



BOARD OF EDUCATION — SPECIAL MEETING
Thursday, September 26, 2013 - Public Session: 5:00 p.m.
Location: Murrieta Valley Unified School District Support Center
41870 McAlby Court, Murrieta, California

Board of Education

Kris Thomasian—President, Kenneth Dickson—Clerk, Robin Crist, Paul Diffley, Barbara Muir

Superintendent / Secretary to the Board

Patrick Kelley

A G E N D A

A. OPENING ACTIVITIES

1. Call to Order (5:00 p.m.)
2. Pledge of Allegiance
3. Approval of Agenda
4. Public Comments

Individuals wishing to address the Board are requested to complete a "Request to Address the Board of Education" card located at the entrance to the Board Room and submit it to the Executive Assistant to the Superintendent & Board. Speakers shall be first recognized by the Board President at the designated time on the agenda. In accordance with Board Bylaw 9323, individual speakers shall be allowed three minutes to address the Board on each agenda or non-agenda item. The Governing Board shall limit the total time for public input on each item to 20 minutes. No action or discussion shall be undertaken on any item not appearing on the posted agenda, except as authorized by law (Education Code 35145.5, Government Code 54954.2.)

B. HUMAN RESOURCES

1. Certification of Athletic Coaches for the Fall Season
2. First Reading of New Job Description for Student Information Systems Technician

C. EDUCATIONAL SERVICES

1. Information and Presentation on the California Mathematics Framework – Draft

D. BUSINESS SERVICES

1. Adoption of **Resolution No. 13/14-06** Appropriations Due to the Reconciliation of the 2012/13 Estimated Ending Fund Balances to the 2012/13 Unaudited Actuals Ending Fund Balances

E. FACILITIES/OPERATIONAL SERVICES

1. Adoption of **Resolution No. 13/14-07** Approving the Futility of Public Bidding for Direct Access Energy Service, and Approving a Master Retail Electricity Supply Agreement with Constellation NewEnergy Inc.

CLOSED SESSION

- CS-1 Conference with Labor Negotiators pursuant to Government Code 54957.6
Agency designated representatives: Patrick Kelley, Stacy Coleman, Pamela Wilson, Guy Romero, Bill Olien, Char Gollogly, Darren Daniel, Stacy Matusek, Zhanna Preston, Mary Walters

PUBLIC SESSION

Report Out of Closed Session

F. ADJOURNMENT

Agenda documents are available for public inspection at the District Support Center located at 41870 McAlby Court and on the district's website www.murrieta.k12.ca.us

Pursuant to the Americans with Disabilities Act, persons with a disability who require a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, may request such modification or accommodation from the Superintendent's Executive Assistant at 951-696-1601 (telephone) or 951-304-1523 (facsimile). Notification 48 hours prior to the meeting will enable the district to make reasonable arrangements to assure accessibility to the meeting.

Certification of Athletic Coaches for the Fall Season

Action: X
Consent: _____
Information: _____
Presentation: _____

Agenda Item: B-1
September 26, 2013
Page 1 of 1
Attachment: 3 Pages

Prepared by: Pamela Wilson, Assistant Superintendent, Human Resources

Background Information

As per Title 5, California Code of Regulation (CCR), the Board of Education must annually certify to the State Board of Education that the provisions of Section 5593 have been met. Our District will certify the coaches on a seasonal and as needed basis.

Athletic coaches on the attached listing have met the provisions as set forth in Title 5, California Code of Regulations, Section 5593.

Educational Implications

Ensuring athletic coaches have met the provisions of Title 5, California Code of Regulations, Section 5593 is an essential element of any quality athletic program.

Financial Implications

Not applicable.

Recommendation

It is recommended that the Board of Education certify the list of athletic coaches for the fall season as having met the provisions of Title 5, California Code of Regulations, Section 5593.

MURRIETA VALLEY UNIFIED SCHOOL DISTRICT

**MURRIETA VALLEY HIGH SCHOOL
2013-14 FALL COACHING STAFF**

FOOTBALL

Vinny Fazio
Rich Brey
Chris Dyer
Rich McClure
Ernest Freeman

Todd Thornburg
Tony Teets
Josh McCall
Damon Moore
Matt Miltroy

Scott May
David Munn
Jaime Zarate
Reginald Brown

Monte Jones
Frank Fazio
George Wilson
Shane Ebert

CROSS COUNTRY

Fabrice Vuillemeey

Jose Villegas

GOLF

Rogelio Gallegos

Leonard Garcia

TENNIS – GIRLS

Trent Warren

Robert Pearson

Bob Partin

VOLLEYBALL

Justin Miranda

Ann-Romero Parks

Heather Miller

Tim Donovan

WATER POLO

Bryan Lynton

Mike Gonzalez

Chris Romero

VISTA MURRIETA HIGH SCHOOL
2013-14 FALL COACHING STAFF

FOOTBALL

Coley Candaele
Brandon Clanton
Gene Miranda
Joe Ramer
Joe Hubarth
Corey Quinn
Steve Rausa
David Jennings
Kurt Ruth

Matt Bean
Doug Dubois
Howie Nelson
Even Daarstad
Chad MacDonald
Kavon Seaton
Eric Fagen
Matt Mosiello

John Blakemore
Lonnie Ford
David Olson
Jordan Allen
Roger Olson
Darrell Turner
Jerry Fletcher
Zach Paterson

Frank Carido
Rick Hansen
Eric Peterson
John Files
Steve Perez
Brandon Trujillo
Matthew March
Mario Rottino

CROSS COUNTRY

Denise Robinson

Karen Candaele

Will Gainer

Christina Taylor

GOLF – GIRLS

Ryan Heise

Connie Kim

TENNIS – GIRLS

Brad Stein

Josh Reed

VOLLEYBALL

Kristen Cooke
Patrick Villanueva

Tim Meehan
Christi Latteri

Jack Mayberry
Tim Meehan

Ray Calderon

WATER POLO – BOYS

Shane Anderson
Ryan Lattimer

Daniel Hubbard
Robby Lotero

Daniel Hipp

Jordan Knight

MURRIETA MESA HIGH SCHOOL
2013-14 FALL COACHING STAFF

FOOTBALL

Justin Schaeffer
Bryan Barbagallo
David Chambers
Greg Smith
John Calhoun

Steven Clower
Brian Cralle
Frank Castillon
Jacob Johnson
Carson Waters

Paul Joyce
Bob Vick
Evan Ibarra
Tony Romero
Joe Jones

James Schneider
Carlos Santiago
Ian Pharris
Jon Robinson

CROSS COUNTRY

Aaron Ballou

Macaria Gonzalez

Ashley Ballou

GOLF – GIRLS

Kip Shipley

Ashley Davis

TENNIS – GIRLS

Lisa Laney

Michael Traylor

Mary Ann Neder

VOLLEYBALL

Bonnee Burdine-Arscott

Emily Hamm

Erin D'Aquanni

Laikin Ramirez

WATER POLO – BOYS

Audra Woods

Montana Naaya

CHEER

Sara Caskey

Jessica Shaw

First Reading of New Job Description for Student Information Systems Technician

Action: _____
Consent: _____
Information: X
Presentation: _____

Agenda Item: B-2
September 26, 2013
Page 1 of 1
Attachment: 3 Pages

Prepared by: Pamela Wilson, Assistant Superintendent, Human Resources

Background Information

The above listed job description is presented to the Board of Education for first reading. The District reviews and revises job descriptions on an on-going basis. Efforts are focused on identifying key functions and abilities, consolidation of information of the job description and compliance with state and federal requirements.

This job description has been created in order to support the proposed restructuring of Educational Services beginning the 2013-14 school year.

At the September 12, 2013 Board of Education Meeting, the Board was presented with a first reading of a new job description for a Student Information Systems **Specialist**. That job description has been replaced with a first reading of new job description for Student Information Systems **Technician**.

Educational Implications

The employee in this position will directly and indirectly provide support to the educational program.

Financial Implications

None.

Recommendation

This is a first reading.

