OSIsoft Agreement # *1029798*

Corporate Family Software License and Services Agreement

("**Effective Date**")

OSIsoft, LLC ("**OSIsoft**")
Legal Department
1600 Alvarado Street
San Leandro, CA 94577 USA
Phone: +1 (510) 297-5800

City of Santa Clara, dba Silicon Valley Power ("**Licensee**")
1500 Warburton Ave.
Santa Clara, CA 95050

Contacts:
Business:
Name: Adele Ward
Email: adele@osisoft.com
Phone: 510 297-5850

Contacts:
Business:
Name: Tim Lynch
Email: tlynch@svpower.com
Phone: 408-615-6689

Legal:
Name: Legal Department
Email: legal@osisoft.com
Facsimile: +1 (510) 295-2444

Legal:
Name: City of Santa Clara City Attorney's Office
Email: CityAttorney@santaclaraca.gov
Phone: 408-615-2230

OSIsoft and Licensee hereby agree as follows:

1.   **License**

1.1   **License Grant**. Subject to the terms and conditions of this **Agreement**, OSIsoft grants to Licensee a perpetual nonexclusive, nontransferable (except as specified in Section 10.1) license to use in accordance with the Product Usage Terms as specified at www.osisoft.com that correspond to the OSIsoft products and related documentation ordered by Licensee (the "**OSIsoft Products**"). Licensee may make a reasonable number of copies of any OSIsoft Product documentation for internal business use. Any OSIsoft Software received by Licensee via FTP or other electronic delivery method will be governed by this Agreement even if no reference to this Agreement is made in connection with such electronic delivery, unless OSIsoft states another agreement applies. Any OSIsoft online services that Licensee purchases or uses will be governed by the agreement presented to you when you register for the applicable service.

1.2   **License Restrictions**. Except as expressly provided in this Agreement, Licensee agrees that it has no right to: (i) modify the OSIsoft Products or to permit any third party to do so; (ii) copy the OSIsoft Products, except as strictly required to install the OSIsoft Software and make a reasonable number of copies for archival or backup purposes, or (iii) use the OSIsoft Products to provide service-bureau, software rental, time-sharing or any data

services to any third party that is not a Licensee Affiliate. Any OSIsoft Products ordered by Licensee and licensed by OSIsoft as a bundled unit must be used by Licensee as a bundled unit. Licensee acknowledges that OSIsoft Products contain trade secrets of OSIsoft, and in order to protect such trade secrets, Licensee agrees not to disassemble, decompile or reverse engineer the OSIsoft Products, nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable law. Licensee may only write programs that make calls to OSIsoft's Data Access Software under the following circumstances: (i) pursuant to an appropriate development license from OSIsoft; (ii) to extend the functionality of an OSIsoft Product that is designated by OSIsoft as including "Programmatic Extensions", or a similar designation, and only as expressly permitted by the accompanying documentation; or (iii) as expressly permitted by a previously purchased OSIsoft Product license.

1.3   **Limited Rights**. Licensee's rights in the OSIsoft Products will be limited to those expressly granted in this Section 1, and OSIsoft reserves all other rights, title, interest and licenses therein. All OSIsoft Products provided to the U.S. Government are provided with the commercial license rights and restrictions described in this Agreement. Further, all OSIsoft Products provided to the U.S. Government are provided with Restricted Rights as

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provided for in FAR 52.227-19 (DEC 2007) and DFARS227-7202 or their successors, as applicable.

1.4.   **Audit Rights**. Upon OSIsoft's written request, Licensee shall furnish OSIsoft with a certification signed by an officer of Licensee verifying that the OSIsoft Products are being used pursuant to the terms of this Agreement. In addition, upon prior written notice, OSIsoft may audit Licensee's use of the OSIsoft Products to ensure that Licensee is in compliance with the terms of this Agreement. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. Licensee shall provide OSIsoft access to the relevant Licensee records and facilities. If an audit reveals that Licensee has underpaid fees to OSIsoft, Licensee shall be invoiced for such underpaid fees based on OSIsoft's price list in effect at the time the audit is completed. Licensee shall promptly deliver to OSIsoft any unpaid fee for any errors or omissions disclosed by such audit. Licensee shall pay OSIsoft an additional fee of twenty-five percent (25%) of the applicable unpaid fee disclosed by the audit to compensate for Licensee's over use of the OSIsoft Products. If the underpaid fees exceed five percent (5%) of the license fees previously paid by Licensee, then Licensee shall also pay OSIsoft's reasonable costs of conducting the audit.

