 30 MWs per year of renewable energy from its Salton Sea geothermal facilities. As of July 1, 2017, SMUD began receiving up to 10 MWs from the CalEnergy portfolio, which escalated to the full 30 MWs on May 1, 2020.

***Rancho Seco Solar***. In October 2015, SMUD entered into a 20-year power purchase agreement with Rancho Seco Solar LLC for the purchase of energy from a 10.88 MW solar PV project sited on SMUD's property at the closed Rancho Seco Nuclear Generating Station. Commercial operation was achieved in August of 2016. Rancho Seco Solar LLC leased the property from SMUD under a land lease

agreement. The output of this project directly serves two large commercial customers that executed agreements with SMUD for retail supply of solar power.

In May 2019, SMUD entered into a 30-year power purchase agreement for an additional 160 MW solar PV project with Rancho Seco Solar II, LLC. The project is located on SMUD-owned property at the closed Rancho Seco Nuclear Generating Station, adjacent to the existing 10.88 MW solar PV project. Construction began in 2019, and the project became commercially operable in February 2021.

**Grady Wind Energy.** In October 2015, SMUD entered into a 25-year power purchase agreement with Grady Wind Energy LLC (“Grady”) for the purchase of energy from a 200 MW wind project located in New Mexico (the “Grady Project”). The Grady Project began commercial operations on August 5, 2019. Energy from the Grady Project is delivered to CAISO. SMUD purchases 100% of the Grady Project output which includes energy, renewable energy credits, and capacity attributes. SMUD and Grady had a short-term (6-month) agreement spanning the winter 2021-spring 2022 season wherein Grady has the option to pay SMUD to curtail up to 100 MW. This agreement does not affect the remaining term of the agreement.

**Great Valley Solar 2, LLC.** In January 2017, SMUD entered into a 20-year power purchase agreement with Great Valley Solar 2, LLC for the purchase of energy from a 60 MW solar PV project located in Fresno County, California. The project’s commercial operation date was December 28, 2017.

**ARP-Loyalton Cogen LLC.** On September 14, 2016, Senate Bill 859 (“SB 859”) was signed into law. Under SB 859, a POU must procure its proportionate share of 125 MWs of renewable energy from biomass plants burning high hazard forest fuels, subject to terms of at least five years. Seven POUs (SMUD, MID, Turlock Irrigation District (“TID”), Anaheim Public Utilities, Imperial Irrigation District, Los Angeles Department of Water & Power and Riverside Public Utilities, collectively described herein as the “ARP-Loyalton POUs”) jointly solicited proposals for up to 29 MW of contract capacity for renewable energy to meet the requirements of SB 859. In January 2018, SMUD entered into a 5-year power purchase agreement with ARP-Loyalton Cogen LLC to fulfill 18 MWs of the required 29 MWs with SMUD’s share being just over 23 percent (the “ARP-Loyalton PPA”). See “—Roseburg Forest Product Co.” below for a discussion of the remaining SB 859 capacity. The contract became effective on April 1, 2018. On February 18, 2020, ARP-Loyalton Cogen LLC filed for Chapter 11 bankruptcy and stopped producing and selling energy from the biomass plant. On May 7, 2020, the bankruptcy court approved the sale of the Loyalton facility to Sierra Valley Enterprises, LLC (“SVE”). SVE initially expressed interest in bringing the facility back into service; however, the bankruptcy trustee requested repeated extension of the deadline for SVE to accept or reject the ARP-Loyalton PPA. The latest deadline was April 19, 2023, the date of expiration of the ARP-Loyalton PPA term. As SVE did not resume operations before the end of the ARP-Loyalton PPA term, the ARP-Loyalton POUs have negotiated a settlement agreement with the bankruptcy trustee (the “ARP-Loyalton Settlement Agreement”). The ARP-Loyalton Settlement Agreement defines funds from the performance security that the ARP-Loyalton POUs will keep to cover legal and administrative fees, along with a contingency amount to cover potential risk of future damages. Since the ARP-Loyalton POUs entered into a 5-year agreement to procure compliant biomass and provided SVE the opportunity to accept the ARP-Loyalton PPA and restart operations, the ARP-Loyalton POUs consider their statutory obligations to have been fulfilled.

**Roseburg Forest Products Co.** For the remaining SB 859 biomass obligation of 11 MW, SMUD and the other ARP-Loyalton POUs have entered into a five-year power purchase agreement with Roseburg Forest Products Co. SMUD’s share of the contract capacity is 2.5795 MW, and the plant began operating under the contract on February 26, 2021.

**Sutter Energy Center.** SMUD entered into an initial two-year contract (with a third-year exercisable option) with Calpine Energy Services, L.P. (“Calpine”) for the ability to schedule up to 258

MWs of energy from Sutter Energy Center. The Sutter Energy Center is a natural gas-fired, combined-cycle facility located in Yuba City, California. The initial contract became effective on April 1, 2018. SMUD exercised its option to extend the contract, which expired November 1, 2020. SMUD entered into a new contract with Calpine for the same 258 MWs of energy that became effective January 1, 2021, and had an original expiration date of January 1, 2024. In December 2021, SMUD extended this contract through December 31, 2026.

***Drew Solar, LLC.*** In June 2018, SMUD entered into a 30-year power purchase agreement with Drew Solar, LLC for the purchase of energy from a 100 MW solar PV project located in Imperial County, California. The project's scheduled commercial operation date was set to be December 31, 2021. The commercial operation date was delayed due to Force Majeure claims surrounding the COVID pandemic and supply chain constraints caused by changes in Federal regulatory requirements. The project began commercially operating on November 3, 2022.

***Wildflower Solar.*** In October 2018, SMUD entered into a 25-year power purchase agreement with Wildflower Solar I, LLC, for the purchase of energy, capacity, and RECs from a 13 MW solar PV project located in Rio Linda, California. The project began commercially operating on December 18, 2020.

***Coyote Creek (Formerly Sacramento Valley Energy Center, LLC.)*** In August 2021, SMUD entered into a 30-year power purchase agreement with Sacramento Valley Energy Center, LLC for the purchase of energy from a 200 MW solar PV and 100 MW four-hour Battery Energy Storage System ("BESS") capacity project located in Sacramento County, California. The project's commercial operation date was expected to be December 31, 2023. The scheduled commercial operation date has been delayed to 2026 due to ongoing development and permitting delays.

***SloughHouse Solar, LLC.*** In September 2021, SMUD entered into a 30-year power purchase agreement with SloughHouse Solar, LLC for the purchase of energy from a 50 MW solar PV project located in Sacramento County, California. The project's commercial operation date was originally expected to be December 31, 2023, but the commercial operation date has been delayed to 2026 due to ongoing development and permitting delays.

***Country Acres Solar.*** In December 2021, SMUD issued a Request for Offers ("RFO") seeking qualified Power Purchase Agreement offers for a utility scale PV with BESS project under development which will interconnect to SMUD's North Area transmission system. The project site is located on over 1,000 acres in Placer County near the city of Roseville. SMUD selected a developer for the power purchase agreement, which is currently expected to be in place by the third quarter of 2023. Development efforts are underway with an expected commercial operation date in late 2025 to early 2026.

***Geysers Power Company, LLC.*** In March 2021, SMUD executed a 10-year power purchase agreement with Geysers Power Company, LLC for 100 MW of capacity from the Geysers geothermal energy plant located in Lake and Sonoma Counties, California. SMUD started to receive deliveries on January 1, 2023.

## **Transmission Service Agreements**

***TANC California-Oregon Transmission Project.*** The 340-mile COTP is one part of a three 500-kV line coordinated system known as the California-Oregon Intertie ("COI"). The COTP is allocated one-third of the 4,800 MW capability of the COI system (see related agreements below). TANC is entitled to use 1,390 MW and is obligated to pay approximately 80% of the operating costs of the COTP. SMUD is a member of TANC and a party to Project Agreement No. 3 ("PA3"), under which it is entitled to 378 MW and obligated to pay on an unconditional take-or-pay basis about 27.5% of TANC's COTP debt service and



operations costs, subject to a “step-up” obligation of up to 25% of its entitlement share upon the unremedied default of another TANC member-participant. In 2009, SMUD entered into a long-term layoff agreement with certain members that increased SMUD’s entitlement by 35 MW. In 2014, SMUD entered into another long-term layoff agreement with certain other members that increased SMUD’s COTP entitlements by 128 MW and amended the 2009 layoff agreement that returned 13 MW to a member. As of December 31, 2018, SMUD was entitled to approximately 528 MW of TANC’s transfer capability for imports and 405 MW for exports, and is obligated to pay approximately 38.6% of TANC’s COTP debt service and operations costs. SMUD’s payments under this contract, like SMUD’s payments under its other power purchase and transmission service agreements, are treated as “Maintenance and Operation Costs” or “Energy Payments” under the resolutions securing the Senior Bonds and Subordinated Bonds (each as defined under the caption “CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS” below). SMUD relies on its COTP rights to purchase power, access contingency reserves through the Western Power Pool, and obtain renewable resources to supplement its own resources to serve its load. TANC maintains its own property/casualty insurance program. TANC’s budget for COTP costs, support services and advocacy expenses is about \$45.4 million for 2023. SMUD’s obligation of the TANC budget is about \$17.4 million for 2023.

***TANC Tesla-Midway Transmission Service.*** TANC has a long-term contract with PG&E to provide TANC with 300 MW of transmission service between PG&E’s Midway Substation and the electric systems of the TANC Members (the “Tesla-Midway Service”). SMUD’s share of the Tesla-Midway Service had been 46 MW. As part of the 2009 long-term layoff agreement, SMUD acquired an additional 2 MW of South-of Tesla Principles (“SOTP”) transmission rights for 15 years starting February, 2009 from another TANC member, bringing SMUD’s share of the Tesla-Midway Service to 48 MW.

***Bonneville Power Administration.*** In 2009, SMUD entered into a transmission service agreement with the Bonneville Power Administration (“BPA”) for 60 MW of firm point-to-point transmission service from BPA’s Hilltop substation in north eastern California to the Malin substation at the California-Oregon border for the purpose of transmitting power under SMUD’s power purchase agreement with Gradient Resources for Phase 1 of the Patua geothermal project over BPA’s 230kV transmission lines. In early 2013, in accordance with BPA’s transmission tariff, the transmission service was split into two 30 MW services and deferred as appropriate to better fit the timing of expected commercial operation of Phase 1 and Phase 2 of the Patua Project. See “POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – Patua Project LLC.” SMUD submitted another request for the 30 MW of transmission procured for Phase 2 of the Patua Project to split the service into a 10 MW and a 20 MW service, with the 10 MW of service deferred and timed with the originally expected commercial operation date of Phase 2 of the Patua Project. With the termination of Phase 2 of the Patua Project and SMUD’s reduced obligation due to the poor performance of Phase 1 of the Patua Project, much of the transmission reserved for it will no longer be needed. BPA does not have a provision in its transmission tariff for early termination of transmission service. However, the power purchase agreement with Patua requires Patua to cover unused transmission that SMUD has procured for the Patua purchases. On January 1, 2020, SMUD’s transmission rights with BPA were reduced to 19 MW. This now aligns with SMUD’s PacifiCorp transmission rights of 19 MW described in the immediately following paragraph.

***PacifiCorp.*** In 2009, SMUD entered into a transmission service agreement with PacifiCorp for 60 MW of firm point-to-point transmission service across PacifiCorp’s high voltage step-up transformer at the Malin substation at the California-Oregon border for the purpose of transmitting power under SMUD’s power purchase agreement with Gradient Resources for Phase 1 of the Patua Project. In early 2013, in accordance with PacifiCorp’s transmission tariff, the commencement of the 60 MW of transmission service was deferred to fit the timing of first deliveries expected from the 30 MW of Phase 1 of the Patua Project. In 2013, SMUD terminated the 60 MW of transmission service and requested two new transmission services of 30 MW each, with service start dates timed to better fit with the expected start dates of Phase 1

and Phase 2 of the Patua Project. With the reduction in expected output of the Patua Project, SMUD terminated the second 30 MW transmission agreement, and replaced it with a 10 MW transmission service agreement for Phase 2 of the Patua Project. With the termination of Phase 2 of the Patua Project, SMUD terminated the 10 MW Pacificorp transmission service agreement and as a result of the reduced obligation to take power from the Patua Project, SMUD has reduced its remaining Pacificorp transmission service from 30 MW to 19 MW.

***Western Area Power Administration.*** SMUD does not have a direct interconnection of its power system to the COTP. To receive power deliveries that use its COTP rights, SMUD has a long-term transmission service agreement with WAPA for transmission of 342 MW of power from the COTP line (received at WAPA's Tracy or Olinda substations) to SMUD's system. In May of 2011, WAPA completed the Sacramento Voltage Support Transmission Project. Completion of this project has given SMUD an additional 165 MW of transmission service rights on WAPA's system from the COTP at the Olinda Substation to SMUD's system at the Elverta Substation.

## **Projected Resources**

The following tables titled "Projected Requirements and Resources to Meet Load Requirements Energy Requirements and Resources" (the "Energy Table") and "Capacity Requirements and Resources Net Capacity – Megawatts" (the "Capacity Table") describe SMUD's contracted commitments and owned resources available to meet its forecasted load requirements through the year 2032. Resources are shown on an annualized basis with market purchases netted against surplus sales to arrive at a single net position for each year. Because SMUD's available resources do not exactly match its actual load requirements on an hourly basis, there are times during a year when resources available will either exceed or be insufficient to meet SMUD's needs. Expected actual capacity values are included in the tables. These values may differ from measured net demonstrated capacity values of the Local Area Gas-Fired Plants. The table below also includes the impact energy efficiency has on resource requirements as discussed below under "Demand Side Management Programs." See "BUSINESS STRATEGY" and "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants.*"

Resources listed in both the Energy Table and the Capacity Table are listed as either renewable or non-renewable. Generally, SMUD follows the CEC guidelines for eligibility requirements. Some of SMUD's renewable resources listed include solar, wind, geothermal, small hydroelectric facilities with a capacity of 30 MW or less, and biomass (representing generation from a fuel comprised of agricultural wastes and residues, landscape and tree trimmings, wood and wood waste).

As in any forecast, assumptions are made. In both the Energy Table and the Capacity Table the WAPA and UARP forecasts assume average water conditions throughout the period. On the capacity table, WAPA and Cosumnes Power Plant renewable capacity is estimated based on the ratio of renewable energy to total WAPA or Cosumnes Power Plant energy. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Hydroelectric.*"

The Uncommitted Purchases (Sales) on the tables represent either anticipated future needs or surpluses. Future needs are met well in advance of delivery. They also include both renewable and non-renewable resources.

The Transmission Losses represent reductions in the amount of energy or capacity from the location it was purchased to the point of entering SMUD's electrical system. This amount reduces the Total Resources available to meet the Total Projected Energy Requirements of the electrical system.

## **Demand Side Management Programs**

SMUD's demand-side management initiatives represent an integral element of its total resource portfolio, and are organized into two major components: energy efficiency and load management programs. Energy efficiency offerings include a wide variety of programs and services to customers to retrofit or upgrade existing equipment and fixtures and to install new energy efficiency measures in existing and new construction facilities. Load management allows SMUD to reduce the load on the electric system by cycling residential air conditioning, and calling upon commercial/industrial customers to curtail energy usage when energy is constrained during the summer or system emergencies. Load management programs are projected to allow SMUD to shed approximately 60 MW of peak load in an emergency on a hot day, representing about 2% of SMUD's maximum system peak demand.

The customer "smart meter" system with 2-way communication capability provides information regarding customer usage patterns, which is expected to help SMUD tailor rate designs that provide customers with both the information and ability to manage their energy usage around high energy cost periods.

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**PROJECTED REQUIREMENTS AND RESOURCES TO MEET  
LOAD REQUIREMENTS<sup>(1)</sup>  
ENERGY REQUIREMENTS AND RESOURCES (GWh)**

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Renewable Resources</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP - Small Hydro <sup>(2)</sup>	115	93	92	94	94	95	94	94	94	95
Solano Wind	585	738	895	902	902	904	902	902	902	904
Cosumnes-Shell Landfill Gas and Digester Gas <sup>(3)</sup>	48	166	167	582	692	692	692	692	692	692
<b>Total</b>	<b>748</b>	<b>996</b>	<b>1,154</b>	<b>1,578</b>	<b>1,688</b>	<b>1,691</b>	<b>1,688</b>	<b>1,688</b>	<b>1,688</b>	<b>1,691</b>
<u>Purchases</u>										
Western (WAPA) – Small Hydro <sup>(2)</sup>	13	15	15	15	15	15	15	15	15	15
Grady – Wind	933	900	897	897	897	900	897	897	897	900
Avangrid (Iberdrola) (PPM) - Wind	97	98	45	0	0	0	0	0	0	0
Patua (Gradient/Vulcan) – Geothermal	140	147	147	147	147	147	147	147	141	147
Geysers – Geothermal	876	878	876	876	876	878	876	876	876	878
Cal Energy – Geothermal	218	224	223	223	223	224	223	223	223	224
Great Valley SolarShares	167	170	171	171	169	169	169	166	166	167
Rancho Seco PV2	261	332	330	328	327	325	323	322	320	319
Rancho Seco PV	21	22	22	22	22	22	22	22	22	22
Feed-in-Tariff Photovoltaic – Solar	205	209	208	207	206	205	204	203	202	60
Navajo Drew (NTUA) Solar	299	301	298	297	285	276	273	264	271	237
Sloughhouse (Kings Country)	0	0	0	131	124	124	123	122	122	121
Wildflower Solar	31	31	31	31	33	32	33	31	32	32
CoyoteCreek (SVEC) Solar	0	0	0	519	505	502	500	497	495	492
Country Acres	0	0	0	710	706	703	699	696	692	689
Other Long-Term Contracts	145	150	140	29	8	8	6	6	6	6
Future Renewables	0	0	0	0	1,044	1,989	3,351	4,206	4,537	5,870
<b>Total</b>	<b>3,404</b>	<b>3,477</b>	<b>3,403</b>	<b>4,602</b>	<b>5,587</b>	<b>6,521</b>	<b>7,861</b>	<b>8,693</b>	<b>9,018</b>	<b>10,179</b>
<b>Non-Renewable</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP – Large Hydro <sup>(2)</sup>	2,561	1,614	1,627	1,647	1,618	1,625	1,635	1,625	1,617	1,626
Cosumnes Power Plant	3,428	4,173	4,187	3,685	2,511	1,792	675	530	528	525
Procter & Gamble Project	786	859	809	831	123	43	2	3	5	4
Carson Project	423	480	435	401	3	0	1	3	4	4
Campbell Soup Project	776	929	926	0	0	0	0	0	0	0
McClellan	24	61	0	0	0	0	0	0	0	0
<b>Total</b>	<b>7,998</b>	<b>8,116</b>	<b>7,984</b>	<b>6,565</b>	<b>4,256</b>	<b>3,460</b>	<b>2,313</b>	<b>2,160</b>	<b>2,155</b>	<b>2,160</b>
<u>Purchases</u>										
Western (WAPA) – Large Hydro <sup>(2)</sup>	410	482	485	485	485	485	485	485	485	485
Western (WAPA) Customers (Wheeling) <sup>(2)</sup>	25	37	38	38	38	38	38	38	38	38
Calpine Sutter	1,733	1,695	1,660	1,585	0	0	0	0	0	0
Committed Purchases	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>2,168</b>	<b>2,213</b>	<b>2,182</b>	<b>2,108</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>	<b>523</b>
<b>Total Resources</b>	<b>14,319</b>	<b>14,803</b>	<b>14,723</b>	<b>14,852</b>	<b>12,053</b>	<b>12,195</b>	<b>12,384</b>	<b>13,064</b>	<b>13,383</b>	<b>14,552</b>
Uncommitted Purchases / (Sales)	(3,382)	(3,773)	(3,606)	(3,599)	(1,067)	(920)	(921)	(1,374)	(1,471)	(2,351)
Transmission Losses (COTP/CVP)	(3)	(11)	(11)	(9)	(82)	(102)	(129)	(146)	(152)	(179)
<b>Total Projected Energy Requirements</b>	<b>10,933</b>	<b>11,018</b>	<b>11,106</b>	<b>11,244</b>	<b>10,903</b>	<b>11,174</b>	<b>11,335</b>	<b>11,544</b>	<b>11,759</b>	<b>12,021</b>
Energy Efficiency (EE)	16	30	44	57	69	79	89	99	108	117
Customer PV	63	121	181	238	793	844	894	943	988	1,033
Expected Electric Vehicle (EV) Charging	(34)	(75)	(143)	(228)	(324)	(430)	(545)	(674)	(803)	(947)
Electric Building (EB)	(12)	(28)	(50)	(77)	(108)	(146)	(201)	(267)	(339)	(412)
Battery Storage (Utility)	0	0	0	0	(121)	(142)	(188)	(225)	(232)	(266)
Battery Storage (BTM)	(0)	(0)	(1)	(1)	(7)	(11)	(17)	(23)	(31)	(38)
<b>Total Gross Energy Requirements before EE, PV and EV Charging</b>	<b>10,966</b>	<b>11,066</b>	<b>11,136</b>	<b>11,233</b>	<b>11,205</b>	<b>11,368</b>	<b>11,368</b>	<b>11,396</b>	<b>11,451</b>	<b>11,508</b>

(1) Totals may not sum due to rounding.

(2) [2023 based on current precipitation levels as of March 31, 2023. All other years assume average precipitation.]

(3) Includes a biomethane contract counted as renewable (see “POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Renewable Natural Gas Supply*”).

# CAPACITY REQUIREMENTS AND RESOURCES<sup>(1)</sup>

## NET CAPACITY – MEGAWATTS

	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
<b>Load:</b>										
<b>Planned Peak</b>	<b>2,806</b>	<b>2,807</b>	<b>2,813</b>	<b>2,820</b>	<b>2,766</b>	<b>2,784</b>	<b>2,790</b>	<b>2,795</b>	<b>2,800</b>	<b>2,808</b>
Transmission Losses	28	28	28	28	28	28	28	28	28	28
Dispatchable Demand Resource	(71)	(71)	(71)	(71)	(165)	(183)	(202)	(165)	(165)	(165)
<b>Adjusted Peak</b>	<b>2,764</b>	<b>2,764</b>	<b>2,770</b>	<b>2,778</b>	<b>2,629</b>	<b>2,629</b>	<b>2,616</b>	<b>2,658</b>	<b>2,663</b>	<b>2,671</b>
Reserve Margin	415	415	416	417	394	394	392	399	399	401
<b>Adjusted Peak with Reserves</b>	<b>3,178</b>	<b>3,179</b>	<b>3,186</b>	<b>3,194</b>	<b>3,023</b>	<b>3,023</b>	<b>3,008</b>	<b>3,057</b>	<b>3,062</b>	<b>3,072</b>
<b>Renewable Resources</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP – Small Hydro	45	45	45	45	45	45	45	45	45	45
Solano Wind	94	97	158	202	204	194	197	198	201	201
Cosumnes – Shell Landfill Gas and Digester Gas <sup>(2)</sup>	7	7	26	94	120	120	120	120	120	120
<b>Total</b>	<b>146</b>	<b>148</b>	<b>229</b>	<b>341</b>	<b>369</b>	<b>359</b>	<b>362</b>	<b>363</b>	<b>365</b>	<b>366</b>
<u>Purchases</u>										
Western (WAPA) – Small Hydro	10	10	9	9	9	9	9	9	9	9
Grady – Wind	34	33	33	32	32	33	33	33	29	29
Avangrid (Iberdrola) (PPM) - Wind	22	21	--	--	--	--	--	--	--	--
Patua (Gradient/Vulcan) – Geothermal	12	12	12	12	12	12	12	12	12	12
CalEnergy– Geothermal	26	26	26	26	26	26	26	26	26	26
Geysers – Geothermal	95	95	95	95	95	95	95	95	95	95
Great Value Solar Shares	40	35	33	14	14	15	16	15	14	13
Rancho Seco – PV1	3	3	3	0	1	2	1	1	1	1
Rancho Seco – PV2	50	66	61	16	23	26	19	17	14	11
Feed-in-Tariff Photovoltaic - Solar	40	35	31	7	10	13	6	8	5	5
Wildflower Solar	8	4	4	1	1	2	2	1	1	1
Navajo Solar	55	49	45	14	16	19	16	14	11	9
Sloughhouse Solar	--	--	--	14	15	17	15	14	13	12
CoyoteCreek Solar with Storage	--	--	--	154	147	152	147	145	143	141
CountryAcre with Storage	--	--	--	225	214	219	213	209	206	204
Stand-alone Storage	4	4	4	4	521	521	625	664	844	994
Future Renewables Solar, Wind	--	--	--	--	90	209	215	289	333	346
Future Firm Renewables (Geo)	--	--	--	--	--	12	125	125	125	185
Other Long-Term Contracts	18	18	17	2	2	2	2	2	2	2
<b>Total</b>	<b>414</b>	<b>410</b>	<b>371</b>	<b>625</b>	<b>1,228</b>	<b>1,383</b>	<b>1,576</b>	<b>1,678</b>	<b>1,881</b>	<b>2,093</b>
<b>Non-Renewable</b>										
<u>District or Joint Powers Authority Owned:</u>										
UARP – Large Hydro	640	640	640	640	640	640	640	640	640	640
Cosumnes Power Plant	563	563	544	476	450	450	450	450	450	450
Carson Project	103	103	103	103	100	100	100	100	100	100
Procter & Gamble Project	166	166	166	166	166	166	166	150	150	150
McClellan	72	72	--	--	--	--	--	--	--	--
Campbell Soup Project	170	170	170	--	--	--	--	--	--	--
<b>Total</b>	<b>1,714</b>	<b>1,714</b>	<b>1,623</b>	<b>1,385</b>	<b>1,356</b>	<b>1,356</b>	<b>1,356</b>	<b>1,340</b>	<b>1,340</b>	<b>1,340</b>
<u>Purchases</u>										
Western (WAPA) – Large Hydro	323	309	304	304	304	304	304	304	304	304
Western (WAPA) Customers (wheeling)	19	18	18	18	18	18	18	18	18	18
Sutter Energy Center	258	258	258	258	--	--	--	--	--	--
Firm Contract Reserves <sup>(3)</sup>	18	17	17	17	17	17	17	17	17	17
Committed Purchases	275	--	--	--	--	--	--	--	--	--
<b>Total</b>	<b>892</b>	<b>602</b>	<b>596</b>	<b>596</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>	<b>338</b>
<b>Total Variable Renewal Diversity Benefit/(Risk)</b>	<b>4</b>	<b>107</b>	<b>124</b>	<b>263</b>	<b>164</b>	<b>131</b>	<b>162</b>	<b>178</b>	<b>199</b>	<b>215</b>
Uncommitted Purchases / (Sales)	7	197	242	(16)	(432)	(544)	(787)	(840)	(1,062)	(1,281)
<b>Total Resources</b>	<b>3,178</b>	<b>3,179</b>	<b>3,186</b>	<b>3,194</b>	<b>3,023</b>	<b>3,023</b>	<b>3,008</b>	<b>3,057</b>	<b>3,062</b>	<b>3,072</b>

<sup>(1)</sup> [Based on information available as of March 31, 2023]. Totals may not sum due to rounding. [Capacity values for wind, solar, storage, and future variable renewable projects shown are based on resource effective load carrying capability (ELCC) modeling.]

<sup>(2)</sup> [The Cosumnes Power Plant is a 495 MW plant that includes 100 MW capacity attributable to a biogas contract counted as renewable (see “POWER SUPPLY AND TRANSMISSION – Fuel Supply – *Renewable Natural Gas Supply*”) and 395 MW capacity from natural gas.]

<sup>(3)</sup> [SMUD assumes that for all firm system purchases, the suppliers will be planning 5% reserves.]

## Balancing Authority Area Agreements

**Background.** SMUD began operating as an independent control area, later termed a Balancing Authority, on June 18, 2002 within the WECC reliability organization's region. This reduced SMUD's exposure to the costs and reliability risks of the CAISO's markets. SMUD expanded its operational footprint beyond SMUD's service territory to include WAPA's electric system, including the MID, Roseville, and Redding service areas (on January 1, 2005) and the COTP (on December 1, 2005). As described further below, SMUD ceased to be the Balancing Authority on April 30, 2011, as BANC took SMUD's place as the Balancing Authority. SMUD remains the operator of the Balancing Authority through a contract with BANC. SMUD administers the contracts with WAPA and TANC to provide specified Balancing Authority-related and other services, and is compensated by WAPA and TANC for its added labor expense. TANC recovers such Balancing Authority services costs as a part of its annual operating budget from the COTP Participants and WAPA recovers its Balancing Authority services costs through its rates for power and transmission service. The agreement with WAPA, among other terms, establishes operating reserve obligations between the parties. WAPA in turn has agreements with electric systems connected to it to assure that such systems also operate reliably (i.e., MID, Roseville and Redding). As a result of the transition to BANC as the Balancing Authority, SMUD assigned or terminated its interconnection and operations agreements with other interconnecting Balancing Authority areas (i.e., CAISO, BPA and TID). BANC is now the party to these agreements as they primarily address only Balancing Authority matters required for compliance with the reliability standards issued by the North American Electric Reliability Corporation ("NERC"), such as emergency assistance arrangements. See also "OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY – Western Energy Imbalance Market."

**Reliability Standards.** The Energy Policy Act of 2005 gave FERC authority to enforce reliability standards for the bulk electric system. In June 2007, these standards became mandatory for SMUD and BANC.

In 2022, SMUD and BANC underwent a combined NERC/WECC audit to evaluate compliance with applicable reliability standards. These audits occur every three years. At the conclusion of the audit, regulators determined that neither entity had any compliance violations related to the Operations and Planning or Critical Infrastructure Protection Standards. SMUD and BANC will undergo another NERC/WECC audit sometime in 2025.

**Balancing Authority of Northern California.** SMUD, MID, Redding and Roseville executed a Joint Exercise of Powers Agreement (the "BANC JPA Agreement") creating BANC on May 8, 2009. BANC became operational on May 1, 2011 as a Balancing Authority and replaced SMUD as the entity responsible for Balancing Authority-related reliability standards. Since that time, the Trinity Public Utilities District and the City of Shasta Lake have also become members of BANC. As provided in the BANC member agreement, liability for penalties associated with such Balancing Authority-related reliability standards are shared on a *pro rata* basis among the members of BANC. SMUD is the Balancing Authority operator under contract and performs Balancing Authority operational functions on behalf of BANC, much as it did when it was the Balancing Authority. The BANC JPA Agreement assigns cost responsibility based on member load within the BANC Balancing Authority, with SMUD representing approximately 70% of the total load.

## Power Pool and Other Agreements

**Western Power Pool Agreement.** The Western Power Pool ("WPP") is an agreement among over 30 utilities and public agencies in the western United States to coordinate contingency reserve sharing, referred to as the WPP Reserve Sharing Program ("RSP"). The RSP permits participants to rely on one

another in the event that any participant experiences a generating resource outage. While SMUD became an RSP participant in 2009, participation is limited to Balancing Authorities, which SMUD relinquished to BANC in 2011. Under the RSP, BANC and TID (also a WPP member) share their reserve amounts and when necessary may call upon WPP reserves using BANC member systems and unused COTP rights. The WPP RSP permits members to operate more efficiently by reducing the contingency reserves that they would otherwise need to have available if they could not rely on each other.

***TANC-SMUD OASIS Administration Agreement.*** SMUD entered into an agreement with TANC to provide OASIS services (transmission sales and scheduling related services in the BANC BA of TANC members' COTP rights) on September 29, 2005. SMUD is compensated for performing these services. TANC and SMUD entered into a letter agreement dated October 25, 2010 to clarify each party's role for regulatory reliability standards compliance responsibilities and take into account SMUD's increased efforts related to supporting TANC's compliance requirements. SMUD and TANC entered into an agreement to transition this service to the Western Area Power Administration, effective on May 1, 2023. Going forward SMUD will only have a minor role in receiving payments and distributing revenues to the TANC members.

### **Other Agreements with PG&E**

***Background.*** SMUD's electric system was originally purchased from PG&E in 1947. SMUD's service area is mostly surrounded by PG&E's service area and the two electric systems are interconnected at SMUD's Rancho Seco and Lake 230-kV substations.

***Interconnection Agreement.*** PG&E and SMUD executed a Replacement Interconnection Agreement ("RIA") which became effective on January 1, 2010. The RIA provides that SMUD and PG&E operate their interconnections reliably, plan their electric systems to meet their load requirements, and avoid or mitigate impacts they cause by certain electric system modifications. The new agreement has a termination date of December 31, 2024, subject to FERC approval.

***Generator Interconnection Agreements.*** SMUD signed a LGIA with CAISO and PG&E for the Solano 3 Wind Project, effective December 16, 2008, with a 50-year term. The Solano 2 Wind Project has interconnection rights granted through a LGIA, also with the CAISO and PG&E. The agreement became effective in January 2010 and has a term of 20 years. On June 3, 2021, SMUD entered into a LGIA with the CAISO and PG&E, for the planned 90.8 MW Solano 4 Wind project with a 10-year term and automatic renewal for successive one-year terms thereafter. On February 27, 2023, SMUD completed a combined LGIA amendment administrative process which combines the Solano 2, 3 & 4 projects into one Solano Wind Project. The original agreement conditions for the individual projects are carried forward with a new combined project maximum production limit of 320.8 MW at the point of interconnection at the Russell Substation.

Other generator interconnection agreements include a Small Generator Interconnection Agreement with PG&E for Slab Creek with a 22-year term which became effective on January 14, 2010, and a Small Generator Interconnection Agreement with PG&E for the Chili Bar Project with a 10-year term which became effective on June 2, 2021.

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## SELECTED OPERATING DATA

Selected operating data of SMUD for the four years ended December 31, 2019 through 2022, and for the three months ended March 31, 2023 and March 31, 2022 are presented in the following table.

### SMUD SELECTED OPERATING DATA CUSTOMERS, SALES, SOURCES OF ENERGY AND REVENUES

	Three Months Ended March 31,		Year Ended December 31,			
	2023	2022	2022	2021	2020	2019
<b>Customers at End of Period:</b>						
Residential .....	577,659	573,693	576,471	572,786	568,741	565,103
Commercial and industrial .....	69,503	69,531	69,512	69,426	68,628	68,203
Other .....	7,284	7,331	7,290	7,345	7,354	7,406
Total .....	654,446	650,555	653,273	649,557	644,723	640,712
<b>MWh Sales:</b>						
Residential .....	1,108,861	1,010,095	4,763,277	4,749,079	4,906,566	4,493,548
Commercial and industrial .....	1,234,611	1,313,519	5,805,052	5,649,474	5,453,120	5,616,920
Other .....	14,045	14,272	53,965	54,473	55,590	55,770
Total .....	2,357,517	2,337,886	10,622,294	10,453,026	10,415,276	10,166,238
Surplus power/out of area sales .....	989,530	551,317	2,493,651	2,774,907	2,259,991	1,878,205
Total .....	3,347,047	2,889,203	13,115,945	13,227,933	12,675,267	12,044,443
<b>Sources of Energy Sold MWh:</b>						
Generated by SMUD .....	1,683,465	1,297,158	4,368,126	6,776,244	6,414,380	7,143,944
Purchased or exchanged .....	1,773,658	1,679,188	9,162,576	6,884,003	6,691,279	5,324,217
Total .....	3,457,123	2,976,346	13,530,702	13,660,247	13,105,659	12,468,161
Less System losses and SMUD usage .....	106,194	87,143	414,757	432,314	430,392	423,718
Total .....	3,350,929	2,889,203	13,115,945	13,227,933	12,675,267	12,044,443
Gross System peak demand (kW) <sup>(1)</sup> .....	1,549,000	1,526,000	3,263,000	3,019,000	3,057,000	2,927,000
Average kWh sales per residential customer <sup>(2)</sup> .....	1,921	1,762	8,293	8,316	8,650	7,987
<b>Average Revenue per kWh Sold:</b>						
Residential <sup>(2)</sup> (cents) .....	14.52	14.34	16.73	16.20	15.27	14.90
Commercial & industrial <sup>(2)</sup> (cents) .....	13.91	12.11	13.97	13.95	13.17	12.71

<sup>(1)</sup> Peak system MW values are measured at the four SMUD interconnection points and exclude SMUD's generation losses. Historical values include the impacts of dispatchable, non-dispatchable, and energy efficiency program capacity savings.

<sup>(2)</sup> The average kWh sales per residential customer and the average revenue per kWh sold are calculated based upon billed and unbilled sales.

Source: SMUD

## SELECTED FINANCIAL DATA

### SMUD Financial Information

The following table presents selected financial data of SMUD. Under generally accepted accounting principles, data with respect to SMUD's component units, such as the Authorities, is included with that of SMUD. The following presents data for SMUD only and not its component units, such as the Authorities. SMUD's audited financial statements for the years ended December 31, 2022 and December 31, 2021 are included in APPENDIX B attached to this Official Statement. The following unaudited data for SMUD (excluding its component units) is drawn from SMUD's financial records that have been subjected to the auditing procedures applied in the audits of SMUD's and its component units financial statements for the years ended December 31, 2019 through 2022. The selected financial data for the periods ended March 31, 2023 and March 31, 2022 are derived from SMUD's unaudited financial records, which



have been prepared on the same basis as SMUD's data for the years ended December 31, 2019 through 2022. The selected financial data for the period ended March 31, 2023 are not necessarily indicative of the financial data to be expected for the entire year ending December 31, 2023.

**SMUD FINANCIAL DATA<sup>(1)</sup>**  
(thousands of dollars)

	Three Months Ended March 31,		Year Ended December 31,			
	2023	2022	2022	2021 (Restated)	2020	2019
<b>Summary of Income</b>						
Operating Revenues <sup>(2)</sup> .....	\$ 466,524	\$ 378,404	\$ 2,138,655	\$ 1,784,290	\$1,582,979	\$1,553,167
Operating Expenses .....	(489,270)	(376,017)	(2,102,849)	(1,464,069)	(1,397,845)	(1,412,199)
Operating Income (Loss) .....	(22,746)	2,387	35,806	320,221	185,134	140,968
Interest and Other Income (Expense) ..	32,593	10,777	124,704	108,788	63,014	(21,113)
Interest Expense .....	(18,608)	(19,294)	(74,702)	(81,692)	(80,699)	(66,185)
Change in Net Position .....	\$ (8,761)	\$ (6,130)	\$ 85,808	\$ 347,317	\$ 167,449	\$ 53,670
<b>Selected Statement of Net Position Information</b>						
Net Plant in Service .....	\$ 3,604,649	\$ 3,413,234	\$ 3,654,725	\$ 3,502,335	\$3,234,208	\$3,187,135
Construction Work in Progress .....	343,966	409,932	323,499	365,478	460,155	351,584
Electric Utility Plant – Net.....	\$ 3,948,615	\$ 3,823,166	\$ 3,978,224	\$ 3,867,813	\$3,694,363	\$3,538,719
Unrestricted Cash.....	\$ 554,360	\$ 536,534	\$ 591,410	\$ 569,001	\$ 662,155	\$ 451,800
Rate Stabilization Fund.....	\$ 151,118	\$ 193,608	\$ 156,016	\$ 188,992	\$ 168,726	\$ 143,669
Total Assets .....	\$ 6,297,170	\$ 6,032,532	\$ 6,421,666	\$ 6,096,865	\$5,826,449	\$5,429,137
Net Position .....	\$ 2,368,958	\$ 2,286,511	\$ 2,377,719	\$ 2,291,910	\$1,944,593	\$1,777,145
Long-Term Debt <sup>(3)</sup> .....	\$ 2,228,327	\$ 2,378,960	\$ 2,236,824	\$ 2,387,686	\$2,523,921	\$2,166,389
<b>Debt Service Coverage Ratios</b>						
Parity Debt Service Coverage Ratio ..			2.04x	2.59x	2.25x	2.11x
Parity and Subordinate Debt Service Coverage Ratio.....			1.94x	2.47x	2.14x	2.06x

<sup>(1)</sup> The financial statements of SMUD comprise financial information of SMUD along with its component units, CVFA, SPA, SCA, SFA, NCGA and NCEA. This table includes only financial information of SMUD excluding its component units. Net operating revenues and expenses and Electric Utility Plant and Capitalization of CVFA, SPA, SCA, SFA, NCGA and NCEA are not included in this table, although amounts paid to or received from the Authorities by SMUD are included.

<sup>(2)</sup> Operating Revenues reflect net transfers to (from) the Rate Stabilization Fund for each full year as follows:

2023 (\$4.9) million through March 31, 2023

2022 (\$33.0) million

2021 \$20.3 million

2020 \$25.1 million

2019 \$47.0 million

Transfers to the Rate Stabilization Fund reduce operating revenues in the year transferred; transfers from the Rate Stabilization Fund increase operating revenues. Transfers from the HGA balancing account in the Rate Stabilization Fund are automatic based on the amount of precipitation received. See "RATES AND CUSTOMER BASE – Rates and Charges" above.

<sup>(3)</sup> Long-Term Debt includes Long-Term Debt due within one year and unamortized premiums.

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## Financial Information of SMUD and the Authorities

The following table presents a summary of selected financial information for SMUD and the Authorities.

### SUMMARY OF FINANCIAL INFORMATION OF SMUD AND THE AUTHORITIES FOR THE YEARS ENDED DECEMBER 31, 2022 AND 2021 (thousands of dollars)

	Year Ended December 31, 2022			Year Ended December 31, 2021 (Restated)		
	SMUD	Authorities	Total <sup>(1)</sup>	SMUD	Authorities	Total <sup>(1)</sup>
<b>Summary of Income</b>						
Operating Revenues <sup>(2)</sup> .....	\$ 2,138,655	\$ 166,674	\$ 2,147,334	\$ 1,784,290	\$ 270,694	\$ 1,790,276
Operating Expenses .....	(2,102,849)	(120,798)	(2,065,652)	(1,464,069)	(250,980)	(1,450,341)
Operating Income .....	35,806	45,876	81,682	320,221	19,714	339,935
Interest and Other Income	124,704	1,871	90,044	108,788	712	108,114
Interest Expense.....	(74,702)	(26,482)	(101,184)	(81,692)	(27,608)	(109,300)
Change in Net Position.....	<u>\$ 85,808</u>	<u>\$ 21,265</u>	<u>\$ 70,542</u>	<u>\$ 347,317</u>	<u>\$ (7,182)</u>	<u>\$ 338,749</u>
<b>Selected Statement of Net Position Information</b>						
Net Plant in Service .....	\$3,654,725	\$ 285,346	\$3,653,281	\$3,502,335	\$ 307,755	\$3,523,243
Construction Work in Progress.....	323,499	24,259	347,758	365,478	1,819	367,297
Electric Utility Plant – Net ....	<u>\$3,978,224</u>	<u>\$ 309,605</u>	<u>\$4,001,039</u>	<u>\$3,867,813</u>	<u>\$ 309,574</u>	<u>\$3,890,540</u>
Unrestricted Cash .....	\$ 591,410	\$ 36,454	\$ 627,864	\$ 569,001	\$ 61,375	\$ 630,376
Rate Stabilization Fund ....	\$ 156,016	--	\$ 156,016	\$ 188,992	--	\$ 188,992
Total Assets .....	\$6,421,666	\$1,133,461	\$7,191,063	\$6,096,865	\$1,179,848	\$6,916,205
Net Position .....	\$2,377,719	\$ 271,836	\$2,366,803	\$2,291,910	\$ 286,890	\$2,296,261
Long-Term Debt <sup>(3)</sup> .....	\$2,236,824	\$ 787,215	\$3,024,039	\$2,387,686	\$ 826,171	\$3,213,857

<sup>(1)</sup> Financial information for SMUD and the SMUD JPAs (CVFA, SPA, SCA, SFA, NCGA and NCEA) include intercompany balances. The financial information reflects balances after the elimination of intercompany accounts including Authorities distributions to SMUD of \$36.5 million in 2022 and \$1.4 million in 2021.

<sup>(2)</sup> Operating Revenues reflect net transfers to (from) the Rate Stabilization Fund as follows:

2022 (\$33.0) million

2021: \$20.3 million

Transfers to the Rate Stabilization Fund reduce operating revenues in the year transferred; transfers from the Rate Stabilization Fund increase operating revenues. Transfers from the HGA balancing account in the Rate Stabilization Fund are automatic based on the amount of precipitation received. See "RATES AND CUSTOMER BASE – Rates and Charges" above.

<sup>(3)</sup> Long-Term Debt includes Long-Term Debt due within one year and unamortized premiums.

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## Management's Discussion of SMUD's Operating Results

**Three Months Ended March 31, 2023 (Unaudited).** For the three months ended March 31, 2023, SMUD reported a decrease in net position of \$8.8 million as compared to a decrease of \$6.1 million for the three months ended March 31, 2022.

Operating revenues were \$88.1 million higher than 2022. This was primarily due to higher sales of surplus power (\$47.1 million), sales to customers (\$29.0 million), and transfers from the rate stabilization fund (\$9.3 million).

Operating expenses were \$113.3 million higher than 2022. This was primarily due to higher purchased power expenses (\$42.7 million), amortization of pension and OPEB (\$19.5 million), transmission and distribution maintenance expenses (\$12.6 million), administrative and general expenses (\$11.5 million), depreciation expense (\$9.7 million), production expenses (\$4.1 million), production maintenance expenses (\$3.5 million), customer service and information expenses (\$3.3 million), public good expenses (\$2.6 million), and customer accounts expenses (\$2.0 million).

Non-Operating income was \$21.8 million higher than 2022. This was primarily due to a gain on land sale (\$14.3 million), higher interest income (\$6.0 million), and unrealized holding gains (\$2.6 million) offset by investment expenses (\$2 million).

Interest expense decreased \$0.7 million from 2022.

**Year Ended December 31, 2022.** For the year ended December 31, 2022, SMUD reported an increase in net position of \$85.8 million as compared to an increase of \$347.3 million for 2021.

Operating revenues were \$354.4 million higher than 2021. This was primarily due to higher sales to customers (\$130.7 million), sales of surplus gas (\$96.0 million), sales of surplus power (\$62.2 million), transfers from the RSF (\$24.3 million), customer fees (\$9.5 million), AB 32 revenue (\$4.9 million) and LCFS revenue (\$2.2 million), partially offset by lower gain on sale of carbon allowance futures (\$3.7 million) and transfers to the RSF (\$28.9 million).

