

**Joint CCA  
2020 Request for Offers  
for  
Long Duration Energy Storage Capacity**

**RFO RELEASE DATE:** October 15, 2020

**RESPONSE DEADLINE:** December 1, 2020 at 5:00 PM PDT

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# 1 General Information

## 1.1 Introduction & Purpose

Central Coast Community Energy, CleanPowerSF, Marin Clean Energy, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy, and Sonoma Clean Power (collectively, the “Joint CCAs”) are seeking to procure long duration energy storage (“LDS”) to cost effectively enhance the integration of their respective renewable energy portfolios into the California Independent System Operator (“CAISO”) grid and to aid in meeting California’s aggressive greenhouse gas reduction targets by 2030 as outlined in the California Public Utilities Commission’s (“CPUC”) 2021-2030 Integrated Resource Plan Reference System Plan for the 38 and 46 million metric tonnes (“MMT”) reduction targets.

Information specific to each of the CCAs listed above can be found [here](#).

The Joint CCAs hereby issue this Request for Offers (“Joint RFO” or “RFO”) for the sale of LDS capacity and energy consistent with the terms and provisions in this RFO. The Joint CCAs are seeking to acquire through one or more LDS Projects up to 500 MWs of Capacity, Energy, and any associated Ancillary Products and Resource Adequacy (“Full Toll”) and/or simply Resource Adequacy (“RA Only”), with deliveries beginning no later than June 1, 2026.

## 1.2 Joint RFO Documents

This RFO document consists of a main body and three (3) Appendices. Among other things, the main body (i) offers general information pertaining to this RFO, (ii) describes the purpose and drivers of this RFO and provides high-level considerations for Offerors, (iii) includes a milestone schedule for this RFO, (iv) sets forth terms governing the preparation and submission of offers and RFO-related communications with the Joint CCAs, and (v) provides a high-level overview of the process for evaluating and selecting offers submitted in response to this RFO. The three Appendices are as follows:

- Appendix A - Offer Form
- Appendix B - Pro Forma Term Sheet
- Appendix C - Reservation of Rights

Offerors are responsible for familiarizing themselves with and being fully aware of the terms of this RFO, including the terms of each Appendix.

## 1.3 Joint RFO Website

This RFO and related materials and information will be posted on a Joint RFO website, which will be administered by the Joint RFO Administrator. The website will be updated from time-to-time with additional information related to this RFO. Interested persons and Offerors are responsible for monitoring the websites to ensure the timely receipt of information about this RFO.

## 1.4 Joint RFO Administrator

The RFO Administrator is Silicon Valley Clean Energy (“SVCE”).

The RFO Administrator’s responsibilities include (i) acting as a liaison between the participants in this RFO and the Joint CCAs on all RFO-related matters, (ii) ensuring that Offeror questions the Joint CCAs receive are addressed in an appropriate manner, (iii) receiving, recording and maintaining Offeror offers, (iv) and managing other administrative matters relating to this RFO, including the Joint RFO website.

As detailed in Section 3.3 below, all questions, requests, and other inquiries or communications from or on behalf of Offerors to the Joint CCAs about this RFO must be directed in email to the RFO Administrator.

The contact information for the RFO Administrator is:

**Monica Padilla, SVCE Director of Power Resources**

**Email:** JointLDSRFO@svcleanenergy.org

## 2 RFO Overview

### 2.1 RFO Purpose

Offers submitted pursuant to this RFO will be evaluated for their ability to meet the Joint CCAs’ capacity target in accordance with the terms of this RFO. The evaluation is based on a best fit and value and at the lowest reasonable cost considering, without limitation, reliability, risk mitigation, and other relevant factors including the ability to provide enhanced grid reliability by providing Resource Adequacy attributes as defined by the California Public Utilities Commission and the California Independent System Operator<sup>1</sup>.

It is the intent of the Joint CCAs to select one or more resources offered for consideration for this RFO (each such resource, a “Project”) with the added intent of negotiating and executing a Single Energy Storage Services agreement (“ESSA”) per Project under a yet to be formed Joint Powers Authority (“JPA”) representing all or a subset of the above mentioned CCAs. If the JPA is not formed or one or more CCAs decides not to join the JPA, then multiple ESSAs may be executed for a single Project.

### 2.2 Eligible Project, Products Sought, and Requirements

<b>Eligible Project</b>	Grid-charged long duration storage technology types with a minimum of 8 hours of discharge duration. Resources must meet minimum California Public Utilities Commission and CAISO requirements for participation in the Resource Adequacy program.
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<sup>1</sup> Definitions and documentation regarding Resource Adequacy may be found at: <http://www.caiso.com/planning/Pages/ReliabilityRequirements/Default.aspx> and <http://www.cpuc.ca.gov/ra/>.