**MURRIETA VALLEY UNIFIED SCHOOL DISTRICT
JOB DESCRIPTION**

First Reading 9/26/13
Page 1 of 3

TITLE: STUDENT INFORMATION SYSTEM TECHNICIAN

REPORTS TO: Assigned District Administrator

JOB GOAL: To maintain accurate and complete student records for all District and State Student Information Systems

QUALIFICATIONS

Knowledge of

1. California and District Student Information System (SIS) requirements.
2. Organization and operation of the District SIS.
3. Data collection, analytical methods and procedures.
4. Computer literacy and proficiency in word processing and data entry.
5. District graduation requirements and college entrance requirements.
6. Report writing and record-keeping techniques.
7. Effective communication techniques.
8. Correct English usage, spelling, grammar, punctuation, and math.
9. District policies, rules and regulations as they apply to student records.
10. Numerical, alphabetical, and subject matter filing systems.
11. Proper office methods, techniques, and procedures including report writing and proper telephone techniques.
12. Safety rules and regulations for this position.

Ability to

1. Respond to CSIS requests for data and information.
2. Establish and maintain efficient record keeping/filing systems and prepare reports.
3. Relate well to a variety of individuals including students, parents, and staff.
4. Analyze situations, take appropriate action and carry out oral and written instructions in a variety of procedural matters without immediate supervision.
5. Communicate effectively and tactfully in a courteous manner in both oral and written form.
6. Establish and maintain supportive communications between the sites, departments and District.
7. Assist in the orientation and in-service training of site personnel pertaining to data processing procedures, report formatting and other student information, issues and concerns.
8. Be a productive, cooperative and active team member.
9. Work successfully with diverse groups of people.
10. Work without immediate supervision, maintaining work schedules in performing tasks.
11. Present and maintain a pleasant appearance and demeanor.
12. Handle all matters in a tactful, courteous, and confidential manner so as to maintain and/or establish good public relations.
13. Learn and follow District operations, procedures, policies and requirements.

**MURRIETA VALLEY UNIFIED SCHOOL DISTRICT
STUDENT INFORMATION SYSTEM TECHNICIAN**

Ability to (continued)

14. Exercise independent judgment and problem-solving skills related to specific areas or responsibility.
15. Establish and maintain effective work relationships with those contacted in the performance of required duties.
16. Provide excellent "Customer Service" to staff and the community

Training and Experience

1. Education equivalent to the completion of the twelfth (12) grade.
2. Two (2) years of successful experience working with school-related student information systems, or any combination of training and experience that could likely provide the desired knowledge and abilities.
3. Good work history and attendance.

ESSENTIAL FUNCTIONS

1. Ensures accuracy and completeness of data in the District's Student Information System (SIS).
2. Manages data entry of information for state California Based Education Data System (CBEDS) report, CALPADS data submissions and ensures that other student related data is accurately recorded.
3. Maintains past student records for the District.
4. Ensures the accuracy and completeness of District student enrollment records.
5. Coordinates, processes and maintains District transfer requests.
6. Communicates transfer information to school sites and families.
7. Processes a variety of student records, including transcripts.
8. Provides training as needed in the SIS.
9. Receives, reviews, and verifies documents, records, and forms for accuracy, completeness and conformance to applicable rules, regulations, policies, and procedures.
10. Prepares letters, reports, memos, and related documents.
11. Process forms, applications, documents, records and/or other paperwork in support of the assigned office functions.
12. Maintains and updates a variety of records and files, including computer data files.
13. Follows district policies and procedures.
14. Participates in district in-service training as required.
15. Knows and understands the District Mission and Core Values.
16. Performs other related duties as assigned.

SPECIAL REQUIREMENTS

1. Must use safety equipment and devices designated for this position.

**MURRIETA VALLEY UNIFIED SCHOOL DISTRICT
STUDENT INFORMATION SYSTEM TECHNICIAN**

PHYSICAL ABILITIES

1. Visual ability to read handwritten or typed documents and the display screen of various office equipment and machines.
2. Able to conduct verbal conversation in English or other designated language.
3. Able to hear normal range verbal conversation. (approximately 60 decibels)
4. Able to sit, stand, stoop, kneel, bend, and walk.
5. Able to sit for sustained periods of time.
6. Able to climb slopes, stairs, steps, ramps, and ladders.
7. Able to lift up to ten (10) pounds frequently, and thirty (30) pounds occasionally.
8. Able to carry up to ten (10) pounds frequently, and thirty (30) pounds occasionally.
9. Able to push and pull objects weighing up to thirty (30) pounds.
10. Able to exhibit full range of motion for shoulder external rotation and internal rotation, shoulder abduction and adduction, elbow flexion and extension, shoulder extension and flexion, back lateral flexion, hip flexion and extension, and knee flexion.
11. Able to demonstrate manual dexterity necessary to operate calculator, typewriter, and/or computer keyboard at the required speed and accuracy in a safe and effective manner.
12. Able to operate a motor vehicle in a safe and effective manner.

While the ideal candidate will possess all these abilities, duties assigned can be modified to accommodate some physical restrictions.

TERMS OF EMPLOYMENT: Twelve-month work year
Classified bargaining unit member

EVALUATION: Performance of this job will be evaluated in accordance with Board of Education policy and provisions of the collective bargaining agreement. The assigned administrator will give the evaluation.

Approved by: Board of Education Date:

**MURRIETA VALLEY UNIFIED SCHOOL DISTRICT IS A
TOBACCO-FREE, DRUG-FREE WORKPLACE**

**MURRIETA VALLEY UNIFIED SCHOOL DISTRICT IS AN
AFFIRMATIVE ACTION/EQUAL OPPORTUNITY EMPLOYER**

Information and Presentation on the California Mathematics Framework – Draft

Action: _____
Consent: _____
Information: X
Presentation: X

Agenda Item: C-1
September 26, 2013
Page 1 of 1

Prepared by: Guy Romero, Assistant Superintendent, Educational Services
Char Gollogly, Executive Director, Elementary Education
Darren Daniel, Executive Director, Secondary Education

Background Information

The 2013/14 California Mathematics Framework is currently on the November 2013 agenda as an action/approval item with the State Board of Education.

In this framework, the California Common Core State Standards (CCSS) are listed and organized by grade level in grades K-8 and conceptual category for high school.

Each state and school district may decide different options on the implementation of these high school standards. Boards will determine how the high school CCSS will be organized into courses that provides a strong foundation for college and/or career readiness. The pathways and courses listed in the framework are models, not mandates. They illustrate possible approaches to organizing the content of the CCSS into coherent and rigorous courses.

States and districts are not expected to adopt these courses as is; rather, they are encouraged to use these pathways and courses as a starting point for developing local curriculum and courses.

This agenda item includes a presentation from Riverside County Office of Education staff including Mike Barney and Annette Kitagawa who will share information on the pathways, the implications for instruction of each pathway, and discuss the research on student acceleration in math.

Educational Implication

Riverside County Office of Education staff will highlight implications for instruction on each pathway and research related to student acceleration in mathematics.

Fiscal Implication

There are no fiscal implications with this presentation. There are, however, fiscal implications with any direction the Board wishes to take.

Recommendation

This is an information item only.

Adoption of Resolution No. 13/14-06 Appropriations Due to the Reconciliation of the 2012/13 Estimated Ending Fund Balances to the 2012/13 Unaudited Actuals Ending Fund Balances

Action: X
Consent:
Information:
Presentation:

Agenda Item: D-1
September 26, 2013
Page 1 of 1
Attachment: 2 Pages

Prepared by: Stacy Coleman, Assistant Superintendent, Business Services
Stacy Matusek, Director, Fiscal Services

Background Information

In accordance with Education Code 42600, the Board of Education is required to approve all appropriation transfers between major object codes. The September 12, 2013 Board agenda included an agenda item approving the 2012/13 Unaudited Actuals which determined how each fund ended the year as compared to the Budget Adoption estimates. As a result of the Unaudited Actuals, ending fund balances were adjusted in each fund. This Resolution is necessary to amend the 2013/14 budget which will allocate the fund balance differences to various object codes.

A resolution adopted by the Governing Board and approved by the County Superintendent of Schools is required to make these budget revisions.

Educational Implication

Not applicable.

Fiscal Implication

Fiscal implications are detailed in the attached narrative.