Operating expenses were \$638.8 million higher than 2021. This was primarily due to higher purchased power expenses (\$369.6 million), amortization of pension and OPEB (\$126.9 million), production operating expenses (\$114.0 million), transmission and distribution maintenance expenses (\$23.3 million), depreciation expenses (\$8.9 million), transmission and distribution operating expenses (\$8.8 million), public good expenses (\$7.7 million), customer service and information expenses (\$4.5 million), and production maintenance expenses (\$2.8 million), partially offset by lower administrative and general expenses (\$30.4 million).

Non-Operating income increased by \$15.9 million primarily due to higher investment income (\$19.7 million), partially offset by unrealized holding losses (\$3.7 million), closeout of escrow account (\$2.8 million), higher fee based product costs (\$1.9 million), and loss on asset retirements (\$1.9 million).

Interest expense decreased \$7.0 million from 2021.

**Year Ended December 31, 2021.** For the year ended December 31, 2021, SMUD reported an increase in net position of \$347.3 million as compared to an increase of \$167.4 million for 2020.

Operating revenues were \$201.3 million higher than 2020. This was primarily due to higher sales to customers (\$70.1 million), sales of surplus gas (\$65.4 million), sales of surplus power (\$47.1 million),

transfers from the RSF (\$18.2 million), AB 32 revenue (\$17.9 million) and gain on sale of carbon allowance futures (\$3.1 million), partially offset by transfers to the RSF (\$13.4 million) and lower public good revenue (\$3.5 million).

Operating expenses were \$66.2 million higher than 2020. This was primarily due to higher production operating expenses (\$89.6 million), purchased power expenses (\$47.0 million), and depreciation expenses (\$37.8 million), partially offset by lower amortization of pension and OPEB (\$84.2 million), public good expenses (\$10.7 million), customer accounts expenses (\$6.8 million) and transmission and distribution maintenance expenses (\$5.5 million).

Non-Operating income increased by \$45.8 million primarily due to California Arrearage Payment Program funding (\$41.4 million), a settlement related to Rancho Seco damages (\$15.0 million), higher investment income (\$11.5 million), higher contributions in aid of construction (\$4.0 million), lower legal settlement costs (\$2.2 million), offset by dissolution of RBC CSCDA gas prepay contract (\$10.9 million), lower insurance proceeds (\$8.6 million), lower interest income (\$6.9 million), lower unrealized holding gains (\$4.0) and lower distributions from the JPAs (\$2.6 million).

Interest expense increased \$1.0 million from 2020.

**Regulatory Assets.** In accordance with Governmental Accounting Standards Board (“GASB”) No. 62, “Regulated Operations,” SMUD defers, as regulatory assets, certain types of expenditures. These assets are amortized and collected through future rates.

As of December 31, 2022, SMUD had a total of \$764.2 million recorded for regulatory assets. Regulatory assets associated with costs related to implementation of GASB No. 68, which requires SMUD to record a net pension liability was \$340.5 million and deferred outflows related to GASB No. 68 was \$86.6 million at December 31, 2022. Regulatory assets associated with costs related to implementation of GASB No. 75, which requires SMUD to record a net Other Post Employment Benefit (OPEB) liability was \$281.0 million and deferred outflows related to GASB No. 75 was \$19.2 million at December 31, 2022. Regulatory assets associated with Rancho Seco decommissioning costs totaled \$83.9 million at December 31, 2022. Nuclear fuel storage costs and non-radiological decommissioning costs have been collected in rates since 2009. For a complete description of these regulatory assets, see Note 8 (Regulatory Deferrals) to SMUD’s financial statements.

The Board has authorized the deferral of any charges or credits that result from the change in valuation of ineffective hedges that should be reported as Investment Revenue/Expense on the Statements of Revenues, Expenses and changes in net position. The Board’s resolution establishes that such charges or credits are not included in rates based on market value changes but are included in rates when the underlying transactions occur. Therefore, under GASB No. 62, “Regulated Operations,” any such changes are included in the Statement of Net Position as regulatory assets or liabilities. For a complete description of these derivative financial instruments, see Note 9 (Derivative Financial Instruments) to SMUD’s financial statements.

## **RANCHO SECO DECOMMISSIONING**

**Overview.** The 913 MW Rancho Seco Nuclear Power Plant (“Rancho Seco”) began Nuclear Regulatory Commission (“NRC”) licensed operations in 1974. In June 1989, the electorate of SMUD voted against allowing SMUD to continue to operate Rancho Seco as a nuclear generating facility, and the plant was shut down. In 1991, SMUD submitted a report (the “Financial Assurance Plan”) providing required financial assurance to the NRC that SMUD will have sufficient funds available to pay for the cost of decommissioning. On March 17, 1992, the NRC granted SMUD a change from an operating to a

possession-only license for Rancho Seco that relieved SMUD from compliance with a number of NRC regulations applicable to operating nuclear power plants. SMUD also filed a proposed decommissioning plan with the NRC (the “Decommissioning Plan”), which was approved in March 1995.

After the decommissioning efforts began, no suitable disposal option was available to SMUD for the Class B and Class C low level radioactive waste generated during the plant decommissioning. With the used nuclear fuel stored onsite requiring oversight staff, SMUD opted to store the Class B and Class C radioactive waste in an existing interim onsite storage building until a suitable disposal option was available. In November 2007, the possession-only license for Rancho Seco was amended to update the Decommissioning Plan to terminate the possession-only license for the Class B and Class C waste in two phases. Phase I of the decommissioning was completed at the end of 2008. Following verification of the site conditions, SMUD submitted a request to the NRC to reduce the licensed facility from 2,480 acres to the interim onsite storage building and about one acre surrounding it. The request was approved by the NRC in September 2009. Phase II of decommissioning included the approximately two-acre interim storage building containing the Class B and Class C radioactive waste and surrounding area. In September 2013, SMUD entered into a contract with the operator of the low-level radioactive waste disposal facility located in Andrews, Texas. Shipment of the Class B and Class C radioactive waste for disposal was completed in November 2014. SMUD conducted additional clean-up activities and radiological surveys, which were followed by NRC confirmatory surveys. The results of these surveys demonstrated unit dose criteria well below NRC release criteria, and the NRC approved the Phase II area for unrestricted use. On September 21, 2017, SMUD formally requested the termination of the possession-only license. On August 31, 2018, the NRC officially terminated SMUD’s possession-only license for the remaining Class B and Class C waste at Rancho Seco.

As part of the Decommissioning Plan, the nuclear fuel and Greater Than Class C (“GTCC”) radioactive waste is being stored in a dry storage facility (the Independent Spent Fuel Storage Installation or “ISFSI”) constructed by SMUD, adjacent to the former reactor facility. The NRC has separately licensed this facility. The DOE, under the Nuclear Waste Policy Act of 1982, is responsible for permanent disposal of used nuclear fuel and GTCC radioactive waste. SMUD has a contract with the DOE for the removal and disposal of this waste. The DOE was to have a waste repository operating by 1998, but has experienced significant and ongoing delays. The Nuclear Waste Policy Act designates Yucca Mountain in Nevada as the final and exclusive repository for the nation’s used nuclear fuel. The DOE discontinued the Yucca Mountain license review activities in 2010, but after a court ordered the NRC to resume its review in 2013, the NRC published its final safety evaluation report in 2015. The final safety report, and the final environmental impact statement, concluded that the proposed repository would be safe and environmentally sound for one million years.

Nevertheless, seeking alternatives to Yucca Mountain, the Blue-Ribbon Commission on America’s Nuclear Future delivered its final report in January 2012 with several recommendations. The Department of Energy (the “DOE”) responded to the recommendations by issuing a report in January 2013 (Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste). Key to both documents is a focus on used fuel from decommissioned sites including Rancho Seco. The DOE report accepts most of the Blue-Ribbon Commission recommendations, and contains timelines for fuel management options which proposed removing the fuel from Rancho Seco as early as 2021. However, any progress on the strategies proposed by the DOE is dependent on legislative action by Congress. With no legislative action taken to date, the 2021 projected date for fuel removal slips year-for-year. Therefore, SMUD cannot determine at this time when the DOE will fulfill its contractual obligations to remove the nuclear fuel and GTCC waste from the Rancho Seco facility. In the meantime, SMUD continues to incur costs of approximately \$5 to \$6 million per year for storage of used nuclear fuel at the ISFSI. SMUD has filed a series of successful lawsuits against the federal government for recovery of past spent fuel costs, with recoveries to date from the DOE in excess of \$104 million. SMUD plans to continue pursuing cost

recovery claims to ensure it is reimbursed for all such costs in the future. The ISFSI will be decommissioned, and its license terminated after the fuel and GTCC is removed.

***Financial Assurance Plan.*** In accordance with the Financial Assurance Plan, SMUD established and funded an external decommissioning trust fund currently held by Wells Fargo Bank (the “Decommissioning Trust Fund”). Pursuant to the Financial Assurance Plan, SMUD made the final deposit into the Decommissioning Trust Fund in 2008. Additional deposits are not expected but will be made if increased cost estimates or reduced fund interest earnings require it. In 2011, the NRC began requiring that SMUD demonstrate financial assurance for decommissioning the ISFSI as well as the former power facility, increasing the overall cost for decommissioning Rancho Seco. The estimated total cost for decommissioning the ISFSI was approximately \$6.5 million on December 31, 2022. The decommissioning cost estimate is required to be updated every three years. As of December 31, 2022, the balance of the Decommissioning Trust Fund was \$8.98 million, excluding unrealized gains and losses. Based on the current decommissioning cost estimate and the value of the fund, SMUD’s existing Decommissioning Trust Fund provides sufficient funds to complete decommissioning and terminate the ISFSI license.

In addition to these costs, SMUD also estimates that it would cost approximately \$13.1 million to restore the site to make it available for other SMUD uses with some major structures remaining intact. Site restoration is not a legal requirement. No site restoration is currently underway.

## **EMPLOYEE RELATIONS**

SMUD has approximately 2,335 employees, most of whom are covered by a civil service system. SMUD is a contracting member of the California Public Employees’ Retirement System (“PERS”). Approximately 50% of SMUD’s work-force is represented as to wages, hours and other terms and conditions of employment, by one of three recognized employee organizations, the International Brotherhood of Electrical Workers (“IBEW”) Local 1245, the Organization of SMUD Employees (“OSE”), and the SMUD Public Safety Officers’ Association (“PSOA”). The remaining 50% of SMUD’s work-force, which includes managers, professional, administrative, supervisory, confidential and security staff, is unrepresented.

SMUD negotiated a four-year Memoranda of Understanding (“MOU”) with IBEW and the OSE, effective January 1, 2022, through December 31, 2025. Both contracts contain a no-strike/no-lockout clause effective during the life of the agreements. SMUD has an MOU with PSOA effective through December 31, 2026. SMUD has experienced only one labor interruption, which occurred in January 1980 that lasted four days.

## **RETIREMENT BENEFITS AND POST-EMPLOYMENT MEDICAL BENEFITS**

### **Pension Plans**

SMUD participates in PERS, an agent multiple-employer public employee defined benefit pension plan. PERS provides retirement and disability benefits, annual cost-of-living adjustments, and death benefits to plan members and beneficiaries. PERS acts as a common investment and administrative agent for participating public entities within the State. Benefit provisions and all other requirements are established by State statute and SMUD policies. The pension plan provides retirement benefits, survivor benefits, and death and disability benefits based upon employees’ years of credited service, age, and final compensation.

As of June 30, 2021, the last actuarial valuation date for SMUD’s plan within PERS, the market value of the SMUD plan assets was \$2.51 billion. The plan is 100.1% funded on a market value of assets

basis, an increase of 21.0% compared to the June 30, 2020 funded status based on the market value of assets.

As an employer, SMUD is required to contribute a percentage of payroll each year to PERS to fund SMUD's plan based on actuarial valuations performed by PERS. PERS collects the normal cost based on a percentage of payroll and the unfunded liability portion is based on a dollar amount. SMUD also makes partial contributions required of SMUD employees on their behalf and for their account. At the PERS fiscal year ended June 30, 2022, SMUD's required employer contribution rate for normal cost was 9.0% of payroll and the unfunded liability contribution was \$36.3 million. During 2022, SMUD contributed \$52.7 million to PERS (including SMUD's contributions to cover required employee contributions), and SMUD employees paid \$16.5 million for their share of the PERS contribution.

For the fiscal years ending June 30, 2023 and June 30, 2024, SMUD is required to contribute 8.9% and 9.6% of payroll for normal costs and \$22.4 million for fiscal year ending June 30, 2023 for the unfunded liability contribution. There is no estimated employer contribution to the unfunded liability for fiscal year ending June 30, 2024. Assuming no amendments to the plan and no liability gains or losses (which can have a significant impact), PERS has projected that SMUD will be required to contribute 9.5% of payroll to the plan for normal costs and no employer contribution for the unfunded liability for the fiscal year ending June 30, 2025, not including SMUD contributions to cover required employee contributions. The amount SMUD is required to contribute to PERS is expected to increase in the future. The actual amount of such increases will depend on a variety of factors, including but not limited to investment returns, actuarial methods and assumptions, experience and retirement benefit adjustments.

SMUD has the option to prepay an annual lump sum payment to PERS for the unfunded accrued liability portion only (not including SMUD contributions to cover required employee contributions). SMUD made an annual lump sum prepayment of \$35.1 million, and also voluntarily made an additional payment of \$56.3 million, for the unfunded accrued liability for the fiscal year ended June 30, 2022. SMUD also made an annual lump sum prepayment of \$19.5 million, and voluntarily made an additional payment of \$2.9 million for the unfunded accrued liability for the fiscal year ending June 30, 2023.

While SMUD has some ability to adjust the retirement benefits provided to its employees, PERS determines the actuarial methods and assumptions used with respect to assets administered by PERS (including the SMUD plan assets) and makes the investment decisions with respect to such assets. For a description of such actuarial methods and assumptions (including the smoothing conventions used by PERS when setting employer contribution rates) and investments, see the comprehensive annual financial report of PERS (SMUD's plan is part of the Public Employees' Retirement Fund of PERS) available on its website at [www.calpers.ca.gov](http://www.calpers.ca.gov). SMUD cannot guarantee the accuracy of such information and neither the comprehensive annual financial report of PERS nor any other information contained on the PERS website is incorporated by reference in or part of this Official Statement. Actuarial assessments are "forward-looking" information that reflect the judgment of the fiduciaries of the pension plans, and are based upon a variety of assumptions, one or more of which may prove to be inaccurate or be changed in the future. Actuarial assessments will change with the future experience of the pension plans.

GASB issued statement No. 68 "Accounting and Financial Reporting for Pensions – An Amendment of GASB Statement No. 27" ("GASB No. 68"). The primary objective of GASB No. 68 is to improve accounting and financial reporting by state and local governments for pensions. Under GASB No. 68, SMUD is required to report the net pension asset or net pension liability (i.e., the difference between the total pension liability and the pension plan's net position or market value of assets) in its Statement of Net Position. This standard requires shorter amortization periods for recognition of non-investment gains and losses and actuarial assumption changes, as well as for recognition of investment gains and losses. GASB No. 68 separates financial reporting from funding requirements for pension plans. The net pension

liability as of December 31, 2022 is \$235.5 million and the net pension asset as of December 31, 2021 is \$27.7 million.

SMUD provides its employees with two cash deferred compensation plans: one pursuant to Internal Revenue Code (“IRC”) Section 401(k) (the “401(k) Plan”) and one pursuant to IRC Section 457 (the “457 Plan” and collectively, the “Plans”). The Plans are contributory plans in which SMUD’s employees contribute the funds. Each of SMUD’s eligible full-time or permanent part-time employees may participate in either or both Plans, and amounts contributed by employees are vested immediately. Such funds are held by a trustee in trust for the employees upon retirement from SMUD service and, accordingly, are not subject to the general claims of SMUD’s creditors. SMUD makes annual contributions to the 401(k) Plan on behalf of certain employees pursuant to a memorandum of understanding with both of its collective bargaining units. SMUD matches non-represented employee contributions to the 401(k) Plan up to a set amount. SMUD also makes limited discretionary contributions to non-represented employees hired after January 1, 2013, which contributions fully vest after five years. Prior to 2022, SMUD did not match employee contributions, nor make contributions on behalf of its employees to the 457 Plan. Beginning in 2022, SMUD makes annual contributions to the 457 Plan on behalf of certain employees and matches employee contributions up to a set amount pursuant to a memorandum of understanding with one of its collective bargaining units. SMUD made contributions to both Plans of \$7.0 million in 2022 and to the 401(k) Plan of \$6.1 million in 2021. Participating employees made contributions into both Plans totaling \$32.4 million in 2022 and \$30.6 million in 2021.

### **Other Post-Employment Benefits**

SMUD provides post-employment healthcare benefits, in accordance with SMUD policy and negotiated agreements with employee representation groups in a single employer defined benefit plan, to all employees who retire from SMUD, and their dependents. SMUD also provides post-employment healthcare benefits to covered employees who are eligible for disability retirement. SMUD contributes the full cost of coverage for retirees hired before January 1, 1991, and a portion of the cost based on credited years of service for retirees hired after January 1, 1991. SMUD also contributes a portion of the costs of coverage for these retirees’ dependents. Retirees are required to contribute the portion that is not paid by SMUD. The benefits, benefit levels, retiree contributions and employer contributions are governed by SMUD and can be amended by SMUD through its personnel manual and union contracts.

SMUD’s post-employment health care benefits are funded through the PERS California Employers’ Retiree Benefit Trust (“CERBT”), an agent multiple-employer plan. The funding of a plan occurs when the following events take place: the employer makes payments of benefits directly to or on behalf of a retiree or beneficiary; the employer makes premium payments to an insurer; or the employer irrevocably transfers assets to a trust or other third party acting in the role of trustee, where the plan assets are dedicated to the sole purpose of the payments of the plan benefits, and creditors of the government do not have access to those assets.

SMUD has elected to contribute the normal costs to the CERBT but annually receive reimbursement for cash benefit payments from the CERBT. In 2023, SMUD’s contribution for the normal costs to CERBT is \$8.6 million. In 2022 and 2021, SMUD decided to forgo making a contribution for the normal costs to the CERBT because there was a net OPEB asset at December 31, 2021 and December 31, 2020. SMUD can elect to make additional contributions to the trust. During 2022 and 2021, SMUD made healthcare benefit contributions by paying actual medical costs of \$24.5 million and \$24.1 million, respectively. During 2022 and 2021, SMUD received a \$23.3 million reimbursement for cash benefit payments from the CERBT each year.



At June 30, 2022 and 2021, SMUD estimated that the actuarially determined accumulated post-employment benefit obligation was approximately \$381.7 and \$398.2 million, respectively. At June 30, 2022 and 2021, the plan was 97.9% and 113.1% funded, respectively.

SMUD's actuary uses PERS economic and other assumptions as the basis for the calculation of the post-employment benefit obligation. The actual accumulated post-employment benefit obligation will vary substantially if such PERS assumptions, such as interest rate and life expectancy, among others, prove to be inaccurate or different than SMUD's actual experience. Although SMUD believes that such assumptions and estimates are reasonable, no assurance can be given that any such assumptions will prove to be accurate, or that SMUD's actual accumulated post-employment benefit obligation will not materially exceed its estimates. Additional information is available in Note 15 (Other Postemployment Benefits) and "Required Supplementary Information" to SMUD's consolidated financial statements.

GASB previously issued SGAS No. 75 "Accounting and Financial Reporting for Postemployment Benefits Other than Pensions". The primary objective of GASB No. 75 is to improve accounting and financial reporting by state and local governments for post-employment benefits other than pensions ("OPEB"). Under GASB No. 75, SMUD is required to report the net OPEB asset or net OPEB liability (i.e., the difference between the total OPEB liability and the OPEB plan's net position or market value of assets) in its Statement of Net Position. This standard requires shorter amortization periods for recognition of non-investment gains and losses and actuarial assumption changes, as well as for recognition of investment gains and losses. The net OPEB liability as of December 31, 2022 is \$6.8 million and the net OPEB asset as of December 31, 2021 is \$57.5 million.

## **CAPITAL REQUIREMENTS AND OUTSTANDING INDEBTEDNESS**

### **Estimated Capital Requirements**

SMUD has a projected capital requirement of approximately \$2.70 billion for the period 2023 through 2027 as shown in the table below. Approximately 60% of this requirement is anticipated to be funded with internally generated funds and cash on hand.

Special projects include costs relating to construction of large substations and the potential construction of Solano Phase 4. The Estimated Capital Requirements table below includes \$207 million for Solano Phase 4. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – Solano 4 Project."

### **ESTIMATED CAPITAL REQUIREMENTS (Dollars in Thousands)**

	<b>Service Area and Other System Improvements Including Distribution System</b>	<b>Improvements to Existing Generation Plant</b>	<b>General Plant</b>	<b>Special Projects</b>	<b>Total Capital Requirements</b>
2023	\$150,334	\$57,763	\$78,675	\$207,427	\$494,199
2024	195,581	40,608	97,225	216,229	549,643
2025	247,528	100,303	107,766	94,651	550,248
2026	247,528	100,303	107,766	94,651	550,248
2027	247,528	100,303	107,766	94,651	550,248

## Outstanding Indebtedness

**General.** SMUD typically finances its capital requirements through the sale of revenue bonds, the sale of commercial paper, from draws on its Revolving Credit Facility (as defined below) and from internally generated funds. With the recent passage of the Inflation Reduction Act and the Infrastructure Investment and Jobs Act SMUD is monitoring and exploring new methods of financing, including those afforded under these two programs that provide not-for-profit public power utilities with direct federal incentive payments.

SMUD's Electric Revenue Bonds (the "Senior Bonds") are issued pursuant to Resolution No. 6649 (the "Senior Resolution") adopted in 1971, as amended and supplemented (the "Senior Resolution"). As of May 1, 2023, SMUD had Senior Bonds in the aggregate principal amount of \$1,841,715,000 outstanding. [If the plan of finance described in the forepart of this Official Statement is implemented in whole, Senior Bonds in the aggregate principal amount of \$[\_\_\_\_\_] are expected to be outstanding under the Senior Resolution.] See "PLAN OF FINANCE" in the forepart of this Official Statement. The Senior Bonds are payable solely from the Net Revenues of SMUD's Electric System. The Senior Bonds are subordinate in right of payment to the prior payment of "Maintenance and Operation Costs" and "Energy Payments" as defined in the Master Resolution, including payments by SMUD to TANC under PA3, payments by SMUD under power purchase agreements related to the Authorities and payments by SMUD to NCGA and NCEA under their respective gas supply contracts.

SMUD's Subordinated Electric Revenue Bonds (the "Subordinated Bonds") are issued pursuant to Resolution No. 85-11-1 of SMUD, adopted on November 7, 1985, as amended and supplemented (the "Subordinate Resolution"). As of May 1, 2023, SMUD had Subordinated Bonds in the aggregate principal amount of \$200,000,000 outstanding. [If the plan of finance described in the forepart of this Official Statement is implemented in whole, Subordinate Bonds in the aggregate principal amount of \$[\_\_\_\_\_] are expected to be outstanding under the Subordinate Resolution.] The Subordinated Bonds are payable solely from the Net Subordinated Revenues of SMUD's Electric System. The Subordinated Bonds are subordinate in right of payment to the prior payment of principal of and interest on the Senior Bonds.

SMUD issues commercial paper notes (the "Notes") from time to time. As of May 1, 2023, SMUD's Notes were outstanding in the aggregate principal amount of \$200,000,000. Currently, Notes in the aggregate principal amount of \$300,000,000 may be outstanding at any one time, but SMUD reserves the right to increase or decrease the aggregate principal amount of the Notes that may be outstanding at any one time in the future. The Notes are secured by letters of credit issued by commercial banks. The Notes (and SMUD's obligations to repay drawings under the letters of credit) are payable solely from available revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds. Drawings under the letters of credit, to the extent not repaid immediately from the proceeds of commercial paper or other available SMUD funds, are repayable with interest over a period of five years. The letters of credit currently expire in February and August of 2025. SMUD expects to pay \$200,000,000 of the outstanding principal amount of the Notes with proceeds of the [2023 Bonds] (as defined in the forepart of the Official Statement). See "PLAN OF FINANCE" in the forepart of the Official Statement.

SMUD also entered into a revolving credit agreement with a commercial bank and issued its taxable and tax-exempt revolving notes thereunder (collectively, the "Revolving Credit Facility") in February 2022. As of May 1, 2023, no principal was outstanding under the Revolving Credit Facility. Currently, the aggregate principal amount that can be outstanding under the Revolving Credit Facility at any one time is limited to \$100,000,000. However, SMUD reserves the right to increase or decrease the aggregate principal amount that can be outstanding at any one time under the Revolving Credit Facility in the future. SMUD's payment obligations under the Revolving Credit Facility are payable solely from available

revenues of SMUD's Electric System and are subordinate in right of payment to the prior payment of principal of, premium if any, and interest on the Senior Bonds and the Subordinated Bonds. The current term of the Revolving Credit Facility expires in February 2026.

***Joint Powers Authorities.*** SMUD has entered into long-term take-or-pay power purchase agreements with SFA relating to the Local Gas-Fired Plants. Under such agreements, SMUD has exclusive control of the dispatch of all five of the Local Gas-Fired Plants and takes all of the power produced by the Local Gas-Fired Plants. See "POWER SUPPLY AND TRANSMISSION – Power Generation Facilities – *Local Gas-Fired Plants.*" The Authorities are each treated as component units of SMUD for accounting purposes. Only SFA has outstanding debt, which relates solely to the Cosumnes Power Plant and is payable solely from capacity payments made by SMUD under the related power purchase agreement. As of May 1, 2023, bonds issued by SFA to finance the Cosumnes Power Plant were outstanding in the aggregate principal amount of \$89,735,000. SMUD's payments under the power purchase agreements relating to the Local Gas-Fired Plants are payable from revenues of SMUD's Electric System prior to the payment of principal of and interest on the Senior Bonds and Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and Subordinate Resolution.

SMUD and Sacramento Municipal Utility District Financing Authority formed a joint powers authority called the Northern California Gas Authority No. 1 ("NCGA"). NCGA is treated as a component unit of SMUD for accounting purposes. NCGA issued \$757,055,000 in bonds in May 2007 for the purpose of paying Morgan Stanley Capital Group in advance for natural gas to be delivered to NCGA and then sold to SMUD pursuant to a long-term purchase contract. SMUD's obligation under the purchase contract is limited to payment for gas supplies delivered by NCGA. SMUD's payments under the purchase contract are payable from revenues of SMUD's Electric System prior to the payment of principal and interest on the Senior Bonds and the Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and the Subordinate Resolution. SMUD is not obligated to make any payments in respect of debt service on the NCGA bonds. As of May 1, 2023, related bonds in the aggregate principal amount of \$142,935,000 remain outstanding.

SMUD and Sacramento Municipal Utility District Financing Authority formed a joint powers authority called the Northern California Energy Authority ("NCEA"). NCEA is treated as a component unit of SMUD for accounting purposes. NCEA issued \$539,615,000 in bonds in December 2018 for the purpose of paying J. Aron & Company LLC in advance for natural gas or electricity to be delivered to NCEA and then sold to SMUD pursuant to a long-term purchase contract. SMUD's obligation under the purchase contract is limited to payment for gas or electricity supplies delivered by NCEA. SMUD's payments under the purchase contract are payable from revenues of SMUD's Electric System prior to the payment of principal and interest on the Senior Bonds and the Subordinated Bonds as either "Maintenance and Operation Costs" or "Energy Payments" under the Senior Resolution and the Subordinate Resolution. SMUD is not obligated to make any payments in respect of debt service on the NCEA bonds. As of May 1, 2023, related bonds in the aggregate principal amount of \$539,615,000 remain outstanding.

***Interest Rate Swap Agreements.*** SMUD has two interest rate swap agreements relating to previously or currently outstanding Subordinated Bonds and two forward starting interest rate swap agreements relating to potential refunding bonds to be issued in the future, as shown in the following table. For more information, see Note 9 (Derivative Financial Instruments) to SMUD's consolidated financial statements.

Effective Date	Termination Date	SMUD Pays		SMUD Receives	Notional Amount (000's)	Counterparty
7/2/1997	7/1/2024	Floating	SIFMA	5.154%	\$38,165	J Aron & Company LLC
7/15/2003	8/15/2028	Fixed	2.894%	63% of 1M LIBOR	68,450	Morgan Stanley Capital Services, Inc.
07/12/2023	08/15/2041	Fixed	0.718%	70% of 1M LIBOR	132,020	Barclays Bank
07/12/2023	08/15/2033	Fixed	0.554%	70% of 1M LIBOR	75,680	Barclays Bank

The obligations of SMUD under the swap agreements are not secured by a pledge of revenues of SMUD's electric system or any other property of SMUD. SMUD does not currently have any collateral posting requirements with respect to the interest rate swap agreements, but SMUD may be required to post collateral under certain circumstances. [In connection with the plan of finance described in the forepart of this Official Statement, SMUD expects to terminate the swap with Barclays Bank with a notional amount of \$75,680,000 that would otherwise become effective on July 12, 2023]. See "PLAN OF FINANCE" in the forepart of this Official Statement.

**Build America Bonds Subsidy Payments.** SMUD's Electric Revenue Bonds, 2009 Series V (the "2009 Series V Bonds") and Electric Revenue Bonds, 2010 Series W (the "2010 Series W Bonds") were issued as "Build America Bonds" under the provisions of the American Recovery and Reinvestment Act of 2009. At the time the 2009 Series V Bonds and 2010 Series W Bonds were issued, SMUD expected to receive an annual cash subsidy payment from the United States Treasury equal to 35% of the interest payable on the 2009 Series V Bonds and the 2010 Series W Bonds. However, as a result of the federal budget process, many payments from the federal government, including Build America Bonds subsidy payments, have been reduced. Absent the federal budget reductions, the aggregate annual cash subsidy payable to SMUD with respect to the 2009 Series V Bonds and the 2010 Series W Bonds would be approximately \$9.8 million. With the current federal budget reductions, SMUD has typically been receiving aggregate annual cash subsidy payments with respect to the 2009 Series V Bonds and the 2010 Series W Bonds of approximately \$9.2 million. It is possible that future federal budget actions could further reduce, or eliminate entirely, the annual cash subsidy payments with respect to Build America Bonds, including the annual cash subsidy payments payable to SMUD with respect to the 2009 Series V Bonds and the 2010 Series W Bonds. SMUD cannot predict the likelihood of the further reduction or elimination of the Build America Bonds subsidy payments. A significant reduction or elimination of the cash subsidy payments payable to SMUD with respect to the 2009 Series V Bonds or the 2010 Series W Bonds could be material.

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**Debt Service Requirements.** The following table sets forth SMUD’s debt service requirements with respect to SMUD’s Senior Bonds and Subordinated Bonds.

**DEBT SERVICE REQUIREMENTS[TO BE UPDATED]<sup>(1)</sup>**

<b>Calendar Year</b>	<b>Senior Bonds Debt Service<sup>(2)</sup></b>	<b>Subordinated Bonds Debt Service<sup>(3)</sup></b>	<b>Total Debt Service</b>
2022	\$ 198,841,641	\$ 10,000,000	\$ 208,841,641
2023	208,076,945	10,861,111	218,938,056
2024	176,548,637	7,483,333	184,031,970
2025	177,270,712	8,833,333	186,104,045
2026	177,369,062	5,500,000	182,869,062
2027	177,458,312	6,000,000	183,458,312
2028	177,568,563	6,000,000	183,568,563
2029	126,192,937	6,000,000	132,192,937
2030	136,265,941	6,000,000	142,265,941
2031	141,875,082	6,000,000	147,875,082
2032	141,716,845	6,000,000	147,716,845
2033	141,576,102	6,000,000	147,576,102
2034	144,261,606	6,000,000	150,261,606
2035	144,110,773	6,000,000	150,110,773
2036	143,962,001	6,000,000	149,962,001
2037	83,681,613	6,000,000	89,681,613
2038	83,528,863	6,000,000	89,528,863
2039	80,375,800	6,000,000	86,375,800
2040	80,382,550	6,000,000	86,382,550
2041	85,735,800	6,000,000	91,735,800
2042	31,422,350	28,490,000	59,912,350
2043	31,214,150	28,490,300	59,704,450
2044	31,008,750	28,490,350	59,499,100
2045	30,799,950	28,494,550	59,294,500
2046	25,391,750	28,492,150	53,883,900
2047	25,392,000	28,492,700	53,884,700
2048	25,392,500	28,490,450	53,882,950
2049	25,390,750	28,489,800	53,880,550
2050	25,394,250	-	25,394,250
<b>Total</b>	<b>\$3,078,206,235</b>	<b>\$360,608,077</b>	<b>\$3,438,814,312</b>

(1) Does not include outstanding bonds issued by the Authorities for the Local Gas-Fired Plants. Does not include bonds issued by NCGA, NCEA or SMUD’s portion of bonds issued by TANC. Payments by SMUD which are used by the Authorities, NCGA, NCEA, and TANC to pay debt service on such bonds constitute either “Maintenance and Operation Costs” or “Energy Payments” under the Senior Resolution and the Subordinate Resolution.

(2) Includes debt service for the [ ] Bonds and excludes debt service for the [Refunded Bonds]. Debt service for all Senior Bonds other than the [ ] Bonds calculated as of December 31, 2022. Debt service for the [ ] Bonds calculated assuming the [ ] Bonds are issued on [ ]. Debt service is not reduced by the amount of any subsidy that SMUD currently expects to receive in connection with the 2009 Series V Bonds and 2010 Series W Bonds.

(3) [As of December 31, 2021. Based on an assumed interest rate of 3% per annum following (i) the initial scheduled Mandatory Purchase Date of October 17, 2023 for SMUD’s Subordinated Electric Revenue Bonds, 2019 Series A and (ii) the initial scheduled Mandatory Purchase Date of October 15, 2025 for SMUD’s Subordinated Electric Revenue Bonds, 2019 Series B.]

Note: Amounts may not add due to rounding.

## **INSURANCE**

SMUD maintains a comprehensive property/casualty insurance program designed to protect against catastrophic losses that would have an adverse effect on its financial position or operational capabilities. Insurance programs are continuously reviewed and modified when construction, operational exposures, or developments in the insurance industry so warrant. Long term relationships with a variety of insurers minimize SMUD's susceptibility to the effects of market cycles. SMUD budgets reserves to meet potential insurance deductibles and self-insured liability claims.

SMUD safeguards assets with all-risk property and boiler/machinery insurance with limits of \$800 million per occurrence for physical damage and business interruption combined. Various coverage sublimits and deductibles apply to losses arising from certain perils, such as business interruption, earthquake, or flood, respectively. Liability insurance is in effect to defend and indemnify SMUD against third party claims, including general, automobile and sudden and accidental pollution claims with policy limits of \$140 million, and wildfire coverage with policy limits of \$250 million, all of which include a variety of self-insured retentions.

Nuclear property and liability insurance policies are maintained in accordance with the NRC's requirements for decommissioned nuclear plants that maintain dry storage of spent fuel on-site. This includes \$100 million in first party property damage and decontamination, \$100 million for nuclear liability arising from accidents on-site, \$200 million for supplier's and transporter's nuclear liability, and \$300 million for nuclear worker liability. SMUD is exposed to possible retrospective assessments for nuclear property events occurring at other nuclear facilities in the United States capped at ten times SMUD's annual nuclear property premium (currently the maximum retrospective assessment is approximately \$1,000,000).

Other types of insurance include non-owned aircraft liability, workers' compensation, crime, cyber security, fidelity, fiduciary liability, directors' and officers' liability, professional errors and omissions, transportation, and builder's risk for major facilities under construction.

## **LEGAL PROCEEDINGS**

SMUD is a party to numerous actions arising out of the conduct of its business and affairs, some of which are discussed below. SMUD believes that any losses or adverse financial results it may suffer in these current actions, to the extent not covered by insurance, would not, in the aggregate, have an adverse material impact on SMUD, its business and affairs, the results of its operations, financial position or liquidity.

### **Environmental Litigation**

SMUD was one of many potentially responsible parties that had been named in a number of actions relating to environmental claims and/or complaints. SMUD has resolved these environmental claims and/or complaints and entered into settlement agreements and/or consent orders. These settlement agreements and consent orders have statutory reopener provisions which allow regulatory agencies to seek additional funds for environmental remediation under certain limited circumstances. While SMUD believes it is unlikely that any of the prior settlements or consent orders will be reopened, the possibility exists. If any of the settlements or consent orders were to be reopened, SMUD management does not believe that the outcome will have a material adverse impact on SMUD's financial position, liquidity or results of operations.

## **Claim for Accidental Death**

In February 2020, SMUD received a claim alleging an employee of a gutter company died after he accidentally came into contact with a SMUD electrical line during an installation. The claim is for approximately \$43 million. SMUD concluded the electrical lines at the site of the accident exceeded required clearances and there is no basis for the claim against SMUD. SMUD management believes that SMUD has no potential liability in this matter and that any costs ultimately borne by SMUD will not have a material adverse impact on SMUD's financial position, liquidity or results of operations.

## **Proposition 26 Lawsuit**

Two SMUD customers jointly filed a complaint against SMUD in October 2019, and subsequently one of the plaintiffs removed themselves from the complaint. The complaint states that SMUD violated Proposition 26 (see "DEVELOPMENTS IN THE ENERGY MARKETS – State Legislation and Regulatory Proceedings – Proposition 26" for a description of Proposition 26) when SMUD's Board on June 24, 2019 adopted rate increases for 2020 and 2021. The plaintiff contends the rate increases do not reflect SMUD's reasonable cost of service because they include a 9.2% scalar that SMUD applied to its TOD residential rate restructure in the 2017 rate process which SMUD's Board adopted at that time. Therefore, the plaintiff contends SMUD's 2020 and 2021 rates should be decreased by this scalar amount because the scalar exceeded SMUD's cost of service, and refunded to SMUD customers. Because SMUD has a strong evidentiary record supporting the Board's rate decisions in 2017 and 2019, and views the lawsuit as having little merit, SMUD anticipates the court will rule in SMUD's favor. The plaintiff has requested to amend the complaint, which has delayed the court's proceeding until the amended complaint is filed. While SMUD believes the court will rule in its favor, SMUD is unable to predict the outcome of the litigation or, if or to the extent SMUD ultimately is not successful in the litigation, what remedies against SMUD may be available. SMUD management believes that if SMUD is not successful in the litigation, and to the extent the outcome would have a material adverse impact on SMUD's financial position, liquidity, or results of operations, the Board would make appropriate rate modifications based on an evidentiary record consistent with guidance from a judicial decision in the case.

## **Other Litigation Matters**

Currently, SMUD is party to various claims, legal actions and complaints relating to its operations, including but not limited to: property damage and personal injury, contract disputes, torts, and employment matters. SMUD management believes that the ultimate resolution of these matters will not have a material adverse effect on SMUD's financial position, liquidity or results of operation.

## **FERC Administrative Proceedings**

SMUD is involved in a number of FERC administrative proceedings related to the operation of wholesale energy markets, regional transmission planning, gas transportation and NERC reliability standards. These proceedings generally fall into the following categories: (i) filings initiated by the CAISO (or other market participants) to adopt/modify the CAISO Tariff and/or establish market design and behavior rules; (ii) filings initiated by existing transmission owners (i.e., PG&E and the other IOUs) to pass-through costs to their existing wholesale transmission customers; (iii) filings initiated by FERC on market participants to establish market design and behavior rules or investigate market behavior by certain market participants; (iv) filings initiated by transmission owners under their transmission owner tariffs to establish a regional transmission planning process; (v) filings initiated by providers of firm gas transportation services under the Natural Gas Act; and (vi) filings initiated by NERC to develop reliability standards applicable to owners, users, and operators of the bulk electric system. In addition, SMUD is an active participant in other FERC administrative proceedings, including those related to reliability, variable

resource integration and the changing resource mix, and transmission planning and cost allocation. SMUD management believes that determinations of these FERC proceedings will not have a material adverse effect on SMUD's financial position, liquidity or results of operations.

### **CPUC Administrative Proceedings**

Periodically, PG&E seeks to update its gas transmission and storage ("GT&S") revenue requirements and rate designs. These applications are litigated at the CPUC and affect SMUD through several tariff rates SMUD pays to move natural gas along PG&E's backbone transmission lines. In the 2019 GT&S rate case (the "2019 GT&S Case"), the CPUC affirmed the application in GT&S rates of cost causation principles to prevent excessive and unreasonable costs being shifted to electric generator backbone customers like SMUD, either through proposed changes in PG&E's natural gas storage strategy or through cost shifts within the electric generator customer class.

PG&E filed its 2023 General Rate Case ("GRC") in June 2021 which includes its gas transmission and storage revenue requirements. In September 2021, PG&E filed an application for approval of its Gas Cost Allocation and Rate Design Proposals ("CARD"). SMUD is actively participating in PG&E's GRC and CARD proceedings to ensure that costs are fairly allocated to non-core customers, including electric generator backbone customers. Separately, SMUD continues to participate and monitor a proceeding at the CPUC concerning long-term gas system planning. At this point in these proceedings, SMUD management does not anticipate that the ultimate resolution of such cases will have a material adverse effect on SMUD's financial position, liquidity, or results of operation.

## **DEVELOPMENTS IN THE ENERGY SECTOR**

### **Electric Market Deregulation**

In 1996, the State partially deregulated its electric energy market and the CAISO was established in 1998. Since the CAISO's formation, the State has experienced episodes of higher and more volatile prices for natural gas and wholesale electricity. In reaction to such conditions, SMUD made significant changes to its business strategy to mitigate the impacts of the more volatile and unpredictable energy markets. Volatility in energy prices in the State are always a potential risk due to a variety of factors which affect both the supply and demand for electricity in the western United States. These factors include, but are not limited to, the implementation of the CAISO market design changes, insufficient generation resources, the increase in intermittent renewable energy resources, natural gas price volatility, fuel costs and availability, weather and natural disasters, transmission constraints and levels of hydroelectric generation within the region. While SMUD has taken a number of steps to mitigate its exposure to price volatility associated with these factors, this price volatility under extreme conditions may contribute to greater volatility in SMUD's net revenues from the purchase and sale of electric energy and, therefore, could materially adversely affect the financial condition and liquidity of SMUD. For a discussion of SMUD's current resource planning activities and risk management strategies, see "BUSINESS STRATEGY" above.

### **Cybersecurity**

Cybersecurity continues to be a top priority for SMUD. Attacks or threats directed at critical electric or energy sector operations could damage or cause the shut-down of generation, transmission or distribution assets that are essential to SMUD's ability to serve its customers, cause operational malfunctions and outages affecting SMUD's electric system, and result in costly recovery and remediation efforts. The costs of security measures or of remediating breaches could be material.



SMUD participates in sharing and receiving information about cyber security threats in real-time through the Electricity Information Sharing and Analysis Center (“E-ISAC”), the central hub for such data to actively manage risk related to potential cyber intrusion. SMUD also participates in NERC’s development of mandatory, enforceable cyber security standards to address vulnerabilities in electric utility systems. SMUD also adopts voluntary measures suggested as best practices by the National Institute of Standards and Technology (“NIST”) in its national framework.

SMUD’s prudent response to this ever-changing threat requires constant monitoring and frequent updates to implement new regulatory requirements as they are developed. SMUD manages risk related to frequently changing regulatory requirements by participating in the development of standards at NERC and NIST and through active engagement in the cyber security policy dialogue in Congress.

## **Physical Security**

Physical security is a critical concern for electric utilities as they seek to protect their infrastructure from a range of threats. The electric utility infrastructure is complex and consists of multiple components, such as power plants, substations, transmission and distribution lines, and other facilities. SMUD employs a dedicated physical security team that is deployed 24/7 and allows SMUD to respond to emergent events in a safe, coordinated, efficient, and cohesive manner, protecting the lives of its employees, customers, community, properties and assets. SMUD has policies, processes and procedures in place that outline the access controls and restrictions for its properties. SMUD restricts access based on need as it determines, while adhering to applicable laws, regulations and standards such as NERC Reliability Standards and NRC regulations. SMUD also maintains a Utility Security Plan adopted by the Board representing SMUD’s compliance with the CPUC’s Safety and Enforcement Divisions six-step security plan process described in CPUC Decision 19-01-018.

During times of elevated, imminent threats, safety and/or security concerns, SMUD’s Security Operations team, under the direction of the Chief Financial Officer or delegate, reserves the right to deploy additional security measures, controls, and further restrict or limit access to its properties to increase its security posture.

SMUD operates a 24/7 security operations center which monitors and coordinates responses to situations reported by internal and external stakeholders, or which are detected by SMUD’s security technology. The technology includes access control, video surveillance, and various types of intrusion detection solutions. The security operations center is a central hub for initial contact for physical security calls from employees of suspicious events and initiates incident responses as needed.

## **Federal Legislation and Regulatory Proceedings**

***Energy Policy Act of 2005.*** On August 8, 2005, the Energy Policy Act of 2005 (the “EPAAct of 2005”) was signed into law. The law includes a number of energy-related provisions, including among other things limited FERC jurisdiction over interstate transmission assets of municipal utilities, cooperatives and federal utilities to order these entities to provide transmission services on rates and terms comparable to those the entities charge and provide to themselves; the grant of authority to FERC to establish and certify an electric reliability organization to develop and enforce reliability standards for users of the bulk power transmission system; and prohibitions of certain market practices including the provision of false information and related expansion of FERC civil and criminal penalty authority. So far, the most visible impact of the EPAAct of 2005 on SMUD has been the development of mandatory federal reliability standards.

***Federal Regulation of Transmission Access.*** The Energy Policy Act of 1992 (the “Energy Policy Act”) made fundamental changes in the federal regulation of the electric utility industry, particularly in the area of transmission access. The Energy Policy Act provided FERC with the authority to require a transmitting utility to provide transmission services at rates, charges, terms and conditions set by FERC. The purpose of these changes, in part, was to bring about increased competition in the electric utility industry. Under the Energy Policy Act, electric utilities owned by municipalities and other public agencies which own or operate electric power transmission facilities which are used for the sale of electric energy at wholesale are “transmitting utilities” subject to the requirements of the Energy Policy Act.

