

**Regular Meeting of the Board of Directors of the  
Peninsula Clean Energy Authority (PCEA)****AGENDA****Thursday, May 26, 2022****6:30 p.m.****Zoom Link:** <https://pencleanenergy.zoom.us/j/82688645399>**Meeting ID:** 826-8864-5399 **Passcode:** 2075 **Phone:** +1(346)248-7799**NOTE: Please see attached document for additional detailed teleconference instructions.**

*In accordance with AB 361, the Board will adopt findings that meeting in person would present imminent risks to the health or safety of attendees of in-person meetings. Consistent with those findings, this Board Meeting will be held remotely. PCEA shall make every effort to ensure that its video conferenced meetings are accessible to people with disabilities as required by Governor Newsom's March 17, 2020 Executive Order N-29-20. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials should contact Nelly Wogberg, Board Clerk, at least 2 working days before the meeting at [nwogberg@peninsulacleanenergy.com](mailto:nwogberg@peninsulacleanenergy.com). Notification in advance of the meeting will enable PCEA to make best efforts to reasonably accommodate accessibility to this meeting and the materials related to it.*

*If you wish to speak to the Board of Directors, please use the "Raise Your Hand" function in the Zoom platform or press \*6 if you phoned into the meeting. If you have anything that you wish to be distributed to the Board of Directors and included in the official record, please send to [nwogberg@peninsulacleanenergy.com](mailto:nwogberg@peninsulacleanenergy.com).*

**CALL TO ORDER / ROLL CALL****PUBLIC COMMENT**

*This item is reserved for persons wishing to address the Committee on any PCEA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. Members of the public who wish to address the Board are customarily limited to two minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.*

**ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS**

1. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings
2. Approval of the Minutes for the April 28, 2022 Board of Directors Meeting
3. Authorize the General Counsel to Execute with The Law Firm of Clean Energy Counsel, an Engagement Agreement Allowing for a Term from February 2022 Through February 2024 in an Amount Not-to-Exceed \$500,000

4. Authorize the General Counsel to Execute with The Law Firm of Sheppard, Mullin, Richter & Hampton LLP, an Engagement Agreement Allowing for a Term from April 2022 Through December 2023 in an Amount Not-to-Exceed \$1,700,000

#### **REGULAR AGENDA**

5. Chair Report (Discussion)
6. CEO Report (Discussion)
7. Citizens Advisory Committee Report (Discussion)
8. Recognition of Peninsula Clean Energy's Fifth Anniversary of Service to San Mateo County (Discussion)
9. Approval of Resolution to Honor Members of the Citizens Advisory Committee (CAC) (Action)
10. Approval of New Citizens Advisory Committee (CAC) Members (Action)
11. Approval of Proposed 2022 Citizens Advisory Committee (CAC) Workplan and Deliverables (Action)
12. Approval of Authority for Peninsula Clean Energy Chief Executive Officer to Vote on California Community Power (CC Power) Board Items (Action)
13. Approve Resolution Delegating Authority to the Chief Executive Officer to Execute a Second Amended and Restated Power Purchase and Sale Agreement for Renewable Supply with Wright Solar Park, LLC, and any Necessary Ancillary Documents with a Power Delivery Term of 25 Years, Which Commenced at the Commercial Operation Date of January 3, 2020 in an Amount Not-to-Exceed \$900 Million (Action)
14. Review of Fiscal Year 2022-2023 Draft Budget (Discussion)
15. PG&E Voluntary Allocation and Market Offer Renewable Energy Credit Solicitation (Action)
16. Board Members' Reports (Discussion)

#### **INFORMATIONAL REPORTS**

17. 2021 Citizens Advisory Committee Workplan Deliverables and Role of the Committee

18. Financial Reports for Quarter Ending March 31, 2022
19. Update on Marketing, Outreach Activities, and Account Services
20. Update on Regulatory Policy Activities
21. Update on Legislative Activities
22. Update on Community Energy Programs
23. Update on Energy Supply Procurement
24. Industry Acronyms and Terms

### **ADJOURNMENT**

Public records that relate to any item on the open session agenda are available for public inspection. The records are available at the Peninsula Clean Energy offices or on PCEA's Website at: <https://www.peninsulacleanenergy.com>.

