



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, June 28, 2018**

Peninsula Clean Energy, 2075 Woodside Road,
Redwood City, CA 94061
6:30 p.m.

Supplemental Agenda Packet items. Please find attached:

- Item No. 11 Data Management Contract

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND CALPINE ENERGY SOLUTIONS, LLC.

This Agreement is entered into this [28th] day of [June], [2018], by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA" and Calpine Energy Solutions, LLC, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 6508 of the Joint Exercise of Powers Act, PCEA may contract with independent contractors for the furnishing of services to or for PCEA; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of providing data management and establishing a customer call center for PCEA.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for PCEA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

2. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. If PCEA reasonably determines that the quantity or quality of the work performed is unacceptable, then PCEA reserves the right to withhold the proportional payment attributable to such unacceptable work, provide notice to Contractor, and opportunity to cure, consistent with this Agreement. In no event shall PCEA's total fiscal obligation under this Agreement exceed ten million dollars (\$10,000,000) ("Maximum Total Price"). For the avoidance of doubt, Contractor shall have no obligation to provide out-of-scope work until such time as such work is authorized in writing and the Maximum Total Price is adjusted by mutual agreement. In the event that the PCEA makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the PCEA at the time of contract termination or expiration. Unless otherwise indicated in Exhibit B, Contractor shall invoice PCEA monthly for all payments related to service performed during the previous month. Payments shall be due within thirty (30) days after the date of invoice. All payments must be made in U.S. dollars.

3. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from [July 1, 2018], through [June 30, 2020]. At its own election, PCEA may renew this Agreement for an additional two-year term (July 1, 2020 through June 30, 2022, referred to herein as the "Renewal Term") by providing written notice to Contractor on or before March 1, 2020.

4. Termination; Availability of Funds

a. Termination for Convenience. This Agreement may be terminated by Contractor or by the Chief Executive Officer of the Peninsula Clean Energy Authority or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to the effective termination date of the Agreement, as well as such work/services it is directed to do thereafter with regard to protection of work in place and/or transition services. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

b. Termination Due to Unavailability of Funds. PCEA may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or PCEA funds by providing written notice to Contractor as soon as is reasonably possible after PCEA learns of said unavailability of outside funding. Contractor shall be under no obligation to provide services for which funds are unavailable.

c. Termination for Default. Either PCEA or Contractor may terminate this Agreement if any one of the following events (each a "Default") occurs with respect to the other Party: (i) with respect to PCEA, PCEA fails to pay amounts due hereunder and such failure continues for twenty-one (21) Business Days after written notice from Contractor; in accordance with Section 2 of Agreement, (ii) a Party defaults in the observance or performance by a Party of any such Party's material covenants or agreements in this Agreement (other than a default in a payment obligation) and such default continues uncured for thirty (30) Business Days after written notice is given to such Party failing to perform its covenants or agreements under this Agreement, PROVIDED, HOWEVER, that for such events which require more than thirty (30) Business Days, to cure, then Contractor shall have such additional time as may reasonably be required to effect such cure PROVIDED, that Contractor diligently and continuously pursues such cure; or; (iii) either Party makes an assignment or any general arrangement for the benefit of creditors or files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors or has such a petition filed against it or otherwise becomes bankrupt or insolvent (however evidenced) or is unable to pay its debts as they fall due.

d. Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services hereunder; and (b) any and all payment obligations of PCEA under this agreement will become due immediately. Upon such expiration or termination, and upon request of PCEA, Contractor shall reasonably cooperate with PCEA to ensure a prompt and efficient transfer of all data documents and other materials to a new service provider in a manner such as to minimize the impact of expiration or termination on PCEA's customers. PCEA agrees to pay Contractor

compensation for services performed in connection of such transfer, to the extent not contemplated in the Agreement.