Since the Energy Policy Act, FERC has adopted a series of rules to implement competitive open access to transmission facilities and regional transmission planning. Order No. 888, issued in 1996, requires the provision of open access transmission services on a nondiscriminatory basis by all “jurisdictional utilities” (which, by definition, does not include municipal entities like SMUD) by requiring all such utilities to file OATTs. Order No. 888 also requires “nonjurisdictional utilities” (which, by definition, does include SMUD) that purchase transmission services from a jurisdictional utility under an open access tariff and that owns or controls transmission facilities to provide open access service to the jurisdictional utility under terms that are comparable to the service that the nonjurisdictional utility provides itself. Section 211A of the EAct of 2005 authorizes, but does not require, FERC to order unregulated transmission utilities to provide transmission services, including rates and terms and conditions, that are comparable to those under which the unregulated transmitting utility provides transmission services to itself that are not unduly discriminatory or preferential.

In Order 890, issued in 2007, FERC stated that it will implement its authority under Section 211A on a case-by-case basis and retain the current reciprocity provisions.

In 2011, FERC issued Order 1000, which among other things requires public utility (jurisdictional) transmission providers to participate in a regional transmission planning process that produces a regional transmission plan and that incorporates a regional and inter-regional cost allocation methodology. Similar to Order 890, FERC states that it will implement its authority under Section 211A on a case-by-case basis. However, in Order 1000, FERC appears to expand upon the current reciprocity provisions and states that it has the authority to allocate costs to beneficiaries of services provided by specific transmission facilities even in the absence of a contractual relationship between the owner of the transmission facilities and the identified beneficiary.

SMUD, individually, and through the Large Public Power Council (“LPPC”), appealed Order 1000, but in 2014 the D.C. Circuit Court of Appeals rejected all of the arguments raised on appeal, upholding the entirety of Order 1000.

The jurisdictional members of WestConnect filed their proposed regional planning process and cost allocation methodology through a series of compliance filings at FERC. FERC accepted binding cost allocation for jurisdictional transmission providers of WestConnect and mandated that non-jurisdictional transmission providers (such as SMUD) identified as beneficiaries of a project have the ability to not accept the cost allocation. WestConnect’s Order 1000 planning process began with the 2016-2017 planning cycle.

However, in response to FERC’s WestConnect orders on compliance, El Paso Electric Company (“El Paso”), a jurisdictional transmission provider, petitioned to the Court of Appeals for the 5th Circuit. El Paso contends that FERC’s WestConnect orders violate Order 1000’s cost causation principle because WestConnect’s binding cost allocation applies only to the jurisdictional transmission providers and thus forces jurisdictional transmission providers to subsidize projects benefitting non-jurisdictional transmission providers that opt-out of projects. The non-jurisdictional transmission providers agreed on a settlement with the jurisdictional transmission providers to resolve the matters on appeal in the 5th Circuit, but FERC

ultimately did not accept the settlement. The court scheduled briefings and oral argument for the case, which took place April 3, 2023. A court decision is expected sometime later in 2023. In the meantime, SMUD continues to participate in the WestConnect process.

SMUD is unable to predict at this time the full impact that Order 1000 will have on the operations and finances of SMUD's electric system or the electric industry generally. However, WestConnect has conducted planning cycles under its Order 1000 planning process and has not identified any project eligible for cost allocation. SMUD will continue to take any action necessary, including withdrawing from a cost allocation determination and engaging in FERC proceedings, to ensure that it is not required to pay for transmission costs in the absence of an agreement or service relationship.

Of note, on April 21, 2022, FERC issued a Notice of Proposed Rulemaking on Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection (the "NOPR"). The NOPR seeks input on proposals that would impact the Order 1000 planning and cost allocation process. SMUD has been engaged in the proceeding, providing input and helping draft comments with trade organizations, including LPPC. FERC has not issued any subsequent order. SMUD will continue to monitor and be engaged in any developments at FERC that impact the Order 1000 process and its participation in WestConnect.

***NERC Reliability Standards.*** The EAct of 2005 required FERC to certify an electric reliability organization ("ERO") to develop mandatory and enforceable reliability standards, subject to FERC review and approval. On February 3, 2006, FERC issued Order 672, which certified NERC as the ERO. Many reliability standards have since been approved by FERC, including those aimed at protecting the bulk electric system from physical and cyber threats.

The ERO or the regional entities, such as WECC, may enforce the reliability standards, subject to FERC oversight or FERC may independently enforce reliability standards. Potential monetary sanctions include fines of up to \$1,496,035 per violation per day. Order 693 provides ERO and regional entities with the discretion necessary to assess penalties for such violations, while also having discretion to calculate a penalty without collecting the penalty if circumstances warrant.

***Anti-Market Manipulation Rules.*** EAct of 2005 gave FERC the authority to issue rules to prevent market manipulation in jurisdictional wholesale power and gas markets, and in jurisdictional transmission and transportation services. These anti-market manipulation rules apply to non-jurisdictional entities such as SMUD. Further, EAct of 2005 provided FERC civil penalty authority, which the Commission has stated that it will exercise carefully by assuring that its market manipulation rules are clear.

***Greenhouse Gas Emissions.*** The United States Environmental Protection Agency (the "EPA") has taken steps to regulate GHG emissions under existing law. In 2007, the U.S. Supreme Court held that the Clean Air Act ("CAA") directed EPA to regulate GHG emissions from new motor vehicles if it judged that such emissions contribute to climate change. In 2009, EPA finalized an "Endangerment Finding" under the CAA, declaring that six identified GHGs – carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride – cause global warming, and that global warming endangers public health and welfare. Subsequently, EPA promulgated GHG standards for passenger cars and light-duty trucks (the so-called "Tailpipe Rule"). Although that rulemaking was later withdrawn by a different administration, prompting litigation and re-proposal of the standards that has only recently been finalized, the original promulgation of the Tailpipe Rule required EPA to also address emissions of the same pollutants from other sources, namely, the electric sector.

In 2014, EPA issued a proposed rule under section 111(d) of the CAA called the Clean Power Plan (the "CPP") that projected power sector emissions reductions of 30% below 2005 levels by 2030. The

proposed CPP would have established a rate-based emissions goal for each state, providing states the responsibility to develop a State Implementation Plan (“SIP”) describing how each will meet the goal assigned by EPA using the “Best System of Emissions Reduction” (“BSER”) established by EPA. The BSER under the CPP featured a suite of emissions reduction measures including fuel switching, emissions trading, and other measures. Significantly for the State and its regulated entities, the proposed CPP included a “state measures” plan that allowed for continued operation of successful state programs that achieve CPP goals. The rule was finalized in October 2015.

In November 2015, 27 states and numerous corporations challenged the CPP in court, alleging that EPA had exceeded its authority under the CAA. The U.S. Supreme Court stayed implementation of the CPP pending disposition of the petitions for review in the D.C. Circuit and any subsequent review by the Supreme Court. The D.C. Circuit Court of Appeals held oral arguments on the petitioner’s claims, but before the court issued a decision, the 2016 presidential election resulted in a change of administration.

The new administration quickly moved for an abeyance (or stay) of the case for as long as the agency needed to review and withdraw the CPP. The court issued a series of 60-day abeyances and ultimately dismissed the case on September 17, 2019. Meanwhile, in August 2018, EPA proceeded to withdraw the CPP and proposed a different rule under the same provision of the CAA. The new rule, known as the Affordable Clean Energy (“ACE”) rule, would establish a BSER that only includes measures that can be undertaken at an individual power plant, rather than the broader suite of measures envisioned under the CPP. The ACE rule would also allow states to decide individually, on a case-by-case basis, the standards to be achieved by the best system of emission reductions, as well as exempt certain upgrades of fossil-fuel power plants from the CAA’s New Source Review program and extend the time to implement SIPs after the ACE rule is finalized. The ACE rule was challenged in court by environmental groups and states alleging that the revised rule inadequately responds to EPA’s responsibility to protect public health and welfare. SMUD joined in this litigation along with other challengers. The D.C. Circuit vacated the ACE rule on January 19, 2021, and remanded it to the EPA for review and revision, just days before a new presidential administration took office. Several states led by West Virginia and coal industry members appealed the decision.

In June 2022, the U.S. Supreme Court issued its opinion in *West Virginia v. EPA*, striking down the CPP and foreclosing any future regulations of “significant political and economic significance” if Congress has not expressly authorized them. While the decision does not restrict EPA to only requiring measures “inside the fence line” at an individual power plant to control GHGs, it appears unlikely that the EPA will be able to require material reductions in GHGs to mitigate climate change through section 111(d) of the CAA.

**Federal Clean Energy Legislation.** SMUD actively participates in discussion at the federal level regarding legislation that would meaningfully impact SMUD’s existing GHG reduction strategies or impose new requirements for electric generators, including a proposed federal clean energy standard. In the 117th Congress, a clean electricity performance program was considered but ultimately lacked support to pass. Instead, Congress extended and expanded clean energy tax credits and created new grant and rebate programs to incentivize clean energy investments in the Inflation Reduction Act of 2022. While it is possible that a future Congress may revisit the concept of a clean energy standard or other GHG reduction regime, it is possible that the passage of the Inflation Reduction Act will diminish the likelihood of a new regulatory framework being enacted in the near future.

SMUD is unable to predict whether any new EPA rulemakings will be undertaken, and what the full impact of the reduction of fossil-based generation over time will have on the operations and finances of SMUD’s electric system or the electric utility industry generally.

## State Legislation and Regulatory Proceedings

A number of bills affecting the electric utility industry have been enacted by the State Legislature. In general, these bills provide for reduced GHG emission standards and greater investment in energy efficient and environmentally friendly generation alternatives through more stringent RPS. Additionally, ongoing regulatory proceedings address water flow and quality issues related to the Sacramento – San Joaquin River Delta. The following is a brief summary of these bills and regulatory proceedings.

**Greenhouse Gas Emissions.** On September 27, 2006, the Governor of the State signed into law AB 32, the Global Warming Solutions Act of 2006 (“AB 32”). AB 32 requires the California Air Resources Board (“CARB”) to adopt enforceable GHG emission limits and emission reduction measures in order to reduce GHG emissions to 1990 levels by 2020. In addition, AB 32 establishes a mandatory reporting program for all IOUs, local, publicly-owned electric utilities and other load-serving entities (electric utilities providing energy to end-use customers) (“LSEs”). The AB 32 reporting program allows CARB to adopt regulations using market-based compliance mechanisms such as a “cap-and-trade” system.

On December 16, 2010, CARB approved a resolution adopting cap-and-trade regulations for the State. The regulations became effective on January 1, 2012. As adopted, the cap-and-trade program covers sources accounting for 85% of the State’s GHG emissions, the largest program of its type in the United States.

The cap-and-trade program has been implemented in phases. The first phase of the program (through December 31, 2014) introduced a hard emissions cap on the combined electric utility and large industrial sectors, covering all sources emitting more than 25,000 metric tons of carbon dioxide-equivalent greenhouse gases (“CO<sub>2</sub>e”) per year. In 2015, the program was expanded to cover distributors of transportation, natural gas, and other fossil fuels. The cap declined about 2 percent in 2014, and declined 3 percent annually from 2015 to 2020. The cap-and-trade program requires covered entities to retire compliance instruments (allowances and carbon offsets) for each metric ton of CO<sub>2</sub>e they emit. Initially, CARB allocated free allowances to LSEs and most industrial facilities at roughly 90% of their average emissions. SMUD was granted a higher amount because of early action taken to reduce GHG emissions. In the case of electric utilities, the value of allowances must be used to benefit ratepayers and achieve GHG emission reductions. As the program matures, some covered entities will be required to buy an increasing portion of their allowances at auction or on the secondary market. The cap-and-trade program also allows covered entities to use offset credits for compliance purposes (not exceeding 8% of a regulated entity’s compliance obligation through 2020, 4% from 2021 through 2025, and 6% from 2026 through 2030). Offsets must be obtained from certified projects in sectors that are not regulated under the cap-and-trade program and are subject to other restrictions.

In November of 2012, CARB conducted its first allowance auction and auctions now occur on a quarterly schedule. On January 1, 2014, CARB linked the State cap and trade program with a companion program in the Canadian province of Quebec. The first quarterly joint auction for the linked programs occurred in November, 2014. On January 1, 2018, CARB linked the State’s cap-and-trade program with a companion program in the Canadian province of Ontario. Immediately thereafter, an entity in any one of the three jurisdictions was able to purchase allowances on the secondary market in a linked jurisdiction, and as of February 21, 2018 (the date of the first joint auction) could purchase allowances in the joint auction. In June 2018, elections in Ontario changed political parties and the new administration formally withdrew from the Cap-and-Trade linkage. CARB has limited purchase and use of Ontario allowances in response. The August 2018 Cap and Trade auction did not include Ontario. In 2021, the Washington state legislature passed a Cap-and-Trade bill, which [is expected to] interact with the State’s markets. Future potential near-term links to the CARB cap-and-trade program also include the states of Oregon, which has

adopted a cap and trade program, and New Mexico, which is considering the adoption of a cap and trade program.

On October 7, 2015, the Governor of the State signed SB 350 that contained aggressive goals for reducing carbon emissions by 2030, including raising the proportion of renewable energy to 50%, reducing the use of petroleum fuel in cars and trucks by up to 50%, and doubling the energy efficiency of existing buildings. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*” for additional information. In addition, SB 350 established requirements for larger POUs to adopt (by January 1, 2019) and file with the CEC Integrated Resource Plans (“IRPs”) by April 2019 that would show planned procurement to achieve the 50% RPS and State GHG goals established by CARB. The CEC developed “guidelines” for these IRPs for POUs in 2017, updated them in 2018, and proposed additional updates in 2022. CARB established specific GHG target ranges for these IRPs in summer 2018, with SMUD’s planning target set at 1.1 – 1.9 million metric tons of emissions. SMUD developed and adopted an IRP in 2018 through a comprehensive public process and filed the adopted IRP with the CEC in April 2019. SMUD adopted an updated IRP in June 2022 and filed the updated IRP with the CEC in September 2022. SMUD’s updated IRP plans for a greater than 92% reduction in GHG emissions by 2030 relative to 1990 levels, which equals approximately 250,000 metric tons of GHG emissions in 2030. See “BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Renewable Energy and Climate Change*.”

On April 29, 2015, the Governor of the State signed Executive Order B-30-15, establishing a goal for the State to reduce GHG emissions to 40% below 1990 levels by 2030. In 2016, the State Legislature passed Senate Bill 32 (“SB 32”), which codified Governor Brown’s goal of reducing the State’s GHG emissions to 40% below 1990 levels by 2030. In 2017, the State Legislature passed Assembly Bill 398 (“AB 398”), explicitly authorizing the continuation of the cap and trade program, with designated changes, through 2030. Subsequently, CARB adopted an initial set of regulatory changes extending the Cap-and-Trade program, including establishing utility sector allowance allocations through 2030. In 2018, CARB completed a rulemaking to implement the cap-and-trade program changes designated by AB 398. These changes include development of a hard price ceiling for the cap-and-trade program and two price-containment points below that ceiling, in an attempt to ensure stable prices in the program. CARB adopted final regulations on December 13, 2018.

In December 2022, CARB approved the agency’s 2022 Scoping Plan, a roadmap to reducing GHG emissions by 85% and achieving economy-wide carbon neutrality by 2045. The Plan does not impose new mandates, but calls for state policymakers and regulatory agencies to implement programs and policies that support the Plan’s goals. In 2023, CARB signaled that they would reopen regulations that govern several programs that SMUD participates in, including Cap and Trade, to align them with the goals set forth in the Scoping Plan. SMUD will monitor and, as appropriate, participate in these forthcoming regulatory proceedings.

In addition, any new projects constructed in the State, including power plants, that may cause a significant adverse impact on the environment must be analyzed under CEQA. Some State agencies have begun using CEQA in novel ways to require mitigation of “significant” GHG emissions caused, either directly or indirectly, by a project. Pursuant to Senate Bill 97 passed in 2007, CARB will assist the Governor’s Office of Planning and Research in setting thresholds of significance under CEQA of GHG impacts from new projects. This is an area of State law that is evolving and untested in the courts. However, there is a risk that any project proponent of an electric system infrastructure project might have to mitigate such potential impacts to a level of less than significance.

On December 3, 2012, the Superior Court issued a ruling in *Cleveland National Forest Foundation v. San Diego Association of Governments* (“SANDAG”), Case No. 2100-00101593, that sided with the

State Attorney General and the other petitioners stating that SANDAG did not follow CEQA when it adopted a \$257 billion regional transportation plan in 2011. The ruling expressly invalidated the certification of the Environmental Impact Report (“EIR”) on the grounds that the EIR should have analyzed the plan’s consistency with the governor’s policy goal to reduce GHG emissions by 80% by 2050 as articulated in the 2005 Executive Order S-03-05. On November 24, 2014, the Fourth Appellate District upheld the trial court in a published decision, and SANDAG appealed to the State Supreme Court. On July 13, 2017, the Supreme Court reversed and held that SANDAG’s decision not to adopt the 2050 goal was not an abuse of discretion. Nevertheless, the Court articulated three clear principles for agencies to follow in their CEQA review of planning documents: 1) agencies must take seriously the significance of even small increases in GHG emissions; 2) they must consider science-based State policy guidance in their decision-making; and 3) they are required to use the best scientific information available to determine whether their planning decisions are consistent with the State’s goals. These principles will apply to SMUD in CEQA reviews of future projects.

On September 29, 2006, the Governor of the State signed into law Senate Bill 1368 (“SB 1368”), the GHG Emissions Performance Standard (“EPS”). SB 1368 limits long-term investments in baseload generation by the State’s utilities to power plants that meet an EPS jointly established by the CEC and the CPUC. The agencies have set the EPS at 1,100 pounds CO<sub>2</sub> per MWh, which is roughly half of the CO<sub>2</sub> emissions rate of a conventional coal-fired power plant. CEC regulations to implement the law for POUs were approved by the Office of Administrative Law on October 16, 2007.

SMUD’s primary supply and demand-side resource needs to meet customers’ electricity usage patterns over the next 10 years are for peaking resources. Currently there is a ban in the State that prohibits the development of nuclear power plants until there is a permanent storage solution for spent fuel rods. With the effective ban on new coal power imports under SB 1368, natural gas-fired, combined cycle power plants would appear to be the primary viable option for fossil fuel-based baseload power plant development absent the implementation of new technologies in connection with other resource options. The reliance on a single fuel source will continue to put pressure on the natural gas market in the United States. SMUD has in place a natural gas procurement plan to mitigate natural gas volatility, see “POWER SUPPLY AND TRANSMISSION – Fuel Supply” above.

On September 16, 2022, the Governor of the State signed into law SB 1158, which requires every retail supplier of electricity to annually report hourly greenhouse gas emissions. The California Energy Commission will establish a process by July 1, 2024, and the implementation date is 2028.

Also on September 16, 2022, the Governor of the State signed into law SB 1020, which creates interim climate targets under which eligible renewable energy resources and zero-carbon resources must supply 90% of all retail sales of electricity to California end-use customers by December 31, 2035, and 95% by December 31, 2040. The bill also requires each State agency to ensure that zero carbon resources and eligible renewable energy resources supply 100 percent of electricity procured on its behalf by December 31, 2035. SMUD provides electricity to a number of State agency buildings and will work with State agencies to comply with this requirement.

**Reliability.** On June 30, 2022, the Governor signed the 2022-23 budget, along with a number of trailer bills, which provide implementing details on the budget line items. Included in AB 205, the energy trailer bill, are a number of reliability programs.

1. CEC Distributed Electricity Backup Assets Program to incentivize the construction of cleaner and more efficient distributed energy assets that would serve as on-call emergency supply or load reduction for the state’s electrical grid during extreme events.

2. CEC Demand Side Grid Support Program to pay customers to reduce demand during stressed grid events this summer. SMUD is actively engaging the CEC on the development of this program.
3. DWR Strategic Reliability Reserve to secure resources for summer reliability or to preserve the option to extend the life of facilities that otherwise would retire, new temporary generators of more than 5 megawatts (MWs), new energy storage systems of at least 20 MWs, generation facilities that use lean, zero-emission fuel technologies, or new zero-emission technologies that can be operational by December 31, 2026.

**Energy Efficiency.** Senate Bill 1037 (“SB 1037”), signed by Governor Schwarzenegger on September 29, 2005, requires that each municipal electric utility, including SMUD, prior to procuring new energy generation resources, first acquire all available energy efficiency, demand reduction and renewable resources that are cost effective, reliable and feasible. SB 1037 also requires each municipal electric utility to report annually to its customers and to the CEC its investment in energy efficiency and demand reduction programs. Further, State Assembly Bill 2021 (“AB 2021”), signed by the Governor on September 29, 2006 requires that the publicly owned utilities establish energy efficiency and demand reduction targets and report and explain the basis of the targets beginning June 1, 2007 and every three years thereafter for a ten year horizon. Future reporting requirements as set forth in AB 2021 include: (i) the identification of sources of funding for the investment in energy efficiency and demand reduction programs, (ii) the methodologies and input assumptions used to determine cost effectiveness, and (iii) the results of an independent evaluation to measure and verify energy efficiency savings and demand reduction program impacts. The information obtained from local publicly owned utilities will be used by the CEC to present the progress made by the publicly owned utilities on the State’s goal of reducing electrical consumption by 10% in ten years and amelioration with the GHG targets presented in Executive Order S-3-05 enacted by the Governor of the State on June 1, 2005.

In response to SB 1037 and AB 2021, SMUD established a specific goal of reducing energy consumption by 15% by 2018 and adopted annual targets for gigawatt hour and megawatt savings. SMUD revisits its energy efficiency goals and programs on a regular basis to ensure compliance with State policies established by SB 1037 and AB 2021 (as modified by SB 350).

SB 350 (passed in 2015) requires the CEC to develop statewide energy efficiency targets for 2030 aimed at doubling the achieved savings, and requires POUs to establish efficiency targets that are “consistent” with those targets. In 2017, the CEC developed a report on the doubling of energy efficiency targets required by SB 350. Both SB 350 and the CEC report contemplate the use of fuel substitution to meet energy efficiency targets and have a strong focus on carbon reduction. In response, SMUD developed a methodology and carbon tool to count fuel substitution, namely switching natural gas end-uses to efficient electric end uses and measuring savings in carbon emissions. SMUD presented its methodology to the joint state agency working group known as the Fuel Substitution Working Group several times in 2019 and adopted a carbon-based metric in early 2020 to guide overall SMUD carbon targets. This goal is expected to facilitate substantial expansion of building electrification and result in more than double the overall amount of energy efficiency being delivered per year, when measured on a carbon reduction basis. The vast majority of this energy efficiency (more than 85%) is expected to be delivered through efficient electrification by 2030.

Also passed in 2015 was AB 802. This bill directed the CEC to develop a State-wide building energy use benchmarking and public disclosure program for those buildings greater than 50,000 square feet. As set forth in regulations adopted by the CEC, building owners are required to report building characteristic information and energy use data each year. The reporting began in 2018 for buildings without residential utility accounts and in 2019 for buildings with 17 or more residential utility accounts. Energy utilities must provide building-level energy use data to building owners upon request.



In order to support the implementation of SB 350 and AB 802, the CEC opened a rulemaking to amend its Title 20 Data Collection regulations, resulting in an expansion of customer data utilities must report to the CEC. The CEC adopted regulations pursuant to the rulemaking in February 2018, and the regulations were approved and went into effect in the Summer of 2018. SMUD has made several data filings under the new regulations. In 2020, the CEC opened a second phase of Data Collection rulemaking to amend regulations necessary to develop the policy reports and analysis as required by statute to assist in the CEC's energy forecasting and assessment activities. The OAL approved the codifying of the regulations from that proceeding on December 30, 2021.

***Electric Transportation Mandates*** Executive Order B-48-18, enacted January 2018, ordered all state entities to work with the private sector and all appropriate levels of government to put at least 5 million zero-emission vehicles on California roads by 2030, as well as 250,000 zero-emission vehicle chargers by 2025.

In September 2020, Governor Newsom signed Executive Order N-79-20 to accelerate actions to mitigate and adapt to climate change, and to more quickly move toward a low-carbon, sustainable and resilient future. Executive Order N-79-20 states the goal of 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035 and 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks.

CARB has proposed or adopted a suite of regulations to support these State policies, including the Zero Emission Forklift Regulation, Advanced Clean Trucks Rule (the "ACT Rule"), Advanced Clean Cars II ("ACC II"), and the Advanced Clean Fleets Rule (the "ACF Rule"). The ACT Rule and ACC II establish increasing zero-emission vehicle ("ZEV") sales requirements for truck and light-duty vehicle manufacturers, respectively. The ACT Rule, which took effect in March 2021, requires that by 2035, at least 55% of Class 2b-3 truck sales are ZEVs, at least 75% of Class 4-8 straight truck sales, and 40% of truck tractor sales. ACC II, which took effect in November 2022, requires that 100% of light-duty passenger car, truck, and SUV sales in California be ZEV by the 2035 model year.

CARB is expected to adopt the ACF Rule in 2023. The proposed ACF Rule would establish ZEV purchase and fleet composition requirements for on-road medium- and heavy-duty ("MHD") fleets in California. Under the proposed ACF Rule, public fleets like SMUD would have two compliance options. The first is a ZEV purchase requirement: 50% of annual MHD vehicle purchases would need to be ZEVs starting in 2024, and 100% starting in 2027. The second is the optional ZEV milestone option, under which the composition of the MHD fleet meets certain ZEV percentages over time, which would provide SMUD with considerably greater compliance flexibility. The proposed ACF Rule would also accelerate the manufacturer ZEV sales requirement to 100% of all MHD truck sales by the 2036 model year.

Additionally, CARB is developing a regulation to drive greater deployment of zero-emission forklifts within fleets throughout the State. This Zero-Emission Forklift Regulation is scheduled for CARB consideration in 2023.

Increases in ZEV adoption and deployment will result in increased customer usage of electricity. The ACF Rule would also require SMUD, as a fleet owner, to transition SMUD's MHD fleet to ZEVs.

***Rooftop Solar Mandate.*** In February, 2018, the CEC approved updates to the 2019 Building Energy Efficiency Standards to require installation of rooftop photovoltaic solar systems for residential buildings under three stories constructed starting in 2020, with an option to satisfy the requirement through community shared solar electric generation or battery storage systems. This "Community Solar" compliance mechanism permits a program administrator, such as a utility, to provide solar power to participating residential customers instead of rooftop solar. SMUD submitted an application to the CEC to

be a program administrator of SMUD's Community Solar program, Neighborhood SolarShares, in 2019, and the CEC approved SMUD's application in February 2020. In 2021, the CEC revised the Community Solar provisions in the 2022 Building Energy Efficiency Standards to include an "opt-out" provision, which will impact the design and implementation of SMUD's Neighborhood SolarShares program. SMUD updated its Neighborhood SolarShares program materials to incorporate the 2022 revisions, which took effect in January 2023, and has received approval from the CEC to continue serving as a program administrator. See also "BUSINESS STRATEGY – Serving SMUD's Customers – *Renewable Options*."

***Renewables Portfolio Standard.*** Senate Bill 100 was passed by the Legislature and approved by Governor Brown on September 10, 2018. The bill sets a 50% RPS target for 2026 and sets compliance period targets at 44% by December 31, 2024, 52% by December 31, 2027, and 60% by December 31, 2030. The bill also creates a statewide planning goal to meet all of the state's retail electricity supply with a mix of RPS-eligible and zero-carbon resources by December 31, 2045.

***Load Management Standards.*** Sections 25213, 25218(e) and 25403.5 of the Public Resources Code mandate and authorize the CEC to adopt rules and regulations to reduce the uneconomic and unnecessary consumption of energy and to manage energy loads, or demand, to help maintain electrical grid reliability. The original Load Management Standards ("LMS") regulations were adopted in 1979 and required the implementation of marginal cost pricing industrial time-of-use rates, and residential load control programs. In October 2022, the CEC adopted an update to the LMS regulations to require the largest electric service providers in California (including SMUD) to develop retail electricity rates that change at least hourly to reflect locational marginal costs and submit those rates to the utility's governing body for approval. The LMS proposes the following: a) voluntary hourly or sub-hourly rates for each customer class or b) a cost-effective program, to be implemented by the utilities by January 2026. The effective date of the LMS regulation is April 1, 2023. The LMS regulations are intended to increase efficiency and demand flexibility in California's electricity grid. SMUD's Pricing team is leading SMUD's LMS implementation work, including the development of a Compliance Plan to be submitted to SMUD's Board by the fourth quarter of 2023 and then to the CEC.

***Energy Storage Systems.*** In September 2010, the State Legislature enacted, and the Governor signed into law, Assembly Bill 2514 ("AB 2514"). On or before March 1, 2012, the governing board of each POU was required to initiate a process to determine appropriate targets, if any, for the utility to procure viable and cost-effective energy storage systems to be achieved by December 31, 2016, and December 31, 2020. The bill required each POU to report certain information to the CEC. In 2014, SMUD set a 0 MW target for 2017, and in 2017 set a 9 MW target for 2020. In 2018, SMUD identified a potential need for 246 MW of storage by 2030. Following SMUD's 2020 compliance report to the CEC in January 2021, going forward SMUD will evaluate and report energy storage planning as part of its IRP update at least once every five years. See also "BUSINESS STRATEGY – Sustainable Power Supply and Transmission – *Energy Storage Systems*."

***Sacramento-San Joaquin River Bay-Delta Processes.*** The Sacramento-San Joaquin River Delta is an expansive inland estuary, formed at the western edge of the California Central Valley by the confluence of the Sacramento and San Joaquin rivers ("Delta"). There are two substantial Delta planning processes with the potential to affect (1) energy available for SMUD's purchase from the Central Valley Project ("CVP") and (2) flows within the Upper American River watershed. These processes are called the Bay-Delta Water Quality Control Plan ("Bay-Delta Plan") and the Delta Conveyance Project.

The Bay-Delta Water Quality Control Plan is updated periodically by the State Water Resources Control Board ("SWRCB"), the last time being in 2006. The current Bay-Delta Plan update process is being implemented in four phases. The first phase considered southern Delta water quality, with a significant focus on San Joaquin River tributaries. Phase 2, which is initially being addressed by a

document under development by SWRCB staff, will address Sacramento River tributaries and various flow related issues, including the critically important one of those tributaries' contribution to Delta outflow. Phase 3 will concern changes to water rights needed to implement Phase 2. A substantial change in Delta outflow requirements could have a major impact on the timing of hydroelectric energy generation by the CVP. SMUD has a long-term agreement with WAPA to purchase some of this power (see "POWER SUPPLY AND TRANSMISSION – Power Purchase Agreements – *Western Area Power Administration*"). On July 18, 2018, the SWRCB released an updated Framework document signaling its staff's intent to propose Delta outflow requirements of 45–65% unimpaired flows for the Sacramento River tributaries (which includes the American River, the upper portions of which are where the UARP sits), though the report will analyze requirements of 35–75%. If these criteria were implemented, they could cut CVP generation by 50 to 63%. Governor Newsom has urged the SWRCB, other agencies and affected parties to execute voluntary agreements to address species' needs and outflow requirements. Although the negotiations have been slow, it is expected they will eventually result in a reasonable compromise. If the agreements do not come to fruition, SMUD plans to fully participate in all regulatory and legal proceedings to argue for consideration and minimization of impacts to hydropower generation. SMUD will assess the potential impacts of proposed modifications to the present outflow objectives on SMUD's operations once the SWRCB makes those available.

In July 2022, the State Department of Water Resources ("DWR") released a Draft Environmental Impact Report ("EIR") to evaluate the potential impacts of carrying out the Delta Conveyance Project; the U.S. Army Corps of Engineers released a separate Environmental Impact Statement to evaluate the effects of the Project pursuant to the National Environmental Policy Act. The Delta Conveyance Project is expected to entail construction of two intakes on the Sacramento River that will carry water to a main tunnel to the California Aqueduct for delivery south of the Delta. The Delta Conveyance Project may pose the potential to exacerbate impacts to already imperiled aquatic species, and in turn could have indirectly prompted regulatory agencies to require third parties, such as SMUD, to compensate by making changes to their operations. The Bureau of Reclamation is not a party to the Delta Conveyance Project, which should eliminate the potential for CVP power to be used to supply Delta Conveyance Project pumps. SMUD will monitor the proceedings and participate as necessary to ensure any impacts to SMUD interests are minimized.

**Proposition 26.** Proposition 26 was approved by the electorate on November 2, 2010 and amends Article XIII A and Article XIII C of the State Constitution. Proposition 26 imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State, unless the fees and charges are expressly excluded. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes, unless the fees and charges are expressly excluded. The initiative, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters pursuant to Proposition 13, approved in 1978, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific local government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the local government of providing the service or product. Proposition 26 is not retroactive as applied to local governments. Although SMUD believes that the initiative was not intended to apply to fees for utility services such as those charged by SMUD and its fees and charges meet the criteria of the exclusion described above, it is possible that Proposition 26 could be interpreted to further limit fees and charges for electric utility services and/or require stricter standards for the allocation of costs among customer classes. SMUD is unable to predict at this time how Proposition 26 will be interpreted by the courts or what its ultimate impact will be. As of the date of this Official Statement, SMUD is unaware of any fees or charges relating to SMUD's service that would have to be reduced or eliminated because of Proposition 26. However, certain of SMUD's adopted rate increases have been challenged. See "LEGAL PROCEEDINGS – Proposition 26 Lawsuit."

**Wildfire Legislation.** In September 2016, Governor Brown signed into law Senate Bill 1028 (“SB 1028”), which requires POU’s (including SMUD), IOUs, and electrical cooperatives to construct, maintain and operate their electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by electrical lines and equipment. SB 1028 also requires the governing board of POU’s to make an initial determination whether any portion of that geographical area has a significant risk of catastrophic wildfire resulting from those electrical lines and equipment, based on historical fire data and local conditions, and in consultation with the fire departments or other entities responsible for control of wildfires within the geographical area.

Senate Bill 901 (“SB 901”), signed into law in September 2018 by Governor Brown, further addresses response, mitigation and prevention of wildfires. The bill requires POU’s, including SMUD, before January 1, 2020, and annually thereafter, to prepare a wildfire mitigation plan and present it in a public meeting to their governing board. SB 901 requires POU’s to accept comments on the wildfire mitigation plan from the public, other local and State agencies, and interested parties, and to verify that the plan complies with all applicable rules, regulations, and standards, as appropriate. The bill requires a qualified independent evaluator to review and assess the comprehensiveness of its wildfire mitigation plan and present its report to the board in a public meeting.

In 2019, Governor Newsom released his comprehensive strategy on wildfires, laying the groundwork for legislative discussions on utility wildfire liability and allocating costs associated with catastrophic wildfires, among other things. While the Governor supported a modification of State’s current inverse condemnation doctrine, under which utilities are held liable for wildfire damage without regard to the fault of the utility, no bill was introduced. AB 1054 (Holden) did pass in 2019 that included several provisions for solvent investor owned utilities, including the development of a fund to help pay victim claims for utility ignited wildfires. The bill also created a new Wildfire Safety Division within the CPUC to prioritize wildfire safety throughout the State, and established an appointed Wildfire Safety Advisory Board to advise and make recommendations relating to wildfire safety to this new Division. For POU’s, the bill requires submittal of annual wildfire mitigation plans to the Advisory Board for review and advisory opinions.

Senate Bill 247 (“SB 247”), signed by Governor Newsom on October 2, 2019, establishes notification, audit and reporting guidelines for electrical corporations relating to vegetation management requirements in the wildfire mitigation plan. SB 247 also specifies the qualifications for electrical line clearance tree trimmers performing work to comply with the vegetation management requirements in an electrical corporation’s wildfire mitigation plan and requires that qualified line clearance tree trimmers be paid no less than a specified prevailing wage rate. POU’s are not required to adhere to SB 247, but the market impacts are projected to significantly increase SMUD’s annual vegetation management costs.

**Nonstock Security.** SMUD sponsored legislation in 2019, Assembly Bill 689, which was signed into law by Governor Newsom on September 5, 2019. This bill expressly allows SMUD the ability to operate a pilot project (effective January 1, 2020, to January 1, 2025), of up to three acquisitions, to hold nonstock security in a corporation or other private entity if acquired as part of a procurement of goods or services from that entity, provided that no separate funding is expended solely for the nonstock security. This will allow SMUD to realize the financial benefits of its investments, partnerships, and intellectual property.

On September 15, 2022, the Board authorized the CEO & GM to enter into a joint collaboration agreement with ESS Tech, Inc. (“ESS”). Under that agreement SMUD would procure from ESS iron flow batteries for utility scale long-duration energy storage applications. The agreement contemplates a multi-year phased deployment of up to 200MW/2GWh of long duration energy storage by 2028. As part of that procurement, SMUD acquired nonstock security in ESS.

## **Future Regulation**

The electric industry is subject to continuing legislative and administrative reform. States and Federal entities routinely consider changes to the way in which they regulate the electric industry. Recently, both further deregulation and forms of additional regulation have been proposed for the industry, which has been highly regulated throughout its history. SMUD is unable to predict at this time the impact any such proposals will have on the operations and finances of SMUD or the electric utility industry generally.

## **OTHER FACTORS AFFECTING THE ELECTRIC UTILITY INDUSTRY**

### **CAISO Market Initiatives**

The CAISO routinely conducts a number of initiatives and stakeholder processes that propose certain operational and market changes that impact SMUD. SMUD does and will continue to monitor the various initiatives proposed by the CAISO and participate in its stakeholder processes to ensure that its interests are protected.

SMUD participates in the CAISO market for only a small percentage of energy needs, however, it continues to benefit from its participation in the CAISO's WEIM and is currently exploring further participation in the CAISO's proposed Extended Day Ahead Market ("EDAM") (both the WEIM and EDAM are described further below). Along with monitoring other key market initiatives at the CAISO which impact wholesale energy markets, SMUD will continue to actively participate in all processes related to EIM and EDAM, to ensure both participation models are beneficial to SMUD's customers. Given its success in EIM and active engagement with the CAISO and CAISO leadership, SMUD has earned a key role in the stakeholder processes related to these important and evolving markets.

### **Resource Adequacy Filing**

In September 2005, the State Legislature enacted and the Governor signed into law Assembly Bill 380 ("AB 380"), which requires the CPUC to establish resource adequacy requirements for all LSEs within the CPUC's jurisdiction. In addition, AB 380 requires publicly owned utilities, including SMUD, to meet the most recent resource adequacy standard as adopted by the WECC. In October 2005, the CPUC issued a decision stating that LSEs under its jurisdiction would be required, by June 2006, to demonstrate that they have acquired capacity sufficient to serve their forecast retail customer load plus a 15-17% planning reserve margin. In March 2021, the CPUC issued a decision requiring the three largest investor owned utilities (PG&E, Southern California Edison, and San Diego Gas & Electric) to target a minimum of 2.5% of incremental resources for their planning reserve margin for 2021 and 2022. Subsequently, in December 2021, the CPUC issued another decision that increased the investor-owned utilities' minimum target by an additional 2.5-5% of incremental resources for 2022 (which creates an effective planning reserve margin of 20-22%) and extended this target to 2023. And in June 2022, the CPUC issued a decision adopting a planning reserve margin of 16% for 2023, and 17% for 2024, for all LSEs under its jurisdiction. The WECC has yet to formally adopt a resource adequacy requirement. However, consistent with current WECC practices, SMUD utilizes a 15% planning reserve margin when assessing the need for future resources.

### **Western Energy Imbalance Market and Extended Day Ahead Market**

Federal and state policymakers have long-promoted the development of organized markets in the west as a means (among other reasons) to better integrate intermittent renewable resources into the electric system, the first of which markets is the Western EIM, operated by the CAISO. The CAISO successfully launched the WEIM, a real time only imbalance market, on October 1, 2014, with PacifiCorp as the first participant. Since this time, the WEIM has grown significantly with the additions of NV Energy, Arizona

Public Service, Puget Sound Energy, Portland General Electric, Idaho Power, Powerex, BANC, the Salt River Project, Seattle City Light, the Turlock Irrigation District, the Los Angeles Department of Water and Power, NorthWestern Energy, the Public Service Company of New Mexico, Avista, Tacoma Power, Bonneville Power Administration, and Tucson Electric Power. Additionally, the WEIM footprint will continue to expand further in 2023 with the additions of Avangrid, WAPA Desert Southwest Region, and El Paso Electric. SMUD expects the WEIM to comprise a significant portion of the Western Interconnection in 2023.

To date, participation in the WEIM by SMUD has shown significant financial and operational benefits, in addition to furthering an already favorable working partnership between SMUD and the CAISO to develop solutions to integrate renewable resources in support of carbon reduction goals.

BANC's participation not only signaled the first public power participant in the EIM, but it was also implemented utilizing a unique phased approach, with SMUD (as the largest member of BANC) implementing so-called WEIM Phase 1 in 2019, while the other BANC members and WAPA (the "Phase 2 Parties") joined after further evaluation and approvals in March of 2021.

Part of the BANC Phase 2 participation included reimbursement to SMUD certain upfront infrastructure costs incurred by SMUD in Phase 1 to establish BANC as an WEIM Entity. This reimbursement to SMUD by the Phase 2 Parties has been completed.

The CAISO and WEIM participants, including SMUD and BANC, have participated in developing a design framework to extend the successful WEIM real time framework to the EDAM. Like WEIM, EDAM would broaden the access to regional resources for the reliable integration of renewable resources, only over a longer (day ahead) time horizon by allowing for a more economic and efficient optimization of regional resources by providing grid operators greater time (day ahead as opposed to real time) to commit or decommit units based on market price signals. Only participants in the WEIM will be allowed to extend their participation to EDAM. The CAISO launched a public stakeholder initiative and utilized most of 2022 developing the EDAM design. On February 1, 2023 the CAISO Board of Governors and EIM Governing Body approved the EDAM proposal. Tariff development, regulatory approvals and implementation activities will take place in 2023 and 2024, with expected market go-live first quarter 2025. SMUD (and BANC) will likely need to consider its participation before 2024 if it wishes to on-board in time for the first phase of EDAM participation in 2025. Similar to the process around WEIM participation, SMUD, along with BANC, are performing cost-benefit studies to ensure EDAM participation will expand on the existing WEIM benefits prior to seeking approvals to proceed.

## **PG&E Bankruptcy**

On January 14, 2019, PG&E and its parent company, PG&E Corporation, announced their intention to file, on or about January 29, 2019, for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code") mainly as a result of wildfire liability claims and exposure. On January 29, 2019, PG&E and PG&E Corporation filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code (the "Bankruptcy Code"). On May 28, 2020, the CPUC approved PG&E's Plan of Reorganization. On June 20, 2020 the United States Bankruptcy Court for the Northern District of California confirmed PG&E's Plan of Reorganization. SMUD does not anticipate any material impacts to SMUD in connection with PG&E's Plan of Reorganization.

In addition, other electric utilities, including the other major IOUs in the State, Southern California Edison and San Diego Gas & Electric Company, have experienced credit rating downgrades as a result of potential wildfire liabilities exposure, which may have implications for the electric market generally.

## Other Factors

The electric utility industry in general has been, or in the future may be, affected by a number of other factors which could impact the financial condition and competitiveness of many electric utilities and the level of utilization of generating and transmission facilities. In addition to the factors discussed above, such factors include, among others, (a) effects of compliance with rapidly changing environmental, safety, licensing, regulatory and legislative requirements other than those described above; (b) changes resulting from conservation and demand side management programs on the timing and use of electric energy; (c) changes resulting from a national energy policy; (d) effects of competition from other electric utilities (including increased competition resulting from mergers, acquisitions, and “strategic alliances” of competing electric and natural gas utilities and from competitors transmitting less expensive electricity from much greater distances over an interconnected system) and new methods of, and new facilities for, producing low cost electricity; (e) the repeal of certain federal statutes that would have the effect of increasing the competitiveness of many IOUs; (f) increased competition from independent power producers and marketers, brokers and federal power marketing agencies; (g) “self-generation” or “distributed generation” (such as solar, microturbines and fuel cells) by industrial and commercial customers and others; (h) issues relating to the ability to issue tax exempt obligations, including severe restrictions on the ability to sell to nongovernmental entities electricity from generation projects and transmission service from transmission line projects financed with tax exempt obligations; (i) effects of inflation on the operating and maintenance costs of an electric utility and its facilities; (j) changes from projected future load requirements; (k) increases in costs and uncertain availability of capital; (l) issues relating to supply chains and the uncertain availability or increased costs of necessary materials; (m) shifts in the availability and relative costs of different fuels (including the cost of natural gas); (n) sudden and dramatic increases in the price of energy purchased on the open market that may occur in times of high peak demand in an area of the country experiencing such high peak demand, such as has occurred in the State; (o) issues relating to risk management procedures and practices with respect to, among other things, the purchase and sale of natural gas, energy and transmission capacity; (p) other legislative changes, voter initiatives, referenda and statewide propositions; (q) effects of changes in the economy; (r) effects of possible manipulation of the electric markets; (s) natural disasters or other physical calamities, including, but not limited to, earthquakes, droughts, severe weather, wildfires and floods; (t) changes to the climate, including increasing volatility in rainfall in the Western United States and a reduction in the depth and duration of the Sierra snowpack; (u) issues relating to cyber-security; and (v) outbreaks of infectious diseases or the occurrence of pandemics. Any of these factors (as well as other factors) could have an adverse effect on the financial condition of any given electric utility, including SMUD’s electric utility, and likely will affect individual utilities in different ways.

SMUD is unable to predict what impact such factors will have on the business operations and financial condition of SMUD’s electric system, but the impact could be significant. SMUD has taken major steps to mitigate the impacts of many of the changes. This Official Statement includes a brief discussion of certain of these factors. This discussion does not purport to be comprehensive or definitive, and these matters are subject to change subsequent to the date hereof. Extensive information on the electric utility industry is available from the legislative and regulatory bodies and other sources in the public domain, and potential purchasers of the [2023 Bonds] should obtain and review such information.