2.   **Ordering and Delivery.**

2.1   **Order Process**. Licensee or a Licensee Affiliate may submit written orders containing the information and in the format reasonably requested by OSIsoft ("Orders") to OSIsoft or OSIsoft's authorized distributor for the purchase of new or additional licenses of OSIsoft Products or for Software Reliance Program services (as described in Section 4). All OSIsoft Products will be delivered DAP Licensee location.

2.2   **Licensee Affiliate.** "*Licensee Affiliate*" means any entity that controls, is controlled by, or is under common control with Licensee. For purposes of this Agreement, "control" of an entity means having ownership of more than fifty percent (50%) of the voting equity or beneficial interest of such entity. Licensee Affiliates that Licensee would like to add to this Agreement can be added by a form provided on osisoft.com. Licensee may add or subtract Licensee Affiliates from this Agreement by providing OSIsoft with written or electronic notice containing the contact information for each relevant Licensee Affiliate. Authorized Licensee Affiliates are entitled to use and order OSIsoft Products and shall be bound by this Agreement. Licensee is obligated to promptly notify OSIsoft of the change in status of any Licensee Affiliate. Licensee and any Licensee Affiliate that purchases OSIsoft Product licenses shall be jointly and separately liable for any breach of this Agreement by any

Licensee Affiliate. Licensee and Licensee Affiliates may be collectively referred to as Licensee.

2.3   **Contractor**. Licensee may designate one or more contractors that may interact with OSIsoft on its behalf for purposes of accessing Licensee's OSIsoft technical support account, ("*Contractors*"). Licensee may add or subtract Contractors from this Agreement by providing OSIsoft with written or electronic notice containing the contact information for each Contractor and Licensee Affiliates with which the Contractor is working. Licensee may permit Contractors to access and use the OSIsoft Products, without notice to OSIsoft, in accordance with this Agreement and so long as the Contractor is subject to confidentiality obligations no less protective than this Agreement. All Contractors shall be bound by this Agreement, and shall only have the right to act for the sole benefit of the Licensee. Licensee is obligated to promptly notify OSIsoft of any change in status of Contractors. Licensee and any Licensee Affiliate who benefits from a Contractor hereunder shall be jointly and severally liable for any breach of this Agreement by the Contractor.

2.4   **Order Submission and Acceptance**. Orders submitted directly to OSIsoft will not be deemed binding on OSIsoft until an authorized representative of OSIsoft expressly accepts such Order in writing or until Licensee receives the OSIsoft Products, whichever first occurs. Licensee must notify OSIsoft prior to using any OSIsoft Product at a location other than the one specified in the applicable Order. Except for information necessary to place an Order, such as identification of the OSIsoft Product, quantity and other similar information, any terms and conditions of any Order that are inconsistent with or in addition to the terms and conditions of this Agreement will be deemed stricken from such Order, and OSIsoft hereby expressly rejects such terms and conditions even if OSIsoft fulfills such Order. Licensee will be responsible for any contractors submitting Orders to OSIsoft on Licensee's behalf. OSIsoft reserves the right to refuse, cancel or delay shipment to Licensee if Licensee (i) fails to make any payment as provided herein or under the terms of payment set forth in any invoice or otherwise agreed to by OSIsoft and Licensee, (ii) fails to meet the credit or financial requirements established by OSIsoft, or (iii) otherwise fails to comply with the terms and conditions of this Agreement. Without interference with the licenses to OSIsoft Products previously ordered by and delivered to Licensee under this Agreement, OSIsoft, reserves the right to discontinue the distribution of any or all OSIsoft Products at any time and to cancel any orders therefor without liability of any kind to Licensee or any other person. No such cancellation, refusal or delay will be deemed a termination (unless OSIsoft so advises Licensee) or breach of this Agreement by OSIsoft.

3.   **Payment of OSIsoft Invoices.** Provided that Licensee meets OSIsoft's then-current credit standards and policies, payment of all fees and expenses pursuant to OSIsoft's invoices will be due and payable within thirty (30) days of the date of invoice, otherwise invoices will be due upon receipt. All fees are non-cancelable, non-contingent and non-refundable except as expressly stated in this Agreement. Licensee will pay all amounts due under OSIsoft's invoices in U.S. currency, free of any and all currency controls or other restrictions. All past due amounts under OSIsoft's invoices will incur interest at a rate equal to the lower of 1.5% per month or the highest rate permitted by law, beginning as of forty (40) days after the applicable due date. Except for taxes paid by OSIsoft on its net income, all amounts due pursuant to OSIsoft's invoices are net of, and Licensee will be solely responsible for, any shipping charges, withholding, use, sales, value-added, import and any other taxes, fees, tariffs or duties associated with this Agreement or Licensee's use of the OSIsoft Products and Software Reliance Program. This section will not apply when an authorized OSIsoft distributor invoices Licensee for Orders submitted to such distributor. However, Licensee will comply with any payment terms agreement Licensee may have with such distributor.