<b>Product &amp; Attributes</b>	Full Toll: Energy, Capacity, Ancillary Services and RA counting rights. Buyer will have full rights. RA Only: RA counting rights
<b>Project Location</b>	Resources must interconnect directly to the transmission or distribution system (i.e. "in front of the meter") and be able to participate directly in CAISO electricity markets or if not directly interconnected to the CAISO must have the ability to provide RA as a dynamic transfer.
<b>Delivery Term</b>	Commercial Operation must occur no later than June 1, 2026.  Minimum delivery term of 10 years. Delivery term lengths longer than 10 years will be considered.
<b>Scheduling and Dispatch Flexibility</b>	If a Full Toll, the Joint CCAs, their designee, or, if applicable, a single CCA, will act as the Scheduling Coordinator with full dispatch and flexibility rights.  Not applicable if offer is RA only.
<b>Price</b>	Pricing must be provided as follows: <ul style="list-style-type: none"> <li>• Capacity pricing will be on an \$/kW-month basis, with no escalator.</li> <li>• Offeror may submit multiple prices per Project based on varying term, capacity, and discharge duration.</li> <li>• Pricing should assume one ESSA per Project. If there are any differences in price based on the Offeror entering multiple ESSAs for a Project, these differences must be noted in the offer.</li> <li>• Alternative pricing structures may be considered.</li> </ul>
<b>Minimum Project Capacity</b>	50 MW per Project

The foregoing is intended as a high-level overview and is not an exhaustive list of important commercial terms for an ESSA resulting from this RFO. Please refer to [Appendix B](#) and the sections below for other relevant commercial provisions or considerations.

## 3 RFO Milestones and Offer Submission

### 3.1 Schedule

The RFO Schedule below sets out critical milestone events and deadlines for Offerors interested in participating in this RFO. Notice of any change to the RFO Schedule will be posted on the Joint RFO website.

<b>Activity</b>	<b>Scheduled Date</b>
Issuance of RFO	October 15, 2020
Offerors Webinar	October 28, 2020 3:30-4:30 PM (PDT)
Deadline to submit questions	October 30, 2020
Responses to questions published	November 3, 2020
Deadline to submit proposals	December 1, 2020 by 5:00 pm PST
Review, evaluation and ranking of projects	December 1, 2020 to February 2, 2021
Project(s) shortlisting	March 2, 2021
Developer/Buyer Negotiations	March – July 2021
Final contract approval (Tentative)	July 2021

## 3.2 Offerors' Webinar

The Joint CCAs will be holding an Offerors' Webinar on **October 28, 2020 from 3:30-4:30 PM (PDT)** to review the RFO and respond to questions from prospective Offerors.

Please click the link below to join the webinar:

<https://zoom.us/j/99215822291?pwd=a1B2VW12ZEM3NnpORzFuekZTZS90QT09>

Passcode: 624662

Or iPhone one-tap:

US: +16699009128,,99215822291#,,,,,0#,,624662# or  
+13462487799,,99215822291#,,,,,0#,,624662#

Or Telephone:

Dial (for higher quality, dial a number based on your current location):

US: +1 669 900 9128 or +1 346 248 7799 or +1 253 215 8782 or +1 312 626 6799 or  
+1 646 558 8656 or +1 301 715 8592

Webinar ID: 992 1582 2291

Passcode: 624662

International numbers available: <https://zoom.us/u/adUtdlagYK>

## 3.3 Submission and Posting of RFO Questions

Offerors and other interested Persons are encouraged to submit questions about this RFO, to the RFO Administrator (using the contact information provided above in Joint RFO Administrator 1.4). All questions regarding this RFO must be submitted by email by **October 30, 2020**.

Subject to consideration of confidentiality concerns, the Joint CCAs intend to post all questions submitted by Offerors, as well as responses to those questions on the Joint RFO website. All questions will be posted anonymously, to shield the identity of Offerors who posed the questions. The Joint CCA's objective in posting questions and answers is to afford Offerors equal access to information potentially relevant to their offers. Offerors are urged to submit RFO questions as early as possible, in consideration of the offer submission deadlines. Responses to questions will be posted by **November 3, 2020**.

## 3.4 Offer Submission

The Offer Submission Process requires each Offeror to submit a completed offer package, including detailed responses to Appendix A and Appendix B (and/collectively referred to as the "Offer Package"), in order to have its offer(s) evaluated under this RFO. Under the current schedule, Offerors must submit a completed Offer Package by 5 p.m. PST on December 1, 2020.

Offerors will each bear the risk of any failure to submit the completed Offer Package by the required deadline as required by this RFO. Offers for which Offeror does not submit all appendices, information, and material as required by this RFO may be considered non-conforming and eliminated from consideration. Responsive offers are those which are deemed conforming to all requirements listed in this RFO document.

**All offers must be submitted in email form with the appropriate attached documents to the following email address: [JointLDSRFO@svcleanenergy.org](mailto:JointLDSRFO@svcleanenergy.org)**

## 4 Offer Evaluation

### 4.1 Offer Requirements

The following is a list of requirements for Offers to be considered complete and eligible in this RFO process:

- a) The Project must meet the requirements as provided in Section 2.2 of this RFO.
- b) The completed Offer Package must be received by the Joint RFO Administrator by 5 p.m. PST on December 1, 2020.
- c) All portions of the Offer Package must be received in the appropriate digital formats – pdf for narrative documents and Excel spreadsheets for the associated data templates. Requested edits to Appendix B, as applicable, must be sent in Office Word format and include either tracked changes or similar redline indicating requested edits.
- d) All associated data templates must be completed satisfactorily and provided with the Offer Package. It is the duty of the Offeror to contact the Joint RFO Administrator for clarification regarding completion of data templates and Appendix B. Incomplete templates are grounds for non-consideration of an offer.
- e) Submission must include a section summarizing offer characteristics and qualifications related to each scoring category (see below in Section 4.2.1).
- f) After receipt of offers, the Joint CCAs may contact Offerors to request clarification about unclear portions of offers. Offerors will have 5 business days to respond or the offer may be removed from further consideration.
- g) The Delivery Term for the proposed ESSA must be a minimum of ten (10) consecutive years.