## Instructions for Joining a Zoom Meeting via Computer or Phone

### Best Practices:

- Please mute your microphone when you are not speaking to minimize audio feedback
- If possible, utilize headphones or ear buds to minimize audio feedback
- If participating via videoconference, audio quality is often better if you use the dial-in option (Option 2 below) rather than your computer audio

### Options for Joining

- A. Videoconference with Computer Audio – see Option 1 below
- B. Videoconference with Phone Call Audio– see Option 2 below
- C. Calling in via Telephone/Landline – see Option 3 below

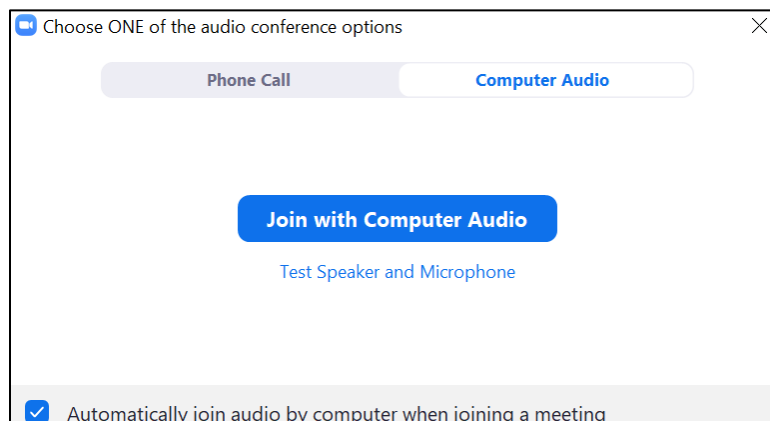
### Videoconference Options:

Prior to the meeting, we recommend that you install the Zoom Meetings application on your computer by clicking here <https://zoom.us/download>.

If you want full capabilities for videoconferencing (audio, video, screensharing) you must download the Zoom application.

### **Option 1 Videoconference with Computer Audio:**

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: <https://pencleanenergy.zoom.us/j/82688645399>
2. The Zoom application will open on its own or you will be instructed to open Zoom.
3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Computer Audio option at the top of the pop-up screen.

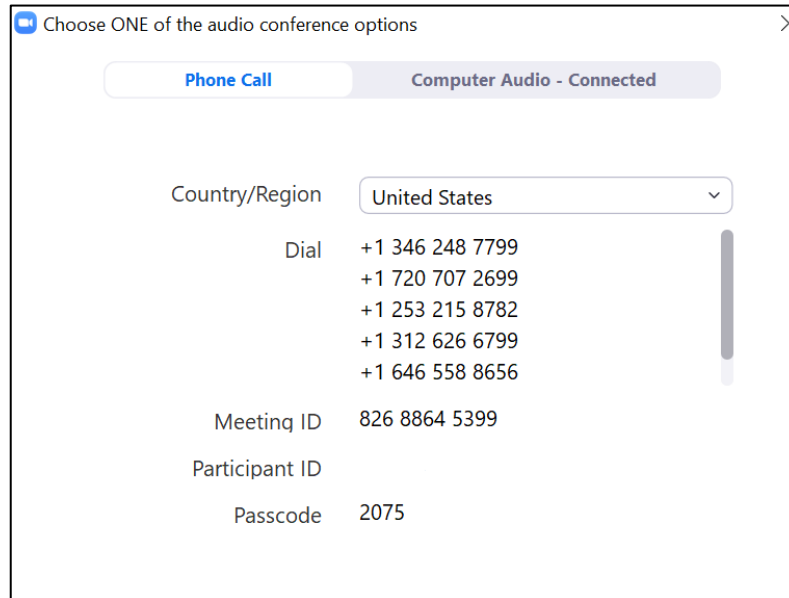


4. Click the blue, "Join with Computer Audio" button.
5. In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.



### **Option 2 Videoconference with Phone Call Audio:**

1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: <https://pencleanenergy.zoom.us/j/82688645399>
2. The Zoom Application will open on its own or you will be instructed to Open Zoom.



3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audioconference options. Click on the Phone Call option at the top of the pop-up screen.
4. Please dial +1(346)248-7799
5. You will be instructed to enter the meeting ID: **826-8864-5399 followed by #**
6. You will be instructed to enter in your participant ID. Your participant ID is unique to you and is what connects your phone number to your Zoom account
7. After a few seconds, your phone audio should be connected to the Zoom application on your computer
8. In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio

### **Audio Only Options:**

**Please note that if you call in/use the audio only option, you will not be able to see the speakers or any presentation materials in real time.**

### **Option 3: Calling in via Telephone/Landline:**

1. Dial +1(346)248-7799
2. You will be instructed to enter the meeting ID: **826-8864-5399 followed by #**
3. You will be instructed to enter your **Participant ID** followed by #. If you do not have a participant ID or do not know it, you can press # to stay on the line
4. You will be instructed to enter the meeting passcode **2075 followed by #**