4.   **Support, Maintenance and Services**

4.1   **Software Reliance Program.** Subject to Licensee's advance payment of the applicable Software Reliance Program subscription fees, Licensee will be enrolled in OSIsoft's then-current Software Reliance Program ("**Software Reliance Program**"). OSIsoft's current terms of Software Reliance Program will be provided on request and are also available through OSIsoft's description of services section at http://www.osisoft.com.

4.2   **Replacement Software.** Promptly following its use of any Updates, Bug Fixes or other replacement software as designated by OSIsoft and accepted by Licensee ("**Replacement Software**"), except for archival copies, Licensee will return or destroy the OSIsoft Software replaced by the Replacement Software. Licensee will not receive any credit for software replaced by Replacement Software.

4.3   **Services.** If Licensee purchases OSIsoft's services, OSIsoft warrants that the results of such services will comply with mutually agreed upon specifications for a period of 90-days following delivery of the services by OSIsoft. Licensee agrees to supply OSIsoft with access to and use of all information and facilities reasonably necessary for OSIsoft to render any on-site services pursuant to this Agreement. OSIsoft will comply with all reasonable safety rules and procedures provided by Licensee to OSIsoft personnel in advance.

5.   **Warranties.**

5.1   **Limited Warranty**. OSIsoft warrants that, for a period of one (1) year after delivery of the OSIsoft Products, the OSIsoft Products will function in accordance with OSIsoft's accompanying documentation in all material respects. As Licensee's sole and exclusive remedy and OSIsoft's entire liability for any breach of the foregoing warranty, OSIsoft will repair or replace, at no additional charge to Licensee, any OSIsoft Products that fail to meet this limited warranty. The limited warranty set forth herein shall automatically become null and void if a party other than OSIsoft modifies the OSIsoft Products in any way.   EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, OSIsoft MAKES NO WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED, AND OSIsoft EXPRESSLY DISCLAIMS ANY AND ALL SUCH OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT AND NONINFRINGEMENT.

6.   **Indemnity**

6.1   **OSIsoft Indemnity Obligation.** OSIsoft will defend any action brought against Licensee to the extent that it is based upon a claim that the OSIsoft Products infringe any U.S. patent, copyright or trade secret, and will pay any costs, damages and reasonable attorneys' fees attributable to such claim that are finally awarded or paid in settlement in any such action, provided that: (i) Licensee promptly notifies OSIsoft in writing of the claim; (ii) Licensee grants OSIsoft sole control of the defense and settlement of the claim; and (iii) Licensee provides OSIsoft with all assistance, information and authority reasonably required for the defense and settlement of the claim, at OSIsoft's expense.

6.2   **Injunction**. If Licensee's use of any of the OSIsoft Products hereunder is, or in OSIsoft's opinion is likely to be, subject to the type of infringement claim specified in Section 6.1, OSIsoft may, at its sole option and expense: (i) procure for Licensee the right to continue using such OSIsoft Products, as applicable under the terms of this Agreement; (ii) replace or modify such OSIsoft Products so that it is non-infringing, but retains substantially the same functionality; or (iii) if options (i) and (ii) above cannot be accomplished despite OSIsoft's reasonable efforts, then OSIsoft may terminate Licensee's rights and OSIsoft's obligations hereunder with respect to such OSIsoft Products and refund to Licensee the unamortized portion of the fees paid for such OSIsoft Products,

based upon a straight-line three (3) year depreciation commencing as of the date Licensee received such OSIsoft Products.

6.3   **OSIsoft Indemnity Exclusions**. OSIsoft will have no liability for infringement claims of any kind arising from: (i) any use of the OSIsoft Products beyond the scope of this Agreement; (ii) Licensee's use of the OSIsoft Products in combination with any products not developed by OSIsoft, if the basis for the claim is such combined use; (iii) Licensee's failure to use updated or modified versions of the OSIsoft Products provided or made available by OSIsoft without additional charge; or (iv) OSIsoft's compliance with designs or specifications of a published standard or as provided by Licensee. THE PROVISIONS OF THIS SECTION 6 SET FORTH OSIsoft's SOLE AND EXCLUSIVE OBLIGATIONS AND LICENSEE'S SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

7.   **Limitations of Liability**. EVEN IF ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE AND REGARDLESS OF WHETHER A CLAIM ARISES UNDER CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT OSIsoft HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, IN NO EVENT SHALL OSIsoft BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) NOR SHALL OSISOFT's TOTAL CUMULATIVE LIABILITY HEREUNDER EXCEED THE TOTAL LICENSE FEES PAID BY LICENSEE TO OSIsoft UNDER THIS AGREEMENT DURING THE TRAILING 12 MONTH PERIOD OR TWO HUNDRED FIFTY THOUSAND DOLLARS ($250,000), WHICHEVER IS GREATER. The parties expressly agree that the allocation of risk contained in this Section is an essential basis of this Agreement.