Recommendation

It is recommended that the Board of Education adopt **Resolution No. 13/14-06 Appropriations Due to the Reconciliation of the 2012/13 Estimated Ending Fund Balances to the 2012/13 Unaudited Actuals Ending Fund Balances**.

MURRIETA VALLEY UNIFIED SCHOOL DISTRICT

Resolution No. 13/14-06

**Appropriations Due to the Reconciliation of the
2012/13 Estimated Ending Fund Balances to the
2012/13 Unaudited Actuals Ending Fund Balances**

WHEREAS, the estimated ending fund balance for all funds for the 2012/13 school year was \$27,481,268 and the unaudited actuals ending fund balances for all funds was \$29,308,947; and

WHEREAS, the ending fund balance from 2012/13 becomes the 2013/14 beginning fund balance; and

WHEREAS, these differences of \$1,827,679 in all funds must be reflected in the 2013/14 Revised Budget and said appropriations will be either added to the ending fund balance or allocated to an expenditure series object code;

NOW THEREFORE, BE IT RESOLVED by the Governing Board of Murrieta Valley Unified School District, Riverside County, California pursuant to Education Code, Section 42600, that this Board hereby finds and determines that this district is in need of appropriating the differences in said funds in the sum of \$1,827,679 during the 2013/14 fiscal year by the amounts indicated on the attached document.

Passed, approved and adopted this 26th day of September, 2013 by the Board of Education of the Murrieta Valley Unified School District.

AYES: _____
NOES: _____
ABSTAIN: _____
ABSENT: _____

I, Patrick Kelley, Secretary of the Board of Education of the Murrieta Valley Unified School District of Riverside County, California, hereby certify that the above and foregoing Resolution was duly and regularly adopted by the said Board at a Special Board meeting thereof held on the 26th day of September 2013, and passed by a vote of ___ to ___ by said Board.

IN WITNESS THEREOF, I have hereto set my hand and seal this 26th day of September 2013.

Patrick Kelley, Secretary
Board of Education

Kris Thomasian, President
Board of Education

Murrieta Valley Unified School District
Reconciliation of 2012-2013 Ending Balances

	2012-2013 Unaudited Actuals Ending Fund Balance	2012-2013 Estimated Ending Fund Balance	Variance
<u>General Fund Unrestricted</u>			
Revolving Cash	\$ 15,000	\$ 15,000	\$ -
Designated For Economic Uncertainties	\$ 9,233,700	\$ 8,514,138	\$ 719,562
Medi-Cal Admin. Activities Site Carryover	\$ 85,180	\$ 100,395	\$ (15,215)
Donations Carryover	\$ 405,522	\$ 418,466	\$ (12,944)
Site Safety Awards Carryover	\$ 10,156	\$ 10,500	\$ (344)
Green Team Schools Carryover	\$ 64,534	\$ 65,936	\$ (1,402)
Specialized Secondary Program Carryover	\$ -	\$ 9,417	\$ (9,417)
CAHSEE Carryover	\$ -	\$ 2,033	\$ (2,033)
Lottery	\$ 1,507,116	\$ 1,550,585	\$ (43,469)
Total General Fund Unrestricted	\$ 11,321,209	\$ 10,686,470	\$ 634,739
<u>General Fund Restricted</u>			
Medi-Cal Billing Option	\$ 1,068,635	\$ 1,095,069	\$ (26,434)
Special Education Low Incidence	\$ 2,678	\$ -	\$ 2,678
Special Education Mental Health Services	\$ 1,090,433	\$ 1,038,154	\$ 52,279
Economic Impact Aid	\$ 413,752	\$ 377,323	\$ 36,429
Redevelopment Revenues	\$ 598,160	\$ -	\$ 598,160
Total General Fund Restricted	\$ 3,173,658	\$ 2,510,546	\$ 663,112
TOTAL GENERAL FUND	\$ 14,494,867	\$ 13,197,016	\$ 1,297,851

Adult Education Fund	\$ 331,320	\$ 342,436	\$ (11,116)
Child Development Fund	\$ 44,649	\$ -	\$ 44,649
Cafeteria Fund	\$ 1,512,678	\$ 1,389,219	\$ 123,459
Deferred Maintenance Fund	\$ 3,165	\$ 3,164	\$ 1
Building Fund	\$ 4,816,650	\$ 4,738,565	\$ 78,085
Capital Facilities Fund	\$ 7,420,047	\$ 7,726,905	\$ (306,858)
County School Facilities Fund	\$ 685,572	\$ 83,963	\$ 601,609
TOTAL OTHER FUNDS	\$ 14,814,080	\$ 14,284,252	\$ 529,828

TOTAL ALL DISTRICT FUNDS	\$ 29,308,947	\$ 27,481,268	\$ 1,827,679
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Adoption of Resolution No. 13/14-07 Approving the Futility of Public Bidding for Direct Access Energy Service, and Approving a Master Retail Electricity Supply Agreement with Constellation NewEnergy Inc.

Action: X
Consent:
Information:
Presentation:

Agenda Item: E-1
September 26, 2013
Page 1 of 2
Attachment: 12 Pages

Prepared by: Bill Olien, Assistant Superintendent, Facilities/Operations

Background Information

Direct Access refers to a process in which a customer of an electric utility purchases its electricity not from the utility but from a separate company approved by the California Public Utilities Commission. In effect, it gives the customer a choice of electricity service providers as opposed to obligating the customer to purchase its electricity from the utility. However, in all cases, a customer's utility still provides the transmission and distribution service that enables the electricity to be delivered to the customer. This transmission and distribution service is often called the "wires" service. The Direct Access or "Energy Service Provider," in contrast, is providing the "energy" service.

California's Direct Access program started in 1997 primarily in response to large utility customers that wanted to give companies an opportunity to compete with the traditional electric utilities and thereby, hopefully, lower electricity costs. By 2000, some 13% of the electric load served by the three main investor-owned utilities in California (SCE, PG&E, and SDG&E) was provided by Direct Access providers. In the midst of the 2000-01 California energy crisis, the state legislature suspended Direct Access to new customers. In the past few years, through a lottery process, there have been limited re-openings for new Direct Access customers. In these lotteries, the demand for new Direct Access service has far exceeded the available spots. In April 2013, MVUSD participated in the most recent Direct Access lottery process and was initially wait-listed. In August, the district was notified that it may now switch its seven largest accounts (at the high schools and middle schools) to Direct Access.

The district is now poised to sign a Direct Access agreement with Constellation NewEnergy. This contract should be in place prior to October 11, 2013, which is when the district's seven eligible accounts are scheduled to switch. This is a two-part agreement. The first part is a master service agreement, which sets out key terms and conditions but does not obligate either party to anything. The second part of the agreement occurs when the district decides to purchase its electricity from Constellation NewEnergy for a particular time period at a specific price by signing Constellation NewEnergy's Transaction Confirmation. Because electricity prices fluctuate on an hourly basis, the actual pricing the district would receive at this point cannot yet be known, but the current pricing trend suggests that the district will be able to save an estimated \$70,000 in the first full year on Direct Access service. The district also has the option at this point of signing up for a second year of service, or it may defer that decision in the hope of obtaining a better price later.

There is no assurance that future pricing will be better than what is available currently. Once the district starts on Direct Access service with Constellation NewEnergy, it may then continuously extend the agreement by signing subsequent Transaction Confirmations for each year going forward. Should the district ever wish to return to receiving its energy service from SCE, it may do so by providing six-month notice to SCE.

Educational Implications

None

Financial Implications

None

Recommendation

It is recommended that the Board of Education adopt **Resolution No. 13/14-07** approving the futility of public bidding for Direct Access Energy Service, and approving a Master Retail Electricity Supply Agreement with Constellation NewEnergy Inc.