**PENINSULA CLEAN ENERGY AUTHORITY**  
**JPA Board Correspondence**

**DATE:** April 19, 2022  
**BOARD MEETING DATE:** April 28, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority

**SUBJECT:** Resolution to Make Findings Allowing Continued Remote Meetings Under Brown Act

**RECOMMENDATION:**

Adopt a resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

**BACKGROUND:**

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for public agencies to transition back to public meetings held in full compliance with the Brown Act. The original Executive Order provided that all provisions of the Brown Act that required the physical presence of members or other personnel as a condition of participation or as a quorum for a public meeting were waived for public health reasons. If these waivers fully sunset on October 1, 2021, legislative bodies subject to the Brown Act would have to contend with a sudden return to full compliance with in-person meeting requirements as they existed prior to March 2020, including the requirement for full physical public access to all teleconference locations from which Board members were participating.

On September 16, 2021, the Governor signed AB 361, a bill that formalizes and modifies the teleconference procedures implemented by California public agencies in response to the Governor's Executive Orders addressing Brown Act compliance during shelter-in-place periods. AB 361 allows a local agency to continue to use teleconferencing under the same basic rules as provided in the Executive Orders when certain circumstances occur or when certain findings have been made and adopted by the local agency. On January 5, 2022, Governor Newsom extended the sunset provision of AB361 and Government Code Section 11133(g) from January 31, 2022 to April 1, 2022 due to the surge in Omicron variant related COVID-19 cases and hospitalizations.

AB 361 requires that, if the state of emergency remains active for more than thirty (30) days, the agency must make findings by majority vote to continue using the bill's exemption to the Brown Act teleconferencing rules. The findings are to the effect that the need for teleconferencing persists due to the nature of the ongoing public health emergency and the social distancing recommendations of local public health officials. **Effectively, this means that agencies, including PCEA, must agendize a Brown Act meeting and make findings regarding the circumstances of the emergency on a thirty (30) day basis. If at least thirty (30) days have transpired since its last meeting, the Boards must vote whether to continue to rely upon the law's provision for teleconference procedures in lieu of in-person meetings.**

AB 361 allows for meetings to be conducted virtually *as long as* there is a gubernatorially-proclaimed public emergency in combination with (1) local health official recommendations for social distancing or (2) adopted findings that meeting in person would present risks to health. AB 361 will now sunset on January 1, 2024.

On September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361. Out of an abundance of caution given AB 361's narrative that describes each legislative body's responsibility to reauthorize remote meetings, staff and counsel brings this memo and corresponding resolution to the attention of the Board of Directors.

On October 28, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On November 18, 2021 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On December 16, 2021 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On January 27, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On February 24, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On March 24, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

On April 28, 2022 the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361.

#### **DISCUSSION:**

Because of continuing concerns regarding COVID-19 transmission, especially when individuals are grouped together in close quarters, it is recommended that the Peninsula

Clean Energy Board of Directors avail itself of the provisions of AB 361 allowing continuation of online meetings by adopting findings to the effect that conducting in-person meetings would present risk to the health and safety of attendees. A resolution to that effect and directing staff to agendize the renewal of such findings in the event that thirty (30) days has passed since the Board's last meeting, is attached hereto.

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

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

**STATE OF CALIFORNIA**

\* \* \* \* \*

**RESOLUTION FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19  
PANDEMIC STATE OF EMERGENCY DECLARED BY GOVERNOR NEWSOM,  
MEETING IN PERSON FOR MEETINGS OF THE PENINSULA CLEAN ENERGY  
BOARD OF DIRECTORS WOULD PRESENT IMMINENT RISKS TO THE HEALTH  
OR SAFETY OF ATTENDEES**

---

**WHEREAS**, on March 4, 2020, the Governor proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code section 8625, that a state of emergency exists with regard to a novel coronavirus (a disease now known as COVID-19); and

**WHEREAS**, on June 4, 2021, the Governor clarified that the “reopening” of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder, and as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature; and

**WHEREAS**, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open Meeting law, Government Code section 54950 et seq. (the “Brown Act”), provided certain requirements were met and followed; and

**WHEREAS**, on September 16, 2021, Governor Newsom signed AB 361 that provides that a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconferencing rules in the Brown Act provided the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and,

**WHEREAS**, on January 5, 2022, Governor Newsom extended the sunset provision of AB361 and Government Code Section 11133(g) to January 1, 2024 due to surges and instability in COVID-19 cases; and,

**WHEREAS**, California Department of Public Health (“CDPH”) and the federal Centers for Disease Control and Prevention (“CDC”) caution that COVID-19 continues to be highly transmissible and that even fully vaccinated individuals can spread the virus to others; and,