8.   **Confidential Information**. "*Confidential Information*" means the OSIsoft Products and any business (including any pricing information provided by OSIsoft) or technical information that is marked by a disclosing party as "confidential" or "proprietary" at the time of disclosure. Licensee's Confidential Information shall also include information related to Licensee's operations that Licensee discloses to OSIsoft in connection with this Agreement in whatever form. OSIsoft's Confidential Information shall also include, without limitation, any interfaces developed using OSIsoft's Software. The receiving party will not use or disclose any Confidential Information of the other party except as expressly permitted herein or as required by California state law.

Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) business days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile, email and/or by US Mail to the legal address and/or facsimile number listed at the beginning of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action within ten (10) days after receiving the foregoing notice from the Receiving Party, or sooner if the Requestor's demand is for sooner disclosure by governmental, administrative or judicial order or decree, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

Notwithstanding the foregoing, if the Requestor is an individual and/or an entity who has a written confidentiality agreement with the Receiving Party containing confidentiality obligations at least as protective of the Disclosing Party's Confidential Information as are the Parties' obligations in this Agreement, and if such Requestor has a need to know the Confidential Information in order for the Receiving Party to perform its rights and obligations under this Agreement in a commercially reasonable and timely manner, then the preceding paragraph shall not apply to the disclosure of Confidential Information to the Requestor.

Confidential Information will not include information which: (i) is or becomes publicly available without fault of the receiving party; (ii) is independently developed by the receiving party without use or access to the Confidential Information; or (iii) was known to the receiving party prior to its receipt of the Confidential Information from the disclosing party and is not subject to other restrictions on disclosure or use.

9.   **Term and Termination**. This Agreement will remain in effect perpetually unless and until terminated pursuant to this Section. Either party may terminate this Agreement if the other party breaches any material term, and such breach remains uncured for thirty (30) days after receiving notice thereof. In the event of any termination of this Agreement, the parties agree to return or at the other party's request destroy all of the other party's Confidential Information within three (3) business days, and without limiting the foregoing, Licensee will return or at OSIsoft's request destroy all copies of the OSIsoft Products within its possession or control. Licensee may terminate its license to the OSIsoft Products under

this Agreement at any time, with or without cause, by destroying all copies of the OSIsoft Products and Confidential Information associated with the OSIsoft Products within its possession or control, and in such event as it elects to terminate all licenses hereunder, Licensee shall notify OSIsoft in writing that the Agreement is terminated. Termination of this Agreement by either party will be a nonexclusive remedy for breach without prejudice to any other right or remedy of such party. The rights and obligations of the parties contained in Sections 3, and 6 through 10 will survive the termination of this Agreement.

10.   **General**

    10.1   **Assignment, Independent Contractors, Notices and Force Majeure**. Licensee must obtain OSIsoft's written consent prior to: (i) moving the OSIsoft Software from the location designated in the corresponding Order or (ii) assigning this Agreement or any licenses to OSIsoft Products granted hereunder to any third party or Licensee Affiliate.   Licensee hereby acknowledges that as a condition to such consent OSIsoft may require Licensee or the proposed assignee, if applicable, to agree to update the OSIsoft Software to the then-current version, pay OSIsoft's then-current license fees and purchase a one year subscription of Software Reliance Program services at OSIsoft's then-current rate. In the case of an assignment or transfer to a third party or a Licensee Affiliate, OSIsoft may require the assignee to execute its then-current Software License and Services Agreement. Except as otherwise specified in writing by OSIsoft in its consent, Orders submitted by any assignee will be in accordance with OSIsoft's then-current list price.   Any attempted assignment, whether by operation of law, as a result of any change in control (as control is defined in Section 2) of Licensee or otherwise without complying with this Section shall be null and void. The parties to this Agreement are independent contractors and neither party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent. All notices required or permitted under this Agreement will be sent to the address specified above (or such other address specified by the receiving party) in writing and will be deemed effective upon receipt. OSIsoft will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control.