RESOLUTION NO. 13/14-07

RESOLUTION OF THE BOARD OF EDUCATION OF THE MURRIETA VALLEY UNIFIED SCHOOL DISTRICT DECLARING THE FUTILITY OF PUBLIC BIDDING FOR DIRECT ACCESS ENERGY SERVICE, AND APPROVING A MASTER RETAIL ELECTRICITY SUPPLY AGREEMENT

WHEREAS, on or about April, 2013, Murrieta Valley Unified School District submitted an application to the California Public Utilities Commission ("CPUC") seeking approval to participate in the California Direct Access Energy Service Program;

WHEREAS, the Direct Access Program offers energy consumers the ability to purchase electricity from energy service providers other than regulated utility companies, over the utility's existing distribution system, subject to maximum load caps set by the CPUC. As capacity becomes available, the CPUC brings in additional customers via a random lottery process; and

WHEREAS, the District's application was waitlisted for an extended period after the lottery was conducted; subsequently the District was notified that its application was approved and that it had a very limited window of opportunity to secure Direct Access participation and service; and

WHEREAS, in consultation with its energy experts, staff has concluded that at current rates and given other energy systems in place at District facilities, electricity can be purchased by the District through the Direct Access Program at rates that may vary over the contract period but are likely to be consistently favorable to those obtained through the local utility, resulting in cost savings to the District; and

WHEREAS, customers may only purchase electricity under the Direct Access Program through energy service providers ("ESPs") approved by the CPUC as meeting specified standards; and

WHEREAS, Public Contract Code section 20111 requires school districts to competitively bid contracts involving an expenditure in excess of \$83,400, but due to the unique nature of electricity pricing, it cannot be known at the time of contracting whether the total cost of services under the Direct Access program might exceed the bid threshold; and

WHEREAS, notwithstanding Public Contract Code sections 20111, California courts allow a narrow exception to the public bidding law in circumstances in which it would be futile, undesirable or impractical and would cause additional delay and additional cost (*Los Angeles Dredging Company v. City of Long Beach* (1930) 2 Cal. 348; *Graydon v. Pasadena Redevelopment Agency* (1980) 104 Cal.App.3d 631, 645.);

WHEREAS, California law provides that, "Where competitive proposals work an incongruity and are unavailing as affecting the final result or where they do not produce any advantage . . . the statute requiring competitive bidding does not apply." (*Hiller v. City of Los Angeles* (1961) 197 Cal.App.2d 685, 694.);

WHEREAS, in conference with its energy experts, the District has determined that in this unique situation, bidding the contract for energy service under the Direct Access Program may not be required if the total expenditures do not exceed the bid limit, or in the alternative would be futile, undesirable or impractical for the following reasons:

(a) The time within which District is required to act to secure participation in the Direct Access Program is insufficient to conduct a public bidding process among approved providers;

(b) The cost to perform a competitive bidding process among approved providers is likely to exceed any differential in rates among approved ESPs;

(c) The nature of electricity pricing is such that actual rates cannot be identified for purpose of comparing bids; ESPs offer "indicative pricing" only, thus rates are never guaranteed or binding even when bid; further, there is no basis for one provider to severely undercut the pricing of another provider. Additionally, until prices are fixed, the contracting period -- and thus the total estimated cost for electricity under the contract -- cannot be determined but could be below the bid limit;

(d) On staff and consultant investigation, only one approved ESP – Constellation NewEnergy, Inc. – offers unlimited energy use without cost increases to best meet the District's energy needs; and

(e) To date, only Constellation NewEnergy, Inc. is confirmed to offer "energy net metering" that is required for interaction with the District's pre-existing solar energy system.

NOW THEREFORE, the Board of Education of the Murrieta Valley Unified School District hereby resolves, determines, and finds the following:

1. That the foregoing recitals are true.
2. For the reasons stated above, public bidding of an electricity supply agreement may not ultimately be required due to total energy costs below the bid limit, but in any event, public bidding will not produce an advantage to the District, would be futile and unavailing, and would produce a net burden and distinct disadvantages to the District.
3. The Board hereby approves the Master Retail Electricity Supply Agreement and any related transaction confirmations, with Constellation NewEnergy, Inc., and authorizes the Superintendent and designees to take all steps and perform all actions necessary to execute and implement the program described therein.

PASSED AND ADOPTED by the Board of Education of the Murrieta Valley Unified School District this 26th day of September, 2013, by the following vote:

AYES: ___
NOES: ___
ABSTAIN: ___
ABSENT: ___

Kris Thomasian, President, Board of Education
Murrieta Valley Unified School District

ATTEST:

Kenneth C. Dickson, Clerk of the Board
Murrieta Valley Unified School District

MASTER RETAIL ELECTRICITY SUPPLY AGREEMENT

This Master Retail Electricity Supply Agreement ("**Master Agreement**") is entered as of _____, 20__ ("**Effective Date**") by and between **Murrieta Valley Unified School District** ("**Customer**") and Constellation NewEnergy, Inc. ("**CNE**"). CNE and Customer are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**." This Master Agreement sets forth the general terms and conditions governing transactions for the purchase and sale of electricity and related products and services to one or more of Customer's accounts (each an "**Account**") as agreed to from time to time (each a "**Transaction**"). Each Transaction shall be evidenced by a pricing schedule, rider or other form of transaction confirmation (each a "**TC**"). This Master Agreement and each TC executed pursuant hereto shall constitute a single integrated agreement between the Parties (collectively referred to as the "**Agreement**"). Any conflict between the terms and conditions of this Master Agreement and any TC shall be resolved in favor of the TC. The Parties intend that they are legally bound by the terms of each TC from the moment each Party agrees to those terms, whether via (i) e-mail transmission solely by designated authorized persons listed below under the Parties' signature, or (ii) a duly executed, written TC. Nothing in this Master Agreement obligates either Party to enter into a TC at any time.

- 1. CNE and Customer Obligations.** CNE shall sell and supply, and Customer shall purchase and receive, Customer's full requirements for electricity for each Account identified in a TC. CNE, in its sole discretion, may select such sources of energy as it deems appropriate to meet its obligations under the Agreement, except that CNE may not switch Customer's Account(s) to Customer's UDC electric generation tariff service as a means of such sourcing of energy to Customer's Account(s). Furthermore, CNE shall enroll each Account with the applicable UDC as being supplied by CNE and shall take such other actions with the applicable UDC and ISO necessary for CNE to meet its obligations under the Agreement. "UDC" means the local utility distribution company owning and/or controlling and maintaining the distribution system required for delivery of electricity to an Account. "ISO" means the independent system operator or regional transmission organization responsible for the service territory governing an Account, or any successor or replacement entity.
- 2. Term of Master Agreement.** The term of this Master Agreement will commence on the Effective Date and, unless terminated earlier as provided in this Master Agreement, will continue until terminated by either Party upon 30 days prior written notice to the other; provided any TC will continue to be governed by this Master Agreement until the TC has been separately terminated or expired.

Term of TC. Each TC shall commence on or about the date set forth under "Start Date", and end on or about the date set forth under "End Date" in accordance with the terms of this Master Agreement. The actual Start Date is dependent on the UDC successfully enrolling the Account(s) and furnishing CNE with all necessary information regarding the Account(s) meter read cycle and meter read date(s). The dates set forth in the TC reflect UDC information available at that time or as otherwise estimated by CNE. The actual meter read dates may occur on or about the dates set forth in the TC. CNE will use commercially reasonable efforts to begin service to each Account(s) on the actual meter read date on or about the Start Date set forth in a TC. If CNE is unable to timely enroll an Account, the Start Date will commence on the next regularly scheduled UDC meter read cycle date following successful enrollment. The End Date will remain the same unless extended for a holdover term. CNE shall not be liable for any failure to enroll or drop an Account by the Start and End Date due to circumstances beyond its control.

- 3. Information and Authorization.** Customer hereby authorizes CNE to take such actions it deems necessary to enroll the Account(s) with the UDC as to be served by CNE and to otherwise meet its obligations under the Agreement. Customer's signature on a TC or acceptance of terms via e-mail transmission constitutes its written authorization for CNE to obtain from time to time from the UDC and ISO all current and historical energy billing, usage data and other related information. Customer shall take any actions, execute any documents and provide any information as CNE reasonably requires.
- 4. Billing and Payment.**

Billing. After receiving Customer's usage for the Accounts, Customer will be billed for electricity usage and related products and services supplied under the Agreement through the use of Dual Billing, which means that Customer will receive two invoices, one from CNE for the Electricity Charge and one from the UDC for the amounts payable by Customer for services provided by the UDC ("Delivery Charges") "Electricity Charge" means the product of (i) the fixed or variable price for electricity, and other related fixed and/or pass through charges for related products and services supplied, as set forth in the TC for each Account; and (ii) the billing units associated with such charges during the applicable period.