### 4.2 Evaluation and Shortlisting Process

#### 4.2.1 Phases of Offer Evaluation

After removal of non-compliant offers, the RFO evaluation process will consist of two phases:

##### Phase 1

All compliant offers will be scored and ranked according to the scoring rubric detailed below.



## Phase 2

Top-scoring offers will be modeled to yield a final, in-depth understanding of their expected performance and cost effectiveness. These results will reveal the highest-value resources for the Joint CCAs, and those Offerors will be Shortlisted and contacted for negotiation of contracts.

### Explanation of Scoring Categories

Offers **must** contain an executive summary section (max 2 pages) summarizing the characteristics and qualifications of the proposed project related to each of the following scoring categories (in the order listed below).

The scoring will be based on the categories detailed in Table 1 below:

Table 1: Phase 1 Scoring Rubric

<b>Criteria Component</b>	<b>Points</b>
Expected Value (ESSA Cost minus Project value)	50
Project Risk	15
Technology/viability	10
Offeror Experience delivering projects of similar scope and magnitude	10
Environmental impact	5
Delivery Term	10
Total	100

### **Expected Value**

The expected value of the proposed resource is a primary concern for ranking offers. Offers will be scored based on the competitiveness of their total cost relative to the value of the project. The value of the project will be derived from stochastic modeling conducted by the Joint CCAs along with stress testing under various market and/or regulatory scenarios.

### **Project Risk**

Offers will be scored based on a qualitative assessment of the risks inherent in the proposed project. Considerations in this category may include position in an interconnection queue, project feasibility including financing plan, deliverability concerns, concerns about cost structure or contract terms, project susceptibility to changes in legislation, etc.

### **Technology/Viability**

Although the RFO is technology agnostic, Offerors will need to provide examples of a proof of concept of their Project whether it is a pilot project or commercial deployment.

### **Offeror Experience Delivering Projects of Similar Scope and Magnitude**

Offerors will be assessed for experience as a firm and/or based on the experience of the members of the project team. The Joint CCAs are seeking Offerors with demonstrated experience delivering projects of similar scope and magnitude to the projects proposed in this RFO and will be scored accordingly in this category.

### **Environmental Impact**

Each Project will be assessed on its ability to assist with meeting California's greenhouse gas reduction targets by 2030. Additionally, Projects will be evaluated on the environmental footprint and impact of the project relative to its ability to help reduce greenhouse gas emissions throughout its installation, operation, and ultimate decommissioning.

### **Delivery Term**

Projects will be evaluated based on a scale with more points being awarded to shorter term Projects and/or projects demonstrating the ability to come online no later than June 1, 2026.

## **4.3 Shortlisting and Exclusivity Agreement**

After the completion of Phase I, the RFO Administrator will communicate to each Offeror the status of its offer(s) and whether additional discussions or negotiations are warranted. If additional discussions or negotiations are warranted, an Offeror will be offered an opportunity to be placed on a shortlist (the "Shortlist") for further negotiations of an ESSA with respect to Offeror's offer (the "Offer").

In order to be placed on the Shortlist, an Offeror will need to execute an Exclusivity Agreement, per Shortlist Offer, giving the Joint CCAs exclusivity in negotiating with Offeror for the Project. A deposit in the form of cash or Letter of Credit ("LOC") in the amount of \$3/kW (the "Shortlist Deposit") is required to secure the Exclusivity Agreement. The Shortlist Deposit will be promptly returned to Offeror in its entirety under one or more of the following conditions: (i) following execution of an ESSA, (ii) the Joint CCAs' rejection of Offeror's offer following shortlist selection, (iii) failure of both Joint CCAs and Offeror to agree on the terms of an ESSA, or (iv) the Joint CCAs' termination of the Joint RFO process. Notwithstanding the foregoing, Offeror hereby acknowledges and agrees that Offeror will forfeit its Shortlist Deposit and the Joint CCAs' shall have the right to draw on the Shortlist Deposit in its entirety, as its sole and exclusive remedy, if (i) it is determined that Offeror made any material misrepresentations in its offer or the Offer, (ii) Offeror materially breaches its obligations under the Exclusivity Agreement, (iii) Offeror unilaterally withdraws the Offer or attempts to materially modify the terms of its Offer prior to the Exclusivity Deadline, or (iv) prior to the Exclusivity Deadline, Offeror enters into discussions with any third party under which such third party, or any of such third party's affiliates may agree, conditionally or unconditionally, to enter into an agreement for the sale of the capacity associated with the Offer.

Placement of an offer on the Shortlist or execution of the Exclusivity Agreement does not constitute or indicate acceptance of any offer, any term thereof, or any related contract term. Without limiting Appendix C, the Joint CCAs have (i) no obligation and make no commitment of

any kind to enter into a transaction with any Offeror, including a Offeror with an offer on the Shortlist, or to be bound by any term proposed by Offeror, and (ii) no obligation or liability with respect to any proposed transaction arising out of this RFO except as may be expressly set forth in a fully-executed ESSA.

## **5 Miscellaneous RFO Matters**

Without limiting the generality of Appendix C, the Joint CCAs reserve the right to withdraw, suspend, cancel, or terminate this RFO, or to modify any term of this RFO, including, without limitation, any term concerning the RFO Schedule (including any date), at any time in its sole discretion. The Joint CCAs will endeavor to notify all participants of any such withdrawal, suspension, cancellation, termination, or modification made prior to the Required Offer Submission Time and to post notice of any such action.