**WHEREAS**, the Board has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings;

**WHEREAS**, on September 25, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361. Out of an abundance of caution given AB 361’s narrative that describes each legislative body’s responsibility to reauthorize remote meetings, staff and counsel bring this resolution to the attention of the Board of Directors, and;

**WHEREAS**, on October 28, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

**WHEREAS**, on November 18, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

**WHEREAS**, on December 16, 2021, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

**WHEREAS**, on January 27, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

**WHEREAS**, on February 24, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

**WHEREAS**, on March 24, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

**WHEREAS**, on April 28, 2022, the Peninsula Clean Energy Board of Directors approved a thirty (30) day extension of remote meetings in accordance with AB 361, and;

**WHEREAS**, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Board deems it necessary to find that meeting in person would present imminent risks to the health or safety of attendees, and thus intends to invoke the provisions of AB 361 related to teleconferencing.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that

1. The recitals set forth above are true and correct.

2. The Board finds that meeting in person would present imminent risks to the health or safety of attendees.
3. Staff is directed to return no later than thirty (30) days, or, alternatively, at the next scheduled meeting of the Board, after the adoption of this resolution with an item for the Board to consider making the findings required by AB 361 in order to continue meeting under its provisions.
4. Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

\* \* \* \* \*



**Regular Meeting of the Board of Directors of the  
Peninsula Clean Energy Authority (PCEA)  
Minutes**

Thursday, April 28, 2022

6:30 p.m.

Zoom Video Conference and Teleconference

**CALL TO ORDER**

Meeting was called to order at 6:32 p.m. in virtual teleconference.

**ROLL CALL**

**Participating Remotely:**

Dave Pine, San Mateo County  
Rick DeGolia, Atherton, *Chair*  
Julia Mates, Belmont  
Coleen Mackin, Brisbane  
Donna Colson, Burlingame, *Vice Chair*  
Carlos Romero, East Palo Alto  
Sam Hindi, Foster City, arrived at 6:43 p.m.  
Harvey Rarback, Half Moon Bay  
Laurence May, Hillsborough  
Jen Wolosin, Menlo Park  
Tygarjas Bigstyck, Pacifica  
Giselle Hale, Redwood City  
Laura Parmer-Lohan, San Carlos  
Rick Bonilla, San Mateo  
James Coleman, South San Francisco

Pradeep Gupta, Director Emeritus  
John Keener, Director Emeritus

**Absent:**

Warren Slocum, San Mateo County  
Raquel Gonzalez, Colma  
Roderick Daus-Magbual, Daly City  
Tom Faria, Los Banos  
Anders Fung, Millbrae  
Marty Medina, San Bruno  
Jeff Aalfs, Portola Valley  
Jennifer Wall, Woodside

**A quorum was established.**

**PUBLIC COMMENT**

Nelly Wogberg, Board Clerk, announced one public comment submitted via email which can be found on the Board of Directors Agenda Page.

Jeremy Sarnecky

## **ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS**

Director Mackin asked a clarifying question, for a section of Agenda Item Number 5, “Staff expects that another CCA would become the Responsible Party if the Joint CCAs later decide to execute another consulting agreement under the Cost-Sharing Agreement for a different service.” Director Mackin asked staff to identify if “another consulting agreement” means a different agreement or an additional agreement, and if “different service” means a different vendor or a different service. in the statement. Chelsea Keys, Senior Power Resources Manager, explained that this statement allows other cost-sharing Community Choice Aggregators (CCAs) to become the responsible party to manage contracts and invoicing, and that the different service alludes to a future contract.

**MOTION:** Director Bonilla moved, seconded by Director Romero to set the Agenda, and approve Agenda Item Numbers 1-7.

1. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Committee Meetings Due to Health Risks Posed by In-Person Meetings
2. Approval of the Minutes for the March 24, 2022 Board of Director’s Meeting
3. Approval of an Amendment to the Agreement with Darren Goode to Provide Professional Services Through May 31, 2023, Increasing the Amount by \$112,000 for a Total Not-to-Exceed Amount of \$442,000
4. Authorize Chief Executive Officer to Execute Cost-Sharing and Reimbursement Agreement Between The Peninsula Clean Energy Authority, City of San Jose, Administrator of San Jose Clean Energy, The East Bay Community Energy Authority, and Central Coast Community Energy
5. Authorize Chief Executive Officer to Execute an Addendum to the Cost-Sharing and Reimbursement Agreement Between The Peninsula Clean Energy Authority, City of San Jose, Administrator of San Jose Clean Energy (SJCE), The East Bay Community Energy Authority (EBCE), and Central Coast Community Energy (CCCE) for Resource Adequacy Services with The Energy Authority, Inc.
6. Authorize Chief Executive Officer to Execute a Consulting Agreement for Resource Adequacy Services with The Energy Authority, Inc., for a term of June 17, 2022 to June 16, 2025, and in an Amount Not-to-Exceed \$650,000
7. Approval of Renewal of Insurance Package Coverage for the Period From May 1, 2022 Through April 30, 2023 at an Annual Cost Not-to-Exceed \$180,184