- 5. Transition At Time Of Termination Or Expiry.** In the event of termination or expiry of this Agreement, in whole or in part, Contractor shall take commercially reasonable steps to ensure the orderly and effective transition of the services to PCEA and/or a successor contractor (“Transition Assistance”).
- a. All references in this Section to termination or expiry shall include partial and complete termination or expiry, cancellation or cessation unless the context otherwise requires. In relation to any partial termination or expiry the provisions of this Schedule shall apply only to those parts of the Services subject to such partial termination or expiry.
 - b. Each reference to an obligation of Contractor under this Section shall be deemed to include an obligation on Contractor to ensure that all relevant sub-contractors of Contractor comply with such obligation.
 - c. **Transition Assistance Period.** The Transition Assistance Period means a period of such duration as is mutually agreed upon by both parties but be limited to a maximum of six (6) months commencing on the earlier of:
 - i. service of notice to terminate this Agreement;
 - ii. in case of a repudiatory breach of this Agreement, the date on which the non-defaulting party accepts such repudiatory breach as terminating this Agreement; or
 - iii. the expiry of the initial term or any extended term (as the case may be).
 - d. **Transition Assistance Election.** During the Transition Assistance Period, the services will be discontinued or transitioned to a Successor Contractor at PCEA’s discretion and such transition shall then be performed in accordance with the Transition Assistance plan and this Section. From the commencement of the Transition Assistance Period and until a date pre-agreed or such provided to Contractor by PCEA with a minimum of thirty (30) days’ notice. All the terms and conditions of this Agreement will remain unchanged during the Transition Assistance Period (including but not limited to rates and charges, discounts, credits, waivers, service levels and key personnel).
 - e. **Transition Assistance Planning.** Promptly following the commencement of the Transition Assistance Period (and in any event within fourteen (14) days), or earlier at the request of PCEA, Contractor shall develop with reasonable assistance from PCEA a written transition assistance plan specifying in detail all activities, and the corresponding timing of such activities, necessary to facilitate an orderly and effective transition of the Services

("Transition Plan"). The Transition Plan shall include sections setting out in detail how Contractor will satisfy the specific obligations described in paragraph 5.f below.

f. Transition Assistance Obligations for Call Center Services (Exhibit A, Section d)

The Transition Assistance provided by Contractor during the Transition Assistance Period shall include the following services at no additional charge to PCEA:

- i. providing PCEA or its designees with documentation relating to the services that are necessary or useful to enable the orderly and effective transition of the services to PCEA and/or a successor contractor;
- ii. allowing PCEA to observe Contractor's provision of the services;
- iii. providing PCEA and/or a successor contractor with reasonable access to relevant Staff in order to facilitate knowledge transfer, which shall include explanations from such Staff of the services, the manner of their provision and reasonably related documentation and providing answers to reasonable questions from PCEA on the same, provided that Contractor shall not be required to disclose any of commercially sensitive information as part of this process unless such information is necessary for performance of the services by PCEA or a successor contractor following the expiry of the Transition Assistance Period;
- iv. Contractor shall provide Transition Assistance in such a manner as to ensure the uninterrupted performance of the services, with no degradation in quality, and avoid disruption in the operation.

g. Transition Assistance Obligations for Data Manager Services (Exhibit A, Sections a, b, c, e, f, g and h)

- i. Contractor shall provide to PCEA data and documentation, in a format or formats acceptable to PCEA, and other information reasonably requested by PCEA in connection with the transition that is sufficient to enable successor contractor to fully assume the provision of the transitioning services.

The processes, systems, and people related to the Data Manager Services within this agreement that are proprietary to Contractor, or which are the Confidential Information of Contractor, will not be included in the Transition Assistance Planning. The Parties agree that damages would be an inadequate remedy Contractor to protect its Confidential Information and therefore Contractor shall be entitled to seek equitable relief in connection therewith, provided that any damages shall be subject to the limitations of Article 22, below. "Confidential

Information” means information and/or material of a confidential nature (trade secrets and information of a commercial value, including but not limited to research, developmental, engineering, technical, marketing, sales, products, goods, legal, financial, pricing, operating, performance, cost, customer, business and process information or data, trade secrets, discoveries, ideas, designs, data, source code, object code, processes, computer programs, developments, flow diagrams, know-how, internal systems and computer programming and other software and software techniques) of Contractor which becomes known to PCEA in connection with Contractor’s provision of the services as well as any information regarding Contractor’s business practices and related information, to the extent it is not public knowledge or has not been made public knowledge as a result of PCEA’s actions. Nothing in this paragraph shall be interpreted to limit PCEA’s responsibilities for disclosure pursuant to the California Public Records Act, California Government Code Sections 6250 -6276.48.