## **APPENDIX B**

### **2022 AND 2021 CONSOLIDATED FINANCIAL STATEMENTS AND REPORT OF INDEPENDENT ACCOUNTANTS**



## APPENDIX C

### BOOK-ENTRY SYSTEM

The information in this Appendix regarding DTC has been provided by DTC, and SMUD takes no responsibility for the accuracy or completeness thereof. SMUD cannot and does not give any assurances that DTC, DTC Participants or Indirect Participants will distribute the Beneficial Owners either (a) payments of interest or principal with respect to the 2023 Subordinated Bonds or (b) certificates representing ownership interest in or other confirmation of ownership interest in the 2023 Subordinated Bonds, or that they will so do on a timely basis or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Official Statement.

The Depository Trust Company (“DTC”) New York, NY, will act as securities depository for the 2023 Subordinated Bonds. The 2023 Subordinated Bonds will be issued as fully registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully registered Bond certificate will be issued for each series of the 2023 Subordinated Bonds, each in the aggregate principal amount of such series, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues and money market instruments from over 100 countries that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations. DTC is a wholly owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others, such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of the 2023 Subordinated Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the 2023 Subordinated Bonds on DTC’s records. The ownership interest of each actual purchaser of each 2023 Subordinated Bond (“Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the 2023 Subordinated Bonds are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their beneficial ownership interests in the 2023 Subordinated

Bonds, except in the event that use of the book-entry system for the 2023 Subordinated Bonds is discontinued.

To facilitate subsequent transfers, all 2023 Subordinated Bonds deposited by Direct Participants with DTC are registered in the name of DTC's partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of the 2023 Subordinated Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the 2023 Subordinated Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such 2023 Subordinated Bonds are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of the 2023 Subordinated Bonds may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the 2023 Subordinated Bonds, such as redemptions, tenders, defaults, and proposed amendments to the bond documents. For example, Beneficial Owners of the 2023 Subordinated Bonds may wish to ascertain that the nominee holding the 2023 Subordinated Bonds for their benefit has agreed to obtain and transmit notices to Beneficial Owners.

Redemption notices shall be sent to DTC. If less than all of a series of the 2023 Subordinated Bonds is being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in the 2023 Subordinated Bonds of such series to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the 2023 Subordinated Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to SMUD as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the 2023 Subordinated Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Principal, premium, redemption proceeds and interest payments on the 2023 Subordinated Bonds will be made to Cede & Co. or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from SMUD or the Trustee, on a payment date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participants and not of DTC, its nominee, the Trustee or SMUD, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal, premium, redemption proceeds and interest to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Trustee. Disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of the Direct and Indirect Participants.

A Beneficial Owner shall give notice to elect to have its 2023 Subordinated Bonds purchased or tendered, through its Participant, to the Underwriter, and shall effect delivery of such 2023 Subordinated Bonds by causing the Direct Participant to transfer the Participant's interest in the 2023 Subordinated

Bonds, on DTC's records, to the Underwriter. The requirement of physical delivery of 2023 Subordinated Bonds in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the 2023 Subordinated Bonds are transferred by Direct Participants on DTC's records and followed by a book-entry credit of tendered 2023 Subordinated Bonds to the Underwriter's DTC account.

DTC may discontinue providing its services as depository with respect to the 2023 Subordinated Bonds at any time by giving reasonable notice to SMUD or the Trustee. Under such circumstances, in the event that a successor depository is not obtained, bond certificates are required to be printed and delivered.

SMUD may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, bond certificates for such 2023 Subordinated Bonds will be printed and delivered to DTC.

**Neither SMUD or the Trustee will have any responsibility or obligation to Participants, to Indirect Participants or to any Beneficial Owner with respect to (i) the accuracy of any records maintained by DTC, any Participant, or any Indirect Participant; (ii) the payment by DTC or any Participant or Indirect Participant of any amount with respect to the principal of or premium, if any, or interest on the 2023 Subordinated Bonds; (iii) any notice which is permitted or required to be given to Holders under the Resolution; (iv) the selection by DTC, any Participant or any Indirect Participant of any person to receive payment in the event of a partial redemption of 2023 Subordinated Bonds; (v) any consent given or other action taken by DTC as Bondholder; or (vi) any other procedures or obligations of DTC, Participants or Indirect Participants under the book-entry system.**

## **APPENDIX D**

### **SUMMARY OF CERTAIN PROVISIONS OF THE SUBORDINATE RESOLUTION**

The following is a summary of certain provisions of the Subordinate Resolution. Other provisions of the Subordinate Resolution are described under the caption “SECURITY FOR THE SUBORDINATED BONDS.” This summary is not to be considered a full statement of the terms of the Subordinate Resolution and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in the Subordinate Resolution.

#### **Certain Definitions**

“Assumed Interest Payments” means, for any fiscal year or period, interest which would accrue during such fiscal year or period on an amount equal to the then unamortized balance of the remaining sum of Assumed Principal Payments and at the interest rate on the date of such calculation on the Parity Subordinated Debt to which such Assumed Principal Payments relate.

“Assumed Interest Rate” for any Parity Bond or Parity Subordinated Debt means, for any fiscal year or period, the interest rate thereon on the date of such calculation.

“Assumed Principal Payments” means for any fiscal year or period the sum of the following amounts falling within such fiscal year or period: each Excluded Principal Payment amortized equally over the years (pro rata in the case of a partial year) in the period commencing on the stated due date for such Excluded Principal Payment and ending on the date 30 years from the date of issuance of the Parity Subordinated Debt to which such Excluded Principal Payment relates.

“Bond Debt Service” means all amounts required to be paid under the Subordinate Resolution from Net Revenues for principal, interest and reserve fund requirements on the Senior Bonds and all Parity Bonds then outstanding, as the same become due and payable.

“Defeasance Securities” shall mean and include any of the following securities, if and to the extent the same are at the time legal for investment of SMUD’s funds:

- (i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the federal agencies set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

- (ii) any bonds or other obligations of any state of the United States of America or of any agency, instrumentality or local governmental unit of any such state (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or other obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described in the clause (i) above which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the maturity date or dates thereof or the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (ii), as appropriate, and (c) as to which the principal of and interest on the bonds and obligations of the character described in the clause (i) above which have been deposited in such fund along with any cash on deposit in such

fund are sufficient to pay principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (ii) on the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (ii), as appropriate;

(iii) bonds, debentures, or other evidences of indebtedness issued or guaranteed by any agency or corporation which has been or may thereafter be created pursuant to an Act of Congress as an agency or instrumentality of the United States of America; and

(iv) with respect to the defeasance of any particular series of Bonds, any other securities specified in the Supplemental Resolution providing for their issuance.

“Electric System” and “Enterprise” means the entire electric system of SMUD, together with all additions, betterments, extensions and improvements to said system or any part thereof. The entire electric system of SMUD shall be deemed to be and to constitute a single unified and integrated system for the furnishing of electric energy to consumers of SMUD and a single enterprise. The terms “Electric System” and “Enterprise” shall have the same meaning and may be used interchangeably.

“Energy Payments” means, when used with respect to the Electric System, all actual costs incurred, or charges made therefor, by SMUD in any particular fiscal year or period to which said term is applicable for purchased power (including power purchased from any special district included within the boundaries of SMUD), electric and thermal energy and capacity and under contracts providing for payments by SMUD for electric or thermal energy or capacity whether or not such energy or capacity is delivered or capable of being delivered or otherwise made available to or received by or for the account of SMUD.

“Excluded Principal Payments” shall mean each payment of principal of Parity Subordinated Debt which the Board of Directors of SMUD determines (on a date not later than the date of issuance of such Parity Subordinated Debt) that SMUD intends to pay with moneys which are not Revenues. No such determination shall affect the security for such Parity Subordinated Debt or the obligation of SMUD to pay such payments from Revenues.

“Financial Products Agreement” means an interest rate swap, cap, collar, option, floor, forward or other hedging agreement, arrangement or security, however denominated, entered into by SMUD with a Qualified Provider not for investment purposes but with respect to specific Parity Bonds, Subordinated Bonds or Parity Subordinated Debt for the purpose of (1) reducing or otherwise managing SMUD’s risk of interest rate changes or (2) effectively converting SMUD’s interest rate exposure, in whole or in part, from a fixed rate exposure to a variable rate exposure, or from a variable rate exposure to a fixed rate exposure.

“Financial Product Payments” means payments periodically required to be paid to a counterparty by SMUD pursuant to a Financial Products Agreement. For the purpose of complying with any coverage test under the Subordinate Resolution, SMUD (or its consultant) may assume, with respect to any prospective Financial Product Payments that may adjust or vary pursuant to the terms of the related Financial Products Agreement, that the index or benchmark upon which the prospective Financial Product Payments are based shall be fixed for the prospective calculation period at the lesser of (a) the index or benchmark in effect as of the date of calculation, or (b) average rate of such index or benchmark over the most recent twelve calendar months preceding the date of calculation. If a twelve-month average index or benchmark as described in clause (b) is not calculable due to insufficient historic data or other reasons, SMUD (or its consultant) shall use the index or benchmark in effect as of the date of calculation.

“Financial Product Receipts” means amounts periodically required to be paid to SMUD by a counterparty pursuant to a Financial Products Agreement. For the purpose of complying with any coverage

test under the Subordinate Resolution, SMUD (or its consultant) may assume, with respect to any prospective Financial Product Receipts that may adjust or vary pursuant to the terms of the related Financial Products Agreement, that the index or benchmark upon which the prospective Financial Product Receipts are based shall be fixed for the prospective calculation period at the lesser of (a) the index or benchmark in effect as of the date of calculation, or (b) average rate of such index or benchmark over the most recent twelve calendar months preceding the date of calculation. If a twelve-month average index or benchmark as described in clause (b) is not calculable due to insufficient historic data or other reasons, SMUD (or its consultant) shall use the index or benchmark in effect as of the date of calculation.

“Maintenance and Operation Costs” means, when used with respect to the Electric System, all actual maintenance and operation costs incurred, or charges made therefor, by SMUD in any particular fiscal year or period to which said term is applicable, but only if said charges are made in conformity with generally accepted accounting principles, and exclusive in all cases of depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment of principal, or amortization, of bonded or other indebtedness of SMUD.

Such maintenance and operation costs of the Electric System include, generally, purchased power (including power purchased from any special district included within the boundaries of SMUD), and such part of the cost of fuel of any type or character (including nuclear fuel), taxes, salaries and wages, fees for services, materials and supplies, rents, office supplies and all other costs as are charged directly or apportioned to the operation and maintenance of the generation, transmission and distribution system, customer accounts, sales and administrative functions, or to the general operation of SMUD. Said term does not include costs, or charges made therefor, for capital additions, replacements, betterments, extensions or improvements to or retirements from the Electric System, which under generally accepted accounting principles are properly chargeable to the capital account or the reserve for depreciation, and does not include losses from the sale, abandonment, reclassification, revaluation or other disposition of any properties of SMUD nor such property items, including taxes and fuel, which are capitalized pursuant to the then existing accounting practice of SMUD.

“Net Revenues” for any fiscal period means the sum of (a) the Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by SMUD from the Rate Stabilization Fund for treatment as Revenues for such fiscal period, less the sum of (c) all Maintenance and Operation Costs for such fiscal period, (d) all Energy Payments for such fiscal period not included in Maintenance and Operation Costs for such fiscal period, and (e) the amounts, if any, withdrawn by SMUD from Revenues for such fiscal period for deposit in the Rate Stabilization Fund pursuant to the Subordinate Resolution.

“Net Subordinated Revenues” means Net Revenues less Bond Debt Service.

“Parity Bonds” includes the Senior Bonds and all revenue bonds issued on a parity with the Senior Bonds as provided or permitted in the Senior Bond Resolution. No Parity Bonds (other than the Senior Bonds) are currently outstanding.

“Parity Subordinated Debt” means the Subordinated Bonds and all revenue bonds of SMUD having an equal lien and charge upon Net Subordinated Revenues and therefore payable on a parity with the Subordinated Bonds and junior to the Parity Bonds.

“Qualified Provider” means any counterparty to a Financial Products Agreement if the unsecured long-term debt obligations of such counterparty (or of the parent or a subsidiary of such counterparty if such parent or subsidiary unconditionally guarantees the performance of such counterparty under such Financial Products Agreement and the Trustee receives an opinion of counsel to the effect that such guarantee is a valid and binding agreement of such parent or subsidiary), or obligations secured or supported by a letter of credit, contract, guarantee, agreement, insurance policy or surety bond issued by such counterparty (or such guarantor parent or subsidiary), are rated in one of the three highest rating categories of a national rating agency (without regard to any gradation or such rating category) at the time of the execution and delivery of the Financial Products Agreement.

“Revenues” means all charges received for, and all other income and receipts derived by SMUD from, the operation of the Electric System, or arising from the Electric System, including income derived from the sale or use of electric energy generated, transmitted or distributed by any facilities of the Electric System, together with any receipts derived from the sale of any property pertaining to the Electric System or incidental to the operation of the Electric System or from any services performed by SMUD in connection with or incidental to the Electric System, or from any other source whatsoever directly or indirectly derived from the Electric System, but exclusive in every case of any moneys derived from the levy or collection of taxes upon any taxable property in SMUD.

The term “Revenues” also includes any income or revenues derived from the wholesale sale of water developed by the White Rock Project (as defined in Resolution No. 4775), or the Upper American River Project (as defined in Resolution No. 4938), but does not include revenues or income derived from the retail distribution of water through any distribution facility thereafter acquired by SMUD.

The term “Revenues” also includes all interest, profits or other income derived from the investment of any moneys in any fund or account established under the Subordinate Resolution or the Senior Bond Resolution.

### **Additional Covenants**

The Subordinate Resolution contains the following additional covenants, among others:

- (a) That the Electric System will be maintained in good repair, working order and condition at all times, and will be continuously operated in an efficient and economical manner.
- (b) That SMUD will comply with all lawful orders of any governmental agency or authority having jurisdiction in the premises (except while the validity or application thereof is being contested in good faith).
- (c) That proper records and accounts will be maintained of all transactions relating to the Electric System and the Revenues (open to inspection by the Trustee and the Holders of not less than 10 percent in principal amount of the Subordinated Bonds), to be audited annually by an independent certified public accountant within 90 days after close of the fiscal year, and copies of such financial statements supplied to Bondholders on request.

### **Tax Covenants**

SMUD agrees in the Subordinate Resolution not to take any action which would result in interest on the 2023 Subordinated Bonds not being excluded from gross income for federal income tax purposes. SMUD also agrees to establish a separate Rebate Fund for the 2023 Subordinated Bonds and to deposit therein such amounts as are necessary to make the required rebate payments to the United States

Government under the Internal Revenue Code of 1986. Such deposits will be made from any Revenues legally available to SMUD after payment of maintenance and operation costs and Energy Payments, principal of and interest on the Parity Bonds, principal of and interest on the Subordinated Bonds, and any other obligations secured by the Revenues. Amounts in the Rebate Fund, and any earnings thereon, shall be paid to the United States Government as provided in the Tax Certificate.

### **Amendment of the Subordinate Resolution**

The Subordinate Resolution and the rights and obligations of SMUD and of the Holders of the Subordinated Bonds may be modified or amended at any time pursuant to the affirmative vote at a meeting of Bondholders, or with the written consent without a meeting, of the Holders of 60% in aggregate principal amount of the Subordinated Bonds then outstanding, provided that no such modification or amendment shall (i) extend the fixed maturity of any Subordinated Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Subordinated Bond so affected, or (ii) reduce the aforesaid percentage of Subordinated Bonds required for consent to an amendment or modification, without the consent of the Holders of all the Subordinated Bonds then outstanding. Modifications or amendments may be made, without the consent of any Bondholders, to add covenants of SMUD or to surrender rights reserved by SMUD in the Subordinate Resolution, to cure ambiguities or defective or inconsistent provisions or in regard to questions arising under the Subordinate Resolution without adversely affecting the interests of the Bondholders, or to provide for the issuance of a Series of Subordinated Bonds, subject to the provisions contained in the Subordinate Resolution with respect thereto.

### **Events of Default and Remedies of Bondholders**

*Events of Default.* The Subordinate Resolution declares each of the following to be an event of default:

(a) Failure to pay the principal of and premium on any Subordinated Bond when due and payable;

(b) failure to pay any installment of interest on any Subordinated Bond when due and payable, if such default continues for a period of 30 days;

(c) if the principal of any Parity Bonds shall be declared to be due and payable on account of the occurrence of a default under or breach of the terms thereof or the Senior Bond Resolution or a similar instrument; and

(d) if, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of SMUD or of the whole or any substantial part of its property, and such custody or control shall not be terminated or stayed within 60 days.

then and in each and every case during the continuance of such event of default, the Trustee or the Holders of not less than a majority in aggregate principal amount of the Subordinated Bonds at the time outstanding shall be entitled, upon notice in writing to SMUD, to declare the principal of all of the Subordinated Bonds then outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in the Subordinate Resolution or in the Subordinated Bonds contained to the contrary notwithstanding.

*Trustee to Represent Subordinated Bondholders.* The Trustee is appointed as trustee to represent the Subordinated Bondholders in the matter of exercising and prosecuting on their behalf such rights and



remedies as may be available to such Holders under the provisions of the Subordinated Bonds and the Subordinate Resolution, as well as under the Act or other provisions of applicable law. Upon any default or other occasion giving rise to a right of the Trustee to represent the Subordinated Bondholders, the Trustee may take such action as may seem appropriate to it, and, upon the request in writing of the Holders of twenty-five percent (25%) in aggregate principal amount of the Subordinated Bonds then outstanding, which request shall specify such default or occasion and the action to be taken by the Trustee, and upon being furnished with indemnity satisfactory to it, the Trustee shall take such action on behalf of the Bondholders as may have been requested.

*Remedies.* In case one or more of the events of default shall happen, then and in every such case the Holder of any Subordinated Bond at the time outstanding shall be entitled to proceed to protect and enforce the rights vested in such Holder by the Subordinate Resolution by such appropriate judicial proceeding as such Holder shall deem most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in the Subordinate Resolution, or in aid of the exercise of any powers granted in the Subordinate Resolution, or to enforce any other legal or equitable right vested in the Holders of Subordinated Bonds by the Subordinate Resolution or by law

*Distribution of Assets.* Upon any distribution of assets of SMUD upon any dissolution, winding up, liquidation or reorganization of SMUD, whether in bankruptcy, insolvency, reorganization or receivership proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of SMUD or upon any acceleration of maturity of the Subordinated Bonds by declaration or otherwise,

(a) the holders of all Parity Bonds shall first be entitled to receive payment in full of the principal thereof (and premium, if any) and interest due thereon, or provision shall be made for such payment in cash, before the Holders of the Subordinated Bonds are entitled to receive any payment on account of the principal of (or premium, if any) or interest on the indebtedness evidenced by the Subordinated Bonds;

(b) any payment by, or distribution of assets of, SMUD of any kind or character, whether in cash, property or securities, to which the Holders of the Subordinated Bonds or the Trustee would be entitled except for the provisions of the Subordinate Resolution shall be paid or delivered by the person making such payment or distribution, whether a trustee in bankruptcy, a receiver or liquidating trustee or otherwise, directly to the holders of Parity Bonds or their representative or representatives or to the trustee or trustees under the Senior Bond Resolution or any similar instrument under which any instruments evidencing any of such Parity Bonds may have been issued, ratably according to the aggregate amounts remaining unpaid on account of the Parity Bonds held or represented by each, to the extent necessary to make payment in full of all Parity Bonds remaining unpaid after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Parity Bonds; and

(c) in the event that, notwithstanding the foregoing, any payment by, or distribution of assets of, SMUD of any kind or character, whether in cash, property or securities shall be received by the Trustee or the Holders of the Subordinated Bonds before all Parity Bonds are paid in full, such payment or distribution shall be held in Trust for the benefit of, and shall be paid over to the holders of such Parity Bonds or their representative or representatives or to the trustee or trustees under the Subordinate Resolution or any similar instrument under which any instruments evidencing any of such Parity Bonds may have been issued, ratably as aforesaid, for application to the payment of all Parity Bonds remaining unpaid until all such Parity Bonds shall have been paid in full, after giving effect to any concurrent payment or distribution (or provision therefor) to the holders of such Parity Bonds.

**Discharge of Subordinate Resolution**

The Subordinate Resolution may be discharged by depositing with the Trustee in trust, moneys or Defeasance Securities, in such amount as the Trustee shall determine will, together with the interest to accrue thereon, be fully sufficient to pay and discharge the indebtedness on all Subordinated Bonds at or before their respective maturity dates.

## **APPENDIX E**

### **SUMMARY OF CERTAIN PROVISIONS OF THE SENIOR BOND RESOLUTION**

The following is a summary of certain provisions of the Senior Bond Resolution. This summary is not to be considered a full statement of the terms of the Senior Bond Resolution and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not otherwise defined in this Official Statement shall have the meanings ascribed thereto in the Senior Bond Resolution.

Between July 1997 and August 2003, SMUD received consents to amend the Senior Bond Resolution from the owners of the requisite percentage of Outstanding Senior Bonds. Pursuant to the authority granted by such consents, SMUD amended the Senior Bond Resolution in October 2003 by adopting the Forty-Eighth Supplemental Resolution and the Forty-Ninth Supplemental Resolution. The following summary of the Senior Bond Resolution reflects such amendments.

#### **Certain Definitions**

“Energy Payments” means, when used with respect to the Electric System, all actual costs incurred, or charges made therefor, by SMUD in any particular fiscal year or period to which said term is applicable for purchased power (including power purchased from any special district included within the boundaries of SMUD), electric and thermal energy and capacity under contracts providing for payments by SMUD for electric or thermal energy or capacity whether or not such energy or capacity is delivered or capable of being delivered or otherwise made available to or received by or for the account of SMUD.

“Net Revenues” for any fiscal period means the sum of (a) the Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by SMUD from the Rate Stabilization Fund for treatment as Revenues for such fiscal period, less the sum of (c) all Maintenance and Operation Costs for such fiscal period, (d) all Energy Payments for such fiscal period not included in Maintenance and Operation Costs for such fiscal period, and (e) the amounts, if any, withdrawn by SMUD from Revenues for such fiscal period for deposit in the Rate Stabilization Fund pursuant to the Senior Bond Resolution.

“Parity Bonds” includes the Senior Bonds and all revenue bonds issued on a parity with the Senior Bonds as provided or permitted in the Senior Bond Resolution. No Parity Bonds (other than the Senior Bonds) are currently outstanding.

“Revenues” means all charges received for, and all other income and receipts derived by SMUD from, the operation of the Electric System, or arising from the Electric System, including income derived from the sale or use of electric energy generated, transmitted or distributed by any facilities of the Electric System, together with any receipts derived from the sale of any property pertaining to the Electric System or incidental to the operation of the Electric System or from any services performed by SMUD in connection with or incidental to the Electric System, or from any other source whatsoever directly or indirectly derived from the Electric System, but exclusive in every case of any moneys derived from the levy or collection of taxes upon any taxable property in SMUD.

The term “Revenues” also includes any income or revenues derived from the wholesale sale of water developed by the White Rock Project (as defined in Resolution No. 4775), or the Upper American River Project (as defined in Resolution No. 4938), but does not include revenues or income derived from the retail distribution of water through any distribution facility thereafter acquired by SMUD. The term “Revenues” also includes all interest, profits or other income derived from the investment of any moneys in any fund or account established under the Senior Bond Resolution.

## **Allocation of Revenues**

After making an allocation of Revenues to Maintenance and Operation Costs and to Energy Payments not included in Maintenance and Operation Costs, the Treasurer of SMUD is required (subject to the last paragraph of this section) to set aside, on an equal priority with sums set aside for all other Parity Bonds, Net Revenues as follows:

First: To the Electric Revenue Bond Interest Fund, in approximately equal monthly installments on or before the first day of each month, an amount equal to at least one-fifth (1/5) of the aggregate amount of interest becoming due on the Senior Bonds on the next succeeding semiannual interest payment date, until an amount sufficient to meet said interest payment is accumulated.

Second: To the Electric Revenue Bond Redemption Fund, to be set aside in the Principal Account and Sinking Fund, respectively, in approximately equal monthly installments on or before the first day of each month, an amount equal to at least one-tenth (1/10) of the aggregate amount of principal becoming due on serial Senior Bonds and the aggregate minimum sinking fund payments required to be made with respect to term Senior Bonds during the next ensuing 12 months, until an amount sufficient to meet the principal and sinking fund requirements on all Senior Bonds outstanding is accumulated in said accounts, respectively.

Third: To the Electric Revenue Bond Reserve Fund, such amounts as any supplemental resolution authorizing the issuance of a series of Senior Bonds may require to build up and maintain said fund.

If interest on Senior Bonds of a series or maturity is payable more frequently than semiannually, the Treasurer of SMUD shall set aside out of Net Revenues in the Interest Fund such amounts as may be required to pay interest on the Senior Bonds of such series or maturity on each interest payment date at least one month prior to such interest payment date. Allocation to the Electric Revenue Bond Redemption Fund and Electric Revenue Bond Reserve Fund shall be made as set forth above.

All remaining Revenues, after making the foregoing allocations, will be available to SMUD for all lawful SMUD purposes. Such remaining Revenues will be used for the purpose of, among other things, making any required deposits to the Rebate Fund. See "Tax Covenants."

## **Reserve Fund**

The Electric Revenue Bond Reserve Fund is a parity reserve fund for the equal benefit of all Parity Bonds outstanding. Moneys in such fund (except any excess over the required balance which may be withdrawn and used for any SMUD use) shall be used solely for the purpose of making good any deficiency in any fund established for the payment of interest, principal or sinking fund payments pursuant to the Senior Bond Resolution or any resolution authorizing the issuance of any Parity Bonds.

The Electric Revenue Bond Reserve Fund is required to be maintained in an amount such that the amount in the combined reserve funds of all Parity Bonds then outstanding will at no time be less than the current annual interest requirements on all then outstanding Parity Bonds (except bonds for which payment has been provided in advance). If SMUD's debt service ratio in any fiscal year (the ratio of Net Revenues

during said fiscal year to maximum annual debt service during the period of three fiscal years next following said fiscal year on all Parity Bonds then outstanding) shall fall below 1.40, there shall be set aside in the reserve funds from the first available Net Revenues not less than 15 percent of the total current monthly interest requirements of all Parity Bonds until the debt service ratio again exceeds 1.40, or until the aggregate amount on deposit in the reserve funds is equal to the maximum annual debt service on all Parity Bonds, whichever occurs first. The combined reserve funds cannot be required to exceed the maximum annual debt service on all outstanding Parity Bonds.

### **Rates and Charges**

SMUD has covenanted in the Senior Bond Resolution to establish and at all times maintain and collect rates and charges for the sale or use of electric energy generated, transmitted, distributed or furnished by SMUD which, together with certain items of other income permitted under the Senior Bond Resolution, will yield Revenues at least sufficient, with respect to the ensuing 12 months, to pay and provide for all sums required for Maintenance and Operation Costs and Energy Payments not included in Maintenance and Operation Costs and, in addition, to provide an aggregate sum equal to at least 1.20 times the total amount required for the payment of principal and interest, together with any sinking fund or reserve fund payments, on all Parity Bonds, in each case during such 12 months.

SMUD has full power to establish rates and charges for all SMUD services, and the levels of such rates are not subject to review or regulation by any other governmental agency, either federal or state.

### **Limitations on Additional Obligations Payable from Revenues**

The Senior Bond Resolution provides that SMUD will not, so long as any Senior Bonds are outstanding, issue any obligations payable in whole or in part from Revenues except the following:

- (a) Senior Bonds of any series authorized pursuant to the Senior Bond Resolution;
- (b) Refunding bonds issued solely to refund all or part of the Parity Bonds;
- (c) General obligation bonds or other securities secured by the full faith and credit of SMUD;
- (d) Additional revenue bonds (including additional Parity Bonds), payable on a parity with the Senior Bonds, with an equal lien and charge upon the Revenues, but only subject to the following conditions:
  - (1) Such additional revenue bonds shall have been authorized;
  - (2) The proceedings for the issuance of such additional revenue bonds shall require SMUD to fix and collect rates and charges in an amount not less, with respect to such bonds, than the amounts required with respect to Senior Bonds issued under the Senior Bond Resolution;
  - (3) SMUD shall not then be in default under the Senior Bond Resolution or other resolutions authorizing the issuance of Parity Bonds; and

(4) A certificate of SMUD, certifying--

(1) that the Net Revenues, after the completion of the additions, betterments, extensions or improvements proposed to be financed from the proceeds of such additional revenue bonds, will be sufficient to pay the principal of and interest (and bond reserve fund requirements, if any) on all Parity Bonds then outstanding and on such additional revenue bonds then proposed to be issued, and

(2) that the Net Revenues, for a period of twelve consecutive months during the twenty-four months immediately preceding the date upon which such additional revenue bonds will become outstanding, have been at least equal to 1.25 times the sum of

- (i) the annual interest,
- (ii) the principal amount of serial bonds falling due, and
- (iii) the amount of minimum sinking fund payments required for the payment of term bonds,

as computed for the year in which such sum shall then be a maximum, including both the then outstanding Parity Bonds and the additional revenue bonds then proposed to be issued, provided that--

(A) if rates and charges in effect on the date upon which such additional revenue bonds will become outstanding will be greater than those in effect during the entire twelve months elected for the foregoing computation, then the Net Revenues for said period of twelve months may be augmented by 75% of the estimated increase in Net Revenues computed to accrue to the Electric System in the first twelve months during which such rates and charges shall be in effect; and

(B) if such additional revenue bonds or any thereof shall be issued for the purpose of acquiring an existing revenue-producing electric system, 75% of the estimated pro forma net revenues of such existing system (calculated on the basis of assumed SMUD ownership and operation during such period but otherwise on the basis of actual gross revenues of such existing system at the rates actually charged therefor) for the preceding twelve months may be added to the actual Net Revenues of the Electric System for the twelve months elected for said computation and treated as if actually received by the Electric System during those twelve months; and

(e) Revenue bonds junior and subordinate to the Parity Bonds.

### **Additional Covenants**

The Senior Bond Resolution contains the following additional covenants, among others:

(a) SMUD will cause the Electric System to be maintained in good repair, working order and condition at all times, and will continuously operate the Electric System in an efficient and economical manner, and so that all lawful orders of any governmental agency or authority having jurisdiction in the premises shall be complied with, but SMUD shall not be required to comply with any such orders so long as the validity or application thereof shall be contested in good faith.

SMUD further covenants and agrees that it will at all times, while any of the Bonds are outstanding maintain and comply with all necessary permits and licenses issued by the Atomic Energy Commission.

(b) None of the electric energy owned, controlled or supplied by SMUD shall be furnished or supplied free, but on the contrary shall always be sold or furnished so as to produce Revenues.

If SMUD shall sell water developed or made available by the Electric System, a reasonable charge therefor shall be made and the revenue received by SMUD therefrom shall be Revenues and accounted for as such, except that SMUD may furnish water developed or impounded by the Electric System for any purpose (other than the use of such water for hydroelectric purposes) without charge as SMUD in its discretion deems advisable if such water is so furnished without any distribution cost to SMUD. SMUD may sell any water for consumption for domestic or other purposes (exclusive of the use thereof for hydroelectric purposes), but SMUD shall charge itself a reasonable wholesale rate for any water sold by SMUD. SMUD also may sell water at wholesale to any other person, for distribution by such other person for domestic or other purposes (except use for hydroelectric purposes), and SMUD shall likewise charge a reasonable wholesale rate to any such other person. In each case, all such wholesale rates shall be included in Revenues. The revenue received by SMUD from any retail sale of water distributed by SMUD shall not be deemed Revenues, but shall be available to SMUD for any SMUD purpose.

(c) That all taxes and governmental charges and other lawful claims which might become a lien on the Electric System or the Revenues or impair the security of the Senior Bonds will be paid and discharged when due.

(d) SMUD will not sell or otherwise dispose of any property essential to the proper operation of the Electric System or to the maintenance of the Revenues. SMUD will not enter into any lease or agreement which impairs or impedes the operation of the Electric System or which otherwise impairs or impedes the rights of the Bondholders with respect to Revenues. Nothing contained in the Senior Bond Resolution shall prevent SMUD from entering into sale and leaseback agreements pursuant to which SMUD may acquire the use of property subject to the terms of such sale and leaseback agreements.

(e) That insurance adequate in amounts and as to risks covered will be maintained against such risks as are usually insurable in connection with similar electric systems, and in addition public liability and property damage insurance in amounts not less than \$1,000,000 per accident and adequate fidelity bonds on all officers and employees of SMUD handling or responsible for SMUD funds, subject in each case to the condition that such insurance is obtainable at reasonable rates and upon reasonable terms and conditions. See "Insurance" for a description of SMUD's insurance.

(f) That the net proceeds realized by SMUD in the event all or any part of the Electric System is taken by eminent domain proceedings will be applied to the redemption or retirement of all Parity Bonds if sufficient therefor, and, if not, then pro rata to the redemption or retirement of Parity Bonds or to new facilities if the additional Revenues to be derived therefrom will sufficiently offset the loss of Revenues resulting from such eminent domain so that the ability of SMUD to meet its obligations will not be substantially impaired.

(g) That SMUD will at all times use its best efforts to maintain the powers, functions and duties now reposed in it pursuant to law.

(h) That SMUD will establish and at all times maintain and collect rates and charges for the sale or use of its electric energy sufficient to permit SMUD to purchase power or issue and sell Parity Bonds to finance additions, betterments, extensions and improvements to the Electric System as may be reasonably necessary to satisfy its then projected electric demand upon its Electric System, and that unless the Board determines that SMUD will be able to satisfy such demand through the purchase of electric energy, SMUD will proceed with all reasonable diligence to issue and sell such Parity Bonds.

## **Tax Covenants**

SMUD agrees in the Senior Bond Resolution not to take any action which would result in interest on the Senior Bonds not being excluded from gross income for federal income tax purposes. SMUD also agrees to establish a separate Rebate Fund for the Senior Bonds and to deposit therein such amounts as are necessary to make the required rebate payments to the United States Government under the Internal Revenue Code of 1986. Such deposits will be made from any Revenues legally available to SMUD after payment of maintenance and operation costs and Energy Payments, principal of and interest on the Parity Bonds and any other obligations secured by the Revenues. Amounts in the Rebate Fund, and any earnings thereon, shall be paid to the United States Government as provided in the Tax Certificate.

## **Amendment of the Senior Bond Resolution**

The Senior Bond Resolution and the rights and obligations of SMUD and of the Holders of the Senior Bonds may be modified or amended at any time pursuant to the affirmative vote at a meeting of Bondholders, or with the written consent without a meeting, of the Holders of 60 percent in aggregate principal amount of the Senior Bonds then outstanding, provided that no such modification or amendment shall (i) extend the fixed maturity of any Senior Bond, or reduce the principal amount thereof, or reduce the rate or extend the time of payment of interest thereon or reduce any premium payable upon the redemption thereof, without the consent of the Holder of each Senior Bond so affected, or (ii) reduce the aforesaid percentage of Senior Bonds required for consent to an amendment or modification, without the consent of the Holders of all the Senior Bonds then outstanding. Modifications or amendments may be made, without the consent of any Bondholders, to add covenants of SMUD or to surrender rights reserved by SMUD in the Senior Bond Resolution, to cure ambiguities or defective or inconsistent provisions or in regard to questions arising under the Senior Bond Resolution without adversely affecting the interests of the Bondholders, or to provide for the issuance of a Series of Senior Bonds, subject to the provisions contained in the Senior Bond Resolution with respect thereto.

## **Events of Default and Remedies of Bondholders**

The Senior Bond Resolution declares each of the following to be an event of default:

- (a) Failure to pay the principal of and premium on any Senior Bond when due and payable;
- (b) Failure to pay any installment of interest on any Senior Bond when due and payable, if such default continues for a period of 30 days;
- (c) Default by SMUD in the observance of any of the covenants, agreements or conditions on its part in the Senior Bond Resolution or in the Senior Bonds, if such default continues for a period of 60 days after written notice thereof (specifying such default and requiring the same to be remedied) has been given to SMUD by the Trustee, or to SMUD and the Trustee by the Holders of not less than 25 percent in aggregate principal amount of the Senior Bonds at the time outstanding; and
- (d) If, under the provisions of any law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of SMUD or of the whole or any substantial part of its property, and such custody or control shall not be terminated or stayed within 60 days.

In the event of default, the Trustee or the Holders of not less than a majority in aggregate principal amount of the outstanding Senior Bonds may, upon written notice to SMUD, declare the principal of all outstanding Senior Bonds, and the interest accrued thereon, to be due and payable immediately. The Trustee is appointed as trustee to represent Bondholders and may take such action as may seem appropriate to it,



and, upon the written request of the Holders of 25 percent in aggregate principal amount of the outstanding Senior Bonds, and upon being furnished with indemnity satisfactory to it, will take such action on behalf of Bondholders as is specified in such written request. Each Bondholder is entitled to proceed to protect and enforce the rights vested in such Holder by the Senior Bond Resolution by such appropriate judicial proceedings as such Holder deems most effectual.

The rights of Bondholders are limited and restricted to the use and application of Revenues as provided in the Senior Bond Resolution and do not extend to the levy of any attachment or execution upon or forfeiture of any of the properties of SMUD or to any moneys derived by SMUD from the levy or collection of taxes.

In addition to the limitations on remedies contained in the Senior Bond Resolution, the rights and remedies provided by the Senior Bonds and the Senior Bond Resolution, as well as the enforcement by SMUD of contracts with customers of the Electric System, may be limited by and are subject to bankruptcy, insolvency, reorganization and other laws affecting the enforcement of creditors' rights.

### **Discharge of Senior Bond Resolution**

The Senior Bond Resolution may be discharged by depositing with the Trustee in trust, moneys or Federal Securities or general obligation bonds of the State of California, in such amount as the Trustee shall determine will, together with the interest to accrue thereon, be fully sufficient to pay and discharge the indebtedness on all Senior Bonds at or before their respective maturity dates.

## APPENDIX F

### PROPOSED FORM OF LEGAL OPINION FOR 2023 SUBORDINATED BONDS

[Closing Date]

Sacramento Municipal Utility District  
Sacramento, California

Sacramento Municipal Utility District Subordinated Electric Revenue Bonds,  
2023 Series D and 2023 Series E  
and  
Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds,  
2023 Series F  
(Final Opinion)

Ladies and Gentlemen:

We have acted as bond counsel to the Sacramento Municipal Utility District (“SMUD”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of its Subordinated Electric Revenue Bonds, 2023 Series D, Subordinated Electric Revenue Bonds, 2023 Series E and its Subordinated Electric Revenue Refunding Bonds, 2023 Series F (collectively, the “2023 Subordinated Bonds”), issued pursuant to Resolution No. 85-11-1 of the Board of Directors of SMUD, adopted November 7, 1985, as amended and restated pursuant to Resolution No. 01-06-10, adopted June 21, 2001 (the “Subordinate Master Resolution”), as supplemented and amended by later resolutions of said Board of Directors (as so supplemented and amended, the “Resolution”), including Resolution No. 23-05-[ ], adopted May 19, 2023 (the “Fifteenth Supplemental Resolution”), Resolution No. 23-05-[ ], adopted May 19, 2023 (the “Sixteenth Supplemental Resolution”) and Resolution No. 23-05-[ ] (the “Seventeenth Supplemental Resolution”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Resolution.

In such connection, we have reviewed the Resolution; the Tax Certificate, dated the date hereof (the “Tax Certificate”), executed by SMUD; opinions of counsel to SMUD and the Trustee; certificates of SMUD, the Trustee and others; and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after original delivery of the 2023 Subordinated Bonds on the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after original delivery of the 2023 Subordinated Bonds on the date hereof. Accordingly, this letter speaks only as of its date and is not intended to, and may not, be relied upon or otherwise used in connection with any such actions, events or matters. Our engagement with respect to the 2023 Subordinated Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures provided to us and the due and legal execution and delivery thereof by, and validity against, any parties other than SMUD. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or certified in the documents, and of the legal

conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Resolution and the Tax Certificate, including (without limitation), covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause interest on the 2023 Subordinated Bonds to be included in gross income for federal income tax purposes.

We call attention to the fact that the rights and obligations under the 2023 Subordinated Bonds, the Resolution and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, receivership, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against governmental entities such as SMUD. We express no opinion with respect to any indemnification, contribution, liquidated damages, penalty (including any remedy deemed to constitute or to have the effect of a penalty), right of set-off, arbitration, judicial reference, choice of law, choice of forum, choice of venue, non-exclusivity of remedies, waiver or severability provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the assets described in or as subject to the lien of the Resolution or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such assets. Our services did not include financial or other non-legal advice. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement, dated \_\_, 2023, or other offering material relating to the 2023 Subordinated Bonds and express no opinion or view with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The 2023 Subordinated Bonds constitute the valid and binding limited obligations of SMUD.

2. The Resolution, including the Fifteenth Supplemental Resolution, the Sixteenth Supplemental Resolution and the Seventeenth Supplemental Resolution, has been duly adopted by, and constitutes the valid and binding obligation of, SMUD. The Resolution creates a valid pledge, to secure the payment of the principal of and interest on the 2023 Subordinated Bonds, of the Net Subordinated Revenues, subject to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution.

3. Interest on the 2023 Subordinated Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the 2023 Subordinated Bonds is not a specific preference item for purposes of the federal individual alternative minimum tax. We observe that, for tax years beginning after December 31, 2022, interest on the 2023 Subordinated Bonds included in adjusted financial statement income of certain corporations is not excluded from the federal corporate alternative minimum tax. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the amount, accrual or receipt of interest on, the 2023 Subordinated Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

per

## APPENDIX G

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is executed and delivered by the Sacramento Municipal Utility District (the “Issuer”) and U.S. Bank Trust Company, National Association in its capacity as Dissemination Agent (the “Dissemination Agent”) in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of the Issuer’s Subordinated Electric Revenue Bonds, 2023 Series D (the “2023D Subordinated Bonds”), \$\_\_\_\_\_ aggregate principal amount of the Issuer’s Subordinated Electric Revenue Bonds, 2023 Series E (the “2023E Subordinated Bonds”) and \$\_\_\_\_\_ aggregate principal amount of the Issuer’s Subordinated Electric Revenue Refunding Bonds, 2023 Series F (the “2023F Subordinated Bonds” and, together with the 2023D Subordinated Bonds and the 2023E Subordinated Bonds, the “2023 Subordinated Bonds”). The 2023 Subordinated Bonds are being issued pursuant to the Issuer’s Resolution No. 85-11-1, adopted on November 7, 1985, as amended and restated by Resolution No. 01-06-10 (the “Subordinate Master Resolution”), as supplemented by supplemental resolutions, including Resolution No. 23-05-[ ], adopted on May 19, 2023 (the “Fifteenth Supplemental Resolution”), Resolution No. 23-05-[ ], adopted on May 19, 2023 (the “Sixteenth Supplemental Resolution”) and Resolution No. 23-05-[ ], adopted on May 19, 2023 (the “Seventeenth Supplemental Resolution”). The Subordinate Master Resolution and all supplemental resolutions, including the Fifteenth Supplemental Resolution, the Sixteenth Supplemental Resolution and the Seventeenth Supplemental Resolution, are collectively referred to herein as the “Subordinate Resolution.” Pursuant to Sections [ ], [ ] and [ ] of the Subordinate Resolution, the Issuer and the Dissemination Agent covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Issuer and the Dissemination Agent for the benefit of the Holders and Beneficial Owners of the 2023 Subordinated Bonds and in order to assist the Participating Underwriters in complying with S.E.C. Rule 15c2-12(b)(5).

**SECTION 2. Definitions.** In addition to the definitions set forth in the Subordinate Resolution, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section 2, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person which has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any 2023 Subordinated Bonds (including persons holding Bonds through nominees, depositories or other intermediaries).

“Disclosure Representative” shall mean the Treasurer of the Issuer or his or her designee, or such other officer or employee as the Issuer shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean U.S. Bank Trust Company, National Association, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“EMMA” shall mean the MSRB’s Electronic Municipal Market Access system.

“Financial Obligation” shall mean, for purposes of the Listed Events set out in Section 5(a)(15) and Section 5(a)(16), a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged

as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “Financial Obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board.

“Participating Underwriter” shall mean any of the original underwriters of the 2023 Subordinated Bonds required to comply with the Rule in connection with offering of the 2023 Subordinated Bonds.

“Repository” shall mean the MSRB through EMMA or any other entity or system designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“State” shall mean the State of California.

### **SECTION 3. Provision of Annual Reports.**

(a) The Issuer shall, or shall cause the Dissemination Agent to, not later than one hundred eighty (180) days after the end of the Issuer’s fiscal year (presently December 31), commencing with the report for the 2023 Fiscal Year, provide to each Repository an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Issuer may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the fiscal year changes for the Issuer, the Issuer shall give notice of such change in the same manner as for a Listed Event under Section 5 hereof.

(b) Not later than fifteen (15) Business Days prior to the dates specified in subsection (a) for providing the Annual Report to each Repository, the Issuer shall provide its respective Annual Report to the Dissemination Agent. If by such date, the Dissemination Agent has not received a copy of the Annual Report from the Issuer, the Dissemination Agent shall contact the Issuer to determine if the Issuer is in compliance with the first sentence of this subsection (b).

(c) If the Dissemination Agent is unable to verify that an Annual Report of the Issuer has been provided to each Repository by the date required in subsection (a), the Dissemination Agent shall send a notice to each Repository and the MSRB (if the MSRB is not a Repository) in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(1) determine each year prior to the date for providing the Annual Report the name and address of each Repository and then-applicable rules and procedures for filing the Annual Report with each Repository, if any; and

(2) file a report with the Issuer certifying that the Annual Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and listing each Repository to which it was provided.

#### **SECTION 4. Content of Annual Reports.**

(a) The Issuer's Annual Report shall contain or include by reference the following:

(1) The audited financial statements of the Issuer for the prior fiscal year, prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board and where not in conflict with the Financial Accounting Standards Board ("FASB") pronouncements or accounting principles prescribed by FASB. If the Issuer's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(2) An update of the following types of information contained in Appendix A to the official statement, dated \_\_, 2023 and related to the 2023 Subordinated Bonds:

(i) The table entitled "Power Supply Resources."

(ii) The table entitled "Projected Requirements and Resources to Meet Load Requirements."

(iii) The table entitled "Average Class Rates" (to the extent such table relates to rates and revenues of the Issuer).