    10.2   **Disputes and Governing Law**. Any dispute arising out of or relating to this Agreement, including without limitation its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Commercial Rules of the American Arbitration Association (the "**AAA**"). The arbitration panel shall consist of a single arbitrator experienced in the enterprise software industry, selected and agreed to by the parties. If the

parties cannot agree upon selection of an arbitrator, then the AAA shall appoint the arbitrator. The place of the arbitration will be San Francisco, California. The arbitration will be conducted in English. The arbitrator shall apply the substantive law of California.   The arbitrator shall provide detailed written findings of fact and conclusions of law in support of any award. Judgment upon any such award may be enforced in any court of competent jurisdiction. Notwithstanding the foregoing, OSIsoft may file an action in any court of competent jurisdiction to enforce its intellectual property rights in the OSIsoft Products without first submitting its claim to arbitration, Licensee hereby submits to the jurisdiction and venue of the federal or state courts located in San Francisco, California for this purpose. This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of law pertaining to conflicts of law and the United Nations Convention on Contracts for the International Sale of Goods. The prevailing party in any action arising from or relating to this Agreement shall be entitled to recover all attorneys' fees and costs including, without limitation, arbitration fees and fees of experts.

    10.3   **Compliance with Laws; Government Approvals and Severability**. Licensee's use of the OSIsoft Products will comply with all laws, rules, and regulations of the United States and other countries that may be applicable to the OSIsoft Products. Without limiting the generality of the foregoing, Licensee acknowledges that the distribution and use of OSIsoft Products and any technical data related thereto (collectively "**OSIsoft Technology**") may be subject to U.S. export control laws and regulations including, but not limited to, the U.S. Export Administration Act of 1979, as amended, and the regulations promulgated there under.   Licensee will not export or re-export, directly or indirectly, any OSIsoft Technology, to any destination for any use that is restricted by U.S. export control laws and regulations including, without limitation, to any party that is involved in sensitive or unguarded nuclear activities, or activities related to chemical or biological weapons or missiles, unless Licensee first obtains the required authorizations from the U.S. Department of Commerce or other appropriate governmental agencies. Licensee may not use the OSIsoft Products to operate or control any inherently dangerous application. Notwithstanding the preceding sentence, Licensee may use the OSIsoft Products in a commercial nuclear power facility so long as Licensee does not use the OSIsoft Products: (i) in any manner where failure of the OSIsoft Products would affect the operability of Licensee's facility or affect Licensee's ability to safely cease all operations of the facility; (ii) to control any safety related system or in any safety related application; or (iii) in any manner that would violate applicable laws or regulations.   Licensee shall indemnify and hold OSIsoft harmless from any and all claims, liability, costs, damages and losses arising out of or related use of

the OSIsoft Products in violation of this section. OSIsoft shall have no responsibility to test, certify, validate or to take any other action regarding the OSIsoft Products with the Nuclear Regulatory Commission or any other governmental agency. Obtaining such approvals, if any, will be the sole responsibility of Licensee. Within ninety (90) days of the Effective Date, Licensee must, at Licensee's expense, obtain and arrange for the maintenance of all government approvals, if any

that may be necessary to make this Agreement effective in the locations where the OSIsoft Products are used by Licensee. If for any reason any part of this Agreement is found unenforceable, the remainder of this Agreement will be enforced to the maximum extent permissible.

10.4   **Use of Name in Customer List**.   Licensee consents to OSIsoft's use of Licensee's non-stylized corporate name in its marketing literature and customer lists. Licensee may withdraw such consent at any time with reasonable notice.

10.5 **Entire Agreement, Waiver and Language**. This Agreement is the entire agreement between OSIsoft and Licensee with respect to all OSIsoft products and services and their use, superseding any prior agreements or understandings related to any OSIsoft products or services, except for such other agreements OSIsoft expressly specifies. The Agreement contains the entire agreement between the parties with respect to the OSIsoft Products and services Ordered and delivered hereunder, and supersedes any prior or contemporaneous agreements, understandings, representations or warranties relating thereto. Except for the online Product Usage Terms and Software Reliance Program terms and conditions, this Agreement cannot be amended except by a writing which specifically references this Agreement and is signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date through their duly authorized representatives. Each individual signatory below hereby represents and warrants that they have full corporate power and authority to execute this agreement and bind the respective parties to the terms and conditions of this Agreement.

OSIsoft, LLC

Signature: _____

Name: ____Robert Guilbault____

Title: _____COO_____

Date: ____6/20/18____

Licensee: City of Santa Clara dba Silicon Valley Power

Signature: _____

Name: Deanna J. Santana_____

Title: City Manager_____

Date: _____

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