



**REGULAR MEETING of the Board of Directors of the  
Peninsula Clean Energy Authority (PCEA)  
Thursday, November 15, 2018  
6:30 p.m.**

Peninsula Clean Energy, 2075 Woodside Road,  
Redwood City, CA 94061

Supplemental Agenda Packet items. Please find attached:

- Item No. 4      Resolution to authorize an adjustment in Peninsula Clean Energy's (PCE's) rates in the first quarter of 2019 to maintain a 5% discount in generation charges compared to PG&E.
- Item No. 5 a.    Amendment to the Power Purchase Agreement (PPA) for Renewable Supply with Mustang Two Whirlaway LLC
- Item No. 5 b.    Letter Consenting to a Change of Control of the PPA for Renewable Supply with Mustang Two Whirlaway LLC

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

**PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,**

**STATE OF CALIFORNIA**

\* \* \* \* \*

**RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO ADJUST  
PENINSULA CLEAN ENERGY’S RATES IN THE FIRST QUARTER OF 2019 TO  
MAINTAIN A 5% DISCOUNT IN GENERATION CHARGES COMPARED TO PG&E**

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**RESOLVED**, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California (“Peninsula Clean Energy” or “PCE”), that

**WHEREAS**, the Peninsula Clean Energy Authority (“PCEA”) was formed on February 29, 2016 as a Community Choice Aggregation program (“CCA”); and

**WHEREAS**, the Board has established a set of strategic goals to guide PCE including maintaining a cost competitive electric generation rate for County Residents and Businesses; and

**WHEREAS**, in the first quarter of 2019, PG&E will be implementing adjustments to both the Power Charge Indifference Adjustment (PCIA) and their own generation rates; and

**WHEREAS**, PG&E’s rate changes will necessitate changes to PCE’s rates in order to maintain a 5% discount in generation charges; and

**WHEREAS**, PCE staff expects the rate adjustments will result in some PCE rates decreasing, some increasing slightly, and some remaining the same.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board authorizes the Chief Executive Officer to implement adjustments to PCE's rates in the first quarter of 2019 in order to maintain a 5% discount in generation charges compared to PG&E.

\* \* \* \* \*

## FIRST AMENDMENT TO POWER PURCHASE AND SALE AGREEMENT

THIS FIRST AMENDMENT TO POWER PURCHASE AND SALE AGREEMENT (this “**First Amendment**”) is made and entered into as of November 15, 2018 (the “**First Amendment Effective Date**”), by and between RE Mustang Two Whirlaway LLC, a Delaware limited liability company (hereinafter “**Seller**”), and Peninsula Clean Energy, a California joint powers authority (hereinafter “**Buyer**”). Seller and Buyer are sometimes hereinafter referred to individually as a “**Party**” and together as the “**Parties**.”

### RECITALS:

A. WHEREAS, Seller and Buyer are parties to that certain Power Purchase and Sale Agreement dated as of August 25, 2017 (the “**PPA**”).

B. WHEREAS, the Parties wish to amend the PPA as set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

### Article 1.

#### AMENDMENTS TO THE PPA

1.1 Cover Sheet. The Cover Sheet of the PPA is amended by:

(a) deleting the date “June 30, 2020” from the Guaranteed Commercial Operation Date section of the Cover Sheet and replacing the same with the date “December 27, 2020”; and

(b) deleting in its entirety the table that appears in the Milestones section of the Cover Sheet and replacing the same with the following table:

Milestone	Completion Date
Site Control	December 31, 2017
Conditional Use Permit	September 30, 2018
Phase II Interconnection Study Results	Complete
Executed Interconnection Agreement	Complete
Financial Close	██████████
Construction Start	██████████
Initial Synchronization	June 1, 2020

Milestone	Completion Date
Commercial Operation Date	December 27, 2020
Deliverability Network Upgrades completed	August 31, 2022

1.2 Definitions; Removal of Section 201 Decision. Section 1.1 of the PPA is hereby amended by deleting in its entirety the defined term “**Section 201 Decision**”.