Taxes. Customer shall pay all federal, state, municipal and local taxes, duties, fees, levies, premiums or other charges imposed by any governmental authority, directly or indirectly, on or with respect to the electricity and related products and services provided under the Agreement, including any taxes enacted after the Effective Date (collectively, "Taxes"). CNE will apply all appropriate Taxes unless and until Customer provides a valid certification of tax exempt status. Each Party shall indemnify, defend and hold harmless the other Party from and against any Taxes for which the indemnifying Party is responsible. All Taxes invoiced to Customer under the Agreement will be included on the invoice or in the applicable fixed price as allowed by Law.

Estimates. CNE's ability to invoice Customer is dependent on the UDC's or ISO's ability to timely furnish CNE with all necessary information, including Customer's metered usage. When there is a delay in receiving information from the UDC, ISO and/or other third parties, CNE will, to the extent necessary, estimate charges and credits for a billing period and reconcile such estimates against actual charges and credits in a future invoice(s). Each invoice is also subject to adjustment for errors in arithmetic, computation, meter readings or other errors. Interest shall not accrue on such adjustments. For charges based on metered usage, if an Account is not equipped with meters that provide an hourly reading, CNE will use either applicable load profiles provided by the UDC or, in their absence, an otherwise reasonable allocation method.

Payment. CNE's invoices will be sent to Customer in accordance with CNE's normal billing cycle, as adjusted from time to time consistent with the applicable UDC's meter read dates. The invoices will state any applicable Electricity Charge, Delivery Charges, Taxes and other amounts related to the purchase and delivery of electricity. CNE's invoices are due and payable on the 31st day after the invoice date, or such other date as required by Law or as set forth in a TC ("Payment Date") without offset or reduction of any kind to the address on the invoice. If Customer disputes any invoice amount, Customer shall nonetheless pay the entire invoice amount when due. Upon resolution of a dispute, CNE shall pay any agreed to refund to Customer. Invoices not paid on or before the Payment Date will accrue interest daily on outstanding amounts from the Payment Date until paid in full, at the lesser of 1.5% per month or the highest rate permitted by Law.

5. **Holdover.** If following termination or expiration of a TC (whether in whole or in part), for any reason, some or all of the Accounts remain designated by the UDC as being supplied by CNE, CNE may continue to serve such Account(s) on a month-to-month holdover basis. During such holdover term, CNE will calculate Customer's invoice as follows: (Each Account's metered usage, as adjusted by the applicable line loss factor) *times* (the applicable ISO-published Real Time Locational Based Marginal Price ("LMP") (or in NYISO Zone J, the ISO-published Day Ahead LMP) + the \$/kWh holdover fee set forth in each TC) + (a pass through of all costs and charges incurred by CNE for the retail supply of electricity to Customer) + Taxes. This Master Agreement will continue to govern the service of such Accounts during such holdover term. Either Party may terminate the holdover term at any time within its discretion at which time CNE will drop each Account as of the next possible meter read date to the then applicable tariff service, whether default service or otherwise.
6. **Adequate Assurance.** If (i) Customer's credit rating falls below either Standard and Poor's BB+ or Moody's Ba1 and (ii) CNE has reasonable insecurity with respect to Customer's payment performance, then CNE may demand, after providing to Customer a 30-day written notice and opportunity to address any deficiencies, in writing, adequate assurance of future performance from Customer in an amount equal to two (2) times the amount of the highest monthly invoices for each of Customer's Accounts during the twelve months immediately preceding CNE's demand ("Assurance Amount"). To satisfy a demand for adequate assurance, Customer shall provide the Assurance Amount by delivery to CNE of a cash deposit, a standby letter of credit or a parental guaranty in form and substance, and from an entity, reasonably satisfactory to CNE within 3 Business Days of the date of the written demand for the Assurance Amount. "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.
7. **Event of Default.** An "Event of Default" means any one of the following: (a) Customer's failure to make, when due, any payment required under the Agreement if not paid within 5 Business Days (or such longer period required by applicable Law) following written notice to Customer that a payment is past due; (b) any representation or warranty made by a Party in the Agreement is false or misleading in any material respect when made or ceases to remain true in all material respects during the term of the Agreement, if not cured within 5 Business Days after written notice from the other Party; (c) Customer fails to provide the Assurance Amount as provided in the Agreement; (d) the failure by a Party to perform any material obligation set forth in the Agreement (other than the events that are otherwise specifically covered as a separate Event of Default hereunder) where such failure is not cured within 5 Business Days after receipt of written notice thereof; or (e) switching by CNE of an Account or Accounts to UDC's electric generation service for reasons other than a Customer Event of Default, or termination following notice of termination of a holdover term or (f) a Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed for it or any substantial portion of its property or assets (iii) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law for the protection of creditors, or has such petition filed against it; (iv) otherwise becomes bankrupt or insolvent (however evidenced); (v) is unable to pay its debts as they fall due; or (vi) is dissolved (other than pursuant to a consolidation, amalgamation or merger).
8. **Remedies Upon Event of Default.** If an Event of Default occurs with respect to a Party (the "Defaulting Party"), the other Party (the "Non-Defaulting Party") may in addition to all remedies available to it at Law or in equity, in its discretion, at any time, (i) suspend any deliveries hereunder and/or (ii) terminate the Agreement in whole or solely with respect to those Accounts adversely affected by such Event of Default, upon written notice to the Defaulting Party setting forth the effective date of termination (the "Early Termination Date"). The Early Termination Date for any Accounts located in New York shall be no less than 15 calendar days from the date of written notice of termination and for any Accounts located in New Jersey shall be no less than 30 calendar days from the date of written notice of termination. If the Agreement is terminated, the Non-Defaulting Party will in good faith calculate a termination payment. The Defaulting Party shall pay such termination payment together with any other amounts due as of such date to the Non-Defaulting Party within 3 Business Days of receipt of notice of the amount of the termination payment. The Parties acknowledge and agree that any termination payment under the Agreement constitutes a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect. If Customer's property associated with an Account receiving electricity supply hereunder is closed, vacated, sold or otherwise disposed of by Customer, then either Party may terminate the TC with respect to such Account upon 30 days written notice to the other Party, in which event Customer shall make a termination payment to CNE calculated in accordance with the next paragraph of this Section 8.

If Customer is the Defaulting Party, the termination payment shall be equal to the sum of: (i) the positive difference, if any, between the Energy Price or Retail Service Price set forth in the applicable TC and the Market Price, multiplied by the estimated undelivered volume of electricity which Customer would consume from the Early Termination Date through the original term of the TC, as reasonably calculated by CNE; (ii) CNE's Costs; and (iii) any unpaid amounts due from Customer to CNE prior to the Early Termination Date.

If CNE is the Defaulting Party, the termination payment shall be equal to the sum of: (i) the positive difference, if any, between the Market Price and the Energy Price or Retail Service Price set forth in the applicable TC, multiplied by the estimated undelivered volume of electricity which Customer would consume from the Early Termination Date through the original term of the TC, as reasonably calculated by Customer; (ii) Customer's Costs; minus (iii) any unpaid amounts due from Customer to CNE prior to the Early Termination Date.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred by such Party as a result of the Event of Default. The "Market Price" shall be the price of electricity and services as of the Early Termination Date under terms substantially similar to those of the applicable terminated TC. The Non-Defaulting Party may determine the Market Price of a terminated transaction by reference to information either available to it internally or supplied by one or more third parties. The Non-Defaulting Party shall not be required to enter into a replacement transaction in order to determine or be entitled to a termination payment. Except for any unpaid amounts due prior to the Early Termination Date, no termination payment shall be owed by the Non-Defaulting Party to the Defaulting Party.