## **Appendix A Offer Form**

Please provide an executive summary in PDF form (max 2 pages) summarizing the characteristics and qualifications of the proposed project related to each of the following scoring categories based on Table 1: Phase 1 Scoring Rubric.

In addition, please fill out the following CSV file titled, "Appendix-A-Offer Form (LDS RFO)" located [here](#).

## Appendix B Proforma Term Sheet

THIS TERM SHEET FOR ENERGY STORAGE SERVICES AGREEMENT (“**Term Sheet**”) is entered into as of [ ], 2020 (the “**Effective Date**”), between Central Coast Community Energy, CleanPowerSF, Marin Clean Energy, Peninsula Clean Energy, Redwood Coast Energy Authority, San Jose Clean Energy, Silicon Valley Clean Energy and Sonoma Clean Power, (collectively, the “**Joint CCAs**”) and [Respondent] (“**Respondent**”). This Term Sheet includes the key commercial terms and conditions to be included in a proposed energy storage service agreement (“**ESSA**”) to be negotiated between the Joint CCAs (“**Buyer**”) and [e.g., Project Company LLC] (“**Seller**”) (the “**Proposed Transaction**”). As used herein, Buyer and Seller are each a “**Party**” and collectively the “**Parties.**” Notwithstanding anything herein to the contrary, that until a definitive agreement is approved by Buyer’s Joint Procurement Authority and signed and delivered by each Buyer and Seller, no Party shall have any legal obligations, expressed or implied, or arising in any other manner under this Term Sheet to continue negotiations or enter into the Proposed Transaction or the ESSA.

### 1. ESSA Terms and Conditions.

<p><b>Storage Product:</b></p>	<p><b>Option 1: RA Product</b> – includes Resource Adequacy Benefits only. “<b>Resource Adequacy Benefits</b>” means the rights and privileges attached to the Storage Facility that satisfy any entity’s resource adequacy obligations, and includes any local, zonal or otherwise locational attributes associated with the Storage Facility, in addition to flex attributes. <i>[Please note that, subject to the agreement of Buyer and Seller, the ESSA for an RA Only product may take the form of an EEI confirmation between Buyer and Seller.]</i></p> <p><b>Option 2: Storage Product</b> – includes all energy, capacity, Resource Adequacy Benefits, and ancillary services produced by or associated with the Storage Facility. Buyer receives full dispatchable rights and energy revenues earned.</p> <p><b>Option 3: RA Product with Revenue Sharing</b> – includes Resource Adequacy Benefits, and percent sharing of benefits (TBD) of revenues from energy and ancillary services produced by or associated with the Storage Facility. Seller will schedule and dispatch the energy.</p> <p><b>Option 4: RA Product + Energy Discharge</b> – includes Resource Adequacy Benefits and blocks of 8 hours of discharge at the hours of Buyer’s choosing.</p> <p><b>Option 5: Unique Offer</b> <i>[Include detail.]</i></p>
<p><b>Storage Facility:</b></p>	<p>“<b>Storage Facility</b>” or “<b>Project</b>” means the [ ] project, located in [County], in the State of [California].</p>
<p><b>Storage Capacity:</b></p>	<p>[XX] MW<sub>AC</sub></p>
<p><b>RA Capacity:</b></p>	<p>[XX] MW [NQC]</p>

<p><b>Contract Price:</b></p>	<p><u>RA Product</u>: \$[XX]/kW-month of delivered RA Capacity.</p> <p><u>Storage Product</u>: \$[XX]/kW-month of Storage Capacity, as adjusted for the Storage Capacity Test (as set forth in the ESSA), multiplied by the actual round-trip efficiency, and subject to the Availability Adjustment.</p> <p><u>RA Product with Revenue Sharing</u>: [TBD]</p> <p><u>RA Product + Energy Discharge</u>: [TBD]</p> <p><u>Unique Offer</u>: [TBD]</p>
<p><b>Delivery Term:</b></p>	<p>[ ] Contract Years from the Commercial Operation Date, with each 12-month period following the Commercial Operation Date considered a “<b>Contract Year</b>.”</p>
<p><b>Commercial Operation Date:</b></p>	<p>The “<b>Commercial Operation Date</b>” or “<b>COD</b>” shall be the later of (a) the Expected Commercial Operation Date or (b) the date on which Commercial Operation is achieved. “<b>Commercial Operation</b>” means the condition existing when Seller has fulfilled the following conditions precedent in the ESSA and provided notice of same to Buyer, including providing a certificate from an independent engineer to Buyer with respect to subparts (i), (iii), (iv) and (v):</p> <ul style="list-style-type: none"> <li>(i) Storage Facility has met all Interconnection Agreement requirements or Agreements required to set Dynamic Transfer and is capable of receiving charging energy from, and delivering discharging energy to, the CAISO Balancing Authority;</li> <li>(ii) Seller has provided Buyer with a copy of written notice from the CAISO that the Storage Facility has achieved Full Capacity Deliverability Status (as defined in the CAISO tariff), if applicable;</li> <li>(iii) Seller has provided Buyer Maximum Import Capability (MIC) rights for full RA Product, if applicable;</li> <li>(iv) Commissioning of equipment has been completed in accordance with the manufacturer’s specifications;</li> <li>(v) 95% of Storage Capacity has been installed and commissioned;</li> <li>(vi) Storage Facility has successfully completed all testing required by prudent utility practices or any requirement of law to operate the Storage Facility;</li> <li>(vii) All applicable permits and government approvals required for the operation of the Storage Facility have been obtained;</li> <li>(viii) Seller has obtained all real property rights;</li> </ul>