6. Contract Materials

At the end of this Agreement, or in the event of termination, PCE data and any reports, and other written materials specifically prepared for PCEA (collectively referred to as “contract materials”) shall be promptly delivered to PCEA. For the avoidance of doubt, Contractor’s intellectual property, including but not limited to Contractor’s internal systems, know-how, programs and work product shall remain the exclusive property of Contractor, and, with regard to any reports prepared specifically for PCEA, PCEA shall have a perpetual, non-exclusive, royalty free (exclusive of payments made under this Agreement) license to use any such reports on an “as is” basis thereafter.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of PCEA and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of PCEA employees. PCEA agrees and understands that Contractor may provide the same or similar services to other parties.

8. Hold Harmless

a. General Hold Harmless

Contractor shall, to the extent of its own negligence and/or willful misconduct (including that of any of Contractor’s employees and subcontractors) only, indemnify and save harmless PCEA and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging; or
- (C) any other loss or cost.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

This Hold Harmless shall apply only to the extent of the Contractor's acts and omissions, which shall be deemed to include any contractor, subcontractor, agent, and/or employee of the Contractor. In addition to the stated parties, the Contractor shall include any other person or entity under Contractor's direction and control.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party, (other than an Affiliate of Contractor) or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of PCEA, which shall not be unreasonably withheld, conditioned or delayed. Any such assignment or subcontract without PCEA's prior written consent shall give PCEA the right to automatically and immediately terminate this Agreement without penalty or advance notice. "Affiliate" shall mean any person or entity that controls, is controlled by, or is under common control with Contractor.

PCEA acknowledges that Contractor utilizes Energy Choice California as a subcontractor for the services provided herein and agrees that Contractor's continued use of Energy Choice California as a subcontractor, in and of itself, does not violate this Article 9.

10. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services.

11. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by PCEA, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish PCEA with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. Contractor shall provide notice

within a reasonable time period not to exceed thirty (30) days in writing, to PCEA of any pending material change in the limits of liability or of any cancellation or material modification of the policy. Such notice shall be provided to PCEA within thirty (30) days of Contractor receiving such notice.

b. Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

Professional Liability.....\$1,000,000

(To be checked if Contractor is a licensed professional)

PCEA and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to PCEA and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the PCEA or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, PCEA, at its option, may,

notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

12. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

13. Non-Discrimination and Other Requirements

a. **General Non-discrimination**

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. **Equal Employment Opportunity**

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to PCEA upon request.

c. **Section 504 of the Rehabilitation Act of 1973**

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. **Compliance with County's Equal Benefits Ordinance**

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. **Discrimination Against Individuals with Disabilities**

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. **History of Discrimination**

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide PCEA with a written explanation of the outcome(s) or remedy for the discrimination.

g. **Reporting; Violation of Non-discrimination Provisions**

Contractor shall report to the Chief Executive Officer of PCEA the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 12, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the Chief Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a PCEA contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the Chief Executive Officer.

To effectuate the provisions of this Section, the Chief Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and PCEA.

14. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed Section 2, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

15. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after PCEA makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by PCEA, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by PCEA.