9. **Change in Law.** CNE may pass through or allocate, as the case may be, to Customer any increase or decrease in CNE's costs related to the electricity and related products and services sold to Customer that results from the implementation of new, or changes (including changes to formula rate calculations) to existing, Laws, or other requirements or changes in administration or interpretation of Laws or other requirements. "Law" means any law, rule, regulation, ordinance, statute, judicial decision, administrative order, ISO business practices or protocol, UDC or ISO tariff, rule of any commission or agency with jurisdiction in the state in which the Accounts are located. Such additional or reduced amounts will be included in subsequent invoices to Customer.
10. **Representations and Warranties.** Each Party warrants and represents to the other (now and deemed repeated by each Party on each date on which a TC is executed and delivered) that: (i) it is duly organized, validly operating and in good standing under the Laws of the jurisdiction of its formation; (ii) it is authorized and qualified to do business in the jurisdictions necessary to perform under the Agreement; (iii) execution, delivery and performance of the Agreement are duly authorized and do not violate any governing documents or any of its contracts or any applicable Law; (iv) there is no material event(s) or agreement(s) which would impair that Party's right, authority or ability to execute the Agreement and otherwise perform under the Agreement; and (v) it has the knowledge and experience to evaluate the merits and risks associated with the Agreement.

Furthermore, Customer warrants, represents and covenants that: (i) the data given and representations made concerning its Account(s) are true and correct; (ii) it is entering into the Agreement to purchase its energy requirements only and not for speculative or resale purposes; and that the energy purchased under the Agreement will be consumed at the facilities to which the Account(s) relate; (iii) it is the party of record of the Account(s), or if it is not the party of record, it has the authority to enter into and bind the party of record to the Agreement; and (iv) if Customer is a Governmental Entity, it will not claim immunity on the grounds of sovereignty or similar grounds from enforcement of the Agreement. If it is a Governmental Entity, Customer covenants to obtain all necessary budgetary approvals, appropriations and funding for all of its obligations under the Agreement, the failure of which shall not be an excuse for Governmental Entity's performance or failure to perform hereunder and upon request will provide proof of such authority. "Governmental Entity" means a municipality, county, governmental board or department, commission, agency, bureau, administrative body, joint action agency, court or other similar political subdivision (including a public school district or special purpose district or authority), or public entity or instrumentality of the United States or one or more states.

11. **Force Majeure.** Notwithstanding any other provision of the Agreement, if a Party is unable to carry out any obligation under the Agreement due to a Force Majeure (other than a payment obligation, which shall not be excused for Force Majeure), the Agreement will remain in effect but such obligation will be suspended for the duration of the Force Majeure, provided: (i) the claiming Party notifies the other Party as soon as possible in writing of the particulars of the Force Majeure; (ii) suspension of performance is of no greater scope and duration than required by the Force Majeure; and (iii) the claiming Party uses commercially reasonable efforts to remedy its inability to perform. If the Force Majeure continues for a period of 30 days or more, or where it is impossible or impracticable for the claiming Party to carry out any obligation under the Agreement due to the Force Majeure either Party may terminate the Agreement with respect to the Accounts adversely affected by the Force Majeure upon 15 days prior written notice. "Force Majeure" means an event not within the reasonable control of the Party claiming Force Majeure and that by the exercise of due diligence, such Party is unable to prevent or overcome in a commercially reasonable manner. Force Majeure includes, but is not limited to, acts of God; fire; war; terrorism; flood; earthquake; civil disturbance; sabotage; facility failure; strike; curtailment, disruption or interruption of distribution, transmission, or supply; declaration of emergency by the UDC or ISO; regulatory, administrative, or legislative action, or action or restraint by court order or governmental authority; or any act or omission of a third party not under the control of either Party.
12. **Indemnification; Limitations.** Each Party agrees, to defend, indemnify and hold harmless the other Party, and all of their respective officers, directors, shareholders, associates, employees, agents, representatives, successors and assigns, from and against all claims, losses, expenses

(including reasonable attorneys' fees and court costs), damages, demands, judgments, causes of action or suits of any kind, including but not limited to, claims for personal injury, death, or property damage, arising out of, or in connection with, the performance of a Party's obligations under the Agreement, to the extent caused by the negligence or willful misconduct of the indemnifying Party ("Claims"). Notwithstanding any other provision of the Agreement to the contrary, the entire liability of each Party for any and all Claims will be limited to direct actual damages only as calculated pursuant to Section 8 above, subject in all cases to an affirmative obligation of each Party to mitigate its damages, and neither Party will be liable for any consequential, exemplary, special, incidental or punitive damages, including, without limitation, lost opportunities or lost profits not contemplated by Section 8 above. Customer acknowledges and agrees that the UDC and ISO are exclusively responsible for the energy transmission and delivery system, that CNE has no independent control over their systems and will have no liability for any of their acts or omissions.

13. **DISCLAIMER.** CUSTOMER ACKNOWLEDGES AND AGREES THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THE AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND CNE SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.
14. **Waiver and Severability.** Failure to provide notice of, or object to, any default under the Agreement will not operate or be construed as a waiver of any future default, whether like or different in character. If any portion of the Agreement, or application thereof to any person or circumstance, is held legally invalid, the remainder will not be affected and will be valid and enforced to the fullest extent permitted by law and equity, and there will be deemed substituted for the invalid provisions such provisions as will most nearly carry out the mutual intent of the Parties as expressed in the Agreement to the fullest extent permitted by applicable Law; provided, however, that this severability provision will not be applicable if any provision of Sections 7 and 8 of this Master Agreement (or any definition or provision in the Agreement to the extent it relates to, or is used in connection with, such sections) is held invalid or unenforceable.
15. **Assignment.** Customer may assign all its rights and obligations under the Agreement; *provided* (A) it gives CNE 45 days prior written notice of its intent to do so; (B) the assignee satisfies in full CNE's credit requirements; (C) the assignee assumes in writing all of Customer's obligations under the Agreement; and (D) Customer continues to be liable for performance, including payment for goods and services received, prior to the assignment date. CNE may assign, sell, pledge, transfer, or encumber any of its rights and obligations under the Agreement or the accounts, revenues, or proceeds hereof to any: (A) bank, insurer, or other financial institution; (B) person or entity (i) succeeding to all or substantially all of CNE's assets or business or the division or region of CNE to which the Agreement relates or (ii) into which CNE is merged or otherwise combined or reorganized; provided (with respect to this clause (B)) the succeeding entity agrees to be bound to the Agreement; or (C) affiliate; provided it gives Customer written notice of any assignment.
16. **Confidentiality.** Each Party agrees to keep all terms and provisions of the Agreement and all communications provided in connection with the Agreement, including the pricing offered to Customer, confidential to the extent not otherwise publicly available and not to disclose them to any third parties without the prior written consent of the other Party, except as otherwise required by Law, including the California Public Records Act (CA Govt Code section 6250 et seq.). Each Party may disclose such information to its affiliates and to its and its affiliates' employees, agents, advisors; and on a need to know basis, to its independent contractors, provided each such recipient agrees to hold such information in confidence. CNE may disclose information respecting Customer to third parties that are representing Customer in the purchase of energy or related services. Furthermore, CNE may make such other disclosures to third parties of information, including aggregate consumption data, provided they are in a manner that cannot be reasonably expected to specifically identify Customer. If disclosure of confidential information is sought through a court, or a state or federal regulatory agency or other legal compulsion, the Party receiving such request will notify the other Party immediately to afford it the opportunity to oppose such disclosure via a protective order or other relief as may be available and will provide reasonable support.
17. **Choice of Law, Venue, Attorney Fees and Expenses.** The Agreement will be governed and interpreted in accordance with the laws of the state in which such Account is located (provided that the governing jurisdiction shall be deemed to be the State of New York if the matter at issue involves Accounts or matters in more than one state), without giving effect to conflict of law principles. Any controversy or claim arising from or relating to the Agreement will be settled in accordance with the express terms of the Agreement by a court located in the governing jurisdiction (and each Party hereto waives any right to object to venue in this regard). TO THE EXTENT ALLOWED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. If either Party pursues court action to enforce its rights under the Agreement, the non-prevailing Party shall promptly reimburse the prevailing Party for all its reasonable attorney fees, expenses and costs.
18. **Notices.** To be effective, all notices must be in writing delivered by hand, by certified mail return receipt requested, or by first class mail, or express carrier to the addresses provided in the TC. Notice by hand delivery shall be effective on the delivery date. All other notices shall be effective on the delivery date or the date delivery is attempted. A Party may change its address by providing notice of such change in accordance herewith. An authorized person may also name other authorized persons via email.