	<p>(ix) Security requirements for the Delivery Term have been met; and</p> <p>(x) Insurance requirements for the Storage Facility have been met, with evidence provided in writing to Buyer.</p> <p>Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date. Seller shall notify Buyer in writing when Seller believes that it has provided the required documentation to Buyer and met the conditions for achieving COD. Buyer shall have five (5) Business Days to approve or reject Seller’s request for COD. Upon Buyer’s approval of Seller’s achievement of COD, Buyer shall provide Seller with written acknowledgement of the COD.</p>
<p><b>Guaranteed Construction Start Date:</b></p>	<p>The “<b>Guaranteed Construction Start Date</b>” means the following date [ ], subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&amp;E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p> <p>In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the “<b>Daily Delay Damages</b>”) for each day of delay, in the amount of the Development Security divided by 120. The Daily Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the ESSA and retain the Development Security.</p>
<p><b>Guaranteed Commercial Operation Date:</b></p>	<p>The “<b>Guaranteed Commercial Operation Date</b>” or “<b>Guaranteed COD</b>” means the following date [ ], subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&amp;E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis. For clarity, these permitted extensions extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p>

	<p>If the Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay Delay Damages to the Buyer for each day of delay until Seller achieves COD.</p> <p>“<b>Delay Damages</b>” are equal to the Development Security divided by 60. Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance monthly. A prorated amount will be returned to Seller if COD is achieved during the month for which Delay Damages were paid in advance.</p> <p>Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the ESSA and retain the Development Security.</p>
<b>Project Interconnection Point:</b>	The Project shall interconnect to [e.g., <i>XX substation</i> ] (the “ <b>Interconnection Point</b> ”). Seller shall be responsible for all costs of interconnecting the Project to the Interconnection Point.
<b>Delivery Point:</b>	“ <b>Delivery Point</b> ” means [the Storage Facility Pnode] on the CAISO grid.
<b>Deliverability:</b>	The Facility will have Full Capacity Deliverability Status by the Commercial Operation Date.
<b>Site Control:</b>	Seller shall maintain site control throughout the Delivery Term.
<b>Permits and Approvals:</b>	Seller shall obtain any and all permits and approvals, including without limitation, environmental clearance under the California Environmental Quality Act (“ <b>CEQA</b> ”) or other environmental law, from the local jurisdiction where the Project is or will be constructed. Buyer is simply purchasing power and does not intend to be the lead agency for the Project.
<b>Project Development Milestones:</b>	<p>[date] – receipt of CEC pre-certification</p> <p>[date] – execution of Interconnection Agreement</p> <p>[date] – procurement of major equipment</p> <p>[date] – obtain federal and state discretionary permits</p> <p>[date] – Guaranteed Construction Start Date</p> <p>[date] – obtain Full Capacity Deliverability Status, if applicable</p> <p>[date] – Guaranteed Commercial Operation Date</p>
<b>Maximum Storage Level:</b>	[XX] MWh [number in MWh representing maximum amount of energy that may be discharged from the Storage Facility]
<b>Minimum Storage</b>	[XX] MWh [number in MWh representing the lowest level to which



<b>Level:</b>	the Storage Facility may be discharged]
<b>Maximum Charging Capacity:</b>	[XX] MW [highest level at which Storage Facility may be charged]
<b>Maximum Discharging Capacity:</b>	[XX] MW [number in MW representing the highest level at which the Storage Facility may be discharged]
<b>Maximum State of Charge (SOC) during Charging:</b>	100%
<b>Minimum State of Charge (SOC) during Discharging:</b>	0%
<b>Maximum Round-Trip Efficiency:</b>	<p>[XX]% [peak efficiency of conversion between charging energy and discharging energy (i.e. ratio of maximum charging energy to maximum discharging energy)]</p> <p>If actual round-trip efficiency is greater than or equal to Maximum Round-Trip Efficiency, then for purposes of calculating the monthly payment amount, the actual round-trip efficiency will be deemed to be 100%.</p>
<b>Minimum Round-Trip Efficiency:</b>	<p>[XX]% [minimum guaranteed efficiency of conversion between charging energy and discharging energy (i.e. ratio of maximum charging energy to maximum discharging energy)] measured at the point of interconnection.</p> <p>If actual round-trip efficiency is less than Minimum Round-Trip Efficiency, then for purposes of calculating the monthly payment amount, the actual round-trip efficiency will be deemed to be 0%.</p>
<b>Ramp Rate Range:</b>	[XX] MW/minute to [XX] MW/minute
<b>Monthly/Annual Cycles:</b>	[Number of times per contract term Buyer may fully charge and discharge the Storage Facility. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Storage Facility over the course of a calendar month equals the Maximum Storage Level. This could occur in one continuous charge or over multiple charges, even if some energy is discharged in between. The