**MOTION PASSED:** 15-0 (Absent: San Mateo County, Colma, Daly City, Los Banos, Millbrae, Portola Valley, San Bruno, Woodside)

<b>JURISDICTION</b>	<b>BOARD MEMBER</b>	<b>YES</b>	<b>NO</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
San Mateo County	Director Pine	X			
San Mateo County	Director Slocum				X
Atherton	Director DeGolia	X			

Belmont	Director Mates	X			
Brisbane	Director Mackin	X			
Burlingame	Director Colson	X			
Colma	Director Gonzalez				X
Daly City	Director Daus-Magbual				X
East Palo Alto	Director Romero	X			
Foster City	Director Hindi	X			
Half Moon Bay	Director Rarback	X			
Hillsborough	Director May	X			
Los Banos	Director Faria				X
Menlo Park	Director Wolosin	X			
Millbrae	Director Fung				X
Pacifica	Director Bigstyk	X			
Portola Valley	Director Aalfs				X
Redwood City	Director Hale	X			
San Bruno	Director Medina				X
San Carlos	Director Parmer-Lohan	X			
San Mateo	Director Bonilla	X			
South San Francisco	Director Coleman	X			
Woodside	Director Wall				X
	Totals	15			8

## **REGULAR AGENDA**

### **8. CHAIR REPORT**

None

### **9. CEO REPORT**

Jan Pepper, CEO, gave a report including welcoming Peninsula Clean Energy's new COO, Shawn Marshall, a recruiting update, an update on California Public Utilities Commissioner and California Energy Commissioner meetings, an update on California Community Power's (CC Power) Firm Clean Resource RFO timeline, a legislation update, and an update on 24/7 and Decarbonization presentations.

Chair DeGolia asked if there was any consideration for the Peninsula Clean Energy Board meeting in person. Jan explained that Peninsula Clean Energy is not set up to host Board Meetings in the office due to space limitations and offered to bring this item to the Executive Committee to explore hybrid options.

Director Hale suggested to let other meeting groups be first to troubleshoot the technology upgrades needed to conduct a hybrid meeting.

Public Comment: Jeremy Sarnecky, Mark Roest

#### **10. CITIZENS ADVISORY COMMITTEE REPORT**

Morgan Chaknova, Citizens Advisory Committee (CAC) Chair, gave an update on changes to the 2022 CAC Work Plan, an update on the Diversity, Equity, Accessibility and Inclusion project, an overview of the discussion on survey results and the role of the CAC. Morgan explained that two main interest areas were formed from that discussion: educators and advocates in the community, and strategic advising.

#### **11. Update on Customer Arrearage Programs - CAPP and AMP (Discussion)**

Leslie Brown, Director of Account Services, gave a presentation on customer arrearage programs: California Arrearage Payment Program (CAPP) and Arrears Management Plan (AMP). Leslie covered CAPP background information, detailed program information, customer priority groups, application and allocation timeline. For AMP, Leslie covered detailed program information, eligibility, and AMP eligible Peninsula Clean Energy customers.

Chair DeGolia asked how outstanding balances would impact Peninsula Clean Energy financials. Leslie explained that there is a policy to retain a certain percentage for bad debts, but that in general Peninsula Clean Energy has not come near that number. Leslie also explained that these programs allow a reset for many customers and provides compensation for what could have ended up as bad debt.

#### **12. Update on Los Banos Enrollment**

Leslie Brown, Director of Account Services, gave a presentation with an update on the Los Banos enrollment. Leslie shared that enrollment notices were sent out in February and March, with the enrollment process beginning in April. May will be the first time that Los Banos residents will receive a bill from PG&E with the Peninsula Clean Energy line item. Opt-outs are currently sitting at 258 total opt-outs of approximately 12,700 notices. Leslie explained that most opt-outs occurred because of a dislike of being automatically enrolled, and that most of these enrollments happen without speaking to a Customer Service Representative.

Director Bonilla asked the percent of the opt-out rate. Leslie explained that currently there is approximately a 2% opt-out rate.