(c) Contractor agrees upon reasonable notice to provide to PCEA, to any Federal or State department having monitoring or review authority, to PCEA's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

16. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

17. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

18. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for

overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of PCEA, to:

Name/Title: Jan Pepper, Chief Executive Officer
Address: 2075 Woodside Road, Redwood City, CA 94061
Telephone: 650-260-0100
Email: jpepper@peninsulacleanenergy.com

In the case of Contractor, to:

Calpine Energy Solutions, LLC
Attn: Legal Dept.
401 West A Street, Suite 500
San Diego, CA 92101
609-684-8251 (phone)
617-684-9350 (fax)

19. Electronic Signature

If both PCEA and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For PCEA: If this box is checked by PCEA, PCEA consents to the use of electronic signatures in relation to this Agreement.

For Contractor: If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

20. No Recourse Against PCEA's Member Agencies

Contractor acknowledges and agrees that PCEA is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by PCEA in connection with this Agreement are undertaken solely by PCEA and are not debts, liabilities, or obligations of its member agencies. Contractor waives any recourse against PCEA's member agencies.

21. Force Majeure

Except for payment obligations, if either Party is rendered unable, wholly or in part, to perform its obligations under this Agreement due to Force Majeure, to the extent affected by the Force Majeure the obligations of each Party will be suspended for the duration of such Force Majeure. A Party claiming Force Majeure shall promptly notify the other Party by telephone and confirm within a reasonable period of time by a written notice describing in reasonable detail the nature and estimated duration of such Force

Majeure. The Party claiming Force Majeure shall remedy the Force Majeure with all reasonable dispatch. If the duration of the Force Majeure event exceeds thirty (30) days, the Party not claiming Force Majeure may terminate the affected portions of the services upon written notice to the other Party, and neither Party shall have any further obligations toward the other for such terminated services, other than to pay for services already performed.

22. Limitation of Liability

FOR BREACH OR DEFAULT ARISING FROM ANY PROVISION FOR WHICH AN EXPRESS REMEDY IS PROVIDED HEREIN, SUCH REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS MAY BE INCLUDED IN AN EXPRESS REMEDY PROVIDED FOR HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, WHETHER BASED ON STATUTE, CONTRACT, TORT, OR OTHERWISE, WITHOUT REGARD TO CAUSE OR THE NEGLIGENCE OF ANY PARTY, WHETHER SOLE, JOINT, ACTIVE OR PASSIVE, AND EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ANY SUCH LIABILITY, EVEN IF DURING THE TERM HEREOF IT ADVISES THE OTHER OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, BUT SUBJECT TO THE LIMITATION ON TYPES OF DAMAGES IN THE FOREGOING SENTENCE, IT IS THE INTENT OF THE PARTIES FOR PCEA TO HAVE THE FULL BENEFIT OF THE INDEMINTY OF ARTICLE 8, ABOVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. THE PROVISIONS OF THIS ARTICLE 22 SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

23. No Third Party Beneficiaries

This Agreement is intended for the benefit of the Parties hereto and is not intended and shall not be construed as conferring any interest or rights with respect to or in connection hereto, except as otherwise expressly provide for herein.

24. Representations and Warranties

Each Party represents and warrants to the other that: (i) it is validly existing and in good standing in the jurisdiction of its formation; (ii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents or any agreements to which it is a party or any law applicable to it; (iii) it has not filed, does not plan to file, nor has it had filed against it, any bankruptcy proceeding; (iv) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms (subject to any equitable defenses); (v) it is not a party to or subject to any commitment that may restrict or interfere with this Agreement.

25. Restrictions on Data Use.

Contractor acknowledges that it will have access to information about PCEA's customers under this Agreement that could give it or a third party an unfair competitive advantage in the event that Contractor or any third party were to compete with PCEA in the provision of electrical or other services to PCEA's customers. CONTRACTOR AGREES THAT IT WILL NOT ACCESS AND/OR USE ANY INFORMATION IT RECEIVES PURSUANT TO THIS AGREEMENT REGARDING PCEA CUSTOMERS FOR ANY PURPOSE OTHER THAN PROVIDING SERVICES UNDER THIS AGREEMENT. Contractor agrees not to access and/or use any of the CCA data provided to it by PCEA for its own marketing purposes. Contractor shall not access and/or use such customer information it receives pursuant to this Agreement to compete with PCEA in any manner. Upon termination of this Agreement, Contractor shall: (i) return all documents and other materials received from PCEA and all copies, if any exists, of such documents and materials, and (ii) destroy all other documents or materials in Contractor's possession that contain PCEA customer data, and (iii) deliver to PCEA a certificate, signed by an authorized representative of Contractor, stating that Contractor has returned or destroyed all such documents and materials; provided, however, that Contractor may retain copies of information necessary for tax, billing, or other financial purposes, to be used solely for such purposes.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