(iv) The table entitled "Selected Operating Data."

(v) The table entitled "Unconsolidated Financial Data."

(vi) The balance in the Decommissioning Trust Fund, the current estimate of decommissioning costs, the decommissioning costs to date, and the annual contribution level to the Decommissioning Trust Fund, all relating to the Rancho Seco Nuclear Power Plant.

(vii) The table entitled "Estimated Capital Requirements."

(b) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the Issuer or public entities related thereto, which have been submitted to each Repository or the Securities and Exchange Commission. If the document included by reference is a final official statement, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

#### **SECTION 5. Reporting of Listed Events.**

(a) Pursuant to the provisions of this Section 5, the Issuer shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the 2023 Subordinated Bonds not later than ten (10) business days after the occurrence of the event:

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on any applicable debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancement reflecting financial difficulties;
- (5) substitution of credit or liquidity providers, or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the 2023 Subordinated Bonds or other material events adversely affecting the tax status of the 2023 Subordinated Bonds;
- (7) modifications to rights of Bondholders, if material;
- (8) bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution or sale of property securing repayment of the 2023 Subordinated Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Issuer;
- (13) the consummation of a merger, consolidation, or acquisition involving the Issuer or the sale of all or substantially all of the assets of the Issuer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (14) appointment of a successor or additional trustee or the change of name of the Trustee, if material;
- (15) incurrence of a Financial Obligation of the Issuer, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Issuer, any of which affect Bondholders, if material; and
- (16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Issuer, any of which reflect financial difficulties.

(b) For the purpose of the event identified in Section 5(a)(12), the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Issuer in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Issuer, or if such jurisdiction has been assumed by leaving the existing governmental body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court

or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Issuer.

(c) Whenever the Issuer obtains knowledge of the occurrence of a Listed Event, the Issuer shall as soon as possible determine if such event is required to be reported pursuant to this Section 5.

(d) If the Issuer has determined that such event is required to be reported pursuant to this Section 5, the Issuer shall promptly notify the Dissemination Agent in writing. Such notice shall instruct the Dissemination Agent to report the occurrence pursuant to subsection (g).

(e) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall file a notice of such occurrence with the MSRB (if the MSRB is not a Repository) and each Repository.

**SECTION 6. Termination of Reporting Obligation.** The obligations of the Issuer and the Dissemination Agent under this Disclosure Agreement shall terminate upon the legal defeasance, prior redemption or payment in full of all of the 2023 Subordinated Bonds. If such termination occurs prior to the final maturity of the 2023 Subordinated Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event under Section 5.

#### **SECTION 7. Dissemination Agent; Filings.**

(a) The Issuer may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the Issuer pursuant to this Disclosure Agreement. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent shall be U.S. Bank Trust Company, National Association.

(b) Unless and until one or more different or additional Repositories are designated or authorized by the Securities and Exchange Commission, all filings with a Repository which are required by this Disclosure Agreement shall be filed with the MSRB through EMMA and shall be in an electronic format and accompanied by such identifying information as prescribed by the MSRB in accordance with the Rule.

**SECTION 8. Amendment; Waiver.** Notwithstanding any other provision of this Disclosure Agreement, the Issuer and the Dissemination Agent may amend this Disclosure Agreement, and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the 2023 Subordinated Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the 2023 Subordinated Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and



(c) The amendment or waiver either (1) is approved by the Holders of 60% of the 2023 Subordinated Bonds, or (2) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the 2023 Subordinated Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in its next respective Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or, in the case of a change of accounting principles from those described in Section 4(a)(1), on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (1) notice of such change shall be given in the same manner as for a Listed Event under Section 5, and (2) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

**SECTION 9. Additional Information.** Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

**SECTION 10. Default.** In the event of a failure of the Issuer or the Trustee to comply with any provision of this Disclosure Agreement, the Trustee shall, at the request of any Participating Underwriter or the Holders of at least 25% aggregate principal amount of Outstanding Bonds and upon being indemnified to its satisfaction from and against any costs, liability, expenses and fees of the Trustee, including, without limitation, fees and expenses of its attorneys, or any Holder or Beneficial Owner of the 2023 Subordinated Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the Issuer or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Subordinate Resolution, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

**SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.** The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and the Issuer agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement and no implied duties for obligation shall be read into this Disclosure Agreement against the Dissemination Agent. The Dissemination Agent has no power to enforce nonperformance on the part of the Issuer. The Dissemination Agent shall be paid compensation by the Issuer for its services provided hereunder in accordance with its schedule of fees provided to the Issuer and all expenses, legal fees and costs of the Dissemination Agent made or incurred by the Dissemination Agent in the performance of its duties hereunder. The obligations of the Issuer under this Section shall survive resignation or removal of the Dissemination Agent and payment of the 2023 Subordinated Bonds.

**SECTION 12. Notices.** Any notices or communications to or among any of the parties to this Disclosure Agreement may be given as follows:

To the Issuer:	Sacramento Municipal Utility District 6201 S Street, MS B405 Sacramento, California 95817 Attention: Treasurer Telephone: (916) 732-6509 Fax: (916) 732-5835
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To the Dissemination Agent:	U.S. Bank Trust Company, National Association Global Corporate Trust One California Street, Suite 1000 San Francisco, California 94111 Telephone: (415) 677-3699 Fax: (415) 677-3769
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To the Trustee:	U.S. Bank Trust Company, National Association Global Corporate Trust One California Street, Suite 1000 San Francisco, California 94111 Telephone: (415) 677-3699 Fax: (415) 677-3769
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The Issuer, the Dissemination Agent and the Trustee may, by giving written notice hereunder to the other person listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent. Unless specifically otherwise required by the context of this Disclosure Agreement, a party may give notice by any form of electronic transmission capable of producing a written record. Each such party shall file with the Trustee and Dissemination Agent information appropriate to receiving such form of electronic transmission.

**SECTION 13. Beneficiaries.** This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Dissemination Agent, the Participating Underwriters and Holders and Beneficial Owners from time to time of the 2023 Subordinated Bonds, and shall create no rights in any other person or entity.

**SECTION 14. Counterparts.** This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Dated: \_\_\_\_\_, 2023.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By \_\_\_\_\_  
Treasurer

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
as Dissemination Agent

By \_\_\_\_\_  
Authorized Officer

ACKNOWLEDGED:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**NOTICE TO REPOSITORIES OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Sacramento Municipal Utility District

Name of Bond Issue: Subordinated Electric Revenue Bonds, 2023 Series D and 2023 Series E  
Subordinated Electric Revenue Refunding Bonds, 2023 Series F

Name of Borrower: Sacramento Municipal Utility District

Date of Issuance: \_\_\_\_\_, 2023

NOTICE IS HEREBY GIVEN that the Sacramento Municipal Utility District (the “Issuer”) has not provided an Annual Report with respect to the above-named Bonds as required by Section [ ] of Resolution No. 23-05-[ ], Section [ ] of Resolution No. 23-05-[ ] and Section [ ] of Resolution No. 23-05-[ ], each adopted May 19, 2023, by the Issuer. [The Issuer anticipates that the Annual Report will be filed by \_\_\_\_\_.]

Dated: \_\_\_\_\_

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION,  
on behalf of Sacramento Municipal Utility District

\_\_\_\_\_

cc: Sacramento Municipal Utility District

**STANDBY BOND PURCHASE AGREEMENT**  
dated as of [\_\_\_\_\_] 1, 2023,

**between**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**and**

**TD BANK, N.A.**

**relating to:**

**[\$\_\_\_\_\_]**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT,  
SUBORDINATED ELECTRIC REVENUE REFUNDING  
BONDS  
2023 SERIES C**

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STANDBY BOND PURCHASE AGREEMENT

dated as of [\_\_\_\_\_] 1, 2023,

between

SACRAMENTO MUNICIPAL UTILITY DISTRICT

and

TD BANK, N.A.

relating to:

\$[\_\_\_\_\_]

SACRAMENTO MUNICIPAL UTILITY DISTRICT,  
SUBORDINATED ELECTRIC REVENUE REFUNDING BONDS  
2023 SERIES C

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## STANDBY BOND PURCHASE AGREEMENT

(This Table of Contents is not a part of this  
Standby Bond Purchase Agreement and is only  
for convenience of reference)

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## STANDBY BOND PURCHASE AGREEMENT

This STANDBY BOND PURCHASE AGREEMENT dated as of [ ] 1, 2023 (together with all amendments, supplements and other modifications hereto, this “*Agreement*”), between SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district of the State of California (together with its successors and assigns, “*SMUD*”) and TD BANK, N.A., a national banking association (together with its successors and assigns, the “*Bank*”).

### WITNESSETH:

WHEREAS, pursuant to the authority granted by the laws of the State of California, particularly Articles 6a and 6b of Chapter 6 of the Municipal Utility Act (California Public Utilities Code Section 12850 *et seq.*), Chapter 7.5 of the Municipal Utility District Act (California Public Utilities Code Section 13371 *et seq.*) and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code (California Government Code Section 53.80 *et seq.*), and Resolution No. 23-05-[ ] Fourteenth Supplemental Resolution Authorizing the Issuance of Subordinated Electric Revenue Refunding Bonds, 2023 Series C (as amended, supplemented, modified or restated in accordance with the terms hereof and thereof, the “*Supplemental Resolution*”) adopted by the Board of Directors of SMUD, on May 18, 2023, SMUD authorized the issuance of its Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “*Bonds*”); and

WHEREAS, SMUD has determined to execute this Agreement in order to provide a source of funding for the purchase of Eligible Bonds (as hereinafter defined) which have not been remarketed by the Remarketing Agent (as hereinafter defined) upon optional or mandatory tender by the owners thereof;

WHEREAS, SMUD has determined to provide for the purchase by the Bank on the terms and conditions specified herein of Eligible Bonds (as hereinafter defined) but only to the extent that such Eligible Bonds have not been remarketed or the proceeds thereof are not available to pay the purchase price thereof as provided in the Supplemental Resolution; and

WHEREAS, the Bank is willing, upon the terms and conditions set forth in this Agreement, to purchase Eligible Bonds upon optional or mandatory tender by the holders hereof, other than those Eligible Bonds which have been remarketed and the proceeds of which are available to pay the purchase price thereof as provided in the Supplemental Resolution;

NOW, THEREFORE, to induce the Bank to purchase Eligible Bonds from time to time pursuant to the terms hereof, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, SMUD and the Bank hereby agree as follows:

## ARTICLE ONE

### DEFINITIONS

*Section 1.1. Definitions.* As used in this Agreement:

“*Act*” means the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto.

“*Affiliate*” means, as to any Person, any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with, such Person. A Person shall be deemed to be “controlled by” any other Person if such other Person possesses, directly or indirectly, power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners; or (b) to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Alternate Liquidity Facility*” means a replacement standby bond purchase agreement or other liquidity facility meeting the requirements of an “Alternate Liquidity Facility” set forth in the Supplemental Resolution.

“*Authorized SMUD Representative*” means the Chief Executive Officer and General Manager of SMUD, any Member of the Executive Committee of SMUD, the Chief Financial Officer of SMUD, the Treasurer of SMUD and/or the Secretary of SMUD.

“*Available Commitment*” as of any day, means the sum of the Available Principal Commitment and the Available Interest Commitment, in each case as of such day.

“*Available Interest Commitment*” initially means [ ] Dollars (\$[ ]) (equal to thirty-four (34) days’ interest on the Bonds, computed as if the Bonds bore interest at the rate of twelve percent (12.00%) per annum and on the basis of a 365-day year), and thereafter shall mean such initial amount adjusted from time to time as follows:

(a) decreased by an amount that bears the same proportion to such amount as the amount of a reduction in the Available Principal Commitment pursuant to the definition of “Available Principal Commitment” bears to the Available Principal Commitment prior to such reduction; and

(b) increased by an amount that bears the same proportion to such amount as the amount of any increase in the Available Principal Commitment pursuant to clause (c) of the definition of “Available Principal Commitment” bears to the Available Principal Commitment prior to such increase; *provided that*, after giving effect to such adjustment, the Available Interest Commitment shall never exceed [ ] Dollars (\$[ ]).

Any adjustment pursuant to clause (a) or (b) above shall occur simultaneously with the event requiring such adjustment.

*“Available Principal Commitment”* initially means [ ] Dollars (\$[ ]) and thereafter shall mean such initial amount adjusted from time to time as follows:

(a) decreased by the amount of any reduction in the Available Principal Commitment pursuant to Section 2.4 hereof;

(b) decreased by the principal amount of any Bonds purchased by the Bank pursuant to Section 2.1 hereof; and

(c) increased by the principal amount of any Bonds previously purchased by the Bank pursuant to Section 2.1 hereof, which a Bank Bondholder elects to retain pursuant to Section 2.5(c) hereof or that are sold or deemed sold by a Bank Bondholder pursuant to Section 2.5(b) hereof (and for which such Bank Bondholder has received immediately available funds equal to the principal amount thereof and accrued interest thereon at the Bank Rate).

Any adjustment pursuant to clause (a), (b) or (c) above shall occur simultaneously with the occurrence of the events described in such clauses.

*“Bank”* has the meaning set forth in the introductory paragraph hereof.

*“Bank Agreement”* means any credit agreement, loan agreement, letter of credit, reimbursement agreement, bond purchase agreement, liquidity agreement, direct purchase agreement (such as a continuing covenant agreement or supplemental bondholder’s agreement) or other agreement or instrument (or any amendment, supplement or modification thereto) entered into by SMUD with any Person, directly or indirectly, or otherwise consented to by SMUD, under which any Person or Persons undertakes to directly purchase, make loans, extend credit or liquidity to SMUD in connection with any of SMUD’s Debt payable from or secured by a lien on Net Revenues senior to or on a parity with the Bonds and Bank Bonds.

*“Bank Bond”* means each Bond purchased by the Bank under this Agreement, until such Bonds are remarketed in accordance with Section 2.5(b) hereof or cease to bear interest at the Bank Rate pursuant to Section 2.5(c) hereof and shall constitute “Liquidity Provider Bonds” under the Supplemental Resolution.

*“Bank Bondholder”* means the Bank (but only in its capacity as owner (which as used herein shall mean the beneficial owner if at the relevant time Bank Bonds are held in book-entry form) of Bank Bonds pursuant to this Agreement) and any other Person to whom a Bank Bondholder has sold Bank Bonds pursuant to Section 2.5(a) hereof.

*“Bank Bond Redemption Date”* has the meaning set forth in Section 2.11 hereof.

*“Bank Rate”* means the rate of interest per annum with respect to any Bank Bond (i) for any day commencing on the date such Bank Bond was purchased by the Bank to and including the one hundred eightieth (180th) day next succeeding the date such Bank Bond was purchased by the Bank, equal to the Base Rate from time to time in effect, and (ii) for any day commencing on the one hundred eighty-first (181st) day next succeeding the date such Bank Bond was purchased by the Bank and at all times thereafter, equal to the sum of the Base Rate from time to time in effect *plus* one percent (1.0%); *provided, however*, that immediately and automatically upon the occurrence of an Event of Default (and without any notice given with respect thereto) and during the continuance of such Event of Default, *“Bank Rate”* shall mean the Default Rate.

*“Bank-Related Persons”* means the Bank, its Affiliates and the officers, directors, employees, agents and attorneys-in-fact of the Bank and Affiliates.

*“Base Rate”* means, for any day, a fluctuating rate of interest per annum equal to the greatest of (i) the Prime Rate in effect at such time *plus* one percent and a half (1.50%), (ii) the Federal Funds Rate in effect at such time *plus* two percent (2.00%) and (iii) seven percent (7.00%).

*“Bond Resolution”* means the Subordinated Bond Resolution as supplemented by the Supplemental Resolution.

*“Bonds”* has the meaning set forth in the recitals hereof.

*“Book Entry Bonds”* means the Bonds so long as the book entry system with DTC is used for determining beneficial ownership of the Bonds.

*“Business Day”* means a day which is not (a) a Saturday, Sunday or legal holiday on which banking institutions in Los Angeles, California or New York, New York are authorized by law to close, (b) a day on which the New York Stock Exchange or the Federal Reserve Bank is closed or (c) a day on which the principal offices of the Bank are closed.

*“Change in Law”* means the occurrence, after the Closing Date, of any of the following: (a) the adoption or taking effect of any Law, rule, regulation or treaty, including, without limitation Risk-Based Capital Guidelines, (b) any change in any Law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, ruling, guideline, regulation or directive (whether or not having the force of law) by any Governmental Authority; *provided* that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, rulings, guidelines, regulations or directives thereunder or issued in connection therewith and (ii) all requests, rules, rulings, guidelines, regulations or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

*“Closing Date”* means [\_\_\_\_], 2023, subject to the satisfaction (or waiver by the Bank) of all of the conditions precedent set forth in Section 3.1 hereof.

“*Code*” means the Internal Revenue Code of 1986, as amended, and any successor statute thereto, and the regulations promulgated thereunder.

“*Commitment Fee*” has the meaning set forth in the Fee Agreement.

“*Confidential Information*” means any permitted redactable information regarding SMUD, the Bank or any Affiliate of the Bank including, without limitation, address and account information, e-mail addresses, telephone numbers, facsimile numbers, names and signatures of officers, employees and signatories.

“*Conversion Date*” has the meaning set forth in the Supplemental Resolution.

“*Credit Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become a Credit Event of Default.

“*Credit Event of Default*” means any of those Events of Default set forth in Section 6.1(a), 6.1(d), 6.1(e), 6.1(f), 6.1(g), 6.1(h), 6.1(i) or 6.2 hereof.

“*Daily Rate*” has the meaning set forth in the Supplemental Resolution.

“*Debt*” of any Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements, bank agreements or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable arising in the ordinary course of business), (d) all obligations of such Person as lessee under leases (as determined under Governmental Accounting Standards Board Statement No. 87 Leases, or any successor guidance) shown on the liabilities side of the balance sheet of such Person, (e) all obligations secured by any Lien upon property of such Person, whether or not such Person has assumed or become liable for the payment of such obligations (other than collateralized commodity swaps the obligations under which are either (a) not secured by a Lien on Net Revenues or (b) secured by a Lien on Net Revenues subordinate to the Bonds and Bank Bonds), (f) all obligations of such Person on or with respect to letters of credit, banker’s acceptances and other evidences of indebtedness representing extensions of credit whether or not representing obligations for borrowed money, and (g) certificates of participation evidencing an undivided ownership interest in payments made by such Person (A) as lessee under any lease of property which in accordance with generally accepted accounting principles would be required to be capitalized on the balance sheet of such Person, (B) as purchaser under an installment sale agreement or (C) otherwise as an obligor in connection therewith, and (h) all Debt of any other Person of the kind referred to in clauses (a) through (g) above which is guaranteed (regardless of form) directly or indirectly in any manner by such Person.

“*Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“*Default Rate*” means a per annum rate of interest equal to the sum of the Base Rate from time to time in effect plus two percent (2.00%).

*“Defaulted Interest”* means accrued interest on the Bonds which was not paid when due or any amounts accruing on amounts owed on the Bonds by reason of such amounts being not paid when due.

*“Designated Jurisdiction”* means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

*“Dollars”* and the sign “\$” means lawful money of the United States of America.

*“DTC”* means The Depository Trust Company, and any successor or assign.

*“Electric System”* has the meaning set forth in the Bond Resolution.

*“Eligible Bonds”* means any Bonds Outstanding under and entitled to the benefits of the Bond Resolution which bear interest at the Daily Rate or the Weekly Rate and that are tendered or deemed tendered for purchase pursuant to Sections 84.01 or 84.02 of the Supplemental Resolution, other than any such Bonds which have been remarketed and the proceeds of which are available to pay the purchase price thereof as provided in the Bond Resolution and other than any Bond which is (a) a Bank Bond or (b) owned by or on behalf of, or is held by or for the account or for the benefit of, SMUD or any of its Affiliates.

*“ERISA”* means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

*“Event of Default”* has the meaning set forth in Article VI hereof.

*“Excess Interest”* has the meaning set forth in Section 2.19 hereof.

*“Excluded Taxes”* means, with respect to the Bank, any Participant or any Bank Bondholder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Bank, such Participant or such Bank Bondholder is organized or in which its principal office is located, and (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which the Bank, such Participant or such Bank Bondholder is located.

*“Facility Maturity Date”* means [\_\_\_\_], 2027, or, if such day is not a Business Day, the next preceding Business Day.

*“Federal Funds Rate”* means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; *provided that*: (a) if such day is not a Business Day, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day; and (b) if no such rate is so published on such next succeeding Business Day, then the Federal Funds

Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of one-hundredth of one percent) charged to the Bank on such day on such transactions as determined by the Bank. Notwithstanding anything herein to the contrary, if the Federal Funds Rate as determined as provided above would be less than zero percent (0.0%), then the Federal Funds Rate shall be deemed to be zero percent (0.0%).

*“Fee Agreement”* means that certain Fee Agreement, dated the Closing Date, between SMUD and the Bank, as the same may be amended, modified or supplemented from time to time by written instrument executed by the Bank and SMUD, the terms of which are incorporated herein by reference.

*“Fiscal Year”* means the twelve-month period commencing on January 1 of each year and ending on December 31 of the same calendar year or such other twelve-month period as SMUD may from time to time determine as its Fiscal Year.

*“Fitch”* means Fitch Ratings, Inc. and its successors, and if such Person shall for any reason no longer perform the functions of a securities rating agency, “Fitch” shall be deemed to refer to any nationally recognized securities rating agency designated by SMUD that is acceptable to the Bank in its sole discretion.

*“Government Acts”* means any act or omission to act, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

*“Governmental Authority”* means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including, without limitation, the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or the European Central Bank); *provided, however*, that, for the purposes of the definition of *“Change in Law”* herein only, *“Governmental Authority”* means the government of the United States of America or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or European Central Bank), or any arbitrator, mediator or other Person with authority to bind a party at law.

*“Immediate Termination Event”* means an Event of Default described in Section 6.2 hereof which is not a Suspension Event.

*“Indemnified Taxes”* means Taxes other than Excluded Taxes.

*“Interest Component”* has the meaning assigned to such term in Section 2.1 hereof.

*“Interest Payment Date”* has the meaning set forth in the Supplemental Resolution.

*“Laws”* means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

*“Lien”* means, with respect to any property, tangible or intangible, real or personal, any mortgage, lien, pledge, charge, security interest or other encumbrance of any kind in respect of such property.

*“Liquidity Facility”* has the meaning set forth in the Supplemental Resolution.

*“Mandatory Tender”* means the mandatory tender of the Bonds on any date on which the Bonds are subject to mandatory tender for purchase in accordance with Section 84.02 of the Supplemental Resolution.

*“Master Bond Resolution”* means Resolution No. 6649 of SMUD, adopted on January 7, 1971, and amended, supplemented, modified or restated from time to time in accordance with the terms hereof and thereof.

*“Material Adverse Effect”* or *“Material Adverse Change”* means (a) with respect to SMUD, a material adverse effect upon SMUD’s business, assets, liabilities, financial condition, results of operations or business prospects, and (b) with respect to SMUD’s obligations under this Agreement, the Fee Agreement or any other SMUD Program Document, a material adverse effect upon (i) the binding nature, validity or enforceability of SMUD’s obligations hereunder or thereunder, (ii) SMUD’s ability to perform its obligations hereunder or thereunder or (iii) the rights, security or interests of the Bank.

*“Maximum Interest Rate”* means (i) with respect to Bonds that are not Bank Bonds, the maximum interest rate on the Bonds as provided in the Supplemental Resolution, which initially shall be 12% per annum and (ii) with respect to Bank Bonds, means the Maximum Rate.

*“Maximum Rate”* means the maximum non-usurious lawful rate of interest permitted by applicable law.

*“Modified Parity Debt”* means Debt of SMUD described in clauses (b), (d), (f) and (h) of the definition of “Debt” herein (and in the case of clause (d) of the definition of “Debt” herein, excluding any lease, the obligation of which is subject to appropriation at the discretion of SMUD.

*“Moody’s”* means Moody’s Investors Service and its successors, and if such Person shall for any reason no longer perform the functions of a securities rating agency, “Moody’s” shall be



deemed to refer to any nationally recognized securities rating agency designated by SMUD that is acceptable to the Bank in its sole discretion.

*“Net Revenues”* has the meaning set forth in the Subordinated Bond Resolution.

*“Net Subordinated Revenues”* has the meaning set forth in the Subordinated Bond Resolution.

*“Notice of Bank Purchase”* means a notice in the form of Exhibit A attached hereto and incorporated herein by this reference.

*“Obligations”* means the Commitment Fees and all other obligations of SMUD to the Bank arising under or in relation to this Agreement, the Fee Agreement or any of the other Program Documents.

*“Official Statement”* means the Official Statement dated [\_\_\_\_], 2023, relating to the Bonds.

*“Optional Tender”* means the optional tender of any of the Bonds in accordance with Section 84.01 of the Supplemental Resolution.

*“Outstanding”* has the meaning set forth in the Supplemental Resolution.

*“Parity Subordinated Debt”* has the meaning set forth in the Subordinated Bond Resolution.

*“Participant”* has the meaning set forth in Section 7.3(b) hereof.

*“Participation”* has the meaning set forth in Section 7.3(b) hereof.

*“Payment Account”* means TD Bank, N.A., ABA No. 031101266, Account Number: [\_\_\_\_], Account Name: [\_\_\_\_], Attention: [\_\_\_\_], Reference: [\_\_\_\_] – Loan# [\_\_\_\_], or such other account as the Bank may designate from time to time.

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

*“Plan”* means a pension plan providing benefits for employees of any Person.

*“Prime Rate”* means the variable interest rate as published by the Wall Street Journal in New York City (or a comparable substitute publication if the Wall Street Journal is not publishing such a rate) from time to time as the prime rate of interest. This rate of interest is used from time to time by the Bank as a means of pricing some loans to some of its customers and is not necessarily

tied to any external rate of interest or index nor does it necessarily reflect the lowest rate of interest actually charged by the Bank to any particular class or category of customer. Notwithstanding anything herein to the contrary, if the Prime Rate determined as provided above would be less than zero percent (0.0%), then the Prime Rate shall be deemed to be zero percent (0.0%).

*“Program Documents”* means this Agreement, the Bonds, the Fee Agreement, the Bond Resolution, the Remarketing Agreement and any documents related thereto.

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

*“Purchase Date”* has the meaning assigned to such term in Section 2.3(a) hereof.

*“Purchase Notice”* has the meaning assigned to such term in Section 2.5(b) hereof.

*“Purchase Period”* means the period from the Closing Date to and including 5:00 p.m., New York time, on the earliest of (a) the Facility Maturity Date, (b) the date on which no Eligible Bonds are Outstanding, (c) the date on which SMUD voluntarily terminates this Agreement in accordance with this Agreement, and (d) the date on which the Available Commitment and the Bank’s obligation to purchase Eligible Bonds have been terminated in their entirety pursuant to Section 2.4 or Article Six hereof.

*“Purchase Price”* means, with respect to any Eligible Bond as of any date, 100% of the principal amount of such Eligible Bond plus (if the Purchase Date is not an Interest Payment Date) accrued and unpaid interest thereon to the Purchase Date, but in no event to exceed the Available Commitment; *provided, however*, if the Purchase Date for any Eligible Bond is also an Interest Payment Date for such Eligible Bond, the Purchase Price for such Eligible Bond shall not include accrued but unpaid interest on such Eligible Bond; and *provided, further, however*, that in no event shall the Purchase Price of any Bond include any premium owed with respect to any Bond or any Defaulted Interest.

*“Purchaser”* has the meaning assigned to such term in Section 2.5(b) hereof.

*“Rating Agency”* and *“Rating Agencies”* means, individually or collectively, as applicable, Moody’s, S&P and Fitch.

*“Recipient”* means the Bank and its parent or holding company, each Participant and its parent or holding company, each Bank Bondholder and its parent or holding company, and any other recipient of any payment to be made by or on account of any obligation of SMUD hereunder.

*“Remarketing Agent”* means Barclays Capital Inc., and its successors and assigns.

*“Remarketing Agreement”* means the Remarketing Agreement dated as of [\_\_\_\_], 2023, between SMUD and the Remarketing Agent, as amended or supplemented in accordance with the terms hereof or thereof, or such other agreement as may be entered into with any remarketing agent with respect to the remarketing of the Bonds.

*“Request for Purchase”* has the meaning set forth in Section 2.3 hereof.

*“Revenues”* has the meaning set forth in the Subordinated Bond Resolution.

*“Risk-Based Capital Guidelines”* means (a) the risk-based capital guidelines in effect in the United States of America, including transition rules, and (b) the corresponding capital regulations promulgated by regulatory authorities outside the United States of America including transition rules, and any amendment to such regulations.

*“Sale Date”* has the meaning assigned to such term in Section 2.5(b) hereof.

*“Sale Price”* has the meaning assigned to such term in Section 2.5(b) hereof.

*“Sanction”* or *“Sanctions”* means any economic or financial sanction administered or enforced by the United States Government (including, without limitation, those administered by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC), the U.S. Department of State, the U.S. Department of Commerce, or through any existing or future United States Government statute or executive order.

*“S&P”* means S&P Global Ratings, and its successors, and if such division shall for any reason no longer perform the functions of a securities rating agency, *“S&P”* shall be deemed to refer to any other nationally recognized securities rating agency designated by SMUD that is acceptable to the Bank in its sole discretion.

*“Senior Bonds”* has the meaning given to the term *“Parity Bonds”* as defined in the Bond Resolution.

*“SMUD”* has the meaning set forth in the introductory paragraph hereof.

*“SMUD Board”* means the board of directors of SMUD.

*“SMUD Program Documents”* means the Program Documents to which SMUD is a party (including, without limitation, the Bond Resolution).

*“State”* means the State of California.

*“Subordinated Bond Resolution”* means Resolution No. 85-11-1 of SMUD, duly adopted at a meeting of SMUD on November 7, 1985, as amended and restated by Resolution No. 01-06-10 of SMUD, duly adopted at a meeting of SMUD on June 21, 2001, and amended and supplemented from time to time in accordance with the terms thereof.

*“Substitution Date”* has the meaning set forth in the Supplemental Resolution.

*“Supplemental Resolution”* has the meaning set forth in the recitals hereof.

*“Suspension Event”* has the meaning set forth in Section 6.3(b) hereof.

“*Swap Contract*” means any and all interest rate swap transactions or any other similar interest rate hedging transactions that hedge the interest rate on securities or other obligations issued by or on behalf of SMUD (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“*Termination Notice*” has the meaning set forth in Section 6.3(c) hereof.

“*Term-Out Commencement Date*” has the meaning set forth in Section 2.11 hereof.

“*Trustee*” means U.S. Bank Trust Company, National Association, and its permitted successors and assigns.

“*Weekly Rate*” has the meaning set forth in the Supplemental Resolution.

“*2022 Financial Statements*” means the audited financial statements of SMUD for the Fiscal Year ended December 31, 2022.

*Section 1.2. Incorporation of Certain Definitions by Reference.* Each capitalized term used herein and not otherwise defined herein shall have the meaning provided therefor in the Bond Resolution and, if not defined therein, in the Master Bond Resolution.

*Section 1.3. Accounting Terms and Determinations.* All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles.

*Section 1.4. Interpretation.* The following rules shall apply to the construction of this Agreement and the Fee Agreement unless the context requires otherwise: (a) the singular includes the plural, and the plural the singular; (b) words importing any gender include the other gender and the neuter gender; (c) references to statutes are to be construed as including all statutory provisions consolidating, and all regulations promulgated pursuant to, such statutes; (d) references to “writing” include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”; (f) references to the introductory paragraph, recitals, articles, sections (or clauses or subdivisions of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent that such amendments and other modifications are permitted or not prohibited by the terms of this Agreement; (h) article and section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose; and (i) unless otherwise indicated, references to Persons include their respective permitted successors and assigns.

## ARTICLE TWO

### THE COMMITMENT; BANK BONDS

*Section 2.1. Commitment to Purchase Bonds.* Subject to the terms and conditions of this Agreement, including Section 3.2 hereof, the Bank hereby agrees from time to time during the Purchase Period to purchase, at the Purchase Price, with immediately available funds, Bonds which are Eligible Bonds which are tendered pursuant to (i) an Optional Tender or (ii) a Mandatory Tender and which, in either case, the Remarketing Agent has been unable to remarket. The Bank will pay said Purchase Price with its own funds. The aggregate principal amount (or portion thereof) of any Eligible Bond purchased on any Purchase Date shall be in an authorized denomination and, in any case, the aggregate principal amount of all Bonds purchased on any Purchase Date, together with the aggregate principal amount of all Bank Bonds then Outstanding, shall not exceed the Available Principal Commitment (calculated without giving effect to any purchase of Bonds by the Bank on such date) at 5:00 p.m., New York City time, on such date. The aggregate amount of the Purchase Price comprising interest on Bonds (the “*Interest Component*”) purchased on any Purchase Date shall not exceed the lesser of (a) the Available Interest Commitment on such date and (b) the actual aggregate amount of interest accrued on each such Bond to but excluding such Purchase Date.

*Section 2.2. Bank Bonds.* Any Bonds purchased by the Bank pursuant to Section 2.1 hereof shall thereupon constitute Bank Bonds and have all of the characteristics of Bank Bonds as set forth herein and in the Supplemental Resolution and shall be deemed and treated by SMUD and the Trustee like the Bonds that are not Bank Bonds, except for any different characteristics as set forth herein and in the Bond Resolution. Without limiting the foregoing, it is intended that the rating on all Bank Bonds shall be the same as the rating on Bonds which are not Bank Bonds. All Bank Bonds shall bear interest at the rate and be payable on the dates and in the amounts provided for in Section 2.10 or 2.11 hereof, respectively.

*Section 2.3. Method of Purchasing.* (a) The Trustee shall give notice by electronic mail promptly confirmed by a written notice in the form of Exhibit A to the Bank (each, a “*Request for Purchase*”), pursuant to an Optional Tender or a Mandatory Tender, no later than 12:15 p.m., New York City time, on the Business Day on which Bonds are subject to an Optional Tender or Mandatory Tender. If the Bank receives such notice as provided above, and subject, in each case, to the satisfaction of the conditions set forth in Section 3.2 hereof, the Bank will transfer to the Trustee not later than 2:45 p.m., New York City time, on such tender date (a “*Purchase Date*”), in immediately available funds, an amount equal to the aggregate Purchase Price of all or such portion of such Eligible Bonds as requested from the Trustee. Payment of the Purchase Price under this Agreement shall be made by the Bank by wire transfer of immediately available funds, to the Trustee at U.S. Bank Trust Company, National Association, ABA: [\_\_\_\_], Account Number: [\_\_\_\_], Account Name: [\_\_\_\_]. Such account may be changed only by presentation to the Bank of a notice in form satisfactory to the Bank specifying a different account with the Trustee and executed by the Trustee and authenticated to the Bank’s satisfaction. A Notice of Bank Purchase shall be irrevocable after receipt thereof by the Bank. The Bank shall have no responsibility for, nor incur any liability in respect of, any act, or any failure to act, by the Trustee, including, without limitation, any failure of the Trustee to effect the purchase of Bonds

for the account of the Bank with such funds provided pursuant to this Section 2.3(a) or otherwise. The Bank hereby acknowledges that the Remarketing Agent has agreed in the Remarketing Agreement to use its best efforts to remarket Bonds purchased pursuant to this Section 2.3(a).

So long as Bonds purchased pursuant to this Section 2.3(a) are Book Entry Bonds held by the Trustee as custodian as part of DTC's FAST automated transfer program ("*FAST Eligible Bonds*"), concurrent with the Trustee's receipt of the Purchase Price for each purchase of Bonds by the Bank, the Trustee, as a participant of DTC (or any other successor securities depository) or an eligible transfer agent, shall, if so directed by the Bank, make a direct registration electronic book entry (A) crediting the DTC account designated by the Bank as its account in which to hold the Bonds purchased by the Bank (the "*Bank Book Entry Account*") with the principal amount of the Bonds purchased by the Bank using the Bank Bond CUSIP Number and (B) debiting the book entry account of DTC for the principal amount of such Bonds (the "*DTC Book Entry Account*") for the principal amount of the Bonds purchased by the Bank (thereby reducing the principal balance of the global certificate representing the Bonds). So long as the Bonds are FAST Eligible Bonds, upon a remarketing of Bank Bonds and the Trustee's receipt from the Remarketing Agent of the remarketing proceeds, the Trustee, as a participant of DTC (or any other successor securities depository) or an eligible transfer agent, shall, if the Trustee has previously credited the Bank Book Entry Account as described in clause (A) of the first sentence of this paragraph, make a direct registration electronic book entry in its records (X) debiting the Bank Book Entry Account of the Bank for the principal amount of the Bonds so remarketed and (Y) crediting the DTC Book Entry Account for the Bonds with the principal amount of the Bonds so remarketed (thereby increasing the principal balance of the global certificate representing the Bonds). The Trustee acknowledges that it is familiar with the procedures and requirements set forth in a notice from DTC, dated June 16, 2020, respecting "Variable Rate Demand Obligations ("*VRDO*") Failed Remarketings and Issuance of Bank Bonds" and agrees that, with respect to any and all Bonds, it will follow the procedures and requirements set forth in such notice, as the same may be amended from time to time. To the extent that, following any amendment of such notice, the procedures and requirements therein should become inconsistent with any aspect of the provisions of this paragraph, the Trustee, SMUD and the Bank shall promptly negotiate in good faith and agree upon amendments of this paragraph so as to eliminate such inconsistency.

If the Bonds are no longer FAST Eligible Bonds, concurrently with the Trustee's receipt of the Purchase Price for each purchase of Bonds by the Bank, the Trustee shall cause each Bank Bond to be registered in the name of the Bank and such Bank Bonds shall be held by the Trustee as the agent, bailee and trustee of the Bank for the exclusive benefit of the Bank. The Trustee acknowledges and agrees that it is acting and will act with respect to Bank Bonds at the direction of the Bank for the exclusive benefit of the Bank and is not and shall not at any time be subject in any manner or to any extent to the direction or control of SMUD or any other Person with respect to the Bank Bonds. The Trustee agrees to act in strict accordance with this Agreement and in accordance with any lawful written instructions delivered by the Bank to the Trustee from time to time pursuant hereto. Under no circumstances shall the Trustee deliver possession of the Bank Bonds to, or cause Bank Bonds to be registered in the name of, SMUD, the Remarketing Agent or any Person other than the Bank except in accordance with the express terms of this Agreement or otherwise upon the written instructions of the Bank. The Trustee agrees that if, while this Agreement is in effect, the Trustee shall become entitled to receive or shall receive any payment

in respect of any Bank Bonds held for the Bank, it shall accept the same as the Bank's agent and hold the same in trust on behalf of the Bank and deliver the same forthwith to the Bank. Upon the remarketing of any Bank Bonds and the Trustee's receipt from the Remarketing Agent of the amounts set forth in Section 2.5(b) hereof, the Trustee shall release Bank Bonds in a principal amount equal to the principal amount so remarketed to the Remarketing Agent for such Bonds in accordance with the terms of the Supplemental Resolution. The Trustee shall conclusively rely upon and shall be protected in acting upon any document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Trustee shall not be liable for any error in judgment made in good faith by its responsible officers, employees and agents unless the Trustee or its responsible officers, employees or agents were negligent or engaged in willful misconduct. Anything herein to the contrary notwithstanding, the Trustee shall have no liability hereunder for any act or omission except such as results from its gross negligence or willful misconduct. The Trustee agrees that it will not, except as provided above, without the prior written consent of the Bank, sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, Bank Bonds, and will not create, incur or permit to exist any pledge, lien, mortgage, hypothecation, security interest, charge, option or any other encumbrance on or take any other action with respect to the Bank Bonds, or any interest therein, or any proceeds thereof. The Trustee shall deliver to the Bank at the Bank's request such information as may be in the possession of the Trustee with respect to Bank Bonds.

The Trustee shall be indemnified and held harmless by SMUD in connection with this Agreement, to the same extent provided in the Bond Resolution for matters arising thereunder.

The Interest Component of the Purchase Price paid for such Bonds shall be paid to the Bank as provided in Section 2.10 hereof.

(b) If the Bank receives a Notice of Bank Purchase after 12:15 p.m., New York City time, on a Purchase Date from the Trustee, the Bank, subject to satisfaction of the conditions provided in Section 3.2 hereof, will transfer to the Trustee at or before 2:45 p.m., New York City time, on the Business Day immediately following the Purchase Date specified in such notice, in immediately available funds, an amount equal to the aggregate Purchase Price of Eligible Bonds tendered or deemed tendered on such Purchase Date. In such event, all other provisions of Section 2.3(a) shall apply to the purchase and registration of Bank Bonds after the delivery of a Notice of Bank Purchase and transfer of funds as set forth herein.

(c) Upon request from time to time by SMUD, the Bank shall confirm to SMUD whether there are any Bank Bonds that are then Outstanding.

(d) Notwithstanding any provisions of this Section 2.3 to contrary, the Bank and DTC may cause the transfer of funds and the transfer of any Bank Bond as described in this Section 2.3 on the basis of delivery versus payment or by such other means as shall be acceptable to the Bank, the Trustee and DTC and not contrary to the Bond Resolution.

(e) Following any sale of Bank Bonds pursuant to Section 2.5(b) hereof or otherwise, or any election to retain Bonds pursuant to Section 2.5(c) hereof, the Bank or other Bank Bondholder

shall retain the right to receive payment from SMUD of any interest thereon as provided herein and in the Bond Resolution.

(f) Any sale of a Bank Bond pursuant to this Section 2.3 shall be without recourse to the seller and without representation or warranty of any kind by the Bank or any Bank Bondholder.

*Section 2.4. Mandatory Reductions of Available Commitment; Termination; Substitution.*

(a) Upon (i) any redemption, repayment or other payment of all or any portion of the principal amount of the Bonds so that such Bonds shall cease to be Outstanding, the aggregate Available Principal Commitment shall, subject to Section 2.4(d) below, be reduced by the principal amount of such Bonds so redeemed, repaid or otherwise deemed paid, as the case may be, or (ii) the earlier to occur of (A) close of business on the Business Day immediately following the Conversion Date (other than a Conversion Date in respect of a change from the Daily Rate to the Weekly Rate or the Weekly Rate to the Daily Rate) and (B) the date on which the Bank honors any properly made request to purchase Eligible Bonds tendered for purchase as a result from such conversion, the aggregate Available Principal Commitment shall, subject to Section 2.4(c) below, be reduced to zero and, in the case of either (i) or (ii), the Available Interest Commitment shall also be simultaneously reduced as provided in the definition thereof in Article One hereof; *provided, however,* that in the event any action described in clause (i) or (ii) above results in a reduction of the Available Commitment to zero, all Obligations, including, without limitation, all principal and interest evidenced by Bank Bonds and all amounts payable under Article Two hereof, shall be paid to the Bank up to and including the time of said reduction as described in the notice set forth in Section 2.4(d) below.

(b) The Available Commitment shall, subject to Section 2.4(d) below, terminate at the earlier to occur of (i) the close of business no sooner than the Business Day immediately following the Substitution Date and (ii) the date on which the Bank honors any properly made request to purchase Eligible Bonds tendered for purchase as a result from such substitution. SMUD shall comply with the requirements of the Supplemental Resolution with respect to the delivery of an Alternate Liquidity Facility.

(c) On any day that no Bank Bonds are Outstanding, SMUD may terminate this Agreement at any time following no less than fifteen (15) days' prior written notice to the Bank, the Trustee and the Remarketing Agent; *provided* that SMUD shall comply with the requirements of the Bond Resolution with respect to terminating or replacing this Agreement. This Agreement shall terminate on the date set forth in such notice, unless prior to such date, there shall be Outstanding Bank Bonds.

(d) In connection with any reduction or termination of the Available Commitment as described in Sections 2.4(a), (b) and (c) above, the Trustee shall provide the Bank with written notice of the effective date of such reduction or termination and, unless and until said notice is received by the Bank, the Available Commitment shall not be deemed reduced and/or terminated pursuant to the terms of Sections 2.4(a), (b) and (c).

(e) Except as specifically provided in this Section 2.4, SMUD shall have no right to reduce or terminate the Available Commitment.



*Section 2.5. Sale of Bank Bonds.*

(a) *Right to Sell Bank Bonds.* The Bank expressly reserves the right to sell, at any time, without the consent of SMUD, Bank Bonds subject, however, to the express terms of this Agreement. The Bank agrees that such sales (other than sales made pursuant to Section 2.5(c) hereof) will be made only to institutional investors or other entities or individuals which customarily purchase tax-exempt or taxable securities in large denominations. The Bank agrees to notify SMUD, the Trustee and the Remarketing Agent promptly in writing of any such sale (other than a sale made pursuant to Section 2.5(c) hereof) and, if such Bank Bond is a Book Entry Bond, specifying in accordance with DTC guidelines the account at DTC to which such Bank Bond is credited; and to notify the transferee in writing that such Bond is no longer an Eligible Bond so long as it remains a Bank Bond and that there may not be a short-term investment rating assigned to such Bond so long as it remains a Bank Bond. Any Bank Bondholder purchasing a Bank Bond from the Bank shall be deemed to have agreed (i) not to sell such Bank Bond to any Person except the Bank, an institutional investor or other entity or individual which customarily purchases tax-exempt or taxable securities in large denominations or a Purchaser identified by the Remarketing Agent pursuant to Section 2.5(b) hereof and (ii) if such Bank Bond is a Book Entry Bond, to give all notices in the manner and by the time required by DTC to exclude such Bank Bond from Mandatory Tenders of Bonds while it remains a Bank Bond.

(b) *Purchase Notices.* Prior to 12:30 p.m., New York City time, on any Business Day on which a Bank Bondholder holds Bank Bonds, the Remarketing Agent may deliver a notice (a “*Purchase Notice*”) to a Bank Bondholder as registered on the bond register and to the Bank, stating that it has located a purchaser (the “*Purchaser*”) for some or all of such Bank Bonds and that such Purchaser desires to purchase on the Business Day following the Business Day on which a Bank Bondholder receives, prior to 12:30 p.m., New York City time, a Purchase Notice (a “*Sale Date*”) an authorized denomination of such Bonds at a price equal to the principal amount thereof, plus accrued interest thereon (calculated as if such Bonds were not Bank Bonds) (the “*Sale Price*”); *provided, however*, that the Remarketing Agent shall not remarket Bank Bonds following the delivery of a Termination Notice pursuant to Section 6.3(c) hereof or SMUD’s termination pursuant to Section 2.4(c) hereof.