#### **13. BOARD MEMBERS' REPORTS**

Vice Chair Colson shared her gratitude for the Sustainable Commercial Building Award for Burlingame's Net-Zero Energy Community Center. The grand opening will be around June 15<sup>th</sup> and all are welcome.

Chair DeGolia announced that the new Atherton Town Center Library will be opening at the end of May 2022. On June 4<sup>th</sup> there will be a grand opening where all are welcome.

**ADJOURNMENT**

Meeting was adjourned at 7:28 p.m.

**PENINSULA CLEAN ENERGY  
JPA Board Correspondence  
General Counsel**

**DATE:** May 16, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable PCE Joint Powers Board

**FROM:** David A. Silberman, General Counsel  
Jennifer Stalzer Kraske, Associate General Counsel

**SUBJECT:** Authorize the General Counsel to execute with the law firm of Clean Energy Counsel, an Engagement Agreement allowing for a Term from February 2022 through February 2024 in an amount not to exceed of \$500,000.

**RECOMMENDATION:**

Adopt Resolution Authorizing the General Counsel to execute with the law firm of Clean Energy Counsel, an engagement agreement allowing for a term from February 2022 through February 2024 in an amount not to exceed of \$500,000.

**BACKGROUND:**

The County Counsel's Office provides legal services to the Peninsula Clean Energy Authority pursuant to a contract approved by the Board March 24, 2016 and subsequently amended to extend the term and increase the amount.

Pursuant to that agreement, the County Counsel serves as General Counsel to the Board and has authority to retain services of outside counsel in an amount not to exceed \$25,000.

Certain projects important to Peninsula Clean Energy can benefit from time-to-time by the assistance of lawyers who focus primarily on those areas of law, including the litigation of complicated regulatory proceedings before the California Public Utilities Commission ("CPUC") and negotiation of complex power purchase agreements.

Peninsula Clean Energy's first outside counsel for power purchase agreements was Steve Hall, then of Troutman Sanders. Mr. Hall had worked with Marin Clean Energy and Sonoma Clean Power on their launches.

Subsequently, Winston & Strawn has been providing Peninsula Clean Energy with significant assistance in negotiating almost all of its Power Purchase Agreements since approval by the Board to retain its services on October 27, 2016. We have been very satisfied with that assistance to date. However, it is beneficial to have the support of multiple law firms to address potential legal conflicts, because it has the potential to manage costs and allows Peninsula Clean Energy to explore different legal perspectives.

### **DISCUSSION:**

General Counsel and the CEO believe that Peninsula Clean Energy benefits from having the flexibility to work with multiple firms for PPA negotiations. Each firm has the potential to bring slightly different strengths to the table at varying costs. Further, the General Counsel and CEO believe that expanding the landscape of firms doing work for CCAs will benefit the community as a whole. In addition, it is possible that each firm could have potential conflicts that would prevent them from working with Peninsula Clean Energy on particular matters and/or be unavailable to provide services.

There is a relatively limited number of lawyers specializing in the negotiation of power purchase agreements. The transactions being negotiated are very complex and collectively worth many hundreds of millions of dollars and require a very high level of assistance from specialized lawyers. In 2021 the General Counsel, CEO and Director of Power Resources identified firms that might be able to supplement our current legal support.

We identified Clean Energy Counsel as well-qualified to assist Peninsula Clean Energy. We also interviewed two lawyers from the firm and checked references with CCAs that have had prior experience working with the firm. In 2021, Peninsula Clean Energy executed an engagement letter with Clean Energy Counsel to provide legal services for a term of one year. Staff has had a positive experience working with Clean Energy Counsel and recommends extending the engagement agreement for two years.

The retention agreements do not obligate Peninsula Clean Energy to expend any particular sum of money on legal services. It provides a framework to access to those services as they become necessary.

Accordingly, we are asking the Board to authorize the General Counsel to execute an engagement agreement, for a total expenditure not to exceed \$500,000 for terms from February 2022 through February 2024.

### **FISCAL IMPACT:**

The financial impact of will not exceed \$500,000.