	inverse is true for a full discharge.]
<b>Additional Energy Storage Products:</b>	All ancillary services and environmental attributes produced by the Storage Facility.
<b>Ancillary Services Capability:</b>	[List frequency regulation, spin, regulation up, regulation down, etc., and specify relevant operating parameters for each.]
<b>Scheduling Coordinator:</b>	<p>[Seller/Buyer]</p> <p><u>For RA Product:</u> Seller or Seller’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Storage Facility. Seller shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments.</p> <p><u>For Storage Product:</u> Buyer or Buyer’s agent shall act as Scheduling Coordinator (as defined by the CAISO) for the Storage Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges (including for charging energy) and retain all CAISO payments (including for discharging energy); provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller’s failure to perform, (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity (as defined by the CAISO) from the Storage Facility (including Non-Availability Charges (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller’s failure to comply with a timely Buyer Curtailment Order if such failure results in incremental costs to Buyer.</p> <p>Outage and curtailment notifications will be required by Buyer as well as access to Storage Facility charging and discharging data.</p>
<b>Station Use:</b>	Buyer will not be responsible for Station Use and Station Use will not be provided by the Storage Facility. Expected Station Use: [XX] MWh per year.
<b>Guaranteed Storage Availability:</b>	[98%] [percentage of hours each month that Seller agrees the Storage Facility will be available]
<b>Availability Adjustment:</b>	The Availability Adjustment (“ <b>AA</b> ”), which is calculated as follows: If the monthly storage availability is greater than or equal to the Guaranteed Storage Availability, then:

	<p>AA = 100%</p> <p>If the monthly storage availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:</p> <p>AA = 100% - [(98% - monthly storage availability) × 2]</p> <p>If the monthly storage availability is less than 70%, then:</p> <p>AA = 0</p>
<b>Local Workforce:</b>	[include % of workforce from Buyer's service territory Seller will utilize]
<b>Monthly Settlement and Invoice:</b>	<p>Within ten (10) days after the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall include all information necessary to confirm the amount due.</p> <p>Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to Buyer's billing dispute process.</p>
<b>Operations and Maintenance:</b>	<p>During the months of June through September Seller shall not schedule any non-emergency maintenance that reduces the energy storage capability of the Storage Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Storage Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing.</p>
<b>Progress Reporting:</b>	<p>After execution of the ESSA, Seller shall provide a quarterly report until the COD followed by a monthly report to Buyer that (a) describes the progress towards meeting the Storage Facility Development Milestones; (b) identifies any missed Storage Facility Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Storage Facility Development Milestones and all subsequent</p>

	<p>Storage Facility Development Milestones by the Guaranteed Commercial Operation Date. If applicable, progress reporting shall also include reporting on small business activities.</p> <p>In the event Seller misses any Project Development Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the ESSA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity.</p>
<b>Credit Requirements:</b>	<p>The Seller shall post security as follows:</p> <p><u>Development Security</u> – \$90/kW of Guaranteed Capacity</p> <p><u>Performance Security</u> – \$105/kW of Guaranteed Capacity</p> <p>To secure its obligations under the ESSA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit.</p> <p>Within five (5) Business Days following any draw by Buyer on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p> <p>To secure its obligations under the ESSA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.</p>
<b>Compliance with Laws:</b>	<p>Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference; conflict of interest; environmentally preferable procurement; single serving bottled water; gifts; and disqualification of former employees.</p>
<b>Business Tax:</b> <sup>2</sup>	<p>The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Proposed Transaction term.</p>
<b>Assignment:</b>	<p>Neither Party may assign the ESSA without prior written consent of the other party, which will not be unreasonably withheld; provided, that Seller has the right to assign the ESSA as collateral for any financing or refinancing of the Facility without the consent of Buyer.</p> <p>Any direct or indirect change of control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require</p>

<sup>2</sup> This language is applicable if San Jose is the Buyer.

	<p>the prior written consent of Buyer, which will not be unreasonably withheld.</p> <p>Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with Seller's financing for the Facility. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under the ESSA, or to modify such ESSA.</p>
<p><b>No Recourse to Members of Buyer<sup>3</sup></b></p>	<p>Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.</p>
<p><b>Appropriation of Funds:<sup>4</sup></b></p>	<p>[Buyer is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies, and, therefore, nothing in the ESSA shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the ESSA; provided, however, that (a) Buyer has created and set aside the Designated Fund for payment of its obligations under the ESSA and (b) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Special Fund necessary to pay its obligations under the ESSA and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer's payment obligations under the ESSA are special limited obligations of Buyer payable solely from the Special Fund and are not a charge upon the revenues or general fund of the City of San</p>

<sup>3</sup> This language is applicable if the Buyer is either the new JPA or a CCA that is a JPA.

<sup>4</sup> This language is applicable if San Jose is the Buyer.

	<p>José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the term of the ESSA.</p>
<p><b>Designated Fund and Limited Obligation:</b></p>	<p><b><u>Designated Fund.</u></b> Buyer’s payment obligations under this Agreement shall be paid from a Department of Community Energy designated fund (“Designated Fund”) that shall be used solely for San José Clean Energy costs and expenses, including the obligations under this Agreement. Subject to the requirements and limitations of Applicable Law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy’s obligations, the Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Buyer’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.</p> <p><b><u>Limited Obligations.</u></b> Buyer’s payment obligations are special limited obligations of the Buyer payable solely from the Designated Fund. Buyer’s payment obligations under this Agreement are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.]</p>
<p><b>Force Majeure:</b></p>	<p>“Force Majeure Event” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.</p> <p>Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide;</p>