PENINSULA CLEAN ENERGY AUTHORITY

By:

Chief Executive Officer, Peninsula Clean Energy Authority

Date:

ATTEST:

By:

Clerk of Said Board

CALPINE ENERGY SOLUTIONS, LLC

Contractor's Signature

Date:

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

- (a) Electronic Data Exchange Services:
 - i. Process CCA Service Requests (CCASRs) from/to PG&E which specify the changes to a customer's choice of services such as enrollment in CCA programs, customer initiated returns to bundled utility service or customer initiated returns to direct access service (814 Electronic Data Interchange Files).
 - ii. Obtain all customer usage data from PG&E's Metered Data Management Agent (MDMA) server to allow for timely billing (according to PG&E requirements) of each customer (867 Electronic Data Interchange Files).
 - iii. Maintain and communicate the amount to be billed by PG&E for services provided by PCEA (810 Electronic Data Interchange Files).
 - iv. Receive and maintain all data related to payment transactions toward CCA charges from PG&E after payment is received by PG&E from customers (820 Electronic Data Interchange Files).
 - v. Process CCASRs with PG&E when customer status changes.
 - vi. Provider shall participate in the Customer Data Acquisition Program (CDA) beta testing for SmartMeter data sharing as PCE's Data Manager.

- (b) Qualified Reporting Entity (QRE) Services:
 - i. Consistent with terms and conditions included in the Qualified Reporting Entity Services Agreement(s) between PCEA and Data Management Provider, serve as QRE for certain locally situated, small-scale renewable generators or other distributed energy resources supplying electric energy to PCEA through a feed-in tariff (FIT) or other mechanism.
 - ii. Submit a monthly generation extract file to Western Renewable Energy Generation Information System (WREGIS) on PCEA's behalf, which will conform to the characteristics and data requirements set forth in the WREGIS Interface Control Document for Qualified Reporting Entities.
 - iii. Provider shall receive applicable electric meter data from PG&E for PCEA distributed energy resource projects, consistent with PG&E's applicable meter servicing agreement, and shall provide such data to PCE for purposes of performance tracking and invoice creation.

- (c) Customer Information System:
 - i. Maintain an accurate database of all eligible accounts who are located in the PCEA service area and identify each account's

enrollment status (opt out, program enrollment), rate tariff election(s), payment history, collection status, on-site generating capacity, if applicable, and any correspondence with customer as well as other information that may become necessary to effectively administer PCEA as mutually agreed to by parties from time to time.

- ii. Allow PCEA to have functional access to the online database to add customer interactions and other account notes.
- iii. Allow PCEA to view customer email or written letter correspondence within online database.
- iv. Maintain and provide as-needed historical usage data on all customers for a time period equal to the lesser of either (a) the start of customer service to present or (b) five years.
- v. Until a cloud-based storage solutions for SmartMeter historical usage data is implemented, Provider will store SmartMeter historical usage data, as received by the MDMA, for a 48 hour window.
- vi. Maintain viewing access, available to appropriate PCE staff, to view PG&E bills for PCEA customers, including supporting the intuitive parsing and labeling of PG&E provided files. Maintain accessible archive of billing records for all PCEA customers from the start of PCEA Service or a period of no less than five years.
- vii. Maintain and communicate as needed record of customers who have been offered service with PCEA but have elected to opt out, either before or after starting service with PCE.
- viii. Maintain and communicate as needed records of Net Energy Metering credits and generation data for customers to be posted on bill and settled annually.
- ix. When requested by PCEA, place program charges on the relevant customer account, identified by Service Agreement ID (SAID).
- x. Identify customers participating in various PCEA programs in database.
- xi. Include various program payment information in all relevant reports.
- xii. Perform quarterly PCEA program reviews to assess appropriate customer charge level.
- xiii. Maintain all customer data according to PCEA's customer privacy policy and the requirements of relevant California Public Utilities Commission Decisions including D.12-08-045, including a daily backup process.
- xiv. Maintain a Data Management Provider Security Breach Policy.