**STRATEGIC PLAN:**

This contract supports staff's ability to meet the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis
- Objective B: Procure power resources to meet regulatory mandates and internal priorities at an affordable cost

**ATTACHMENTS:**

Clean Energy Counsel Engagement Letter



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

\* \* \* \* \*

**RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE WITH THE LAW  
FIRM OF CLEAN ENERGY COUNSEL AN ENGAGEMENT AGREEMENT  
ALLOWING FOR A TERM FROM FEBRUARY 2022 THROUGH FEBRUARY 2024  
AND IN A TOTAL NOT TO EXCEED AMOUNT OF \$500,000.**

---

**RESOLVED**, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

**WHEREAS**, the Peninsula Clean Energy Authority (“Peninsula Clean Energy”) was formed on February 29, 2016; and

**WHEREAS**, the JPA Agreement forming Peninsula Clean Energy delegates to the Board the power to hire a General Counsel pursuant to Paragraph 3.3.2; and

**WHEREAS**, the San Mateo County Counsel’s Office has been appointed General Counsel and has been delegated authority to retain outside legal services in amounts not to exceed \$25,000; and

**WHEREAS**, the General Counsel has determined it was necessary to seek outside legal services related to negotiation of Power Purchase Agreements.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the General Counsel is authorized to execute with the law firm of Clean Energy Counsel an

engagement agreement for a term from February 2022 through February 2024 in an amount not to exceed \$500,000.

\* \* \* \* \*

[CCO-113499]

## CLEAN ENERGY COUNSEL

555 Montgomery Street, Suite 1205  
San Francisco, California 94111-2582  
[www.CleanEnergyCounsel.com](http://www.CleanEnergyCounsel.com)

May 27, 2022

Via Email ([dsilberman@smcgov.org](mailto:dsilberman@smcgov.org).)

David Silberman  
General Counsel  
Peninsula Clean Energy

Re: Engagement for Legal Services

Dear David,

This letter sets forth the terms of the agreement (this "Agreement") under which Clean Energy Counsel, LLP ("CEC" or "we") will provide legal services to Peninsula Clean Energy ("Client" or "you").

1. SCOPE OF REPRESENTATION. Client engages CEC to provide legal advice, counseling and other legal services in connection with Power Purchase Agreement negotiations. We will provide legal services reasonably required to represent you. We will take reasonable steps to keep you informed of progress and to respond to your inquiries. This Agreement does not cover litigation services of any kind, whether in court, arbitration, administrative hearings, or government agency hearings. Separate arrangements must be agreed to for those services. Services that you may request in the future with respect to this or any other matter will be performed pursuant to the terms of this Agreement.

2. LEGAL FEES AND BILLING PRACTICES. I will have primary responsibility for this representation and will utilize other attorneys and paralegals as may be appropriate on the initial matter. Unless otherwise agreed in writing for any matter, you agree to pay by the hour at our prevailing rates for all time spent on your matter by our legal personnel. My current hourly rate is \$650 and Todd Larsen's hourly rate is \$550. Our current rates for other attorneys range from \$475 to \$600 per hour depending on experience and expertise, and our paralegal rate is \$250 per hour. Some of our attorneys work as independent contractors. We will include our charges for contract attorneys at their applicable hourly rates on our invoice to you, and we will be responsible for compensating them under a separate agreement.

Our hourly rates are subject to change in the future and do not require an amendment to this agreement, but we will provide you with prior written or email notice before making any rate change. The time charged will include the time CEC spends on telephone calls relating to your matters, including calls with you and other parties and attorneys. The legal personnel assigned to your matters may confer among themselves, as required or appropriate and may charge for the time expended, as long as the work done is reasonably necessary and not duplicative. Likewise, if more than one of the legal personnel attends a meeting or other proceeding, each will charge for the time spent.

However, we understand that you are a public entity and expenditures must be approved by your Board. Further we understand that the authority you have to obtain legal services from us is currently limited to an amount not to exceed \$500,000 for the period from March 1, 2022 to February 28, 2024.

David Silberman  
Peninsula Clean Energy  
April 18, 2022

Accordingly, we will not charge you for legal services beyond that amount absent a written amendment to this agreement. Further we will notify you when we exceed a total of \$450,000 in billables.

3. COSTS AND OTHER CHARGES.

(a) *Cost reimbursement generally.* We may incur various costs and expenses in performing legal services under this Agreement. You agree to pay for those costs, disbursements and expenses that we reasonably incur upon your request or authorization in addition to the hourly fees. Such costs and expenses may include fees assessed by public agencies, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, local travel costs (such as parking and mileage) and other similar items.

(b) *Out-of-town travel.* You agree to pay transportation, meals, lodging and all other costs of any necessary, pre-approved out-of-town travel by our personnel.

(c) *Consultants and Advisors.* If we believe it is necessary to hire consultants or other advisors to assist with the matters covered by this Agreement, we will seek your approval before hiring them, and if you approve, you agree to pay their fees and charges.