(c) *Sale of Bank Bonds.* A Bank Bondholder shall decide whether to sell any Bank Bonds to any Purchaser and shall give written notice of such decision to SMUD, the Trustee and the Remarketing Agent by 3:00 p.m., New York City time, on the Business Day preceding the Sale Date. In the event such notice is not timely delivered by a Bank Bondholder, such Bank Bondholder shall be deemed to have determined to sell such Bank Bonds to a Purchaser on the Sale Date (subject to receipt by it of the funds called for by the next following sentence). If a Bank Bondholder determines or is deemed to have determined to sell such Bank Bonds to a Purchaser, such Bank Bondholder shall deliver such Bank Bonds to the Trustee (or, in the case of Bank Bonds which are Book Entry Bonds, shall cause the beneficial ownership thereof to be credited to the account of the Remarketing Agent at DTC) by 10:00 a.m., New York City time, on the Sale Date against receipt of the Sale Price therefor in immediately available funds or at the Bank Bondholder’s address listed in the bond register, and such Bonds shall thereupon no longer be considered Bank Bonds; *provided that*, in the event that the Bank Bondholder has not delivered Bank Bonds as provided above and the Sale Price therefor has been delivered as provided above,

such Bank Bonds shall be deemed to have been delivered and such Bonds shall no longer be considered Bank Bonds. When Bank Bonds are purchased in accordance with this Section 2.5(c), the Trustee shall, upon receipt of such Bank Bonds and upon receipt by such Bank Bondholder of the Sale Price, notify SMUD and the Remarketing Agent that such Bonds are no longer Bank Bonds. Any interest accrued on the Bank Bonds shall be paid to the Bank Bondholder as provided in Section 2.10 hereof. Any sale of a Bank Bond pursuant to this Section 2.5 shall be without recourse to the seller and without representation or warranty of any kind. If a Bank Bondholder notifies SMUD, the Trustee and the Remarketing Agent, as provided in the first sentence of this Section 2.5(c), that it will not sell its Bank Bonds, the Trustee shall notify SMUD, the Remarketing Agent, the Bank and such Bank Bondholder that, as of the Sale Date, such Bond or Bonds shall no longer constitute Bank Bonds and such Bonds shall be deemed to have been remarketed and the Available Commitment shall be appropriately increased.

(d) *Delivery Versus Payment.* Notwithstanding any provisions of this Section 2.5 to contrary, the Bank and DTC may cause the transfer of any Bank Bond and the transfer of any funds described in this Section 2.5 on the basis of delivery versus payment or by such other means as shall be acceptable to the Bank, the Trustee and DTC and not contrary to the Bond Resolution.

*Section 2.6. Rights of Bank Bondholders.* Upon purchasing Bank Bonds, Bank Bondholders shall be entitled to and, where necessary, shall be deemed assigned all rights and privileges accorded Bond owners under the Bond Resolution. Upon purchasing Bank Bonds, Bank Bondholders shall be recognized by SMUD and the Trustee as the true and lawful owners (or, in the case of Book Entry Bonds, beneficial owners) of the Bank Bonds, free from any claims, liens, security interests, equitable interests and other interests of SMUD, except as such interests might exist under the terms of the Bank Bonds with respect to all Bond owners (or, in the case of Book Entry Bonds, beneficial owners) of the Bonds.

*Section 2.7. Commitment Fees and Other Fees; Default Rate.* (a) SMUD hereby agrees to pay and perform its obligations provided for in the Fee Agreement, including the payment by SMUD to the Bank of the nonrefundable Commitment Fees and the other fees, expenses and payments described in the Fee Agreement at the times, on the dates and in the amounts specified in the Fee Agreement, the terms of such Fee Agreement being incorporated herein by reference as if fully set forth herein. Any references herein or in any other document to the Commitment Fee and such other fees, expenses and payments owed to the Bank hereunder without specific reference to the Fee Agreement shall be read so as to include the Fee Agreement, and any reference to this Agreement shall be deemed to include a reference to the Fee Agreement. The Fee Agreement and this Agreement shall be construed as one agreement between SMUD and the Bank and all obligations under the Fee Agreement shall be construed as obligations hereunder.

(b) SMUD shall pay within thirty (30) days after demand any amounts advanced by or on behalf of the Bank to the extent required to cure any Default, Event of Default or event of nonperformance hereunder or any Program Document, together with interest at the Default Rate.

(c) SMUD agrees to pay the Bank, upon demand, interest on any and all amounts owed by SMUD under this Agreement from the earlier of the date such amounts are due and payable but not paid and the occurrence and during the continuation of an Event of Default until payment

thereof in full, at a fluctuating interest rate per annum (computed on the basis of a year of 365 or 366 days, as applicable, and the actual number of days elapsed) equal to the Default Rate and shall be payable by SMUD on demand.

*Section 2.8. Computations: Payments.* Interest payable to the Bank on Bank Bonds shall be computed as set forth, and paid for (subject to the following sentence) as provided, in Section 2.10 hereof. If the Bank Bonds are not Book Entry Bonds, then (i) all payments to the Bank hereunder shall be made in U.S. Dollars and in immediately available funds and (ii) unless the Bank shall otherwise direct, all such payments shall be made by means of wire transfer of funds through the Federal Reserve Wire System to the Bank's account to the following account: TD Bank, N.A.; ABA #: 031101266; Beneficiary's Name: [ ]; Beneficiary's Address: [ ]; Beneficiary's Account Number: [ ]; For Further Credit: [ ]; Ref: [ ] (or to such other account as the Bank may specify in writing from time to time).

*Section 2.9. Security.* (a) This Agreement constitutes the Liquidity Facility under the Supplemental Resolution and has all rights and benefits thereof. In order to secure the timely payment of the Bonds, the Bank Bonds and all other Parity Subordinated Debt, SMUD has pledged the Net Subordinated Revenues, pursuant to and on the terms and subject to the conditions set forth in the Bond Resolution. The pledge of Net Subordinated Revenues under the Bond Resolution constitutes a valid pledge of and charge and lien upon the Net Subordinated Revenues, has attached and is effective, binding, and enforceable against SMUD, its successors, purchasers of any of the Net Subordinated Revenues, creditors, and all others asserting rights therein to the extent set forth in, and in accordance with, the Bond Resolution, irrespective of whether those parties have notice of the lien on, security interest in and pledge of the Net Subordinated Revenues and without the need for any physical delivery, recordation, filing or further act. The pledge of the Net Subordinated Revenues securing the Bonds, the Bank Bonds and all other the Parity Subordinated Debt is only subordinate to the pledge of the Net Revenues securing the Senior Bonds.

(b) SMUD hereby grants a fourth lien and charge on and pledge of the Net Revenues to secure the timely payment of all Obligations hereunder and under the Fee Agreement (other than the Bank Bonds). The lien on, pledge of and charge on Net Revenues all Obligations hereunder and under the Fee Agreement (other than the Bank Bonds) constitutes a valid pledge of and charge and lien upon the Net Revenues on a fourth lien basis and, has attached and is effective, binding, and enforceable against SMUD, its successors and purchasers of any of the Debt secured by Net Revenues, creditors, and all others asserting rights therein, irrespective of whether those parties have notice of the lien on, security interest in and pledge of the Net Revenues and without the need for any physical delivery, recordation, filing or further act.

*Section 2.10. Payments.* Notwithstanding anything to the contrary contained in any Bank Bond, SMUD agrees that (a) the Interest Component shall be due and payable on, the earliest of (i) the Interest Payment Date next succeeding the Purchase Date, (ii) the Sale Date or the date such Bank Bond is paid at maturity or redeemed and (iii) the last day of the Purchase Period and (b)(i) interest on the unpaid principal amount of each Bank Bond from and including the applicable Purchase Date and the Interest Component shall be computed at a rate per annum (computed on the basis of a year of 365 or 366 days, as applicable, and the actual number of days elapsed) equal

to the Bank Rate, subject to the provisions of Section 2.19 hereof, and (ii) interest payable pursuant to clause (b)(i) above shall be payable (A) on the first Business Day of each calendar month, (B) upon redemption or purchase in lieu of redemption of such Bank Bond pursuant to the Bond Resolution (to the extent of the interest accrued on the amount being redeemed), (C) on each Sale Date (to the extent of the interest accrued on the amount being sold or deemed sold after a credit for any interest included in the Sale Price and as provided in Section 2.5(c) hereof), (D) on the date the Purchase Period is terminated pursuant to the terms hereof and (E) at maturity (whether by acceleration or otherwise). In the event any Bank Bond is remarketed or otherwise transferred by the Bank before payment in full of the funds advanced by the Bank hereunder with respect thereto, together with (without duplication of the Interest Component of the amount so advanced) interest on the principal amount of such Bank Bond at the Bank Rate, the provisions of this Article Two shall continue to apply to such indebtedness until all sums owing for all periods during which the same was a Bank Bond are paid. All or any portion of the Bank Bonds may be optionally redeemed at any time without penalty. The obligation of SMUD to make the payments described in this Section 2.10 shall be reduced to the extent that such obligations are paid pursuant to the Supplemental Resolution or as part of the Sale Price.

*Section 2.11. Mandatory Redemption.* Bank Bonds purchased on a Purchase Date shall be subject to mandatory redemption prior to 4:00 p.m., New York City time, on the related Purchase Date; *provided, however*, that subject to the satisfaction of the conditions precedent set forth in Section 3.3 hereof on the applicable Purchase Date, Bank Bonds purchased on such Purchase Date shall not be subject to mandatory redemption on such Purchase Date and, instead, shall be subject to mandatory redemption in accordance with the immediately succeeding sentence. If the conditions precedent set forth in Section 3.3 hereof are satisfied on the applicable Purchase Date, such Bank Bonds shall be subject to mandatory redemption in equal semi-annual principal installments, the first such installment being payable on the date which is the 180<sup>th</sup> day immediately following the related Purchase Date (the “*Term-Out Commencement Date*”), and on each six month anniversary thereafter so that such Bank Bonds are paid in full no later than the fifth anniversary of the Purchase Date (if such fifth anniversary of the Purchase Date is not a Business Day, the Business Day next preceding such day) (the date of each such redemption being a “*Bank Bond Redemption Date*”). If the conditions precedent set forth in Section 3.3 hereof are not satisfied on the related Purchase Date, such Bank Bonds shall be subject to mandatory redemption in full on such Purchase Date (at a redemption price equal to the principal amount thereof, plus accrued interest thereon, without premium). Interest on such Bank Bonds shall be payable as provided in Section 2.10 hereof. Notwithstanding the foregoing, SMUD may optionally redeem any Bank Bond without penalty at a redemption price equal to the principal amount thereof, plus accrued interest thereon, without premium. All obligations with respect to all Bank Bonds (including the payment of the Interest Component) shall be due and payable in full on the earliest of (a) the date such Bank Bonds are remarketed and sold or deemed sold by the Bank or a Bank Bondholder to a Purchaser pursuant to Section 2.5(c) hereof, (b) the date the interest rate borne by the Bonds is converted to a rate other than a Covered Rate, (c) the date of the delivery of an Alternate Liquidity Facility and (d) any date determined pursuant to Section 6.3 hereof.

*Section 2.12. Extension of Purchase Period.* (i) No later than 90 days prior to the Facility Maturity Date, SMUD may request the Bank to extend the then current Facility Maturity Date for

a period as agreed to by SMUD and the Bank by delivering notice to the Bank in the form of Exhibit C attached hereto. If the Bank, in its sole discretion, elects to extend the Facility Maturity Date then in effect, it shall deliver to SMUD within 60 days of receiving a request, a written notice of extension in the form of Exhibit D attached hereto (herein referred to as a “*Notice of Extension*”) designating the date to which the Facility Maturity Date is being extended. Such extension of the Facility Maturity Date shall be effective, after receipt of such Notice of Extension, on the Business Day following the date of delivery of such Notice of Extension, and thereafter all references in this Agreement to the Facility Maturity Date shall be deemed to be references to the date designated as such in the most recent Notice of Extension delivered to SMUD. Any date to which the Facility Maturity Date has been extended in accordance with this Section 2.12 may be extended in like manner. If the Bank fails to provide SMUD with a Notice of Extension as provided hereinabove, the Bank shall be deemed not to have consented to SMUD’s request. The Bank shall use commercially reasonable efforts to promptly notify SMUD if it will not extend the Facility Maturity Date, but the Bank’s failure to do so shall be deemed a denial of the extension request.

(ii) Notwithstanding the foregoing, it is understood and agreed that the foregoing provisions are intended for the convenience of the parties only and shall in no respect prohibit the parties from agreeing to extend the Purchase Period under other circumstances or at other times. In the event the Purchase Period is extended under any other circumstances, the Bank shall give prompt written notice thereof to SMUD.

(iii) If the Purchase Period is extended, whether pursuant to subsection (i) above or otherwise, such extension shall be conditioned upon the prompt preparation, execution and delivery of documentation, satisfactory to SMUD and the Bank and their respective counsel.

*Section 2.13. General Provisions as to Payments.* All payments to be made by SMUD under this Agreement and the Fee Agreement shall be made at the Payment Account not later than 4:00 P.M. (New York time) on the date when due and shall be made in lawful money of the United States of America in freely transferable and immediately available funds. All payments received by the Bank after 4:00 P.M. (New York time) shall be deemed to have been made on the next succeeding Business Day and any applicable interest or fees shall continue to accrue.

*Section 2.14. Computation of Interest and Fees.* All fees payable hereunder and under the Fee Agreement shall be calculated on the basis of a 360-day year based upon the actual number of days elapsed and interest with respect to Bank Bonds and all other Obligations shall be calculated on the basis of a 365 or 366 day year, as applicable, and the actual number of days elapsed.

*Section 2.15. Payment Due on Non-Business Day to Be Made on Next Business Day.* If any sum becomes payable pursuant to this Agreement or the Fee Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

*Section 2.16. Net of Taxes, Etc.* (a) Any and all payments to the Bank or any Bank Bondholder by SMUD hereunder or with respect to the Bank Bonds shall be made free and clear of and without deduction or withholding for any and all Indemnified Taxes. If SMUD shall be

required by law to deduct or withhold any Indemnified Taxes imposed by the United States of America or any political subdivision thereof from or in respect of any sum payable hereunder or with respect to the Bank Bonds, then (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Bank or such Bank Bondholder receives an amount equal to the sum it would have received had no such deductions been made, (ii) SMUD shall make such deductions and (iii) SMUD shall timely pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If SMUD shall make any payment under this Section to or for the benefit of the Bank or such Bank Bondholder with respect to Indemnified Taxes and if the Bank or such Bank Bondholder shall claim any credit or deduction for such Indemnified Taxes against any other taxes payable by the Bank or such Bank Bondholder to any taxing jurisdiction then the Bank or such Bank Bondholder shall pay to SMUD an amount equal to the amount by which such other taxes are actually reduced; *provided*, that the aggregate amount payable by the Bank or such Bank Bondholder pursuant to this sentence shall not exceed the aggregate amount previously paid by SMUD with respect to such Indemnified Taxes. In addition, SMUD agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies that arise under the laws of the United States of America or any state of the United States or any other nation from any payment made hereunder or under the Bank Bonds or from the execution or delivery of this Agreement, or otherwise with respect to this Agreement the Bank Bonds (hereinafter referred to as "*Other Taxes*"). The Bank or such Bank Bondholder shall provide to SMUD within a reasonable time a copy of any written notification it receives with respect to Indemnified Taxes or Other Taxes owing by SMUD to the Bank or such Bank Bondholder hereunder; *provided*, that the Bank or such Bank Bondholder's failure to send such notice shall not relieve SMUD of its obligation to pay such amounts hereunder. SMUD may conduct a reasonable contest of any such Indemnified Taxes with the prior written consent of the Bank, which consent shall not be unreasonably withheld or delayed; *provided*, that SMUD shall, on demand, immediately reimburse the Bank for any and all expenses (including attorneys' fees for services that may be required or desirable, as determined by the Bank in its sole discretion) that may be incurred by the Bank in connection with any such contest.

(b) SMUD shall, to the fullest extent permitted by law and subject to the provisions hereof, pay the Bank or such Bank Bondholder for the full amount of Indemnified Taxes and Other Taxes including any Indemnified Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section paid by the Bank or such Bank Bondholder or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto whether or not such Indemnified Taxes or Other Taxes were correctly or legally asserted; *provided*, that SMUD; shall not be obligated to pay the Bank or such Bank Bondholder for any penalties, interest or expenses relating to Indemnified Taxes or Other Taxes arising from the Bank or such Bank Bondholder's gross negligence or willful misconduct. The Bank or such Bank Bondholder agrees to give notice to SMUD of the assertion of any claim against the Bank or such Bank Bondholder relating to such Indemnified Taxes or Other Taxes as promptly as is practicable after being notified of such assertion; *provided*, that the Bank or such Bank Bondholder's failure to notify SMUD promptly of such assertion shall not relieve SMUD of its obligation under this Section. Payments by SMUD pursuant to this Section shall be made within thirty (30) days from the date the Bank or such Bank Bondholder makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. The Bank or such Bank Bondholder agrees to

repay to SMUD any refund (including that portion of any interest that was included as part of such refund) with respect to Indemnified Taxes or Other Taxes paid by SMUD pursuant to this Section received by the Bank or such Bank Bondholder for Indemnified Taxes or Other Taxes that were paid by SMUD pursuant to this Section and to contest, with the cooperation and at the expense of SMUD, any such Indemnified Taxes or Other Taxes which the Bank or such Bank Bondholder or SMUD reasonably believes not to have been properly assessed.

(c) Within thirty (30) days after the date of any payment of Indemnified Taxes by SMUD, SMUD shall furnish to the Bank the original or a certified copy of a receipt evidencing payment thereof.

(d) Notwithstanding anything contained in paragraphs (a) or (b) of this Section, SMUD shall have no liability to the Bank or any Bank Bondholder with respect to any Indemnified Taxes to the extent incurred or imposed on the Bank or any Bank Bondholder more than one hundred eighty (180) days prior to the date written notification thereof is given to SMUD by the Bank (the “Cut-Off Date”), except where (A) the Bank had no actual knowledge of the action resulting in such Indemnified Taxes as of the Cut-Off Date or (B) such Indemnified Taxes apply to the Bank retroactively to a date prior to the Cut-Off Date.

(d) The obligations of SMUD under this Section 2.16 shall survive the termination of this Agreement and the repayment of all Obligations hereunder for a period of one hundred eighty (180) days after such termination and final repayment; *provided, however*, that in the event any taxing jurisdiction imposes Indemnified Taxes on the Bank or any Bank Bondholder after the end of such 180 day period but retroactively to a date prior to the end of such 180 day period, as described in this Section 2.16, the Bank may impose such Indemnified Taxes on SMUD in accordance with the terms of this Section 2.16; *provided, further, however*, that the foregoing proviso shall only apply to any Indemnified Taxes imposed not later than two (2) years after the date this Agreement terminates and all Obligations have been paid in full.

*Section 2.17. Increased Costs.* (a) *Increased Costs Generally.* If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, liquidity ratio, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, the Bank or any Recipient;

(ii) subject any Recipient to any Taxes of any kind whatsoever with respect to this Agreement, or change the basis of taxation of payments to the Bank or such Recipient in respect thereof (except for Indemnified Taxes covered by Section 2.16 hereof and the imposition of, or any change in the rate of any Excluded Tax payable by the Bank or any Recipient); or

(iii) impose on the Bank or any Recipient any other condition, cost or expense affecting this Agreement or the Fee Agreement or any participation therein;

and the result of any of the foregoing shall be to increase the cost to the Bank or such Recipient related to issuing or maintaining this Agreement, the Available Commitment or any Bank Bond, or to reduce the amount of any sum received or receivable by the Bank or such Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of the Bank, SMUD shall promptly pay to the Bank (for the Bank or such Recipient, as the case may be) such additional amount or amounts as will compensate the Bank or such Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) *Capital Requirements.* If the Bank or any Recipient determines that any Change in Law affecting the Bank or such Recipient or the Bank's or such Recipient's parent or holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on the Bank's or such Recipient's capital or liquidity or the capital or liquidity of such Bank's or such Recipient's parent or holding company holding, if any, as a consequence of this Agreement, or for maintaining this Agreement, the Available Commitment or any Bank Bond, to a level below that which the Bank or such Recipient or the Bank's or such Recipient's parent or holding company could have achieved but for such Change in Law (taking into consideration the Bank's or such Recipient's policies and the policies of the Bank's or such Recipient's parent or holding company with respect to capital or liquidity adequacy), then from time to time, upon written request of the Bank, SMUD shall promptly pay to the Bank (for the Bank or such Recipient, as the case may be) such additional amount or amounts as will compensate the Bank or such Recipient or the Bank's or such Recipient's parent or holding company for any such reduction suffered.

(c) *Certificates for Reimbursement.* A certificate of the Bank or a Recipient setting forth the amount or amounts necessary to compensate the Bank or any such Recipient or the Bank's or any such Recipient's parent or holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to SMUD, shall be conclusive absent manifest error. SMUD shall pay the Bank or any such Recipient, as the case may be, the amount shown as due on any such certificate within thirty (30) days after receipt thereof. Each Recipient shall have the benefits of this Section 2.17, but shall not be entitled to receive any greater payment under such Section than the Bank would have been entitled to receive in connection with the rights transferred.

(d) *Delay in Requests.* Failure or delay on the part of the Bank or any such Recipient to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of the Bank's or such Recipient's right to demand such compensation; *provided* that SMUD shall not be required to compensate the Bank or such Recipient pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that the Bank notifies SMUD of the Change in Law giving rise to such increased costs or reductions and of the Bank's or such Recipient's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six (6) month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) *Survival.* The obligations of SMUD under this Section 2.17 shall survive the termination of this Agreement and the repayment of all Obligations hereunder for a period of one hundred eighty (180) days after such termination and final repayment; *provided, however*, that in



the event any Change in Law provides for retroactive increased costs or retroactive imposition of capital adequacy or liquidity requirements, as described in this Section 2.17, the Bank or a Recipient may impose such costs on SMUD in accordance with the terms of this Section 2.17; *provided, further, however*, that the foregoing proviso shall only apply to any Change in Law occurring not later than two (2) years after the date this Agreement terminates and all Obligations have been paid in full.

*Section 2.18. Margin Regulations.* No portion of the proceeds of any advances by the Bank hereunder shall be used by SMUD (or the Trustee or any other Person on behalf of SMUD) for the purpose of “purchasing” or “carrying” any margin stock or used in any manner which might cause the borrowing or the application of such proceeds to violate Regulation U, Regulation T, or Regulation X of the Board of Governors of the Federal Reserve System or any other regulation of said Board of Governors or to violate the Securities Exchange Act of 1934, as amended, in each case as in effect on the date or dates of such advances and such use of proceeds.

*Section 2.19. Maximum Rate; Payment of Fee.* Anything in this Agreement to the contrary notwithstanding, if the rate of interest due hereunder shall exceed the Maximum Rate for any period for which interest is payable, then (i) interest at the Maximum Rate shall be due and payable with respect to such interest period and (ii) interest at the rate equal to the difference between (A) the rate of interest calculated in accordance with the terms hereof without regard to the Maximum Rate and (B) the Maximum Rate (the “*Excess Interest*”), shall be deferred until such date as the rate of interest calculated in accordance with the terms hereof ceases to exceed the Maximum Rate, at which time SMUD shall pay to the Bank, with respect to amounts then payable to the Bank that are required to accrue interest hereunder, such portion of the deferred Excess Interest as will cause the rate of interest then paid to the Bank to equal the Maximum Rate, which payments of deferred Excess Interest shall continue to apply to such unpaid amounts hereunder until all deferred Excess Interest is fully paid to the Bank. To the extent permitted by law, upon the termination of the Available Commitment and/or this Agreement, in consideration for the limitation of the rate of interest otherwise payable hereunder, SMUD shall pay to the Bank a fee equal to the amount of all unpaid deferred Excess Interest.

## ARTICLE THREE

### CONDITIONS PRECEDENT

*Section 3.1. Conditions Precedent to the effectiveness of this Agreement.* As conditions precedent to the obligation of the Bank to establish the Available Commitment and execute and deliver this Agreement, SMUD shall provide to the Bank on the Closing Date, each in form and substance satisfactory to the Bank and its counsel, Chapman and Cutler LLP (hereinafter, “*Bank’s Counsel*”):

(i) *Approvals.* The Bank shall have received an executed counterpart of this Agreement duly executed by SMUD and the Bank and copies of all action taken by SMUD (including, without limitation, any resolution adopted or passed by SMUD in connection therewith) approving the execution and delivery by SMUD of this Agreement, the Fee

Agreement, the Bonds and the other Program Documents, in each case, certified by an authorized official of SMUD as complete and correct as of the date hereof.

(ii) *Incumbency of Officials.* The Bank shall have received an incumbency certificate of SMUD in respect of each of the officials who is authorized to (a) sign this Agreement, the Bonds and the other Program Documents on behalf of SMUD and (b) take actions for SMUD under this Agreement, the Bonds and the other Program Documents.

(iii) *Opinion of Bond Counsel.* The Bank shall have received an opinion of Bond Counsel or a reliance letter thereon.

(iv) *Opinion of Counsel to SMUD.* The Bank shall have received an opinion addressed to the Bank and dated the Closing Date of the general counsel for SMUD, in form and substance satisfactory to the Bank, and addressing (i) SMUD's existence, (ii) SMUD's power and authority to enter into this Agreement and the Fee Agreement and to perform its obligations hereunder and thereunder, (iii) SMUD's execution and delivery of this Agreement and the Fee Agreement, (iv) the enforceability of SMUD's obligations under this Agreement and the Fee Agreement, (v) that SMUD has obtained all consents necessary to execute, deliver and perform this Agreement and the Fee Agreement, (vi) the execution and delivery of this Agreement and the Fee Agreement by SMUD will not violate any law, order or agreement to which SMUD is subject or to which SMUD is a party, and (vii) there is no litigation pending or threatened against SMUD that would prevent SMUD from executing and delivering this Agreement and the Fee Agreement or performing its obligations hereunder and thereunder.

(v) *Bond Resolution and Other Program Documents.* The Bank shall have received (a) a certified copy of the Bond Resolution and the Master Bond Resolution (or a certified copy of the annotated version thereof) which have been adopted prior to the Closing Date, all certified by an authorized officer of SMUD as being in full force and effect and (b) fully executed or certified copies, as applicable, of all other Program Documents.

(vi) *Financial Information.* The Bank shall have received copies of any financial information of SMUD that the Bank may reasonably request.

(vii) *Legality; Material Adverse Change.* The Bank shall have determined (in its sole discretion) that (a) the consummation of any of the transactions contemplated by the Bond Resolution, the Bonds, this Agreement or any other Program Document will not violate any law, rule, guideline or regulation applicable to SMUD, the Bank, the Available Commitment, the Bonds or this Agreement, and (b) no Material Adverse Change shall have occurred since December 31, 2022.

(viii) *Fees, Etc.* The Bank shall have received payment of the fees, costs and expenses payable on the Closing Date.

(ix) *Bank Bonds.* The Bank shall have received written evidence satisfactory to the Bank that (A) a Bank Bond CUSIP number has been obtained and reserved from Standard & Poor's CUSIP Service and (B) the Bank Bonds specifically have been assigned a long-term unenhanced rating of at least "BBB-" or greater by S&P or Fitch and (C) to the extent reasonably achievable, evidence that the CUSIP number and the rating assigned to such Bank Bonds are available electronically to the Bank pursuant to a third-party provider of such information.

(x) *Ratings.* The Bank shall have received written confirmation that on or prior to the Closing Date the Bonds have received the long-term unenhanced credit ratings of at least "AA-" from S&P and "AA" from Fitch.

(xi) *Closing Certificate.* The Bank shall have received a certificate from SMUD executed by the Authorized SMUD Representative, dated the Closing Date, stating that:

(a) the representations and warranties of SMUD contained in this Agreement and each certificate furnished or delivered by SMUD to the Bank pursuant hereto are true and correct on and as of the Closing Date as though made on and as of such date;

(b) no "default" or "event of default" under any Program Document to which SMUD is a party and no Default or Event of Default has occurred and is continuing or would result from the entering into or performance under this Agreement and the other Program Documents; and

(c) except as has been disclosed to the Bank in writing prior to the Closing Date, there has been no Material Adverse Change since December 31, 2022.

(xii) *Other Documents.* The Bank shall have received such other documents, certificates, and opinions as the Bank or the Bank's counsel shall have reasonably requested.

(xiii) *Bank Counsel Opinion.* SMUD shall have received an opinion of Bank's Counsel as to the Bank's execution and delivery of this Agreement and the enforceability of the Bank's obligations under this Agreement.

*Section 3.2. Conditions Precedent to Bank's Obligation to Purchase Tendered Bonds.* The obligation of the Bank to purchase tendered Bonds hereunder on any Purchase Date is subject to the satisfaction of all of the following conditions, unless specifically waived in writing by the Bank with respect to a Purchase Date:

(a) No Immediate Termination Event shall have occurred and no Suspension Event shall have occurred and be continuing; and

(b) The Bank shall have received a Notice of Bank Purchase during the Purchase Period in the manner described in Section 2.3 hereof.

*Section 3.3. Conditions Precedent to Term-Out.* The obligation of the Bank to extend the extended amortization of the Bank Bonds in accordance with Section 2.11 hereof is subject to the satisfaction of the following conditions:

(a) receipt by the Bank of a Request for Purchase as required by Section 2.3(a) hereof;

(b) immediately before and as a result of giving effect to the extension of the extended amortization of the Bank Bonds in accordance with Section 2.11 hereof, no Credit Default or, Credit Event of Default, shall have occurred and be continuing; and

(c) immediately before and as a result of giving effect to the extension of the extended amortization of the Bank Bonds in accordance with Section 2.11 hereof no event described in clause (b) of the definition of Material Adverse Change shall have occurred.

## **ARTICLE FOUR**

### **REPRESENTATIONS AND WARRANTIES**

*Section 4.1. Representations of SMUD.* In order to induce the Bank to establish the Available Commitment and execute and deliver this Agreement, SMUD represents and warrants to the Bank as follows:

(a) *Existence and Power.* SMUD is a municipal utility district organized and existing under and by virtue of the Act, and is possessed of full powers to own and lease (as lessor and lessee) real and personal property, to own and operate the Electric System, to conduct its other business as presently conducted and to enter into contracts such as this Agreement and the SMUD Program Documents, which powers have been validly exercised in connection with the transactions effected by this Agreement and the SMUD Program Documents.

(b) *Authorization; Contravention; Approvals.* The execution, delivery and performance by SMUD of this Agreement, the Fee Agreement and the SMUD Program Documents and the other documents contemplated hereby and thereby are within the powers of SMUD, have been duly authorized by all necessary actions and (i) do not contravene the Act or any other law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any indenture, agreement, lease, instrument or other contractual restriction binding on or affecting SMUD and (ii) except as provided in or contemplated by this Agreement and the Program Documents, do not result in or require the creation of any Lien, security interest or other charge or encumbrance upon or with respect to any asset of SMUD. SMUD is not in violation of or in default in any material respect under any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award that would prevent or is reasonably likely to prevent SMUD from performing its obligations under this Agreement or the SMUD Program Documents. SMUD is not in violation of or in default in any material respect under any indenture, agreement, lease, instrument or other contractual

restriction and is not in violation of or in default in any respect under any of the SMUD Program Documents that would prevent or is reasonably likely to prevent SMUD from performing its obligations under this Agreement or the SMUD Program Documents. No Default or Event of Default has occurred and is continuing. All orders, consents and other authorizations or approvals of all Governmental Authorities and all other Persons have been obtained (and no additional authorization, approval or other action by, and no notice to or filing or registration with, any Governmental Authority is required to be made or obtained by SMUD) for the due execution, delivery and performance by SMUD of this Agreement and the SMUD Program Documents.

(c) *Enforceability.* This Agreement and the SMUD Program Documents, and other documents contemplated hereby and thereby to which SMUD is a party or by which it is bound, are legally valid and binding obligations of SMUD enforceable against SMUD in accordance with their respective terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights generally; (ii) general principles of equity; (iii) the exercise of judicial discretion in appropriate cases; and (iv) to the limitations on legal remedies against municipal utility districts in the State of California.

(d) *Litigation.* Except as disclosed in the Official Statement or in writing to the Bank prior to the Closing Date, there are no actions, suits, proceedings, inquiries or investigations, at law or in equity, before any court, Governmental Authority or arbitrator pending or, to the best knowledge of SMUD, threatened, against or directly involving SMUD (including, without limitation, the ability of SMUD to establish and collect rates for the generation, transmission and distribution of electric power), affecting the existence of SMUD, the title of any officials to their respective offices or affecting or seeking to prohibit, restrain or enjoin the execution or delivery of this Agreement or any Program Document, or in any way contesting or affecting the validity or enforceability of the Bonds, this Agreement, any Program Document or contesting the tax-exempt status of the Bonds, or contesting in any way the completeness or accuracy of the Official Statement or any supplements or amendments thereto, or contesting the powers of SMUD or any authority for the issuance of the Bonds, the execution and delivery of this Agreement or the SMUD Program Documents, nor, to the best knowledge of SMUD, is there any basis therefor, which, if determined adversely to SMUD (i) would adversely affect the validity or enforceability of, or the authority or ability of SMUD to perform its obligations under, this Agreement, the Fee Agreement or any SMUD Program Documents, (ii) would, in the reasonable opinion of SMUD, have a material adverse effect on the business, financial position or results of operations of SMUD or (iii) would adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes or the exemption of such interest from State of California personal income taxes.

(e) *Financial Information.* (i) The audited financial statements of SMUD included in the 2022 Financial Statements, true and correct copies of which have heretofore been delivered or made available to the Bank, fairly present, in conformity with generally accepted accounting principles the financial position of SMUD and its results of operations and changes in financial position at the dates and for the periods indicated.

(ii) Except as has been disclosed in writing to the Bank prior to the Closing Date, since December 31, 2022, there has been no material adverse change in the business, financial position

or results of operations of SMUD which could reasonably be expected to result in a material adverse effect on SMUD's ability to perform its obligations hereunder or thereunder or the rights, security or interests of the Bank.

(iii) Except as reflected in the financial statements included in the 2022 Financial Statements or as described in the Official Statement or as has been disclosed in writing to the Bank prior to the Closing Date and except for SMUD's obligations set forth in this Agreement and the SMUD Program Documents, there are as of the date hereof no liabilities or obligations with respect to SMUD of any nature whatsoever (whether absolute, accrued, contingent or otherwise and whether or not due) which, in the aggregate, would be material to SMUD. SMUD does not know of any basis for the assertion against SMUD of any liability or obligation of any nature whatsoever that is not reflected in the financial statements included in the 2022 Financial Statements or the Official Statement or other written disclosure to the Bank delivered prior to the Closing Date which, in the aggregate, could be material to SMUD.

(f) *Disclosure.* No written information furnished by SMUD to the Bank in connection with this Agreement (except information which has been superseded by subsequent information provided by SMUD) includes any untrue statement of a material fact.

(g) *Environmental Matters.* Except as disclosed in the Official Statement or in writing to the Bank prior to the Closing Date, SMUD has not received notice to the effect that the operations of the Electric System are not in compliance with any of the requirements of applicable Federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, in each case which non-compliance or remedial action could have a Material Adverse Effect.

(h) *Plans.* SMUD currently has a Plan which is in compliance in all respects with the requirements of the applicable laws of the State of California, including without limitation the obligation to pay contributions on behalf of its employees in accordance therewith, and SMUD has no Plan which is subject to the requirements of ERISA. No condition exists or event or transaction has occurred with respect to any Plan which could reasonably be expected to result in the incurrence by SMUD of any material liability, fine or penalty.

(i) *Regulations U and X.* SMUD is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U or X issued by the Board of Governors of the Federal Reserve System); and no proceeds of any amounts advanced by the Bank hereunder will be used to extend credit to others for the purpose of purchasing or carrying any margin stock.

(j) *Tax-Exempt Status.* SMUD has not taken any action or omitted to take any action, and knows of no action taken or omitted to be taken by any other Person, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes or the exemption of such interest from State of California personal income taxes.

(k) *Security.* (i) The Bond Resolution creates, for the benefit of the Bonds, the Bank Bonds and all other Parity Subordinated Debt, a legally valid and binding pledge of the Net Subordinated Revenues, and there is no Lien on the Net Subordinated Revenues that ranks senior to or on a parity with the lien granted for the benefit of the Bonds, the Bank Bonds and all other Parity Subordinated Debt other than the pledge securing the Senior Bonds. Except as provided in the Master Bond Resolution, neither the Master Bond Resolution nor the Bond Resolution permits the issuance of Debt that is secured by the Net Revenues on a basis senior to the Bonds and Bank Bond. No filing, registering, or recording of the Bond Resolution or any other instrument is required to establish the pledge of or to perfect, protect or maintain the Lien on the Net Subordinated Revenues created thereby.

(b) This Agreement creates, for the benefit of all Obligations hereunder and under the Fee Agreement (other than the Bank Bonds) a fourth lien and charge on and pledge of the Net Revenues to secure the timely payment of all Obligations hereunder and under the Fee Agreement (other than the Bank Bonds). The lien on, pledge of and charge on Net Revenues all Obligations hereunder and under the Fee Agreement (other than the Bank Bonds) constitutes a valid pledge of and charge and lien upon the Net Revenues on a fourth lien basis. No filing, registering, or recording of this Agreement or any other instrument is required to establish the pledge of or to perfect, protect or maintain the fourth lien on the Net Revenues created hereby.

(l) *Constitutional Matters.* There is no amendment, or, to the best knowledge of SMUD, proposed amendment certified for placement on a statewide ballot, to the Constitution of the State of California or any published administrative interpretation of the Constitution of the State of California or any State of California law, or any legislation which has passed either house of the State legislature, or any published judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have Material Adverse Effect.

(m) *No Sovereign Immunity.* SMUD represents that it is not entitled to claim immunity on the grounds of sovereignty or other similar grounds with respect to itself from (i) suit or (ii) jurisdiction of any court because of its status as a political subdivision of the State of California.

(n) *Incorporation of Representations and Warranties by Reference.* SMUD hereby makes to the Bank every representation and warranty made by it in SMUD Program Documents, which representations and warranties, as well as the defined terms contained therein that are necessary for a correct interpretation thereof, are incorporated herein by this reference with the same effect as if each and every such provision and defined term were set forth herein in its entirety. No amendment, modification, termination or replacement of any such representations, warranties, covenants and definitions contained in the SMUD Program Documents shall be effective to amend, modify, terminate or replace the representations, warranties, covenants and definitions incorporated herein by this reference, without the prior written consent of the Bank. The representations and warranties of SMUD in all of the SMUD Program Documents are true and correct in all material respects.

(o) *No Violation of Usury Laws.* The terms of the Bond Resolution regarding the calculation and payment of interest on the Bonds and the Bank Bonds do not violate any applicable usury laws of the State of California and, assuming that the Bank is an exempted class of persons

within the meaning of Article 15 of the California Constitution, the terms of this Agreement, the Fee Agreement, the Bank Bonds and the Bonds regarding the calculation and payment of interest and fees and other amounts due under this Agreement, the Fee Agreement, the Bank Bonds and the Bonds do not violate any applicable usury laws of the State of California.

(p) *Compliance.* SMUD is in substantial compliance with all laws, ordinances, orders, rules and regulations applicable to it, except to the extent noncompliance could not reasonably be expected to result in a Material Adverse Effect.

(q) *Default.* SMUD is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any SMUD Program Document, the Master Bond Resolution, the Bond Resolution or any other resolution, agreement or instrument to which it is a party which could have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

(r) *Insurance.* The properties of SMUD are insured in accordance with the terms of the Master Bond Resolution.

(s) *Taxes.* SMUD has filed any Federal, state and other material tax returns and reports required to be filed, and has paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon it or its properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with generally accepted accounting principles. There is no proposed tax assessment against SMUD that would, if made, have a Material Adverse Effect.

(t) *Casualty.* Neither the business nor the Property of SMUD is currently affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance), which could have a Material Adverse Effect.

(u) *Sanctions Concerns; Anti-Corruption Laws.* (i) *Sanctions Concerns.* Neither SMUD, nor, to the knowledge of SMUD, any director, officer, or employee thereof, is (A) currently the subject or target of any Sanctions, (B) included on OFAC's List of Specially Designated Nationals, or (C) located, organized or resident in a Designated Jurisdiction.

(ii) *Anti-Corruption Laws.* SMUD has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar anti-corruption legislation applicable in California, and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

(iii) *Anti- Money Laundering Laws.* To the best of SMUD's knowledge, after due care and inquiry, SMUD is not under investigation for an alleged violation of anti-money laundering laws by a governmental authority that enforces such laws.



(v) *Anti-Terrorism Laws.* (i) SMUD is not in violation of any laws relating to terrorism or money laundering (“*Anti-Terrorism Laws*”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “*Executive Order*”), and the Patriot Act;

(ii) SMUD is not any of the following:

(A) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(B) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order;

(C) a Person with which the Bank is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law;

(D) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or

(E) a Person that is named as a “specially designated national and blocked person” on the most current list published by the Office of Foreign Asset Control (“*OFAC*”) or any list of Persons issued by OFAC pursuant to the Executive Order at its official website or any replacement website or other replacement official publication of such list;

(iii) SMUD is an electrical utility. To its knowledge, SMUD does not (A) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Person described in subsection (ii)(B) above, (B) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order or (C) engage in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law.

(w) *Trustee and Remarketing Agent.* U.S. Bank Trust Company, National Association (or a successor or assign approved in writing by the Bank) is the duly appointed and acting Trustee and Barclays Capital Inc., (or a successor or assign approved in writing by the Bank) is the duly appointed Remarketing Agent.

## ARTICLE FIVE

### COVENANTS

*Section 5.1. Covenants of SMUD.* SMUD will do the following so long as any amounts may be drawn hereunder or any Obligations remain outstanding under this Agreement, unless the

Bank shall otherwise consent in writing:

(a) *Reports and Other Information.* SMUD will furnish, or cause to be furnished, at SMUD's expense to the Bank:

(i) As soon as possible and in any event within five (5) Business Days after the knowledge (actual or constructive) or notice of the occurrence of any Event of Default, a statement of the Authorized SMUD Representative setting forth details of such Event of Default and the action that SMUD proposes to take with respect thereto;

(ii) As soon as available and in any event within two hundred ten (210) days after the end of each Fiscal Year of SMUD, a copy of the audited financial statements of SMUD for such year, including a balance sheet of SMUD as at the end of such Fiscal Year and the related statements of revenues, expenses and changes in fund balances and statement of cash flows, all in reasonable detail and reported on by a firm of nationally recognized independent certified public accountants, and the report of such firm of independent certified public accountants shall state, without qualification, that such financial statements present fairly the financial position of SMUD as of the end of such Fiscal Year, the results of operations, the changes in fund balances and cash flows of SMUD for such Fiscal Year then ended in conformity with generally accepted accounting principles;

(iii) Simultaneously with the delivery of each set of financial statements referred to in clause (ii) above, a certificate of an Authorized SMUD Representative stating whether there exists on the date of such certificate any Event of Default or Default and, if any Event of Default or Default then exists, setting forth the details thereof and the action that SMUD is taking or proposes to take with respect thereto;

(iv) *Unaudited Quarterly Financials.* As soon as available and in any event within 60 days after March 31, June 30 and September 30 of each calendar year, a copy of the unaudited internally prepared balance sheet and statement of changes in net asset of SMUD for the three month period ended on such date, setting forth in each case in comparative form the corresponding figures for the corresponding fiscal period for the preceding fiscal year, all in reasonable detail, prepared in accordance with generally accepted accounting principles, consistently applied, together with a compliance certificate signed by an Authorized SMUD Representative stating that no Event of Default or Default has occurred, or if such Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default.

(v) As soon as practicable and in any event within ten (10) Business Days after SMUD obtains actual knowledge of: (A) any litigation, arbitration or governmental proceeding pending against SMUD that challenges SMUD's ability to perform its obligations under this Agreement and/or the SMUD Program Documents; or (B) any other event or condition that would prevent or is reasonably likely to prevent SMUD from performing its obligations under this Agreement and/or the SMUD Program Documents,

in each case with a statement of the Authorized SMUD Representative setting forth details describing the same and the steps being taken with respect thereto;

(vi) As soon as practicable, notice of any disclosure documents publicly distributed in connection with any issue of Senior Bonds or Parity Subordinated Debt;

(vii) As soon as practicable, notice of any change in, or the withdrawal of, any rating of Senior Bonds or Parity Subordinated Debt (without regard to bond insurance or any other form of credit enhancement) by any Rating Agency; and

(viii) From time to time, such additional information regarding the financial position, results of operations, business or prospects of SMUD as the Bank may reasonably request.

(b) *Books and Records; Inspections.* SMUD will keep proper books of record and account with respect to the Electric System in which full and correct entries shall be made of assets and liabilities, financial transactions and business of SMUD in conformity with generally accepted accounting principles. SMUD will upon reasonable notice permit any Person designated by the Bank in writing to visit any of the properties of SMUD, and to examine the books and financial records of SMUD relating to the Electric System and make copies thereof or extracts therefrom, and to discuss the affairs, finances and accounts of SMUD relating to SMUD with the principal officers of SMUD all at such reasonable times during normal business hours and as often as the Bank may reasonably request.

(c) *Maintain Existence.* SMUD shall take no action that would terminate its existence, rights and franchises as a municipal utility district duly organized and existing under the Constitution and laws of the State of California.

(d) *Compliance with Laws.* SMUD will comply with the requirements of all laws, rules, regulations and orders of any Governmental Authority having jurisdiction over SMUD and/or the Electric System, noncompliance with which would materially adversely affect the ability of SMUD to perform its obligations under this Agreement and the SMUD Program Documents.

(e) *Compliance with Agreements.* SMUD will observe and perform all of its obligations under this Agreement and the SMUD Program Documents.