(d) Customer Call Center:

- i. Provide professional Interactive Voice Response (IVR) recordings for CCA customer call center.
- ii. Provide option for IVR self-service and track how many customers start and complete self-service options without live-agent assistance.

- iii. Staff a call center with dedicated agents serving only PCE between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding PCE and PG&E holidays.
- iv. Staff a call center between the hours of 7 AM and 8 AM PPT, and 5 PM and 7 PM PPT, Monday through Friday, excluding PCE and PG&E holidays.
- v. Provide sufficient call center staffing to meet the requirements set forth herein, including designating PCE specific agents to the extent needed to provide for full functionality.
- vi. Provide sufficient number of Data Manager Experts available to manage escalated calls between the hours of 8 AM and 5 PM PPT Monday through Friday, excluding PCE and PG&E holidays (“Regular Business Hours”).
- vii. Ensure that a minimum of 80% of all calls will be answered within 45 seconds.
- viii. 100% of voicemail messages answered within one (1) Business Day and provide report to PCE upon request that substantiates this requirement has been met.
- ix. 100% of emails receive an immediate automated acknowledgement and provide report upon request to PCE that substantiates this requirement has been met.
- x. 95% of emails receive a customized response within one (1) Business Day and provide report to PCE upon request that substantiates this requirement has been met.
- xi. 100% of emails receive a customized response within three (3) Business Days and provide report to PCE upon request that substantiates this requirement has been met.
- xii. Achieve a no greater than 5% abandon rate for all calls.
- xiii. Provide callers with the estimated hold time, if applicable. Provide an automated ‘call back’ option for callers who will be put on hold for an estimated five minutes or longer.
- xiv. Record all inbound calls and make recordings available to PCE staff upon request. Maintain an archive of such recorded calls for a minimum period of 24 months.
- xv. Track call center contact quality with criteria including:
 - Use of appropriate greetings and other call center scripts
 - Courtesy and professionalism
 - Capturing key customer data
 - Providing customers with correct and relevant information
 - First-contact resolution
 - Accuracy in data entry and call coding
 - Grammar and spelling in text communication (email and chat)
- xvi. Evaluate customer satisfaction through voluntary customersurveys that ask general questions about call quality, call resolution, and how satisfied the customer was with the service received.

- xvii. Respond to customer emails.
- xviii. Receive calls from PCEA customers referred to Provider by PG&E and receive calls from PCEA customers choosing to contact Provider directly without referral from PG&E.
- xix. Provide the call center number on PG&E invoice allowing PCEA customers to contact the call center. Collect and/or confirm current email, mailing address and phone number of customers and add to or update database during inbound call.
- xx. Collect permission (via voice recording, email request, or electronic form submittal) from customers to send electronic correspondence instead of printed mail.
- xxi. Respond to telephone inquiries from PCEA customers using a script developed and updated quarterly by PCEA. For questions not addressed within the script, refer inquiries either back to PG&E or to PCE.
- xxii. Respond to customer inquiries within 24 hours, excluding weekends and holidays, including inquiries received either through telephone calls, email, fax or web-portal.
- xxiii. Coordinate with PCE to offer bi-annual cross training to PG&E call center.
- xxiv. Ensure monthly status reports are provided during the first week of each month.
- xxv. Provide weekly status reports by 10 am each Monday for the period covering the previous weeks Call Center activity (Thursday through Wednesday) or on a mutually agreed upon schedule and reporting period.
- xxvi. Use commercially reasonable efforts to make Spanish speaking call center staff available to customers during Regular Business Hours.
- xxvii. Provide translation services for inbound calls for the following languages: Spanish, Cantonese, Mandarin, Tagalog.
- xxviii. Create and maintain forms for the PCEA website so that customers may change their account status to enroll or opt out of various PCE programs.
- xxix. PCEA meetings to review call center operations on a weekly basis (teleconference).