19. **Miscellaneous.** The Agreement embodies the Parties' entire agreement and understanding, supersedes all prior agreements and understandings (whether written or oral) regarding the subject matter of the Agreement, and may not be contradicted by any prior or contemporaneous oral or written agreement. A facsimile or e-mailed copy of either Party's signature will be considered an original for all purposes under the Agreement, and each Party will provide its original signature upon request. Each Party authorizes the other Party to affix an ink or digital stamp of its signature to this Master Agreement and any TC, and agrees to be bound by a document executed in such a manner. No amendment or edits to the Agreement, including the TC(s) or any purchase orders, will be valid or given any effect unless signed by both Parties. The applicable provisions of the Agreement will continue in effect after termination or expiration hereof to the extent necessary, including but not limited to providing for final billing, billing adjustments and payments, limitations of liability, the forum and manner of dispute resolution, and with respect to any indemnification obligations under the Agreement. The section headings used in this Master Agreement are for reference purposes only and will in no way affect the meaning of the provisions of this Master Agreement. The Parties acknowledge that any document generated by the Parties with respect to the Agreement, including the Agreement, may be imaged and stored electronically and such imaged documents may be introduced as evidence in any proceeding as if such were original business records and neither Party shall contest their admissibility as evidence in any proceeding. The rights, powers, remedies and privileges provided in the Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by Law. CNE shall have the right to set-off and net against any amounts owed to it under the Agreement, including without limitation any early termination payment, any amounts owed by CNE to Customer under the Agreement or any other agreement between the Parties, including without limitation any Assurance Amounts. Except for Section 12 above, no third party will have any rights under the Agreement whatsoever and Customer will be fully responsible for any compensation owing any third party representing Customer in connection with the Agreement and will indemnify, defend and hold CNE harmless from all related Claims. Customer further authorizes CNE to utilize Customer's name for publicity and marketing purposes.
20. **Affirmation; Acknowledgements.** Customer affirms that it has read the Agreement in its entirety and agrees to the terms and conditions contained herein. Any ambiguity or question of intent or interpretation under the Agreement will be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of the Agreement. The Parties acknowledge and agree that: (i) CNE is an independent contractor under the Agreement and except as otherwise explicitly provided in the Agreement, neither Party has the authority to execute documents that purport to bind the other, and nothing in the Agreement will be construed to constitute a joint venture, fiduciary relationship, partnership or other joint undertaking; (ii) the Agreement and TCs entered into hereunder will constitute "forward contracts" under the U.S. Bankruptcy Code, as amended, the rights of the Parties under Section 8 above will constitute contractual rights to liquidate them, and the Parties are entities entitled to the rights and protections afforded to "forward contracts" by the U.S. Bankruptcy Code; (iii) CNE is not Customer's consultant or advisor for any purpose including advice regarding the value or advisability of trading in "commodity interests" as defined in the Commodity Exchange Act, 7 U.S.C. §§ 1-25, et seq., as amended ("CEA"), including futures contracts and commodity options or any other activity which would cause CNE or any of its affiliates to be considered a commodity trading advisor under the CEA; and (iv) Customer is making its own decisions based solely upon its own analysis and the advice of its own advisors, if any.

IN WITNESS WHERE OF, the Parties have executed this Master Agreement through their duly authorized representatives as of the Effective Date.

Constellation NewEnergy, Inc.

Customer: Murrieta Valley Unified School District

By:

By: _____

Name:

Name:

Title:

Title:

Date:

Date: _____

Address: 1221 Lamar St., Suite 750

Address:

Houston, Texas 77010

Phone:

Phone:

Facsimile:

Facsimile:

CNE Authorized Persons:

Customer Authorized Persons:

Commodities Management Group: 1-800-243-

Name:

2113; cmg@constellation.com

Title:

Transaction Group: #emailtransactions@constellation.com

email:

Phone:

**Constellation NewEnergy, Inc.
Fixed Price Solutions Transaction Confirmation**

This TC is entered into pursuant to and in accordance with a Master Retail Electricity Supply Agreement executed on <Insert Date>, by and between Constellation NewEnergy, Inc. ("CNE" or "NewEnergy") and **Murrieta Valley Unified School District** ("Customer"), and is subject to all of the provisions, terms and conditions of such Master Agreement. Notwithstanding anything to the contrary, any conflict between this TC and the Master Agreement will be resolved in favor of this TC, but only with respect to the Account(s) listed on this TC. This TC supersedes all prior agreements and understandings with respect to the Account(s), and may not be contradicted by any prior or contemporaneous oral or written agreement. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Agreement.

Price Terms. The prices contained in the Account Schedule include all the costs listed below as "Fixed", meaning that they will remain constant for the existing term of this TC and may only be subject to change as a result of a Change in Law as described in the Master Agreement. Costs listed below as "Passed Through" means that charges for these costs will change during the existing term of this TC to the extent the related charges assessed or charged to CNE vary for any reason. At any time during the term of this TC, Customer may request the purchase of renewable energy certificates in an amount equal to a prescribed percentage of Customer's load volume by entering into one or more Retail Trade Transactions ("RTTs"), which shall be evidence by a fully executed RTT Confirmation and be incorporated herein.

Cost Components. Each of the items listed as "Fixed" below is included in Customer's contract prices as set forth in the Account Schedule. For each of the items listed as "Passed Through" below, Customer will be charged the costs, which shall include no mark up by CNE, associated with the line item in accordance with the definitions of each item in Section 1.1, Definitions.

Energy Costs	Fixed
Ancillary Services And Other ISO Costs	Passed Through
Capacity Costs	Passed Through
Line Loss Costs	Fixed
Basis Costs	Passed Through
Renewable Portfolio Standards Costs	Passed Through
FERC Order 745 Costs	Passed Through

The contract prices contained in the Account Schedule include CNE's credit costs and margin.

Section 1.1. Definitions.

"Ancillary Services And Other ISO Costs" means for any billing period the applicable charges regarding ancillary services as set forth in the applicable ISO Open Access Transmission Tariff ("OATT") and for other ISO costs not otherwise included in any of the defined cost components in this TC. CNE will determine Customer's monthly Ancillary Services And Other ISO Costs based on Customer's \$/kWh share of CNE's cost for Ancillary Services And Other ISO Costs incurred with respect to all of CNE's customers within the applicable ISO service territory or in the form of an otherwise reasonable allocation method as CNE may determine from time to time based on how Ancillary Services And Other ISO Costs are assessed by the ISO.

"Basis Costs" means the difference in market prices between the energy zone of the service account (sometimes referred to as the "Load Aggregation Point" or "LAP") and the supply hub (sometimes call the "EZ Gen Hub") associated with the service account energy zone. The market rules determine which hub is used to supply an energy zone. Currently the rules require that the PGE energy zone be supplied from the NP15 hub, the SCE energy zone be supplied from the SP15 hub, and the SDGE energy zone be supplied from the SP15 hub. The day ahead market price will be used to calculate Basis Costs except that where the contract specifies use of the real time market price as the energy index for settlement, the real time index price will be used for calculating Basis Costs.

"Capacity Costs" means a charge for fulfilling the capacity (Resource Adequacy) requirements for the Account(s) imposed by the Public Utilities Commission, ISO, or otherwise.

"Covered Bandwidth" does not apply to this TC.

"Energy Costs" means a charge for the cost items included in the Locational Marginal Price for the ISO zone identified in the Account Schedule

"FERC Order 745 Costs" means any costs or charges imposed by the ISO on load served by CNE in accordance with complying with the provisions of Federal Energy Regulatory Commission ("FERC") in Order No. 745 18 CFR Part 35 (March 15, 2011). Any modifications or conditions to the treatment of FERC Order 745 Costs under the ISO tariff or otherwise shall be deemed a Change in Law pursuant to the Change in Law Section of the Master Agreement.

"Holdover Fee" means a cost of \$0.00525 per kWh in the holdover rate.

"Line Loss Costs" means the costs (to the extent not already captured in the applicable Energy Costs) CNE incurs for each Account based on the kWh difference between the UDC metered usage and the ISO settlement volumes. If Line Loss Costs are "Fixed," the Line Loss Costs are included in the Energy Costs and will not be invoiced as a separate line item. If Line Loss Costs are "Passed Through," the Line Loss Costs will be invoiced as a separate line item and calculated based on the applicable fixed price or locational marginal price for the corresponding usage.