	<p>mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.</p> <p>Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Storage Facility, except to the extent expressly permitted as an extension under the ESSA.</p>
<p><b>Other Standard Contract Terms to be included in the ESSA:</b></p>	<p><b><u>Event of Default:</u></b> Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the ESSA, bankruptcy, assignment not permitted by the ESSA, Seller failure to achieve Construction Start within one hundred eighty (180) days of Guaranteed Construction Start Date, and Seller failure to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date.</p> <p><b><u>Indemnification:</u></b> Seller to indemnify Buyer for third party claims arising from Seller’s negligence, willful misconduct, or breach of the ESSA.</p> <p><b><u>Governing Law:</u></b> State of California</p> <p><b><u>Venue:</u></b> Santa Clara County</p>

<p><b>Definitions:</b></p>	<p>The following terms, when used herein with initial capitalization, shall have the meanings set forth below:</p> <p>“<b>CAISO</b>” means the California Independent System Operator.</p> <p>“<b>CAISO Tariff</b>” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.</p> <p>“<b>CEC</b>” means the California Energy Commission, or any successor agency performing similar statutory functions.</p> <p>“<b>CEQA</b>” means the California Environmental Quality Act.</p> <p>“<b>Delivery Term</b>” shall mean the period of Contract Years beginning on the Commercial Operation Date.</p> <p>“<b>Full Capacity Deliverability Status</b>” has the meaning set forth in the CAISO Tariff.</p> <p>“<b>Letter(s) of Credit</b>” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a credit rating of at least A- with an outlook designation of “stable” from S&amp;P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer.</p> <p>“<b>MW</b>” means megawatts in alternating current, unless expressly stated in terms of direct current.</p> <p>“<b>MWh</b>” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.</p>

2. **Neither Party Obligated to Enter Into Proposed Transaction.** This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into a ESSA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the ESSA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the ESSA and will not be bound by any term thereof, unless and until authorized representatives of both Parties execute final definitive documents, enforceable in accordance with their terms.
3. **Other Agreements.** In connection with this Term Sheet, Seller shall execute that certain Exclusivity Agreement (“**Exclusivity Agreement**”) with Buyer and provide a Shortlist Deposit (as defined in such agreement) of \$3 per KW to Buyer within three (3) Business



Days after execution of the Exclusivity Agreement. The Shortlist Deposit will be returned in accordance with, and subject to, the terms of the Exclusivity Agreement.

4. **Expenses.** Each Party will pay its own costs and expenses (whether internal or out-of-pocket, and whether for legal, financial, technical, or other consultants, or other purposes) in connection with the Term Sheet and any definitive agreements.
5. **Termination.** This Term Sheet will terminate upon the earlier of (a) execution of the ESSA or (b) expiration of the Exclusivity Period (as defined in the Exclusivity Agreement), as such Exclusivity Period may be extended by the Parties in accordance with the Exclusivity Agreement.
6. **Governing Law.** This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
7. **Counterparts.** This Term Sheet may be executed in counterparts, each of which will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. Delivery of an executed signature page of this Term Sheet by email transmission of a PDF image shall be the same as delivery of an original executed signature page.
8. **Prior Agreements.** This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
9. **Assignment.** This Term Sheet will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other Party's prior written consent (which consent will not be unreasonably withheld, delayed, or encumbered).
10. **No Consequential Damages.** IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS TERM SHEET.

IN WITNESS WHEREOF, the Parties have signed this Term Sheet effective as of the Effective Date.

**[JOINT CCAS/BUYER]**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[RESPONDENT/SELLER]**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix C Reservation of Rights

### 1. Reservation of Rights

Notwithstanding anything to the contrary, the Joint CCAs may, and expressly reserve the right to, at any time and from time to time, without prior notice and without assigning or providing any reason therefore:

- cancel, suspend, withdraw, or terminate this RFO (including, without limitation, after the selection under this RFO of one or more Offerors for an ESSA) or cancel or suspend its participation in this RFO;
- modify this RFO, including, without limitation, any Appendix to this RFO, or any of the dates, times or places set forth in the RFO or related to the RFO process;
- accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue or reject any offer, in its sole and absolute discretion, for any reason;
- without limitation of the generality of any of the other terms herein, reject or eliminate any offer submitted in response to this RFO that is incomplete, is nonconforming, or contains irregularities (or waive any irregularity in any offer), or that it determines was made with the intent to create artificial prices, terms, or conditions or would have that effect;
- carry out negotiations with any, some or all Offerors or other Persons related to this RFO, and suspend or terminate negotiations with any Offeror or other Person at any time, including, without limitation, as a result of any change in resource needs of the Joint CCAs giving rise to this RFO;
- discuss the terms of any offer or any other material submitted by Offeror with, and obtain clarification or additional information concerning such offer or such other material from, Offeror or its directors, officers, employees, agents, representatives, and advisors;
- request from Offeror information not detailed in or required by this RFO but that may be necessary or relevant to the evaluation of Offeror's offer(s) and utilize such information as the Joint CCAs deems appropriate in connection with such evaluation of this RFO;
- receive, consider, pursue, or transact on (i) opportunities to acquire other assets or resources offered or that become available outside of the RFO process as such opportunities arise or (ii) offers offered in response to this RFO that are nonconforming or eliminated from consideration in this RFO;
- invite further offers in or outside of this RFO or supplemental submissions of offers;
- allow for other load serving entities and/or agencies not part of the Joint CCAs to receive information submitted as part of this RFO or participate in one or more

ESSA;

- determine which Offerors or entities to allow, or continue to allow, to participate in the RFO process;
- pursue or transact on offers offered in response to this RFO regardless of any rank order established in the RFO evaluation process to promote diversity of supply in this RFO, gain experience with different technologies, limit exposure to a counterparty, technology or resource or a particular set of risks, or achieve other commercial goals the Joint CCAs deem appropriate;
- sign or not sign an ESSA with Offerors or other Persons relating to the Transactions solicited by this RFO;
- subject to the terms of any applicable confidentiality agreement entered into between the Joint CCAs and Offeror, retain, archive, or destroy any information or material provided to or for the benefit of the Joint CCAs in the Offer Submission Process; and
- take any and all other actions it deems necessary or appropriate, in its sole and absolute discretion, in connection with this RFO and the RFO process.