(f) *Incorporation of Covenants by Reference.* SMUD, by this reference, hereby incorporates into this Agreement those covenants and agreements made by it in Sections 3.02, 3.05, 3.06 and 6.08 of the Master Bond Resolution (as in effect on the effective date of this Agreement) and in the SMUD Program Documents, as such covenants and agreements exist on the date hereof, as if such covenants and agreements were set forth herein in their entirety together with all defined terms and interpretative provisions necessary for a complete understanding thereof. The incorporated provisions shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall the incorporated provisions be a limitation on the express covenants contained herein. In the event of a conflict between the covenants and agreements set forth in this Article Five (other than the incorporated

provisions) and the incorporated provisions, the covenants and agreements set forth in the other provisions of Article Five shall prevail.

(g) *SMUD Program Documents.* SMUD will not amend, supplement or otherwise modify, or agree to the amendment, modification or termination of, any of the SMUD Program Documents (including, without limitation, an amendment to the Bond Resolution reducing the Maximum Interest Rate with respect to the Bonds to a rate below 12%) if such action could reasonably be expected to (i) adversely affect SMUD's ability to perform its obligations under this Agreement or the SMUD Program Documents, (ii) adversely affect the business, financial position or results of operations of SMUD or (iii) adversely affect the rights, interests, security or remedies of the Bank, in each case, without the prior written consent of the Bank (the Bank shall provide SMUD its determination as to whether or not it consents to any amendment, supplement or modification to any SMUD Program Documents within ten (10) Business Days of written notice from SMUD of such amendment, supplement or modification). SMUD shall provide written notice to the Bank of any proposed amendment to the Master Bond Resolution or Bond Resolution (and a copy of such proposed amendment) at least ten (10) calendar days prior to its effective date.

(h) *Trustee; Remarketing Agent.* SMUD shall not appoint a successor Trustee or Remarketing Agent without the prior written consent of the Bank (which consent shall not be unreasonably withheld).

(i) *Alternate Liquidity Facility.* SMUD agrees that any termination of the Available Commitment and this Agreement as a result of the provision of any Alternate Liquidity Facility will require, as a condition thereto, that SMUD or the issuer of the Alternate Liquidity Facility will provide funds on the date of such termination or provision, which funds will be sufficient to pay in full at the time of termination of the Available Commitment all Obligations due to the Bank hereunder. SMUD shall use commercially reasonable efforts to obtain an Alternate Liquidity Facility to replace this Agreement (such replacement to occur on or before any mandatory purchase date established pursuant to the Bond Resolution) or cause the Bonds to be converted to bear interest in an interest rate mode other than the Daily Rate or the Weekly Rate in the event that (i) the Bank shall determine not to extend the Facility Maturity Date pursuant to the terms hereof, (ii) SMUD terminates this Agreement pursuant to the terms hereof or (iii) the Bank shall furnish a Termination Notice in the form of Exhibit B to the Trustee or notice of the occurrence of a Suspension Event.

(j) *Remarketing Agents.* SMUD will at all times cause the Remarketing Agent to use its best efforts to remarket Bonds (including, without limitation, Bank Bonds) up to the maximum rate provided therefor in the Supplemental Resolution and the Remarketing Agreement (such maximum rate on the Closing Date is equal to twelve percent (12%) per annum pursuant to Section [ ] of the Remarketing Agreement); *provided, however*, that nothing herein shall prohibit SMUD from purchasing tendered Bonds for its own portfolio. SMUD shall not direct any Remarketing Agent to cease its attempts to remarket Bonds tendered for purchase for any reason (including without limitation that any interest rate charged hereunder may be less than the interest rate that would be required to be paid to any potential purchaser of such Bonds in order that the Bonds may be sold at a purchase price equal to the par value thereof plus accrued interest thereon). If the Remarketing Agent fails to remarket any Bank Bonds for 15 consecutive calendar days, or

otherwise fails to perform its duties under the Remarketing Agreement, then SMUD agrees, at the written request of the Bank, to cause the Remarketing Agent to be replaced with a Remarketing Agent satisfactory to the Bank. In addition, SMUD can remove the Remarketing Agent without cause, after appropriate notice, provided that the replacement Remarketing Agent is acceptable to the Bank. SMUD shall provide under the Remarketing Agreement for any replacement Remarketing Agent that the Remarketing Agent may not resign until at least 30 days have elapsed following the Remarketing Agent's giving of notice to SMUD and the Bank of such resignation.

(k) *Tax-Exempt Status.* SMUD shall not take any action or omit to take any action, which action, if taken or omitted, would adversely affect the exclusion of interest on the Bonds from gross income for Federal income tax purposes or the exemption of such interest from State of California personal income taxes.

(l) *Offering Documents.* SMUD shall not make reference to the Bank in any offering document without the Bank's prior written consent thereto (other than references to the name of the Bank solely in the Bank's capacity as the liquidity provider with respect to the Bonds). Except as may be required by law (including, but not limited to, federal and state securities laws), SMUD shall not use the Bank's name (other than references to the name of the Bank solely in the Bank's capacity as the liquidity provider with respect to the Bonds) in any published materials (other than SMUD's staff reports, annual statements, audited financial statements, rating agency presentations) without the prior written consent of the Bank.

(m) *Use of Proceeds.* The proceeds of the advances hereunder by the Bank will be expended in the manner set forth in the Bond Resolution and in not in violation of any applicable law.

(n) *Ranking of Obligations.* SMUD shall not take any action that would result in the Bank Bonds not ranking at least pari passu in right of payment from Net Subordinated Revenues with the Bonds and the Parity Subordinated Debt.

(o) *Investments.* SMUD will not, directly or indirectly, invest in instruments and securities other than those permitted by, and in accordance with, California Government Code Sections 53600 to 53609, the Master Bond Resolution, the Bond Resolution or the Program Documents. SMUD will not permit SMUD to encumber its cash position nor schedule the interest payment dates and maturities of its investments in a manner which impedes, hinders or interferes with the availability of funds to meet SMUD's expected cash needs.

(p) *Reserved.*

(q) *Plans.* SMUD will (i) remain at all times in compliance with any applicable law (including any legally available grace periods) with respect to any Plan, and (ii) maintain each Plan as to which it may have any liability in compliance in all material respects with the provisions of applicable law, the failure to comply with which could subject SMUD to any tax or penalty which tax or penalty, taken together, with all other taxes and penalties which could be assessed against SMUD by reason of all other non-compliances, would have a material adverse effect on the business, financial position or results of operations of SMUD.

(r) *Payment of Taxes, Etc.* SMUD will pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon SMUD on account of the Electric System or any portion thereof and which, if unpaid, might impair the security of the Bonds, when the same shall become due, but nothing herein contained shall require SMUD to pay any such tax, assessment or charge so long as it shall in good faith contest the validity thereof. SMUD will duly observe and conform to all valid material requirements of any Governmental Authority relative to the Electric System or any part thereof.

(s) *Operation and Maintenance of Electric System.* SMUD will operate, maintain and preserve the Electric System in good repair and working order in conformity with standards customarily followed for municipal power supply, transmission and distribution systems of like size and character. SMUD will from time to time make necessary and proper repairs, renewals, replacements and substitutions to the properties of the Electric System, so that business carried on in connection with the Electric System shall and can be conducted in an efficient and economical manner, and will operate the Electric System in an efficient and economical manner. SMUD shall not use the Electric System to conduct any business other than that which is lawfully permitted.

(t) *Amounts of Rates and Charges.* To the extent permitted by law, SMUD hereby covenants to establish, maintain and collect rates and charges with respect to the Electric System sufficient to pay the Senior Bonds, Parity Subordinated Debt, including the Bonds and Bank Bonds and all other Obligations due and owing hereunder.

(u) *Maintenance of Insurance.* SMUD maintains self-insurance for general liabilities, property damage and workers' compensation claims. SMUD shall, at all times, continue to maintain such self-insurance or shall use its best efforts to maintain or cause to be maintained insurance or reserves against loss from such hazards and risks to the person or property of others as are usually insured or reserved against by those with rights and interests in property similar to the Electric System. SMUD shall also procure, and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Electric System revenues, such insurance or bonds to be in an aggregate amount at least equal to the maximum amount of such Electric System revenues at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as a part of any comprehensive fidelity and other insurance and not separately for the Electric System.

(v) *Sale or Other Disposition of Property.* SMUD will not sell or otherwise dispose of any property essential to the proper operation of the Electric System or to the maintenance of the Revenues. SMUD will not enter into any lease or agreement which impairs or impedes the operation of the Electric System or which otherwise impairs or impedes the rights of the Bondholders (as defined in the Master Bond Resolution) or the Bank with respect to Revenues. Subject to the preceding sentence, nothing contained herein shall prevent SMUD from entering into sale and leaseback agreements pursuant to which SMUD may acquire the use of property subject to the terms of such sale and leaseback agreements.

Notwithstanding the foregoing or any other provision of the Master Bond Resolution,

SMUD may sell or otherwise dispose of its accounts receivable and customer loan balances due to SMUD *provided* that:

(1) SMUD delivers to the Trustee:

(a) a certificate of SMUD to the effect that the amount derived by SMUD from the sale or other disposition of such accounts receivable or loan balances is a result of the sale or other disposition of such accounts receivable or loan balances upon fair and reasonable terms no less favorable to SMUD than the terms of a comparable arm's-length transaction treated as a sale and not a loan under generally accepted accounting principles; and

(b) a written statement or report of an independent certified public accountant to the effect that, based on the audited financial statements of SMUD for the most recent fiscal year for which audited financial statements are available and after giving effect to such transaction by reducing Revenues for such fiscal year by the difference between the face amount of such accounts receivable or loan balances and the amount derived by SMUD from the sale or other disposition of such accounts receivable or loan balances, the debt service ratio computed pursuant to Section 5.04 of the Master Bond Resolution would not have been reduced to less than 1.40:1.0.

(w) *Liens.* Except as permitted by the Master Bond Resolution or the Bond Resolution or as otherwise acceptable to the Bank, SMUD will not (a) issue any bonds, notes or other evidences of indebtedness of similar nature payable out of or secured by a security interest in or a pledge or assignment of the Electric System revenues pledged under the Master Bond Resolution or the Bond Resolution and held or set aside by SMUD thereunder, or (b) create or cause to be created any Lien on the Electric System revenues. SMUD shall not, directly or indirectly, incur, create or permit to exist any Lien on all or any portion of the Electric System revenues that would affect the priority of Liens in existence on the Closing Date.

(x) *Reserved.*

(y) *Further Assurances.* SMUD agrees to do such further acts and things and to execute and deliver to the Bank such additional assignments, agreements, powers and instruments as the Bank may reasonably require or reasonably deem advisable to carry into effect the purposes of this Agreement and the Fee Agreement or to better assure and confirm to the Bank its rights, powers and remedies hereunder and under the SMUD Program Documents.

(z) *Immunity.* SMUD covenants that it will not claim immunity on the grounds of sovereignty or other similar grounds with respect to itself from (i) suit or (ii) jurisdiction of any court because of its status as a political subdivision of the State of California.

(aa) *Ratings.* SMUD shall maintain a long-term unenhanced rating from at least one Rating Agency on its Bonds.

(bb) *Swap Contracts.* Without the prior written consent of the Bank, SMUD shall not enter into any Swap Contracts relating to Debt wherein any termination payments thereunder are senior to or on parity with the payment of any Obligation.

(cc) *Shorter Amortization.* In the event that SMUD shall, directly or indirectly, enter into or otherwise consent to any Bank Agreement relating to Parity Subordinated Debt or other Debt of SMUD secured by a lien on Net Subordinated Revenues on parity with the Bonds which such Bank Agreement provides such Person with a shorter amortization period than what is set forth in Section 2.11 hereof (not taking into account any shorter amortization period that might occur under such Bank Agreement because of a default, termination event, or other similar event under such Bank Agreement) (each a “*Shorter Amortization Period*”), SMUD shall provide the Bank with a copy of each such Bank Agreement and such Shorter Amortization Period shall automatically be deemed to be incorporated into this Agreement and the Bank shall have the benefit of such Shorter Amortization Period as if specifically set forth herein. SMUD shall promptly enter into an amendment to this Agreement to include such Shorter Amortization Period; *provided* that the Bank shall have and maintain the benefit of such Shorter Amortization Period even if SMUD fails to provide such amendment.

(dd) *Incorporation of Covenants by Reference.* SMUD agrees that it will perform and comply with each and every covenant and agreement required to be performed or observed by it in Sections 3.02, 3.05, 3.06 and 6.08 of the Master Bond Resolution and in each of the Program Documents, which provisions, as well as related defined terms contained therein, are hereby incorporated by reference herein with the same effect as if each and every such provision were set forth herein in its entirety all of which shall be deemed to be made for the benefit of the Bank and shall be enforceable against SMUD. To the extent that any such incorporated provision permits SMUD or any other party to waive compliance with such provision or requires that a document, opinion or other instrument or any event or condition be acceptable or satisfactory to SMUD or any other party, for purposes of this Agreement, such provision shall be complied with unless it is specifically waived by the Bank in writing and such document, opinion or other instrument and such event or condition shall be acceptable or satisfactory only if it is acceptable or satisfactory to the Bank which shall only be evidenced by the written approval by the Bank of the same. No termination or amendment to such covenants and agreements or defined terms or release of SMUD with respect thereto made pursuant to the Master Bond Resolution or the Program Documents, shall be effective to terminate or amend such covenants and agreements and defined terms or release SMUD with respect thereto in each case as incorporated by reference herein without the prior written consent of the Bank. Notwithstanding any termination or expiration of the Master Bond Resolution or the Program Documents, SMUD shall continue to observe such incorporated covenants therein contained for the benefit of the Bank until the termination of this Agreement and the payment in full of all Obligations. All such incorporated covenants shall be in addition to the express covenants contained herein and shall not be limited by the express covenants contained herein nor shall such incorporated covenants be a limitation on the express covenants contained herein.



## ARTICLE SIX

### DEFAULTS

The occurrence of any of the following events set forth in Sections 6.1 and 6.2 (whatever the reason for such event and whether voluntary, involuntary, or effected by operation of Law) shall be an “*Event of Default*” hereunder, unless waived in writing by Bank:

*Section 6.1. Events of Default not Permitting Immediate Termination or Suspension.* The following events constitute Events of Default that do not permit immediate termination or suspension of the obligations of the Bank to purchase Eligible Bonds hereunder:

(a) SMUD shall fail to pay when due (i) the principal of Bank Bonds which amounts have become immediately due and payable as a result of an Event of Default or (ii) any other amounts due and owing under this Agreement or the Fee Agreement and such failure to continue for a period of three (3) Business Days; or

(b) SMUD shall (i) default in the due performance or observance by it of any term, covenant or agreement contained in Sections 5.1(a)(i), 5.1(c), 5.1(f), 5.1(g), 5.1(i), 5.1(l), 5.1(m), 5.1(n), 5.1(t), 5.1(v), 5.1(w), 5.1(x) or 5.1(z); (ii) default in the due performance or observance by it of any other term, covenant or agreement contained in Sections 5.1(a)(v), 5.1(a)(vi) or 5.1(a)(vii) and such default shall continue unremedied for a period of 5 Business Days; (iii) default in the due performance or observance by it of any other terms, covenant or agreement contained in Section 5.1(a)(ii), 5.1(a)(iii), 5.1(a)(iv) or 5.1(a)(viii) and such default shall continue unremedied for a period of 5 Business Days after the Bank has provided written notice to SMUD; or (iv) default in the due performance or observance by it of any other term, covenant or agreement hereunder or under the Fee Agreement (other than those referred to in Section 6.1(a), 6.1(b)(i), 6.1(b)(ii) or 6.1(b)(iii) hereof) and such default shall continue unremedied for a period of thirty (30) days; or

(c) Any representation, warranty, certification or statement made or deemed made by SMUD in this Agreement, any Program Document or in any certificate, financial statement or other document delivered to the Bank pursuant to this Agreement shall prove when made or deemed made, in the reasonable judgment of the Bank, to have been inaccurate and misleading in any material respect; or

(d) SMUD shall (i) default in any payment of (A) any Debt payable from or secured by Net Revenues beyond the period of grace (not to exceed 30 days), if any, provided in the instrument or agreement under which such Debt was created or (B) any obligation under any Swap Contract the obligations under which are secured by a lien on Net Revenues senior to or on a parity with the Bonds and Bank Bonds, or (ii) default in the observance or performance of any agreement or condition relating to any Debt payable from or secured by Net Revenues on parity with or senior to the Bonds and Bank Bonds or Swap Contract or Bank Agreement the obligations under which are payable from or secured by Net Revenues on parity with or senior to the Bonds and Bank Bonds contained in any instrument or agreement evidencing, securing or relating thereto, or any other event

shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit (A) the holder or holders (or a trustee or agent on behalf of such holder or holders) of any Debt or (B) the counterparty under any Swap Contract or Bank Agreement, in each case, payable from or secured by Net Revenues on parity with or senior to the Bonds and Bank Bonds to cause, with the giving of notice if required, such Debt or obligations under such Swap Contract or Bank Agreement to become due prior to its stated maturity; or (iii) any Debt payable from or secured by a lien on Net Revenues senior to or on a parity with the Bonds and Bank Bonds or Swap Contract or Bank Agreement the obligations under which are payable from or secured by Net Revenues on parity with or senior to the Bonds and Bank Bonds shall be declared to be due and payable, or required to be prepaid other than by a regularly scheduled required prepayment, prior to the stated maturity thereof; or

(e) Any of the funds or accounts established pursuant to the Master Bond Resolution or the Bond Resolution or any funds or accounts on deposit, or otherwise to the credit of, such funds or accounts shall become subject to any stay, writ, judgment, warrant of attachment, execution or similar process by any of the creditors of SMUD relating to an obligation or obligations of SMUD in excess of \$10,000,000 and such stay, writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or stayed within fifteen (15) days after its issue or levy; or

(f) (i) Any event which materially and adversely affects the ability of SMUD to observe and perform its obligations under this Agreement or the Fee Agreement shall have occurred and be continuing, (ii) any event which materially and adversely affects the ability of SMUD to observe and perform its obligations under any SMUD Program Document, the Master Bond Resolution or the Bond Resolution shall have occurred and be continuing or (iii) either the Master Bond Resolution or the Bond Resolution shall be amended and such amendment materially and adversely affects the ability of SMUD to observe and perform its obligations under this Agreement or the Fee Agreement; or

(g) An “event of default” (or similar event) shall have occurred under any of the Program Documents, the Master Bond Resolution or the Bond Resolution; or

(h) There shall be appointed or designated with respect to SMUD, an entity such as an organization, board, commission, authority, agency or body to declare a financial emergency or similar state of financial distress with respect to it or there shall be declared by it or by any legislative or regulatory body with competent jurisdiction over it, the existence of a state of financial emergency or similar state of financial distress in respect of it; or

(i) The (i) downgrade by any Rating Agency of its long-term unenhanced rating with respect to any Bonds or any Parity Subordinated Debt to a level below “Baa1” (or its equivalent) in the case of Moody’s, “BBB+” (or its equivalent) in the case of S&P or “BBB+” (or its equivalent) in the case of Fitch or (ii) suspension or withdrawal by any Rating Agency of its respective long-term unenhanced rating on any Bonds or any Parity Subordinated Debt for credit-related reasons; or

(j) (i) A court of competent jurisdiction or other governmental authority with appropriate jurisdiction over SMUD shall enter a final and non-appealable judgment, order or decree declaring any (x) any obligation of SMUD contained in this Agreement, any Program Document, the Master Bond Resolution or the Bond Resolution or (y) Program Document, the Master Bond Resolution or the Bond Resolution, in either case, to be invalid, not binding or unenforceable against SMUD or (ii) any action is taken by the SMUD Board or any officer of SMUD authorized by the SMUD Board to contest the validity or enforceability of this Agreement, any other Program Document, the Master Bond Resolution or the Bond Resolution or the SMUD Board or any officer of SMUD authorized by the SMUD Board repudiates its obligations under any Program Document, the Master Bond Resolution or the Bond Resolution or any provision thereof or with respect to any Debt of SMUD secured by or payable from Net Revenues senior to or on a parity with the Bonds and Bank Bonds, or SMUD shall seek an adjudication that this Agreement, any other Program Document, the Master Bond Resolution or the Bond Resolution is not valid and binding.

*Section 6.2. Events of Default Permitting Immediate Termination or Suspension.* The following events constitute Events of Default that permit immediate termination or suspension, as applicable, of the obligations of the Bank to purchase Eligible Bonds hereunder:

(a) SMUD shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of itself or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally, or in the reasonable judgment of the Bank be unable, to pay its debts as they become due, or shall take any action to authorize any of the foregoing; or

(b) An involuntary case or other proceeding shall be commenced against SMUD seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and such case or proceeding is not controverted within thirty (30) days and dismissed within sixty (60) days; or an order for relief shall be entered against SMUD under the Federal bankruptcy laws as now or hereafter in effect; or

(c) (i) A court of competent jurisdiction or other governmental authority with appropriate jurisdiction over SMUD shall enter a final and non appealable judgment, order or decree declaring the obligation of SMUD with respect to the principal of or interest on the Bank Bonds and the Obligations or the pledge of the Net Subordinated Revenues securing the Bank Bonds contained in the Bond Resolution to be invalid, not binding or unenforceable against SMUD or (ii) any action is taken by the SMUD Board or any officer of SMUD authorized by the SMUD Board to contest the validity or enforceability of any provision of this Agreement, any other Program Document, the Master Bond Resolution

or the Bond Resolution relating to the payment of the principal of or interest on the Bank Bonds or the Obligations or the security therefor or the SMUD Board or any officer of SMUD authorized by the SMUD Board repudiates its obligation to pay the principal of or interest on the Bank Bonds or the Obligations or the security therefor or with respect to any Debt of SMUD secured by or payable from Net Revenues senior to or on a parity with the Bonds and Bank Bonds, or SMUD shall seek an adjudication that any provision of this Agreement, any other Program Document, the Master Bond Resolution or the Bond Resolution relating to the payment of the principal of or interest on the Bank Bonds or the Obligations or the security therefor is not valid and binding; or

(d) Any failure, in whole or in part, (i) to make timely any payment of principal of, interest on or redemption premium, if any, required to be made on the Bonds or Bank Bonds (other than failure to pay principal of or redemption premium, if any, on Bank Bonds which has become immediately due and payable as a result of the occurrence of an Event of Default), or (ii) to make timely any payment of principal of, interest on or redemption premium, if any, required to be made on any Modified Parity Debt beyond the period of grace (not to exceed 30 days) (other than failure to pay the principal, redemption premium, or interest of any bonds purchased by a Person providing a letter of credit, reimbursement agreement, liquidity facility or similar instrument pursuant to a liquidity drawing thereunder, which payment or repayment has been accelerated and is immediately due and payable after the occurrence of an event of default under any such agreement) or obligations under Swap Contracts (a) that provide interest rate support and (b) with respect to obligations under Swap Contracts that constitute regularly scheduled payments that relate to bonds, debentures, notes, loan agreements, bank agreements or other similar instruments issued by or on behalf of SMUD and (c) the payment of which is secured by a pledge of or Lien on Net Revenues senior to or on a parity with the payment of the Bonds and Bank Bonds.

(e) A moratorium shall have been declared or announced by a Governmental Authority (whether or not in writing) with respect to any Debt of SMUD secured by Revenues senior to or on a parity with the Bonds and Bank Bonds; or

(f) Dissolution or termination of the existence of SMUD; or

(g) A court of competent jurisdiction shall enter a final and non-appealable judgment, order or decree for the payment of money in excess of \$10,000,000 shall be rendered against SMUD and such judgment or order shall continue, unbonded or unsatisfied for a period of 60 days; or

(h) The suspension or withdrawal by each Rating Agency of its respective long-term unenhanced rating on any Bonds or any Parity Subordinated Debt for credit-related reasons or downgrade by each Rating Agency of its long-term unenhanced rating with respect to any Bonds or any Parity Subordinated Debt to a level below “Baa3” (or its equivalent) in the case of Moody’s, “BBB-” (or its equivalent) in the case of S&P and “BBB-” (or its equivalent) in the case of Fitch; or

(i) Any pledge or security interest created by this Agreement, any Program Document, the Master Bond Resolution or the Bond Resolution to secure the Bonds or Bank Bonds shall fail to be fully enforceable with the priority required hereunder or thereunder.

*Section 6.3. Remedies.* Upon the occurrence of an Event of Default, the Bank may take one or more of the following actions:

(a) In the case of any Event of Default specified in Section 6.2 hereof (other than a Suspension Event) (each, an “*Immediate Termination Event*”), the Available Commitment shall immediately be reduced to zero, in which case the obligations of the Bank to purchase Eligible Bonds shall immediately terminate without notice or demand and, thereafter, the Bank shall be under no obligation to purchase Eligible Bonds. Promptly upon such Event of Default, the Bank shall give written notice of same to the Trustee, SMUD and the Remarketing Agent; *provided*, that the Bank shall incur no liability or responsibility whatsoever by reason of its failure to give such notice, and such failure shall in no way effect the termination of the Available Commitment and of the obligations of the Bank to purchase Eligible Bonds pursuant to this Agreement. The Trustee shall immediately notify all owners of the termination of the Available Commitment and the obligation of the Bank to purchase the Eligible Bonds.

(b) In the case of an Event of Default specified in Section 6.2(c)(ii) hereof (following the entry of a judgment subject to further proceedings and prior to the entry of a final, non-appealable judgment) (a “*Suspension Event*”), the Bank’s obligation to purchase Eligible Bonds shall be immediately suspended without notice or demand and thereafter the Bank shall be under no obligation to purchase Eligible Bonds until such obligation is reinstated pursuant to this Section 6.3(b). Promptly upon the Bank obtaining knowledge of any such Suspension Event, the Bank shall give written notice to SMUD, the Trustee and the Remarketing Agent of such suspension; *provided* that the Bank shall incur no liability or responsibility whatsoever by reason of its failure to give such notice and such failure shall in no way affect the suspension of the Bank’s obligation to purchase Eligible Bonds. If a court with jurisdiction to rule on the validity of the provisions described in 6.2(c)(ii) hereof shall enter a final, non-appealable judgment that any such provision is not valid and binding on SMUD, then the Purchase Period, the Available Commitment and the Bank’s obligation to purchase Eligible Bonds shall immediately terminate. If a court with jurisdiction to rule on the validity of the provisions described in 6.2(c)(ii) hereof shall enter a final, non-appealable judgment that such provisions are valid and binding on SMUD, the Bank’s obligation to purchase Eligible Bonds under this Agreement shall be automatically reinstated and the terms of this Agreement will continue in full force and effect (unless the obligation of the Bank to purchase Eligible Bonds hereunder shall otherwise have terminated or been suspended as provided in this Agreement). Notwithstanding the foregoing, if, upon the earlier of the expiration of the Purchase Period and the date which is one (1) year after the effective date of suspension of the Bank’s obligation pursuant to this Section 6.3(b), litigation is still pending and a judgment regarding the validity of the provisions described in Section 6.2(c)(ii) hereof that are the cause of such Suspension Event has not been obtained, then the Available Commitment, the Purchase Period and the obligation of the Bank to purchase Eligible Bonds shall at such time immediately terminate and thereafter the Bank shall be under no obligation to purchase Eligible Bonds.

(c) In the case of any Event of Default the Bank may give written notice in the form of Exhibit B of such Event of Default to SMUD (a “*Termination Notice*”), the Trustee and Remarketing Agent stating that an Event of Default has occurred hereunder and directing that the Bonds be called for mandatory tender pursuant to Section 84.02 of the Supplemental Resolution (a “*Default Tender*”) or take such other remedial action as is provided for in the Bond Resolution thereby causing the Bank’s obligations to purchase Eligible Bonds under this Agreement to terminate thirty (30) days after the Trustee’s receipt of such notice. The Available Commitment, the Purchase Period and the obligation of the Bank to purchase Eligible Bonds shall terminate on the thirtieth (30th) day described in the immediately preceding sentence, and, thereafter, the Bank shall be under no further obligation hereunder to purchase Eligible Bonds. The written notice provided by the Bank under this paragraph (c) shall constitute notice of termination for purposes of the Bond Resolution.

(d) Upon the occurrence of any Event of Default as specified in any provision of this Article Six, the Bank may take any other action or remedies available to it under this Agreement, the Program Documents or otherwise pursuant to law or equity in order to enforce the rights of the Bank hereunder, under the Program Documents or otherwise. Following any such Event of Default, the Bank may, without limitation, take one or more of the following actions at any time and from time to time (regardless of whether the actions are taken at the same or different times): (i) by written notice to the Trustee and SMUD, declare the outstanding amount of the Obligations under this Agreement to be immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived, and an action therefor shall immediately accrue (*provided* that the obligations of SMUD hereunder and under the Bank Bonds shall become immediately due and payable without such notice upon the occurrence of an Event of Default described in Section 6.2(a) or (b) above); (ii) either personally or by attorney or agent without bringing any action or proceeding, or by a receiver to be appointed by a court in any appropriate action or proceeding, take whatever action at law or in equity may appear necessary or desirable to collect the amounts due and payable under the Program Documents or to enforce performance or observance of any obligation, agreement or covenant of SMUD under the Program Documents, whether for specific performance of any agreement or covenant of SMUD, any other legal or equitable right vested in the Bank on behalf of the Bank by this Agreement or any other Program Document or by law or in aid of the execution of any power granted to the Bank in the Program Documents; (iii) at the expense of SMUD, cure any Default, Event of Default or event of nonperformance hereunder or under any Program Document; *provided, however*, that the Bank shall have no obligation to effect such a cure; and (iv) exercise, or cause to be exercised, any and all remedies as it may have under the Program Documents and as otherwise available at law and at equity.

(e) The remedies provided in this Section 6.3 shall only be exclusive with respect to Events of Default to the extent described in this Section 6.3 and to the extent they are obtained by the Bank. If, for any reason whatsoever, the Bank is not able to obtain all such remedies, then the Bank hereby reserves the right and shall have the right to pursue any other available remedies, whether provided by law, equity, or any Program Document. The provisions of this Agreement shall be a contract with each and every Bank Bondholder and the duties of SMUD shall be enforceable by any Bank Bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

*Section 6.4. Solely for the Benefit of Bank.* The rights and remedies of the Bank specified herein are for the sole and exclusive benefit, use and protection of the Bank, and the Bank is entitled, but shall have no duty or obligation to SMUD, the Trustee or any other Person or otherwise, to exercise or to refrain from exercising any right or remedy reserved to the Bank hereunder or under any of the other Program Documents.

*Section 6.5. Discontinuance of Proceedings.* In case the Bank shall proceed to invoke any right, remedy or recourse permitted hereunder or under the Program Documents and shall thereafter elect to discontinue or abandon the same for any reason, the Bank shall have the unqualified right so to do and, in such event, the and the Bank shall be restored to their former positions with respect to the Obligations, the Program Documents and otherwise, and the rights, remedies, recourse and powers of the Bank hereunder shall continue as if the same had never been invoked.

## ARTICLE SEVEN

### MISCELLANEOUS

*Section 7.1. Amendments, Waivers, Etc.* No amendment or waiver of any provision of this Agreement, or consent to any departure therefrom, shall in any event be effective unless the same shall be in writing and signed by the parties hereto, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

*Section 7.2. Notices.* All notices and other communications provided for hereunder shall be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), facsimile or electronic mail transmission, or regular mail, as follows:

(a) if to SMUD:	Sacramento Municipal Utility District
	6201 S Street
	Sacramento, California 95817-1899
	Attention: Treasurer
	Telephone: (916) 732-6509
	Telecopy: (916) 732-5835
	Email: [ ]

(b) if to the Bank: For all matters (including Notices of Bank Purchase):

TD Bank, N.A.  
201 West High Street  
1<sup>st</sup> Floor  
Glassboro, NJ 08028  
Attention: Gary Martz  
Phone: (856) 404-3068  
Email: [Gary.Martz@td.com](mailto:Gary.Martz@td.com)

With copies to:

Email: [AMCBTDBankCorporateAdministration.Account@TD.com](mailto:AMCBTDBankCorporateAdministration.Account@TD.com)

TD Bank, N.A.  
1 Vanderbilt Avenue  
14th Floor  
New York, New York 10017  
Attention: Hristiana Simeonova  
Email: [Hristiana.Simeonova@td.com](mailto:Hristiana.Simeonova@td.com)

TD Bank, N.A.  
104 S. Main Street  
Suite 601  
Greenville, South Carolina 29601  
Attention: Cathryn Kellogg  
Phone: (864) 241-1558  
Email: [cathryn.kellogg@td.com](mailto:cathryn.kellogg@td.com)

(c) if to the  
Trustee: U.S. Bank Trust Company, National Association  
[ ]  
Attention: [ ]  
Phone: [ ]  
Email: [ ]

or, as to each Person named above, at such other address as shall be designated by such Person in a written notice to the parties hereto. All such notices and other communications shall, when delivered, sent by facsimile or electronic mail transmission or mailed, be effective when deposited with the courier, sent by facsimile or electronic mail transmission or mailed respectively, addressed as aforesaid, except that Notices of Bank Purchase submitted to the Bank shall not be effective until received by the Bank.

*Section 7.3. Survival of Covenants; Successors and Assigns.* (a) All covenants, agreements, representations, and warranties made herein and in the certificates delivered pursuant hereto shall survive the making of any advance hereunder and shall continue in full force and effect



until the Available Commitment shall have terminated and all of the Obligations hereunder shall have been paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference shall, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of SMUD which are contained in this Agreement shall inure to the benefit of the successors and assigns of the Bank. SMUD may not transfer its rights or obligations under this Agreement without the prior written consent of the Bank. The Bank may transfer or assign some or all of its rights and obligations under this Agreement with the prior written consent of SMUD (which consent shall not be withheld unreasonably), *provided* that (i) with respect to the Bank's obligations under this Agreement only, SMUD has received written notice from the Rating Agencies then rating the Bonds that the transfer shall not cause the lowering, withdrawal or suspension of the ratings then existing on the Bonds, and (ii) the Bank shall be responsible for all costs resulting from the transfer. No assignment of this Agreement shall occur unless and until the provisions of the Supplemental Resolution providing for delivery of an Alternate Liquidity Facility for the Bonds are complied with, treating the assigned Agreement as an Alternate Liquidity Facility. The Bank agrees to provide SMUD written notice of all amounts due and owing the Bank through and including the date of any assignment pursuant to this Section 7.3. This Agreement is made solely for the benefit of SMUD and the Bank, and no other Person (including, without limitation, the Depository, the Dealer or any holder of Notes) shall have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Bank shall be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of the Bank's rights and benefits and obligations under this Agreement on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of SMUD. In the event of any such grant by the Bank of a Participation to a Participant, the Bank shall remain responsible for the performance of its obligations hereunder, and SMUD shall continue to deal solely and directly with the Bank in connection with the Bank's rights and obligations under this Agreement. SMUD agrees that each Participant shall, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Bank, *provided* that no Participant shall have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 or 6.2 hereof; *provided further* that SMUD's liability to any Participant shall not in any event exceed that liability which SMUD would owe to the Bank but for such participation.

*Section 7.4. Unconditional Obligations.* The obligations of SMUD under this Agreement and the Fee Agreement shall be primary, absolute, independent, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement and the Fee Agreement, including without limitation the following circumstances:

(a) Any lack of validity or enforceability of the Program Documents or any other agreement or instrument relating to any of the above;

(b) Any amendment or waiver of, or any consent to or departure from, any provision of any of the Program Documents, except for any waiver or consent granted by the Bank;

(c) The existence of any claim, setoff, defense or other rights that SMUD may have at any time against the Bank or any other Person, whether in connection with this Agreement, the Program Documents or any unrelated transaction;

(d) Any breach of contract or other dispute between SMUD and any Bondholder, the Bank or any other Person;

(e) Any demand, statement or any other document presented hereunder proving to have been forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(f) Payment by the Bank hereunder against presentation of a draft or certificate which does not comply strictly with the terms of this Agreement; or

(h) The failure by the Bank to honor any Notice of Bank Purchase hereunder or to make any payment demanded hereunder on the grounds that the demand for such payment does not conform strictly to the terms and conditions of this Agreement.

*Section 7.5. Liability of Bank; Indemnification.* (a)(i) Except as provided in this Agreement, the Bank shall not be obligated to issue any further credits, to cure any defaults under any Program Document or otherwise, or in any other manner to extend any financial consideration or accommodation to SMUD.

(ii) The Bank shall not be deemed to have waived or released any of its rights or remedies (whether specified in or arising under this Agreement, the Fee Agreement or otherwise available to it by law or agreement) unless the Bank shall have signed a written waiver or release. Delay or failure to act on the Bank's part shall not constitute a waiver of or otherwise preclude enforcement of any of its rights and remedies. All of the Bank's rights and remedies shall be cumulative and may be exercised separately or concurrently. The Bank need not resort to any particular right or remedy before exercising or enforcing any other, and the Bank's resort to any right or remedy shall not preclude the exercise or enforcement of any other right or remedy.

(iii) SMUD assumes all risks of the acts or omissions of the Trustee, the Remarketing Agent, or any paying agent for the Bonds or Bank Bonds with respect to its use of this Agreement and the application of proceeds drawn hereunder; *provided* that this assumption with respect to the Bank is not intended to, and shall not, preclude SMUD's pursuing such rights and remedies as it may have against the Trustee, such transferee, the Remarketing Agent or any such paying agent at law or under any other agreement. Neither the Bank nor any of its officers, directors, employees or agents shall be liable or responsible for:

(A) The use that may be made of the Available Commitment or this Agreement;

(B) The form, validity, sufficiency, accuracy or genuineness of documents, or of any endorsements thereon, even if such documents should prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged, so long as the Bank was not

grossly negligent or guilty of willful misconduct as determined by a court of competent jurisdiction;

(C) Payment by the Bank against presentation of documents that do not comply strictly with the terms of this Agreement, including failure of any documents to bear any reference or adequate reference to this Agreement;

(D) The validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign this Agreement or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason;

(E) Errors, omissions, interruptions or delays in transmission or delivery of any messages by telex, mail, cable, telegraph, facsimile or otherwise, whether or not they have been in cipher, including any Notices of Bank Purchase under this Agreement;

(F) Errors in interpretation of technical terms; or

(G) Any consequences arising from causes beyond the control of the Bank, including, without limitation, any Government Acts;

*provided* that, notwithstanding anything in the preceding clauses (A) through (G) to the contrary, SMUD shall have a claim against the Bank, and the Bank shall be liable to SMUD, to the extent, but only to the extent, of any direct, as opposed to consequential, damages suffered by SMUD that SMUD proves were caused by (A) the Bank's failure to pay under this Agreement after the presentation to it by the Trustee of a certificate strictly complying with the terms and conditions of this Agreement or (B) the Bank's willful or grossly negligent payment under this Agreement as determined by a court of competent jurisdiction in a final non-appealable judgment.

In furtherance and not in limitation of the foregoing, the Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

(b) (i) To the maximum extent permitted by applicable law, SMUD agrees to indemnify, save and hold harmless each Bank-Related Person from and against: (A) any and all claims, demands, actions or causes of action that may at any time (including at any time following repayment of the Obligations) be asserted or imposed against any Bank-Related Person arising out of or relating to this Agreement, the Available Commitment, the Fee Agreement or any Program Document, the use or contemplated use of the proceeds of any advance by the Bank hereunder, or the relationship of SMUD and the Bank under this Agreement or any Program Document; (B) any investigative, administrative or judicial proceeding by any Governmental Authority arising out of or related to a claim, demand, action or cause of action described in subsection (A) above; and (C) any and all liabilities (including liabilities under indemnities), losses, costs or expenses (including attorney costs) that any Bank-Related Person suffers or incurs as a result of the assertion of any foregoing claim, demand, action, cause of action or proceeding, or as a result of the preparation of any defense in connection with any foregoing claim, demand, action, cause of action

or proceeding, in all cases, and whether or not a Bank-Related Person is a party to such claim, demand, action, cause of action or proceeding; *provided* that no Bank-Related Person shall be entitled to indemnification for any claim caused by its own gross negligence or willful misconduct. The agreements in this subsection shall survive the termination of this Agreement and repayment of all of the Obligations.

(ii) To the maximum extent permitted by applicable law, SMUD shall also indemnify and hold harmless the Bank from any transfer taxes, documentary taxes, assessments or charges made by any Governmental Authority by reason of the execution and delivery of this Agreement and the Program Documents or the making available of the Available Commitment. The agreements in this subsection shall survive the termination of this Agreement and repayment of all of the Obligations.

*Section 7.6. Expenses.* SMUD will promptly pay (i) the reasonable fees and expenses of counsel to the Bank incurred in connection with the preparation, execution and delivery of this Agreement and the other Program Documents, (ii) the reasonable out-of-pocket expenses of the Bank incurred in connection with the preparation, execution and delivery of this Agreement and the other Program Documents, (iii) the reasonable fees and disbursements of counsel to the Bank with respect to advising the Bank as to the rights and responsibilities under this Agreement after the occurrence of an Event of Default and (iv) all reasonable costs and expenses, if any, in connection with the administration and enforcement of this Agreement and the Program Documents and any other documents which may be delivered in connection herewith or therewith, including in each case the fees and disbursements of counsel to the Bank. In addition, SMUD agrees to pay, after the occurrence of an Event of Default, all reasonable costs and expenses (including attorneys' and consultants' fees and costs of settlement) incurred by the Bank in enforcing any obligations or in collecting any payments due from SMUD hereunder by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of SMUD under this Section 7.6 shall survive the termination of this Agreement.

*Section 7.7. No Waiver; Conflict.* No failure by the Bank to exercise, and no delay by the Bank in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, shall operate as a waiver thereof, preclude any other or further exercise thereof nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. The rights, remedies, powers and privileges herein provided and provided under each other Program Document are cumulative, and not exclusive of any rights, remedies, powers and privileges provided by law.

*Section 7.8. Modification, Amendment, Waiver, Etc.* No modification, amendment or waiver of any provision of this Agreement shall be effective unless the same shall be in writing and signed in accordance with Section 7.1 hereof.

*Section 7.9. Dealing with SMUD.* The Bank and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with SMUD regardless of the capacity of the Bank hereunder.

*Section 7.10. Severability.* Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law.

*Section 7.11. Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall constitute an original, but when taken together shall constitute but one agreement and any of the parties hereto may execute this Agreement by signing any such counterpart. The parties agree that the electronic signature of a party to this Agreement shall be as valid as an original signature of such party and shall be effective to bind such party to this Agreement. The parties agree that any electronically signed document (including this Agreement) shall be deemed (i) to be “written” or “in writing,” (ii) to have been signed and (iii) to constitute a record established and maintained in the ordinary course of business and an original written record when printed from electronic files. Such paper copies or “printouts,” if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule. For purposes hereof, “electronic signature” means a manually-signed original signature that is then transmitted by electronic means; “transmitted by electronic means” means sent in the form of a facsimile or sent via the internet as a “pdf” (portable document format) or other replicating image attached to an e-mail message; and, “electronically signed document” means a document transmitted by electronic means and containing, or to which there is affixed, an electronic signature.

*Section 7.12. Table of Contents; Headings.* The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

*SECTION 7.13. ENTIRE AGREEMENT.* THIS AGREEMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES HERETO WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES HERETO AS TO SUCH SUBJECT MATTER.

*Section 7.14. Governing Law.* PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW (OR ANY SUCCESSOR STATUTE THERETO), THIS AGREEMENT AND THE FEE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE FEDERAL LAW; *PROVIDED, HOWEVER,* THAT THE CAPACITY, POWER AND AUTHORITY OF SMUD TO ENTER INTO THIS AGREEMENT AND THE OBLIGATIONS OF SMUD HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE FEDERAL LAW WITHOUT REGARD TO CHOICE OF LAW RULES.

*Section 7.15. Waiver of Jury Trial.* (a) TO THE FULL EXTENT PERMITTED BY LAW, SMUD AND THE BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A TRIAL BY JURY FOR ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE FEE AGREEMENT, ANY OF THE OTHER PROGRAM DOCUMENTS, THE MASTER BOND RESOLUTION, THE BOND RESOLUTION OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH OF SMUD AND THE BANK FURTHER AGREES THAT ANY SUCH CLAIM OR CAUSE OF ACTION SHALL BE TRIED BY A COURT TRIAL WITHOUT JURY. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT PERMITTED BY LAW, THE PARTIES FURTHER AGREE THAT THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY IS WAIVED BY OPERATION OF THIS SECTION AS TO ANY ACTION, COUNTERCLAIM OR OTHER PROCEEDING WHICH SEEKS, IN WHOLE OR IN PART, TO CHALLENGE THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT, THE FEE AGREEMENT, AND/OR ANY PROVISION HEREOF OR THEREOF. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT AND/OR THE FEE AGREEMENT.

(b) In the event the waiver of jury trial as set forth in subsection (a) of this Section shall be declared void or unenforceable, each of SMUD and the Bank agrees to refer the dispute to a judicial referee in accordance with the provisions of Section 638 *et seq.* of the California Code of Civil Procedure.

*Section 7.16. Right of Setoff; Other Collateral.* (a) Upon the occurrence and during the continuance of an Event of Default, the Bank is hereby authorized at any time and from time to time without notice to SMUD (any such notice being expressly waived by SMUD), and to the fullest extent permitted by law, to setoff, to exercise any banker's lien or any right of attachment and apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies at any time held and other indebtedness at any time owing by the Bank to or for the account of SMUD (irrespective of the currency in which such accounts, monies or indebtedness may be denominated and the Bank is authorized to convert such accounts, monies and indebtedness into United States dollars) against any and all of the Obligations of SMUD, whether or not the Bank shall have made any demand for any amount owing to the Bank by SMUD; *provided, however,* that any such setoff, exercise of banker's lien or any right of attachment shall be limited to (i) balances, credits, deposits (general or special, time or demand, provisional or final), accounts or monies or (ii) indebtedness owed by the Bank to or for the account of SMUD, the proceeds of which would otherwise be available to pay or satisfy or otherwise secure the Bonds, the Obligations or any other indebtedness or obligations of SMUD secured or payable on a parity with or subordinate to the Lien on Net Subordinated Revenues securing the Bonds and the Bank Bonds; and *provided further, however,* that the exercise of any such setoff, banker's lien or right of attachment and the application of any such balances, credits, deposits, accounts, monies or proceeds of indebtedness that would constitute Revenues or other funds pledged pursuant to the Master Bond Resolution or Bond Resolution shall be subject to the terms, conditions and lien and payment priorities set forth in the Master Bond Resolution and the Bond Resolution.