1.3 [REDACTED]. Section 3.7 of the PPA is hereby amended by deleting the date “November 1, 2019” in each instance that it appears in such section (i.e., the first and the last sentence of such section) and replacing the same with the date “July 1, 2020.”

1.4 Exhibit B – Facility Construction and Commercial Operation. Exhibit B of the PPA is hereby amended by deleting the same in its entirety and replacing it with Exhibit B attached to this First Amendment.

**Article 2.**

**GENERAL PROVISIONS**

2.1 Definitions and Rules of Interpretation. Initially-capitalized terms used in this First Amendment and not otherwise defined herein shall have the meanings ascribed to them in the PPA. The rules of interpretation set forth in Section 1.2 of the PPA shall apply to this First Amendment.

2.2 Force and Effect. The PPA, as amended hereby, remains in full force and effect.

2.3 Governing Law; Miscellaneous Provisions. The following articles of the PPA are incorporated herein by reference and apply to this First Amendment as if set forth fully herein and as if references in such sections to “this Agreement” were references to this First Amendment: (a) Article 16 (*Governing Law, Dispute Resolution, Attorneys’ Fees*); (b) Article 19 (*Confidential Information*); and (c) Article 20 (*Miscellaneous*).

**[SIGNATURES FOLLOW]**

IN WITNESS WHEREOF, this First Amendment has been executed and delivered by the duly authorized representatives of Seller and Buyer as of the date first written above.

SELLER  
RE Mustang Two Whirlaway LLC

BUYER  
Peninsula Clean Energy Authority

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

By: \_\_\_\_\_  
PCE Executive Officer

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

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

**EXHIBIT B**  
**FACILITY CONSTRUCTION AND COMMERCIAL OPERATION**

1. **Construction of the Facility.**

a. Seller shall cause construction to begin on the Facility by [REDACTED]  
[REDACTED] Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contracts, Seller's issuance of a notice to proceed under such contracts, mobilization to Site by Seller and/or its designees, and the physical movement of soil at the Site ("**Construction Start**"). On the date of Construction Start (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.

b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; [REDACTED]

[REDACTED] On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B. [REDACTED]

2. **Commercial Operation of the Facility.** "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has provided Notice to Buyer that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the later of (x) October 1, 2020 or (y) the date on which Commercial Operation is achieved.

a. Seller shall cause Commercial Operation for the Facility to occur by December 31, 2020 (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction Delay Damages with the first invoice to Buyer after the Commercial Operation Date.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Construction Delay Damages, as applicable, and Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date;  
[REDACTED]  
[REDACTED] Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.

- d. [REDACTED]

- 3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Construction Start [REDACTED] Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a).
- 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any delay arising out of the circumstance in which Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, no extension under the Development Cure Period shall be given if the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

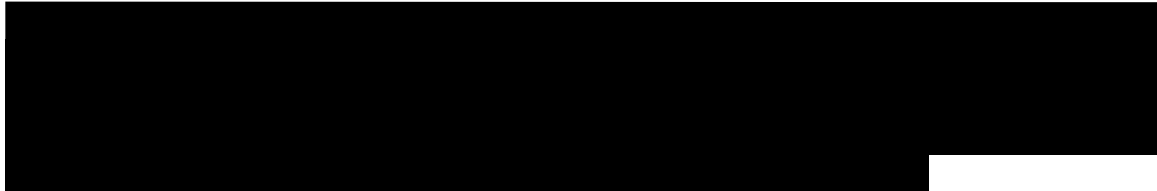
- 5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is at least ninety-five percent (95%) of Guaranteed Capacity, but less than the Guaranteed Capacity. Seller shall have ninety (90) days after the Commercial Operation



Date to install additional capacity such that the Installed Capacity is increased, but not to exceed the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed Capacity. In the event that the Installed Capacity is still less than the Guaranteed Capacity as of such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be reduced to an amount equal to the product of (a) the amount in effect prior to such adjustment, multiplied by (b) the ratio of the Installed Capacity as of such date to the original Guaranteed Capacity.

6. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Construction Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security to its full amount within ten (10) Business Days after such draw.

7.





San Mateo County | Atherton | Belmont | Brisbane | Burlingame | Colma | Daly City | East Palo Alto | Foster City  
Half Moon Bay | Hillsborough | Millbrae | Menlo Park | Pacifica | Portola Valley | Redwood City | San Bruno | San Carlos  
San Mateo | South San Francisco | Woodside

November 15, 2018

Peninsula Clean Energy  
2075 Woodside Rd.  
Redwood City, CA 94061  
Attention: Contracts Manager  
Email: [contracts@peninsulacleanenergy.com](mailto:contracts@peninsulacleanenergy.com)

Peninsula Clean Energy  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, CA 94063  
Attention: David Silberman, General Counsel  
Email: [dsilberman@smcgov.org](mailto:dsilberman@smcgov.org)

Re: Consent to Change of Control

Ladies and Gentlemen,

Reference is made to the Power Purchase and Sale Agreement, dated as of August 25, 2017, between Peninsula Clean Energy ("Peninsula") and RE Mustang Two Whirlaway LLC ("Whirlaway") ("Agreement"). Capitalized terms used but not otherwise defined in this letter (this "Letter") shall have the meanings ascribed to them in the Agreement.

Recurrent Energy Development Holdings, LLC has agreed, subject to the satisfaction of certain conditions precedent, to sell to Solar Frontier Americas Holding LLC 100% of the equity interests in RE Mustang Two LLC, which in turn owns 100% of the equity interest in Whirlaway (collectively, the "Sale"). The Sale will result in a Change of Control and, pursuant to Section 14.2 of the Agreement, Whirlaway must obtain Peninsula's consent prior to consummating a Change of Control. This Letter hereby requests Peninsula's consent to the Sale. By signing below, Peninsula acknowledges and agrees that (1) Peninsula hereby consents to the Sale under the terms and conditions of this Letter, (2) upon completing the Sale, the definition of "Ultimate Parent" in the Agreement is hereby changed from "Canadian Solar Inc." to "Solar Frontier Americas Inc.", (3) this Letter constitutes all required notice to Peninsula of, and all required consent from Peninsula with respect to, the Sale to the extent required by the Agreement, (4) to Buyer's knowledge, no Event of Default has occurred and is continuing, and, to the knowledge of Peninsula, no event has occurred that, with the passage of time or the giving of notice, would

constitute an Event of Default, and (5) upon completing the Sale, the Agreement will continue in full force and effect under the same terms and conditions as those in effect as of the date of this Letter, except as amended herein.

Upon consummation of the Sale, Seller's notice information is hereby updated as set forth on Schedule A hereto.

Please return a signed copy of this Letter to me at your earliest convenience in accordance with Section 9.1 of the Agreement. We thank you in advance for your collaboration.

*[signature page follows]*

Yours faithfully,

**RE MUSTANG TWO WHIRLAWAY LLC**

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

Name:

Title:

Agreed and acknowledged:

**PENINSULA CLEAN ENERGY**

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

Name:

Title:

**SOLAR FRONTIER AMERICAS HOLDING LLC**

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

Name:

Title:

## **SCHEDULE A**

### **Notice Information**

RE Mustang Two Whirlaway LLC  
c/o Solar Frontier Americas Holding LLC  
50 California Street #820  
San Francisco, CA 94111  
Attn: Project Management

With a copy to:

RE Mustang Two Whirlaway LLC  
c/o Solar Frontier Americas Holding LLC  
50 California Street #820  
San Francisco, CA 94111  
Attn: General Counsel