Each of the foregoing rights (including any right listed in a series of rights) may be exercised individually by the Joint CCAs or any director, officer, employee, or authorized agent or representative of the Joint CCAs or its of their respective parent. The reservation of rights contained herein is in addition to all other rights reserved or granted to the Joint CCAs or any of its Affiliates elsewhere in this RFO or otherwise held by or available to the Joint CCAs or any of its Affiliates.

## **2. No Warranties or Liabilities**

BY PARTICIPATING IN THE RFO PROCESS, EACH OFFEROR AGREES THAT, EXCEPT TO THE EXTENT CONTAINED IN AN ENERGY STORAGE SERVICES AGREEMENT WITH OFFEROR:

- (A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF THE JOINT CCAS OR ANY OTHER AFFILIATE OF THE JOINT CCAS IN CONNECTION WITH THIS RFO IS PROVIDED WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND
- (B) THE JOINT CCAS, THEIR AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND ADVISORS SHALL HAVE NO LIABILITY TO ANY OFFEROR, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, LENDERS, OR INVESTORS RELATING TO OR ARISING FROM THE USE OF OR RELIANCE UPON ANY SUCH INFORMATION, ANY ERROR OR OMISSION

THEREIN, OR OTHERWISE IN CONNECTION WITH THIS RFO.

### **3. Acceptance of Offers**

Without prejudice to the Joint CCAs' rights under law or in equity, no offer submitted by any Offeror shall be deemed accepted by, or otherwise binding upon, the Joint CCAs or any of its Affiliates and the Joint CCAs, its Affiliates and their respective directors, officers, members, employees, agents and representatives shall have no obligation or liability of any kind with respect to any such offer or otherwise in connection with this RFO, unless and until an ESSA has been mutually executed and delivered by the Joint CCAs or any of its Affiliates and Seller, and then such obligation or liability shall exist only if and to the extent expressly set forth or provided for therein or in another signed, binding written agreement entered into by the Joint CCAs or any of its Affiliates and Seller. Notwithstanding anything to the contrary in this RFO, all offers delivered to the Joint CCAs shall become the sole and exclusive property of the Joint CCAs upon receipt, and the Joint CCAs shall have all rights and privileges of ownership of such property, subject to any provision of this RFO relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between the Joint CCAs and Offeror or Seller executed in connection with this RFO process.

### **4. Offeror Costs and Expenses**

Each Offeror is solely responsible for all costs and expenses it incurs in connection with this RFO. Through its participation in this RFO, each Offeror agrees that under no circumstance, including, without limitation, the Joint CCAs' withdrawal from or suspension, cancellation, or termination of the RFO process, any of its Affiliates or any of their respective directors, officers, members, partners, employees, agents, representatives or advisors have any responsibility or liability of any kind to Offeror, its Affiliates or any of their respective directors, officers, members, partners, trustees, employees, agents, representatives, advisors or lenders for any cost or expense directly or indirectly incurred by Offeror (no matter how incurred) in connection with the RFO process. Nothing in this Section 4 shall be construed to limit the generality of Section 2 above.

### **5. Offeror Disclosure of RFO Information**

No Offeror may, without the prior consent of the Joint CCAs, disclose to any other Person (except the Joint CCAs staff) its participation in the RFO process (other than by attendance at any meeting to which more than one participant is invited by the Joint CCAs, which attendance in and of itself will not violate this provision of this RFO). Further, no Offeror may disclose, collaborate on or discuss with any other Person (except the Joint CCAs staff) bidding strategies or the substance of offers, including, without limitation, the price or any other terms or conditions of any contemplated, indicative or final offer. Any such disclosure, collaboration or discussion would violate this RFO and the Offer Submission Agreement and may result in the rejection of Offeror's offer or elimination of Offeror from further participation in this RFO.

### **6. Public Records**

All documents submitted in response to this Request will become the property of the Joint CCAs upon submittal and will be subject to the provisions of the California Public Records Act and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is completed. Once a contract is awarded, all proposals shall be deemed public record. The Joint CCAs are required to comply with the California Public Records Act as it relates to the treatment of any information marked "confidential." Respondents requesting that portions of its submittal should be exempt from disclosure must clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page. Each page shall be clearly marked and separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. The Joint CCAs will consider a respondent's request for an exemption from disclosure; however, if the Joint CCAs receive a request for documents under the California Public Records Act, the Joint CCAs will make a decision based upon applicable laws. Respondents should not over-designate material as confidential, and any requests or assertions by a respondent that the entire submittal, or significant portions thereof, are exempt from disclosure will not be honored.

#### **7. Offeror Acceptance of this Appendix C**

By participating in the RFO process, each Offeror agrees that it will be deemed to have accepted all the rights and terms included in this Appendix C and to have agreed that its participation in the RFO is subject to such rights and terms. The Joint CCAs are conducting this RFO and participating in the RFO process in reliance upon the foregoing agreement.