(b) The rights of the Bank under this Section 7.16 are in addition to, in augmentation of, and, except as specifically provided in this Section 7.16, do not derogate from or impair, other rights and remedies (including, without limitation, other rights of setoff) which the Bank may have hereunder or under the other Program Documents.

*Section 7.17. USA Patriot Act.* The Bank hereby notifies SMUD that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107 56 signed into law October 26, 2001) (the “*Patriot Act*”), it is required to obtain, verify and record information that identifies SMUD, which information includes the name and address of SMUD and other information that will allow the Bank to identify SMUD in accordance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the Patriot Act. SMUD hereby agrees that it shall promptly provide such information upon request by the Bank.

*Section 7.18. Assignment to Federal Reserve Bank.* The Bank and each other Bank Bondholder may assign and pledge all or any portion of the Obligations owing to it to any Federal Reserve Bank or the United States Treasury, including, without limitation, as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank or to any state or local governmental entity or with respect to public deposits; *provided* that any payment in respect of such assigned Obligations made by SMUD or on its behalf to the Bank in accordance with the terms of this Agreement shall satisfy SMUD’s Obligations hereunder in respect of such assigned Obligation to the extent of such payment. No such assignment shall release the Bank from its obligations hereunder.

*Section 7.19. No Advisory or Fiduciary Relationship.* In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Program Document), SMUD acknowledges and agrees that: (a) (i) the services regarding this Agreement provided by the Bank and any Affiliate thereof are arm’s-length commercial transactions between SMUD, on the one hand, and the Bank and its Affiliates, on the other hand, (ii) SMUD has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (iii) SMUD is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Program Documents; (b) (i) the Bank and its Affiliates each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary pursuant to Section 15B of the Securities Exchange Act of 1934 or otherwise, for SMUD or any other Person and (ii) neither the Bank nor any of its Affiliates has any obligation to SMUD with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Program Documents; and (c) the Bank and its Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of SMUD, and neither the Bank nor any of its Affiliates has any obligation to disclose any of such interests to SMUD. To the fullest extent permitted by Law, SMUD hereby waives and releases any claims that it may have against the Bank or any of its Affiliates with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transactions contemplated hereby.

*Section 7.20. EMMA Postings.* In the event SMUD files with EMMA, this Agreement, any Program Documents or any description of the material terms thereof or notice of any agreement to covenants, events of default, remedies, priority rights or other similar terms with respect thereto, either voluntarily or as required pursuant a continuing disclosure agreement or Rule 15c2-12 promulgated pursuant to the Securities and Exchange Act of 1934, as amended (the “*Rule*”) (each such posting, an “*EMMA Posting*”), SMUD shall (i) provide the Bank with a copy of each EMMA

Posting prior to submitting or posting on EMMA and (ii) shall not file or permit the filing of any EMMA Posting that includes Confidential Information. SMUD acknowledges and agrees that although the Bank may request or review edits or redactions of such materials prior to filing, the Bank is not responsible for SMUD's or any other entity's (including, but not limited to, any broker-dealer's) compliance or noncompliance (or any claims, losses or liabilities arising therefrom) with any continuing disclosure agreement or any applicable securities or other laws, including, but not limited to, those relating to the Rule.

*Section 7.21. US QFC Stay Rules.*

(a) *Recognition of U.S. Resolution Regimes.* In the event that any party that is a Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of this Agreement (and any interest and obligation in or under this Agreement and any property securing this Agreement) from such Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement (and any such interest, obligation and property) were governed by the laws of the United States or a state of the United States. In the event that any party that is a Covered Entity or a BHC Act Affiliate of such party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights against such party with respect to this Agreement are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States. The requirements of this paragraph (a) apply notwithstanding the provisions of paragraph (b).

(b) *Limitation on the Exercise of Certain Rights Related to Affiliate Insolvency Proceedings.* Notwithstanding anything to the contrary in this Agreement or any related agreement, but subject to the requirements of paragraph (a), no party to this Agreement shall be permitted to exercise any Default Right against a party that is a Covered Entity with respect to this Agreement that is related, directly or indirectly, to a BHC Act Affiliate of such Covered Entity becoming subject to Insolvency Proceedings, except to the extent the exercise of such Default Right would be permitted under 12 C.F.R. § 252.84, 12 C.F.R. § 47.5, or 12 C.F.R. § 382.4, as applicable. After a BHC Act Affiliate of a party that is a Covered Entity has become subject to Insolvency Proceedings, any party that seeks to exercise a Default Right against such Covered Entity with respect to this Agreement shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted hereunder.

“*BHC Act Affiliate*” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“*Covered Entity*” means any of the following:

(a) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);



(b) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“*Default Right*” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“*Insolvency Proceeding*” means a receivership, insolvency, liquidation, resolution, or similar proceeding.

“*U.S. Special Resolution Regime*” means each of (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder and (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

[Execution Pages Follow]

IN WITNESS WHEREOF, SMUD and the Bank have duly executed this Agreement as of the date first above written.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Name: Russell Mills  
Title: Treasurer

Acknowledged and Agreed to by:

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,  
AS TRUSTEE

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TD BANK, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

### NOTICE OF BANK PURCHASE

TD Bank, N.A.  
Gary.Martz@td.com  
Hristiana.Simeonova@td.com  
cathryn.kellogg@td.com

The undersigned, a duly authorized officer of U.S. Bank Trust Company, National Association, as trustee (the "*Trustee*"), hereby certifies to TD Bank, N.A. (the "*Bank*"), in accordance with the Standby Bond Purchase Agreement (the "*Standby Agreement*"), dated as of [\_\_\_\_\_] 1, 2023, between the Sacramento Municipal Utility District and the Bank, relating to the Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C (all capitalized terms herein having the meanings ascribed thereto in the Standby Agreement), that:

1. [Notice of tender of Eligible Bonds for purchase having a Purchase Price of \$\_\_\_\_\_ has been received] [Eligible Bonds having a Purchase Price of \$\_\_\_\_\_ have been called for mandatory purchase] pursuant to Section 84.02 of the Supplemental Resolution, of which \$\_\_\_\_\_ constitutes principal and \$\_\_\_\_\_ constitutes accrued interest.
2. Amounts available for the payment of the Purchase Price of such Eligible Bonds are \$\_\_\_\_\_, of which \$\_\_\_\_\_ is available to pay principal (which such amount includes amounts on deposit with the Trustee and Remarketing Agent to pay such Purchase Price) and of which \$\_\_\_\_\_ is available to pay accrued interest.
3. The total principal amount requested hereby for the payment of the principal portion of the Purchase Price of Eligible Bonds is \$\_\_\_\_\_, which amount does not exceed the related Available Principal Commitment or the principal amount referred to in Paragraph 1 above less the principal amount referred to in Paragraph 2 above.
4. The total amount requested hereby to pay the portion of the Purchase Price for Eligible Bonds constituting accrued interest is \$\_\_\_\_\_, which amount does not exceed the Available Interest Commitment or the amount of interest referred to in Paragraph 1 above less the amount of interest referred to in Paragraph 2 above.
5. Eligible Bonds referred to above having a Purchase Price of \$\_\_\_\_\_ [the amount in Paragraph 3 plus the amount in Paragraph 4] are hereby tendered to the Bank for purchase pursuant to the Standby Agreement on the date hereof.
6. Upon completion of purchase, the Trustee will [register such Bonds or, if a Bond for which notice of optional tender or mandatory purchase has been given is not delivered, a new Bond issued in replacement of the undelivered Bond, in the name of the

Bank or if directed in writing by the Bank its nominee or designee on the Bond Register] [cause the beneficial ownership of such Bonds to be credited to the account of the Bank or if directed in writing by the Bank its nominee or designee with the DTC], and will promptly hold such Bonds in trust for the benefit of the Bank or deliver such Bonds as the Bank may otherwise direct in writing, and prior to such delivery will hold such Bonds in trust for the benefit of the Bank.

7. The Purchase Date is \_\_\_\_\_.

8. The funds requested hereunder shall be transferred to the Trustee in accordance with the terms of the Standby Bond Purchase Agreement to the following account:

[ACCOUNT INFORMATION]

9. To the Trustee's knowledge, no Immediate Termination Event or Suspension Event has occurred and is occurring.

IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Trustee

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

**EXHIBIT B**

**FORM OF TERMINATION NOTICE**

[Date]

U.S. Bank Trust Company, National Association

[\_\_\_\_\_]

Reference: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Telephone: [\_\_\_\_\_]

Re: Sacramento Municipal Utility District  
Subordinated Electric Revenue Refunding Bonds,  
2023 Series C

Ladies and Gentlemen:

The undersigned, a duly authorized officer of TD Bank, N.A. (the "*Bank*") pursuant to Section 6.3(c) of the Standby Bond Purchase Agreement dated as of [\_\_\_\_\_] 1, 2023 (the "*Agreement*") between Sacramento Municipal Utility District and the Bank, relating to the Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C, hereby request you call all Eligible Bonds for mandatory tender pursuant to Section 84.02 of the Supplemental Resolution as described in Section 6.3(c) of the Agreement and notifies you that an Event of Default (as defined in the Agreement) pursuant to Section 6.1 or 6.2 of the Agreement has occurred and that as a result thereof the Agreement shall terminate on the date that is thirty (30) days after your receipt of this notice.

Sincerely,

TD BANK, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

cc: Sacramento Municipal Utility District

## EXHIBIT C

### FORM OF REQUEST FOR EXTENSION

#### REQUEST FOR EXTENSION

TD Bank, N.A.  
Gary.Martz@td.com  
Hristiana.Simeonova@td.com  
cathryn.kellogg@td.com

Ladies and Gentlemen:

Reference is hereby made to that certain Standby Bond Purchase Agreement, dated as of [\_\_\_\_\_] 1, 2023 (the “*Agreement*”), between Sacramento Municipal Utility District (“*SMUD*”) and TD Bank, N.A. (the “*Bank*”), relating to the Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C. All capitalized terms contained herein which are not specifically defined shall be deemed to have the definition set forth in the Agreement. SMUD hereby requests, pursuant to Section 2.12 of the Agreement, that the Facility Maturity Date for the Agreement be extended by **[Identify Appropriate Period]**. Pursuant to Section 2.12 of the Agreement, we have enclosed along with this request the following information:

1. The outstanding principal amount of the Bonds;
2. The nature of any and all Defaults and Events of Default;
3. Confirmation that all representations and warranties of SMUD as set forth in Article Four of the Agreement are true and correct as though made on the date hereof and that no Event of Default has occurred and is continuing on the date hereof except as referenced in paragraph 2 above; and
4. Any other pertinent information previously requested by the Bank.

The Bank is requested to notify SMUD of its decision with respect to this request for extension within sixty (60) days of the date of receipt hereof. If the Bank fails to notify SMUD of its decision within such sixty (60) day period, the Bank shall be deemed to have rejected such request.

Very truly yours,

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT D**

**NOTICE OF EXTENSION**

[Date]

U.S. Bank Trust Company, National Association

[\_\_\_\_\_]

Reference: [\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Telephone: [\_\_\_\_\_]

Sacramento Municipal Utility District

6201 S Street

Sacramento, California 95817-1899

Attention: Treasurer

Telephone: (916) 732-6509

Re: Sacramento Municipal Utility District  
Subordinated Electric Revenue Refunding Bonds,  
2023 Series C

Ladies and Gentlemen:

Reference is hereby made to that certain Standby Bond Purchase Agreement, dated as of [\_\_\_\_\_] 1, 2023 (the “*Agreement*”), between Sacramento Municipal Utility District (“*SMUD*”) and TD Bank, N.A. (the “*Bank*”), relating to the Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C.

The undersigned, a duly authorized signatory of the Bank, hereby advises you, with reference to the above-referenced bonds (any capitalized term used herein and not defined shall have its respective meaning as set forth in the Agreement), that **[Complete as Appropriate]**:

1. On **[date]**, SMUD delivered to the Bank, pursuant to Section 2.12 of the Agreement, a Request for Extension requesting that the date referenced in the definition of “Facility Maturity Date” in the Agreement (as such date may have been extended previously from time to time) be extended to \_\_\_\_\_.
2. At the request and for the account of SMUD, we hereby extend the date referenced in the definition of “Facility Maturity Date” in the Agreement (as such date may have been extended previously from time to time) to \_\_\_\_\_.
3. Except as specifically provided in paragraph (1) above, all of the terms and conditions of the Agreement remain unchanged and in full force and effect.



4. **[This Notice of Extension is an integral part of the Agreement.]**

**[The Facility Maturity Date will not be extended at this time.]**

IN WITNESS WHEREOF, the undersigned, on behalf of the Bank, has executed and delivered this Notice of Extension as of the \_\_\_\_ day of \_\_\_\_\_.

Very truly yours,

TD BANK, N.A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**FEE AGREEMENT**

**DRAFT**

**FEE AGREEMENT**  
**DATED [\_\_\_\_\_] , 2023**

Reference is hereby made to the Standby Bond Purchase Agreement dated as of [\_\_\_\_\_] 1, 2023 (as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof, the “*Agreement*”), between the SACRAMENTO MUNICIPAL UTILITY DISTRICT, a municipal utility district of the State of California (“*SMUD*”), and TD BANK, N.A. (the “*Bank*”), relating to the Sacramento Municipal Utility District Subordinated Electric Revenue Refunding Bonds, 2023 Series C. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

The purpose of this Fee Agreement (this “*Fee Agreement*”) is to confirm the agreement between the Bank and SMUD with respect to, among other things, the Commitment Fee (as defined below) and certain other fees payable to the Bank. This Fee Agreement is the Fee Agreement referenced in the Agreement, and the terms hereof are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between SMUD and the Bank, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

ARTICLE I. FEES AND OTHER AGREEMENTS.

*Section 1.1. Commitment Fees.* SMUD hereby agrees to pay to the Bank on [July 3], 2023, for the period commencing on the Closing Date and ending on [June 30], 2023, and in arrears on the first Business Day of each October, January, April and July occurring thereafter prior to the last day of the Purchase Period, and on the last day of the Purchase Period, a non-refundable commitment fee (the “*Commitment Fee*”) in an amount equal to the rate per annum (the “*Commitment Fee Rate*”) for the then applicable Rating (as defined below) specified in the applicable Level in the pricing grid below for each day during the related fee period on the Available Commitment from time to time in effect for each day during the related fee period:

LEVEL	MOODY’S RATING	S&P RATING	FITCH RATING	COMMITMENT FEE RATE
Level 1	Aa3 or above	AA- or above	AA- or above	0.25%
Level 2	A1	A+	A+	0.35%
Level 3	A2	A	A	0.45%
Level 4	A3	A-	A-	0.55%
Level 5	Baa1	BBB+	BBB+	0.70%
Level 6	Baa2 and below	BBB and below	BBB and below	2.70%

The term “*Rating*” as used herein means the long-term unenhanced debt rating assigned by Moody’s, Fitch and S&P to any Debt of SMUD secured by or payable from Net Subordinated Revenues on a parity with the Bonds or Parity Subordinated Debt. In the event of a split rating (*i.e.*, the Rating of one of the Rating Agencies is different than the Rating of any of the other

Rating Agencies), the Commitment Fee Rate shall be based upon the Level in which the lower of the two highest Ratings appears; *provided, however*, if less than three Rating Agencies then assign a long-term unenhanced debt rating to the Bonds and Parity Bonds or Parity Subordinated Debt, the Commitment Fee Rate shall be based upon the Level in which the lower Rating appears. Any change in the Commitment Fee Rate resulting from a change in a Rating shall be and become effective as of and on the date of the announcement of the change in such Rating. References to ratings levels above are references to rating categories as presently determined by the Rating Agencies and in the event of adoption of any new or changed rating system, including, without limitation, any recalibration or realignment of Rating in connection with the adoption of a “global” rating scale, the rating from the Rating Agency in question referred to above shall be deemed to refer to the rating category under the new rating system that most closely approximates the applicable rating category as currently in effect. In the event that a Rating is suspended or withdrawn (for the avoidance of doubt, a decision by SMUD to cause a Rating Agency to no longer maintain its Rating, for non-credit related reasons and not for the purpose of avoiding the occurrence of an event of default, shall not constitute a suspension or withdrawal of such Rating) by any Rating Agency or upon the occurrence of and during the continuance of an Event of Default, the Commitment Fee Rate shall increase to the Commitment Fee Rate specified for Level 6 above. The Commitment Fees shall be payable as set forth above, together with interest on the Commitment Fees from the date payment is due until payment in full at the Default Rate. The Commitment Fee shall be payable in immediately available funds and computed on the basis of a year of 360 days and the actual number of days to elapse. SMUD acknowledges that as of the Closing Date the Commitment Fee Rate is that specified above for Level 1.

*Section 1.2. Amendment, Consent or Waiver Fee.* SMUD agrees to pay to the Bank on the date of each amendment, supplement, or modification to the Agreement or this Fee Agreement (or any Program Document, the amendment, supplement or modification of which requires the consent of, or waiver from, the Bank), a non-refundable fee equal to \$2,500, or such other fee as may be agreed to between the Bank and SMUD after the Bank has provided SMUD with an estimate of such fee and SMUD has approved such fee estimate in writing plus the reasonable fees and expenses of any legal counsel retained by the Bank in connection therewith in an amount agreed to by the Bank and SMUD after the Bank has provided SMUD with an estimate of such fees and expenses of legal counsel and SMUD has approved such fee and expense estimate in writing.

*Section 1.3. Purchase Demand Fees.* SMUD agrees to pay or cause to be paid to the Bank a purchase demand fee (the “*Purchase Demand Fee*”) in the amount of \$250 with respect to each demand for the Bank to purchase Bonds pursuant to the Agreement. The Purchase Demand Fee shall be non-refundable once paid.

## ARTICLE II. MISCELLANEOUS.

*Section 2.1. Legal Fees.* The Issuer shall pay the reasonable legal fees and expenses of the Bank incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Related Documents in an amount not to exceed \$45,000 plus

disbursements. Legal fees shall be paid directly to the Bank's counsel, Chapman and Cutler LLP, in accordance with the instructions provided by Chapman and Cutler LLP.

*Section 2.2. Amendments.* No amendment to this Fee Agreement shall become effective without the prior written consent of SMUD and the Bank.

*Section 2.3. Governing Law.* THIS FEE AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA AND APPLICABLE FEDERAL LAW; *PROVIDED, HOWEVER,* THAT THE CAPACITY, POWER AND AUTHORITY OF THE BANK TO ENTER INTO THIS FEE AGREEMENT AND THE OBLIGATIONS OF THE BANK HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND APPLICABLE FEDERAL LAW WITHOUT REGARD TO CHOICE OF LAW RULES.

*Section 2.4. Counterparts.* This Fee Agreement may be executed in two or more counterparts, each of which shall constitute an original but both or all of which, when taken together, shall constitute but one instrument. Delivery of an executed counterpart of a signature page of this Fee Agreement by facsimile transmission or by e-mail with a pdf copy or other replicating image attached, will be effective as delivery of a manually executed counterpart of this Fee Agreement, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

*Section 2.5. Severability.* Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

*Section 2.6. Representation by Legal Counsel; Joint Preparation.* The parties hereto have participated jointly in the negotiation and drafting of this Fee Agreement, and each of the parties was represented by its respective legal counsel during the negotiation and execution of this Fee Agreement. In the event an ambiguity or question of intent or interpretation arises, this Fee Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Fee Agreement.

*Section 2.7. No Disclosure.* Unless required by law, SMUD shall not deliver or permit, authorize or consent to the delivery of this Fee Agreement to any Person (other than SMUD's attorneys, accountants or auditors) or for posting on the Electronic Municipal Market Access website as provided by the Municipal Securities Rulemaking Board unless the Bank provides its prior written consent. The Bank acknowledges and agrees, however, that this Fee Agreement was made available to the public for the meetings of the SMUD Board of Directors at which the SMUD Board of Directors considered the approval of the execution and delivery of this Fee Agreement.

*Section 2.8. Payment Due on Non-Business Day to Be Made on Next Business Day.* If any sum becomes payable pursuant to this Fee Agreement on a day which is not a Business Day, the date for payment thereof shall be extended, without penalty, to the next succeeding Business Day, and such extended time shall be included in the computation of interest and fees.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first set forth above.

SACRAMENTO MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_

Name: Russell Mills

Title: Treasurer

TD BANK, N. A.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

**SUBORDINATED ELECTRIC REVENUE REFUNDING**  
**BONDS, 2023 SERIES C**

**REMARKETING AGREEMENT**

**DRAFT**

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**  
**SUBORDINATED ELECTRIC REVENUE REFUNDING BONDS, 2023 SERIES C**

**REMARKETING AGREEMENT**

[\_\_\_\_], 2023

Honorable Board of Directors  
Sacramento Municipal Utility District  
6201 S Street  
Sacramento, California 95817-1899

Ladies and Gentlemen:

This is to confirm the agreement between the undersigned, Barclays Capital Inc. (the “Remarketing Agent”) and Sacramento Municipal Utility District, a municipal utility district of the State of California (the “District”), for the Remarketing Agent to act as exclusive remarketing agent in connection with the offering and sale from time to time in the secondary market of \$[PAR] aggregate principal amount of the Subordinated Electric Revenue Refunding Bonds, 2023 Series C (the “2023 Series C Bonds”) issued pursuant to the provisions of, and shall be payable as provided in, Resolution No. 85-11-1, adopted by the Board of Directors of the District on November 7, 1985 (the “Subordinate Master Resolution”), as amended and restated by Resolution No. 01-06-10, adopted by the Board of Directors of the District on June 21, 2001 (the “Amending Resolution”), and as supplemented by Resolution No. [\_\_\_\_] adopted by the Board of Directors of the District on [May 18, 2023] (the “Supplemental Resolution”). The Subordinate Master Resolution, as amended and restated, and supplemented is herein called the “Subordinate Resolution.” All capitalized terms used herein and not defined herein shall have the meanings specified in the Subordinate Resolution.

In addition, as used herein, “Rule G-34 Documents” shall mean: (i) the letter of credit agreement, reimbursement agreement, standby bond purchase agreement, loan agreement, guaranty agreement or any other document establishing an obligation to provide credit and/or liquidity support with respect to the 2023 Series C Bonds; (ii) the Subordinate Resolution, indenture, bond resolution, and any supplemental or series indenture(s) or resolution(s) or any other authorizing document under which the 2023 Series C Bonds were issued; (iii) any amendments, extensions, renewals, replacements or terminations thereof; and (iv) any other document related to the 2023 Series C Bonds required to comply with Municipal Securities Rulemaking Board (“MSRB”) Rule G-34(c), as it may be amended from time to time; and, in each case where required to be delivered, such delivery shall be by electronic means in a word-searchable PDF file (or in such other form as the Remarketing Agent shall notify the District in writing) labeled with the following information: (a) CUSIP number; (b) name of issuer; (c) name

of transaction; (d) name of document; and (e) whether the document is an execution version or a redacted version.

Concurrently with the execution and delivery of this Agreement, the District is entering into a Standby Bond Purchase Agreement dated as of [ ] (the “Initial Liquidity Facility”) with T.D. Bank, N.A., as liquidity provider (the “Bank”). The 2023 Series C Bonds will be as described in, and will bear interest in accordance with, the Subordinate Resolution.

1. Appointment of Remarketing Agent; Responsibilities of Remarketing Agent.

Subject to the terms and conditions herein contained, the Remarketing Agent is hereby appointed, and the Remarketing Agent hereby accepts such appointment and agrees to perform the duties and obligations imposed on it hereunder and under the Subordinate Resolution, as exclusive remarketing agent in connection with the determination of interest rates, the remarketing of tendered 2023 Series C Bonds from time to time in the secondary market subsequent to the initial offering, and the performance and discharge of all other responsibilities of the Remarketing Agent under the Subordinate Resolution. The principal office of the Remarketing Agent shall be as set forth under Section 12 hereof.

It is understood and agreed that the Remarketing Agent’s responsibilities hereunder and under the Subordinate Resolution will include (i) exercising its best efforts in its remarketing of the 2023 Series C Bonds without regard to the Bank Rate (as defined in the Initial Liquidity Facility), (ii) attempting to remarket 2023 Series C Bonds that have been tendered to U.S. Bank Trust Company, National Association, as trustee and paying agent under the Subordinate Resolution (the “Trustee”), at rates up to and including the maximum rate permitted under the bond documents before notifying the Trustee that a failed remarketing has occurred in respect of such tendered 2023 Series C Bonds, (iii) effecting and processing such purchases, (iv) billing and receiving payment of 2023 Series C Bond purchases, (v) causing the proceeds from the secondary sale of the 2023 Series C Bonds to be transferred to the Trustee, (vi) determining the Daily Rate, Weekly Rate, Flexible Rates, Term Rate, Direct Purchase Index Rate or Fixed Rate, as applicable, and (vii) performing such other related functions as provided in the Subordinate Resolution of the Remarketing Agent or reasonably requested by the District and agreed to by the Remarketing Agent.

The obligations of the Remarketing Agent hereunder and under the Subordinate Resolution, with respect to the date on which the 2023 Series C Bonds are to be remarketed pursuant to this Agreement, are also subject to the conditions set forth in Section 6 hereof. The Remarketing Agent may suspend remarketing 2023 Series C Bonds as provided in Section 7 hereof.

2. The 2023 Series C Bonds.

As more fully described in the Subordinate Resolution, the 2023 Series C Bonds will be issuable, subject to the terms and conditions of the Subordinate Resolution, in the form of fully registered 2023 Series C Bonds in the denominations, and having such tender, redemption, payment and other terms, as specified in the Subordinate Resolution.

3. Offering Materials.

The District represents that the Preliminary Official Statement relating to the 2023 Series C Bonds dated [\_\_\_\_], 2023 (the “Preliminary Official Statement”), both at the date thereof and the date of the sale of the Bonds, except for the information in the Preliminary Official Statement with respect to the book-entry system of DTC and the Bank and under the captions or subcaptions “SPECIAL CONSIDERATIONS RELATING TO THE 2023C SUBORDINATED BONDS,” and “THE INITIAL LIQUIDITY FACILITY,” “Appendix B - Book-Entry-Only System,” and “Appendix G – Initial Liquidity Provider,” does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make such statements therein, in light of the circumstances under which they were made, not misleading. The District represents that the Official Statement relating to the 2023 Series C Bonds dated [\_\_\_\_], 2023 (the “Official Statement”), both at the date thereof and the date of the Closing, except for the information in the Official Statement with respect to the book-entry system of DTC and the Bank and under the captions or subcaptions “SPECIAL CONSIDERATIONS RELATING TO THE 2023C SUBORDINATED BONDS,” and “THE INITIAL LIQUIDITY FACILITY,” “Appendix B - Book-Entry-Only System,” and “Appendix G – Initial Liquidity Provider,” does not contain any untrue or misleading statement of a material fact or omit to state any material fact necessary to make such statements therein, in light of the circumstances under which they were made, not misleading. The District agrees to pay the preparation costs of as many copies of the Preliminary Official Statement and the Official Statement as the Remarketing Agent may reasonably request, including all the Appendices thereto and information incorporated by reference therein and such other information associated with the District, the 2023 Series C Bonds and the security for the 2023 Series C Bonds as the Remarketing Agent shall reasonably request from time to time provided, however that no such material shall be finalized unless the Remarketing Agent and its counsel have had opportunity to review and comment upon the same. The District consents to the use and distribution of the Preliminary Official Statement and the Official Statement in connection with the remarketing of the 2023 Series C Bonds.

4. Representation, Warranties, Covenants and Agreements of the District.

The representations, warranties and agreements of the District set forth in the Contract of Purchase (the “Purchase Contract”) relating to the 2023 Series C Bonds, between the District and Barclays Capital Inc., in its capacity as Underwriter, are hereby incorporated herein as being made as of the date hereof. The District shall deliver to the Remarketing Agent in complying with its obligations under MSRB Rule G-34(c) such additional information concerning the business and financial condition of the District as the Remarketing Agent may reasonably request.

5. Certain Agreements of the District.

(a) During the term of this Agreement, the District agrees to promptly notify the Remarketing Agent by telephone (which shall be promptly confirmed in writing) of the occurrence of any of the events specified in Rule 15c2-12(b)(5)(C).

(b) During the term of this Agreement, the District agrees to promptly notify the Remarketing Agent by telephone (which shall be promptly confirmed in writing) of the occurrence of: (i) any event relating, which, with notice of the passage of time or both, would constitute an Event of Default under the Subordinate Resolution or the Initial Liquidity Facility; and (ii) any Event of Default under the Subordinate Resolution or the Initial Liquidity Facility.

(c) During the term of this Agreement, if, at any time, any event or condition known to the District relating to or affecting the District, the 2023 Series C Bonds, the security for the 2023 Series C Bonds, the Subordinate Resolution, the Initial Liquidity Facility, or the documents or transactions contemplated thereby, shall occur which, in the reasonable judgment of the District or the Remarketing Agent, might affect the accuracy, correctness or completeness of any statement of a material fact contained in the Official Statement, as it shall have been supplemented or amended from time to time pursuant to this Section, and result in the Official Statement, as so supplemented or amended, containing any untrue, incorrect or misleading statement of a material fact or omitting to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading, then: (i) the District (as to events or conditions relating to itself and otherwise of which it becomes aware) shall promptly notify the Remarketing Agent of the circumstances and details of such event; (ii) if, in the opinion of Remarketing Agent, such event or condition requires the preparation and publication of an amendment or supplement to the Official Statement, the District, at its expense, shall promptly prepare or cause to be prepared an appropriate amendment or supplement thereto, in a form and manner approved by the Remarketing Agent, so that the statements in the Official Statement, as so amended or supplemented, will not contain any untrue, incorrect or misleading statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and (iii) the District shall take all necessary action to approve such supplement or amendment.

(d) To assist the Remarketing Agent in complying with its obligations under MSRB Rule G-34(c), the District shall provide the following to the Remarketing Agent:

- i. Within three Business Days after the effective date of this Remarketing Agreement, a copy of each executed and currently effective Rule G-34 Document;
  - ii. no later than ten Business Days prior to the proposed date of any amendment, extension or renewal, replacement or termination of any of the then current Rule G-34 Documents, written notice that such document is proposed to be amended, extended, renewed, replaced or terminated, as the case may be, and the expected date of execution and delivery of such amendment, extension, renewal, replacement or termination, as the case may be;
  - iii. within three Business Days after the execution and delivery of any amendment, extension, renewal, replacement or termination, as the case may be, of any of the then current Rule G-34 Documents a copy thereof; and
  - iv. no later than three Business Days after receiving a request from the Remarketing Agent for any Rule G-34 Document, a copy thereof.
- (e) In each instance that Rule G-34 Documents are delivered to the Remarketing Agent pursuant to this Section 5, the District shall provide: (1) a clean final execution copy of each relevant document; or (2) in any such document where any redactions are made, a redacted final execution copy of each relevant document.
- (f) If the District determines that any information in the Rule G-34 Documents is confidential or proprietary, the District shall discuss such information and the potential redaction thereof with the Remarketing Agent and its counsel to ensure compliance with Rule G-34(c).
- (g) In the event that the District does not provide the Remarketing Agent with a copy of a document described in subsection (a) above, the Remarketing Agent may file a notice with the SHORT System that such document will not be provided at such times as specified by the MSRB and in the SHORT System Users Manual.
- (h) The District acknowledges and agrees that the Remarketing Agent will have no liability to the District with respect to: any confidential or proprietary information that is:
- (i) identified and/or redacted by the District in the Rule G-34 Documents; or
  - (ii) made public when the Remarketing Agent files the Rule G-34 Documents with the SHORT System.
- (i) If there are any additional regulatory requirements, amendments or modifications to the securities laws with which the Remarketing Agent must comply relating to the Remarketing Agent's obligations under this Agreement, the District shall take all steps reasonably requested by the Remarketing Agent or its counsel necessary to comply with such additional requirements.
- (j) The District shall provide the Rule G-34 Documents to the Remarketing Agent at no cost to the Remarketing Agent.

6. Conditions to Remarketing Agent's Obligations.

The obligations of the Remarketing Agent under this Agreement have been undertaken in reliance upon, and shall be subject to, the due performance of the obligations and agreements hereunder to be performed by the District and to the accuracy of and compliance with the representations, warranties, covenants and agreements of the District contained herein, in each case on and as of the date of delivery of this Agreement and on and as of each date on which 2023 Series C Bonds are to be remarketed pursuant to this Agreement. The obligations of the Remarketing Agent hereunder with respect to each date on which 2023 Series C Bonds are subject to optional or mandatory tender are subject, in the discretion of the Remarketing Agent, to the following further conditions:

(a) (i) The Subordinate Resolution, the Initial Liquidity Facility and all other documents and agreements referenced in the Subordinate Resolution or the Official Statement shall be in full force and effect and shall not have been amended, modified or supplemented in any way which would materially and adversely affect the 2023 Series C Bonds, except as may have been agreed to in writing by the Remarketing Agent, (ii) there shall not have occurred an event of default or an event, which, with the passage of time or the giving of notice or both, would constitute an event of default under the Subordinate Resolution, the Initial Liquidity Facility; and (iii) there shall be in full force and effect additional resolutions, agreements, certificates and opinions which shall be reasonably satisfactory in form and substance to Bond Counsel.

(b) At or prior to the closing date (the "Closing Date") under the Purchase Contract, the Remarketing Agent shall have received or waived receipt of all closing documents required by, and delivered pursuant to, the Purchase Contract and all conditions precedent to the delivery of the 2023 Series C Bonds shall have been satisfied or waived.

7. Term, Removal, Termination and Resignation of Remarketing Agent; Suspension of Remarketing.

The Remarketing Agent may be removed by a written instrument of the District filed with the Remarketing Agent, the Bank, the Trustee and the Paying Agent (as these terms are used in the Subordinate Resolution) not less than 30 days before such removal is to take effect; *provided, however*, that such removal shall not take effect until the appointment and acceptance thereof of a successor remarketing agent. Following termination, the provisions of Sections 9, 10 and 11 will continue in effect as to transactions prior to the date of termination, and each party will pay the other any amounts owing at the time of termination. The Remarketing Agent may resign at any time upon thirty (30) days' written notice to the District, the Bank, the Trustee and the Paying Agent; *provided, however*, if the District has not appointed a successor remarketing agent by the end of said 30 day period, so long as the District continues to pay the Remarketing Agent, the Remarketing Agent's resignation shall not become effective for an additional 30

day period. Upon receipt of notice of resignation of the Remarketing Agent, the District will use its best efforts to appoint a successor acceptable to the Bank within 30 days of receipt of such notice of resignation.

The Remarketing Agent may suspend remarketing the 2023 Series C Bonds with immediate effect if it determines, in its reasonable judgment, that it is impracticable to attempt to remarket the 2023 Series C Bonds due to (i) a pending or proposed change in applicable tax laws, (ii) a general banking moratorium by Federal, New York or State authorities or a material disruption in commercial banking or securities settlement, payment services or clearance services shall have occurred, (iii) the occurrence or escalation of hostilities or other national or international calamity or crisis (including the escalation of an already existing national or international calamity or crisis), (iv) a downgrade or withdrawal of the short-term rating of the 2023 Series C Bonds below “A-1” or “F-1” by Standard & Poor’s Ratings Services or Fitch Ratings, respectively, (v) an imposition of material restrictions on the trading or transfer of the 2023 Series C Bonds, (vi) a suspension or material limitation in trading on the New York Stock Exchange or any other major national stock exchange, (vii) legislation shall be introduced by committee, by amendment or otherwise, in or be enacted by, the House of Representatives or the Senate of the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the offering or sale of obligations of the general character of the Bonds, as contemplated hereby, is or would be in violation of any provision of the Securities Act of 1933, as amended and as then in effect or the Securities Exchange Act of 1934, as amended and as then in effect (the “Exchange Act”) or with the purpose or effect of otherwise prohibiting the offering or sale of obligations of the general character of the Bonds, as contemplated hereby, (viii) any of the representations and warranties of the District made hereunder shall not have been true and correct in all material respects on the date made, (ix) the District fails to observe any of the material covenants or agreements made herein, (x) a default or a moratorium in respect of payment of any U.S. Treasury bills, bonds or notes or a pending or proposed change in applicable tax laws the effect of which in the Remarketing Agent’s reasonable judgment makes it impractical to market Bonds or to enforce contracts for the sale of such 2023 Series C Bonds or (vii) a material misstatement or omission in the Official Statement as then modified or supplemented.

8. Dealing in 2023 Series C Bonds by Remarketing Agent.

The Remarketing Agent, in its individual capacity, either as principal or agent, at its option may (but is not obligated to) buy, sell, own, hold and deal in any of the 2023 Series C Bonds, and may join in any action which any owner of any 2023 Series C Bond may be entitled to take with the like effect as if it did not act in any capacity hereunder. Such purchases or sales are not required to be at par. The Remarketing Agent, in its individual capacity, either as principal or agent, may



also engage in or be interested in any financial or other transaction with the District and may act as depositary, trustee or agent for any committee or body of Bondholders or other obligations of the District as freely as if it did not act in any capacity hereunder. The Remarketing Agent may sell any 2023 Series C Bonds it has purchased to one or more affiliated investment vehicles for collective ownership or enter into derivative arrangements with affiliates or others.

9. Payment of Fees and Expenses.

While the 2023 Series C Bonds accrue interest at Flexible Rates, a Daily Rate or a Weekly Rate (as these terms are defined in the Subordinate Resolution), the District shall pay the Remarketing Agent directly, as compensation for its services hereunder, a fee equal to [\_\_\_\_\_ percent] ([\_\_\_\_\_]%) per annum of the weighted average principal amount of the 2023 Series C Bonds outstanding during each three-month period, or such other amount as may be agreed upon from time to time by the District and the Remarketing Agent, payable quarterly in arrears on each February 1, May 1, August 1, and November 1, commencing [August 1], 2023. The Remarketing Agent will not be entitled to compensation for any period after conversion of the interest rate determination method for the 2023 Series C Bonds to a Term Rate Mode, Direct Purchase Index Rate Mode or a Fixed Rate Mode or following termination of this Agreement (whichever is earlier) except for a *pro rata* portion of the fee in respect of the quarter in which such conversion or termination occurs. The parties anticipate that separate fee arrangements will be made for the remarketing of 2023 Series C Bonds accruing interest at a Direct Purchase Index Rate, Term Rate or at a Fixed Rate.

10. Indemnity and Contribution.

(a) To the extent permitted by law, the District agrees to indemnify and hold harmless the Remarketing Agent and each person who controls the Remarketing Agent within the meaning of Section 15 of the Securities Act of 1933, from and against any and all losses, claims, damages or liabilities, caused by (i) the failure to register any security under the Securities Act of 1933, as amended, or to qualify any indenture under the Trust Indenture Act of 1939, as amended in connection with the remarketing of the 2023 Series C Bonds; or (ii) any untrue statement or alleged untrue statement of a material fact contained in the Official Statement or any amendment thereof or supplement thereto, or caused by the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; except insofar as such losses, claims, damages or liabilities are caused by any such untrue statement or omission or alleged untrue statement or omission based upon information with respect to the book-entry system of DTC and the Bank and under the captions or subcaptions “SPECIAL CONSIDERATIONS RELATING TO THE 2023C SUBORDINATED BONDS,” and “THE INITIAL LIQUIDITY FACILITY,” “Appendix B – Book-Entry-Only System,” and “Appendix G – Initial Liquidity Provider,” or furnished under the heading

“Underwriting” as the case may be, in the Official Statement as amended or supplemented.

(b) In case any action shall be brought against the Remarketing Agent or any person controlling the Remarketing Agent, in respect of which indemnity may be sought against the District, the Remarketing Agent shall, as a condition to the above indemnity, promptly notify the District in writing, and the District shall assume the defense thereof, including the employment of counsel and payment of all expenses. The Remarketing Agent or any such controlling person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Remarketing Agent or controlling person, as the case may be, unless (i) the employment of such counsel has been specifically authorized by the District in writing prior to the employment of such counsel or (ii) the named parties to any such action (including any impleaded parties) including both the Remarketing Agent or such controlling person and the District, and the Remarketing Agent, or such controlling person, as the case may be, shall have been advised by such counsel that there may be one or more legal defenses available to it which are different from or additional to those available to the District and that joint representation may be inappropriate under professional standards, in which case the District shall not have the right to assume the defense of such action on behalf of the Remarketing Agent or such controlling person, as the case may be, it being understood, however, that the District shall not, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, be liable for the reasonable fees and expenses of more than one separate firm of attorneys for the Remarketing Agent (including controlling persons), and any such firm shall be designated in writing by the Remarketing Agent. The District shall not be liable for any settlement of any such action effected without its written consent, but if settled with the prior written consent of the District, or if there be a final judgment for the plaintiff in any such action, the District agrees to indemnify and hold harmless the Remarketing Agent and any such controlling person from and against any loss or liability by reason of such settlement or judgment.

(c) If the indemnification provided for in this Section 9 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) above in respect of any losses, claims, damages or liabilities (or actions in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the District on the one hand and the Remarketing Agent on the other from the remarketing of the 2023 Series C Bonds. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law or if the indemnified party failed to give the notice required under subsection (b) above, then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the

relative fault of the District on the one hand and the Remarketing Agent on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the District on the one hand and the Remarketing Agent on the other shall be deemed to be in the same proportion as the total net proceeds from the remarketing (before deducting expenses) bear to the total commission received by the Remarketing Agent. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the District on the one hand or the Remarketing Agent on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The District and the Remarketing Agent agree that it would not be just and equitable if contribution pursuant to this subsection (c) were determined by *pro rata* allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this subsection (c). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (c) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (c), the Remarketing Agent shall be responsible for that portion represented by the percentage that the Remarketing Agent's commission with respect to such remarketing bears to the aggregate principal amount of such 2023 Series C Bonds and the District is responsible for the balance. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(d) The indemnity and contribution provisions of this Remarketing Agreement shall not supersede any other indemnity in any other agreement or arising otherwise by law.

#### 11. Remarketing Agent's Liabilities.

The Remarketing Agent shall incur no liability to the District, or any other party for its actions as Remarketing Agent pursuant to the terms hereof and of the Subordinate Resolution except for its negligence or willful misconduct. The obligation of the Remarketing Agent to remarket bonds hereunder shall be on a best efforts basis without regard to the Bank Rate. The Remarketing Agent will not be liable to the District for the failure of any person to whom the Remarketing Agent has sold a 2023 Series C Bond to pay for such 2023 Series C Bond or to deliver any document in respect of the sale. It is understood and agreed that the Remarketing Agent shall not be obligated to advance its own funds to purchase, or to effect the purchase of any 2023 Series C Bonds.

12. Intention of Parties.

It is the express intention of the parties hereto that no purchase, sale or transfer of any 2023 Series C Bonds, as herein provided, shall constitute or be construed to be the extinguishment of any 2023 Series C Bond or the indebtedness represented thereby or the reissuance of any 2023 Series C Bond or the refunding of any indebtedness represented thereby.

13. No Advisory or Fiduciary Role.

The District acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm's length, commercial transaction between the District and the Remarketing Agent in which the Remarketing Agent is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the District; (ii) the Remarketing Agent has not assumed any advisory or fiduciary responsibility to the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Remarketing Agent has provided other services or is currently providing other services to the District on other matters); (iii) the only obligations the Remarketing Agent has to the District with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the District has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

14. Miscellaneous.

(a) Except as otherwise specifically provided in this Agreement, all notices and formal communications under this Agreement shall be in writing and mailed, telegraphed or delivered to:

The Remarketing Agent:

Barclays Capital Inc.  
10250 Constellation Blvd, Suite 750  
Los Angeles, California 90067  
Attention: Christopher D. Roberts  
TEL: (310) 481-4963  
FAX: [( ) - ]

The District:

Sacramento Municipal Utility District  
6201 S Street  
Sacramento, California 95817-1899  
Attention: Treasurer  
TEL: (916) 732-6509  
FAX: (916) 732-5835

The Remarketing Agent and District may, by notice given under this Agreement, designate other addresses to which subsequent notices, requests, reports or other communications shall be directed.

(b) The obligations of the respective parties hereto may not be assigned or delegated to any other person without the consent of the other parties hereto; provided, however, that the Remarketing Agent may assign its rights and obligations hereunder to an affiliate of the Remarketing Agent or to an entity succeeding to the business of the Remarketing Agent without the consent of the other parties hereto. This Agreement will inure to the benefit of and be binding upon the District and the Remarketing Agent and their respective successors and assigns, and will not confer any rights upon any other person, partnership, association or corporation other than persons, if any, controlling the Remarketing Agent within the meaning of the Securities Act.

(c) All of the representations, warranties and agreements contained in this Agreement of the District and the Remarketing Agent shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of the Remarketing Agent or the District, (ii) delivery of and any payment for any 2023 Series C Bonds hereunder or (iii) termination or cancellation of this Agreement.

(d) Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part this Agreement and will not be used in the interpretation of any provision of this Agreement.

(e) If any provisions of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstances, or of rendering any other provisions inoperative or unenforceable to any extent whatsoever.

(f) This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties.

(g) This Agreement shall only be amended, supplemented or modified in a writing signed by a duly authorized representative of the parties hereto.

(h) The Remarketing Agent may record telephone communications with the District, the Trustee, or the Paying Agent, or all of them.

(i) This Agreement shall not be deemed or construed to be modified, rescinded, canceled or waived, in whole or in part, except by a written instrument signed by a duly authorized representative of the parties hereto.

(j) Failure of any party to this Agreement to exercise any right or remedy hereunder in the event of a breach of this Agreement by any other party shall not constitute a waiver of any such right or remedy with respect to any subsequent breach.

(k) This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

(l) The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Any action or proceeding to enforce or interpret this Agreement shall be brought, commenced or prosecuted in the County of Sacramento, California.

Very truly yours,

**BARCLAYS CAPITAL INC.**

By: \_\_\_\_\_

Name: Christopher D. Roberts

Title: Director

Accepted and agreed to as of the date first above written:

**SACRAMENTO MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_

Name: Russell Mills

Title: Treasurer

[Signature page to 2023 Series C Remarketing Agreement]