"Non Time Of Use" or "Non TOU" means all hours of each day.

"Off Peak" means all hours other than Peak hours.

"Payment Date" means the date thirty-one (31) days following the invoice date, by which Customer's payment to CNE is due without offset or reduction of any kind.

FOR INTERNAL USE ONLY

"Peak" means the hours designated as peak from time to time by the UDC.

"Pricing Schedule" means "Transaction Confirmation" or "TC".

"Renewable Portfolio Standards Costs" means Customer's pro rata share of CNE's total cost of procuring renewable energy to comply with Renewable Portfolio Standards ("RPS") requirements for the State of California. CNE will determine Customer's Renewable Portfolio Standards Cost based on the percentage that Customer's usage for a calendar year bears to all of CNE's customers within the applicable ISO service territory or in the form of an otherwise reasonable allocation method as CNE may determine from time to time based on how costs are incurred by CNE to comply with its RPS requirements.

"Utility" means the "local electricity distribution company" or "UDC".

Section 2.1. Initial Term. With respect to each Account set forth in the Account Schedule below, electricity supply shall commence on or about the date set forth under "Start Date", and end on or about the date set forth under "End Date" in accordance with the terms of the Agreement. Service may be extended for a holdover term as described in the Master Agreement.

Section 2.2. CNE and UDC Contact Information. Customer may contact CNE regarding its invoice or other matters concerning this TC at CNE's Customer Service Department by toll-free telephone at 888-635-0827, or email at customer@constellation.com. **CUSTOMER AGREES TO CONTACT ITS UDC IN THE EVENT OF A POWER OUTAGE OR OTHER ELECTRICITY RELATED EMERGENCY AT THE FOLLOWING TELEPHONE NUMBERS:**

UDC Name	UDC Abbreviation	Contact Numbers
<Insert Utility Name>	<Insert Utility Abbreviation>	<Insert Contact Numbers>

Section 2.3. Certain Customer Representations and Warranties. Customer warrants and represents that (1) the Accounts are eligible for direct access services, (2) its aggregate peak demand during any 12 month period is greater than 20 kilowatts and (3) the electricity supplied under this Agreement is not for residential use.

Section 2.4 Net Energy Metering. CNE shall provide Net Energy Metering to any Account(s) with the necessary metering installed to measure both (a) electricity flowing from the grid to the Account(s) and (b) electrical energy flowing from the Account(s) to the grid. Where Accounts have Net Energy Metering, CNE will use the Net Energy Metered Amount in any billing period to calculate its invoice to the Customer. If UDC metering is not in place to allow the calculation of Net Energy Metering, then CNE shall have no obligation to perform such calculation. If the Net Energy Metered Amount is negative for any billing period (i.e., more kWhs are transmitted from the Account(s) to the grid than are transmitted from the grid to the Account(s)), CNE will apply the Net Energy Metered Amount to the calculation of the next invoice. Notwithstanding, amounts existing at the end of the term set forth in this Pricing Schedule shall not survive past the term and under no circumstances will CNE be obligated to apply a credit or pay Customer for any such amounts; provided however that if the Customer has a subsequent agreement with CNE that ensures continuous, uninterrupted supply to the Customer by CNE, in which case any such negative Net Energy Metered Amounts will be applied to the calculation of the next invoice. "Net Energy Metering" means the measurement and calculation of the Net Energy Metered Amount, provided that for billing purposes, such measurement and calculation shall depend on the specific metering configuration in place by the UDC. "Net Energy Metered Amount" means, for a given billing period, the sum of (a) and (b), where (a) equals the number of kWhs taken from the grid by Account(s), which amount is taken to be a positive value; and (b) equals the number of kWhs transmitted to the grid from Account(s), which amount is taken to be a negative value, and which kWh production is produced by a Customer's solar or wind turbine electrical generating facility or a solar-wind hybrid on its premises ("Self-Generation") which is interconnected and operated in parallel with the UDC's transmission and distribution system.

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Each Party has caused this Transaction Confirmation to be executed by its authorized representative on the respective dates written below.

CONSTELLATION NEWENERGY, INC.

Customer: Murrieta Valley Unified School District

By:	By: _____
Name:	Name:
Title:	Title:
	Date:
Address: 1221 Lamar St. Suite 750 Houston, Texas 77010	Address:
Attention: Contracts Administration	Attention:
Facsimile: (888) 829-8738	Facsimile:
Telephone: (213) 576-6000	Telephone:
	Email Address:

FOR INTERNAL USE ONLY

Meter Acknowledgment Form

Meters

Customer acknowledges that it must have an approved direct access meter ("Meter") installed for each Account as a condition precedent to CNE's obligation to perform its responsibilities for Account(s) under this Agreement. Customer is responsible for loss, damage, theft or destruction of the meters as a result of any cause whatsoever and, in the event of such loss, damage, or destruction, Customer must immediately repair or replace any such meter. CNE will invoice and Customer must pay any Meter costs.

Installation of Meter and Telecommunications Equipment

If Customer does not have an approved Meter, CNE's meter service provider ("MSP") will install such meter and Customer agrees to install any necessary telecommunications equipment so the meter can be read remotely. The MSP will provide an estimate of costs and a schedule of standard rates for the work to be performed.

Customer will allow us to share the use of Customer's fax or voice phone number for meter data acquisition as required.

Customer will provide additional information and access to property within 30 calendar days of CNE's notification to Customer to facilitate the installation of the meter and any associated telecommunications equipment. Failure to provide additional information and/or access to property could result in monthly manual meter reading charges and could impair direct access meter compliance.

The costs listed above plus any adjustments for non-standard installations will be billed and attached to a monthly invoice. Payment terms outlined in the Agreement shall apply.

Meter Maintenance Plan

The prices fixed in this agreement include the costs of the Meter Maintenance Plan ("MMP").

The MMP covers:

i. dispatching trouble calls; ii. repairing or replacing malfunctioned meters caused by hardware (modem, mass memory, etc.) failure; iii. meter testing as required up to one annual visit; iv. test and calibration of transformer rated meter with annual usage of greater than 2,000,000 kWh per year prior to the 12-month anniversary of the installation date; initial manual meter read required if meter equipment failure or any change that prevents a remote meter reading; sample meter testing as required by the applicable state regulatory authority.

The MMP does not cover:

i. phone wiring malfunction except for defects in work by the MSP; ii. dial tone malfunction; iii. removal of the meter; iv. field programming, re-programming, re-configuration requested by Customer outside of the initial and basic meter programming specifications; v. repair, replacement, re-programming, or re-configuration of meters due to Customer's tampering with meters; vi. failure of external device such as AMR module, Datastar, Line Share Switch, Load Control Box, etc.; vii. troubleshooting not related to meter equipment failure; viii. trouble calls related to previous problems where Customer has not rectified the problem.

Costs for services or equipment not covered by the MMP will be billed and attached to a monthly invoice.

Existing direct access meters that are out of compliance at the time of transfer of service to us shall be tested for an additional fee and thereafter the meter testing shall be covered by the MMP.

The MMP applies to all Account(s) on this TC and any subsequent direct access metered accounts. It is a required service under this TC.

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ACCOUNT SCHEDULE:

For: For: <Customer Name>

The pricing set forth below is only valid until 5:00 PM Pacific Prevailing Time on <Insert Date>

CNE shall have no obligation to enroll or supply electricity to any account(s) that are not identified on the Account Schedule below.

Please verify that your specific information is COMPLETE and ACCURATE.

Your review and acceptance of this information will help ensure accurate future invoices

Notes: Accounts listed in the Account(s) Schedule may be updated or replaced with a new account number issued by the UDC, ISO or other entity.

No. Of Service Accounts:

UDC	UDC Account Number	Service Address	Start Date	End Date	Energy Price Non TOU (\$/kWh)	Service Charge (\$/Invoice)

TO ACCEPT THE PRICING ABOVE, PLEASE FAX A SIGNED COPY OF THIS AGREEMENT TO CNE AT (888) 829-8738

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