(e) Billing Administration:

- i. Maintain a table of rate schedules offered by PCEA to its customers.
- ii. Send certain PCEA program charges for non-PCE customers, when supported by PG&E, based on information provided to Provider by PCEA.
- iii. Send certain PCEA program charges as a separate line item to PG&E for placement on monthly bill during term of

- repayment.
- iv. Apply PG&E account usage for all PCEA customers against applicable rate to allow for customer billing.
 - v. Review application of PCEA rates to PG&E accounts to ensure that the proper rates are applied to the accounts.
 - vi. Timely submit billing information for each customer to PG&E to meet PG&E's billing window.
 - vii. Use commercially reasonable efforts to remedy billing errors for any customer in a timely manner, no more than two billing cycles.
 - viii. Assist with annual settlement process for Net Energy Metering customers by identifying eligible customers, providing accrued charges and credits, and providing mailing list to CCA designated printer.
 - ix. Provide customer mailing list to PCEA designated printer for new move-in customer notices and opt out confirmation letters routinely within 7 days of enrollment or opt out.
 - x. Send a PCEA provided letter to customers that are overdue. If no payment is received from the customer after a certain amount of time, issue a CCASR to return customer to PG&E.

(f) Reporting:

Report	Frequency	Delivery Method
Aging	Weekly, Monthly	SFTP
Call Center Stats	Weekly, Monthly	Email
Cash Receipts	Weekly, Monthly	SFTP
County Invoice Summary Reports	Monthly	SFTP
Days To Invoice	Weekly, Monthly	SFTP
Program Opt Up with Address	Weekly, Monthly	SFTP
Utility User Tax (UUT) where applicable	Monthly	Email
Invoice Summary Report	Weekly, Monthly	SFTP
Invoice Summary Report – Mid Month	Monthly	SFTP
Monthly Transaction Summary	Monthly	Email
Opt Out with Rate Class	Weekly, Monthly	SFTP
Retroactive Returns	Monthly	Email

Sent to Collections	Monthly	Email
Snapshot	Weekly	SFTP
Snapshot with Addresses	Weekly	SFTP
Unbilled Usage	Monthly	SFTP
Full Volume Usage by Rate Class	Monthly	SFTP

Provider shall assist PCEA in compiling ad-hoc sales, customer, and usage reports from time to time as may be requested by PCEA, with each such request being accompanied by mutually agreed upon requirements and proper notice.

- (g) Settlement Quality Meter Data:
 - i. Provider shall provide PCEA or PCEA’s designated Scheduling Coordinator (SC) with Settlement Quality Meter Data (SQMD) as required from SC’s by the California Independent System Operator (CAISO).
 - ii. Upon PCE’s request, Provider shall submit the SQMD directly to the CAISO on behalf of PCEA or PCEA’s designated SC.
- (h) Business Intelligence Tools
 - i. Provide a Business Intelligence (BI) analytics platform that allows PCEA to review its customers’ Advanced Meter Infrastructure (AMI) data as provided by PG&E through their Share My Data platform.
 - ii. Support PCEA analyses for program development through the BI toolset

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, PCEA shall pay Contractor based on the following fee schedule and terms:

Contractor's cost for the services listed in Exhibit A is \$1.05 per active meter per month ("Cost for the Services"). Travel and all start-up costs are included in this price.

The Fees defined in Exhibit B include only those service and items expressly set forth in Exhibit A of this Agreement. Unless otherwise agreed to by PCEA and the Contractor, the cost of additional deliverables provided by Contractor to PCEA shall be passed through directly to PCEA without mark-up using a labor rate of \$150.00 per hour, ("Labor Rate").