4. BILLING STATEMENTS. We will send you periodic statements (normally on a monthly basis) for fees and costs incurred. Each statement will be payable upon receipt, and we may charge you interest at the rate of 10% per year (0.833% per month) on any invoice that is not paid within 30 days of receipt if we have provided you notice of your failure to pay and you do not cure within 5 business days. Upon your reasonable request, we will provide an informational statement or up-to-date billing report through the date of the request.

5. RETAINER. We do not require a retainer at this time. However, we may require a retainer at a later time if invoices are not being paid in a timely manner.

6. TERM OF ENGAGEMENT. Either of us may terminate this Agreement and our engagement hereunder at any time for any reason by written notice, subject on our part to applicable rules of professional conduct. If we terminate the engagement prior to its conclusion, we will take reasonable steps to protect your interest in any matters as to which we are then representing you.

7. DISCLAIMER OF GUARANTEE AND ESTIMATES. Nothing in this Agreement and nothing in CEC's statements to Client will be construed as a promise or guarantee about the outcome of any matter. CEC makes no such promises or guarantees. CEC's comments about the outcome of any matter are expressions of opinion only. Unless otherwise specified, any estimate of fees given by CEC is not a guarantee. Actual fees may vary from estimates given.

8. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties. No other agreement, statement, or promise made on or before the effective date of this Agreement will be binding on the parties.

David Silberman  
Peninsula Clean Energy  
April 18, 2022

9. SEVERABILITY IN EVENT OF PARTIAL INVALIDITY. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.

10. MODIFICATION IN WRITING. Any amendment or modification of, or consent or waiver in respect of, this Agreement must be in writing and signed or acknowledged electronically by both parties (or in a case of a consent or waiver, by the party consenting or waiving the claim or right) or an oral agreement only to the extent that the parties carry it out. For purposes of this Agreement, "writing" includes a communication transmitted by email by one party and acknowledged and agreed by the other party in a return email. So, any subsequent agreements, consents or waivers (including informed consents to and waivers of conflicts of interest), may be acknowledged and approved in emails exchanged by our respective authorized representative(s).

11. CONSENT TO REPRESENTATION OF OTHER CLIENTS. The firm represents many other companies and individuals. You agree that we may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you, even if the interests of such clients in those other matters may be directly or indirectly adverse to you. In addition, we often are asked by clients to advise on nondisclosure or confidentiality agreements ("NDAs") where another client is the counterparty. You agree, and by signing below provide your informed consent to (i) our advising you on an NDA where another CEC client is your counterparty under that NDA, and (ii) our advising another client on an NDA where you are a counterparty under that NDA, provided, however, that we will not advise both you and the other client as counterparties to the same NDA. We also agree that the prospective consent to conflicting representation contained in this paragraph shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a non-public nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage. You should know that, in similar engagement letters with many of our other clients, we have asked for similar agreements to preserve our ability to represent you.

12. LIMITED LIABILITY PARTNERSHIP. CEC is a limited liability partnership ("LLP"). Similar to the corporate form of business organization, the LLP form generally limits the liability of the individual partners of CEC to the capital they have invested in CEC for claims arising from services performed by CEC. Our form of organization as an LLP will not diminish the ability to recover damages from CEC or from any individuals who directly caused the loss.

13. PUBLIC IDENTIFICATION OF CLIENT. CEC sometimes identifies clients in presentation to prospective clients or in various public communications, including press releases, our website, and other publications used to describe our firm, our lawyers and our capabilities. In connection with and as a part of such communications, we sometimes describe in generic terms the nature of work done for particular clients. If you do not wish us to refer to you or your representation in this fashion, please notify us upon receipt of this letter. Otherwise, we will treat your retention of us as consent to reveal your name and, in generic terms, the nature of our work for you, as described above.

14. EFFECTIVE DATE; COUNTERPARTS; ELECTRONIC SIGNATURES. This Agreement will govern all legal

David Silberman  
Peninsula Clean Energy  
April 18, 2022

services performed by CEC on behalf of Client. The date at the beginning of this Agreement is for reference only. Each party agrees that its electronically delivered signature shall be legally binding and enforceable.

We appreciate the opportunity to assist you.

Very truly yours,

Clean Energy Counsel, LLP

By: \_\_\_\_\_  
Karleen Stern, Partner

David Silberman  
Peninsula Clean Energy  
April 18, 2022

Client has read and understands the foregoing terms and agrees to them as of the date CEC first provided services. IF MORE THAN ONE CLIENT SIGNS BELOW, EACH AGREES TO BE LIABLE, JOINTLY AND SEVERALLY, FOR ALL OBLIGATIONS UNDER THIS AGREEMENT.

By signing this letter, Client acknowledges that it has been afforded the full opportunity to review it and seek the advice of independent counsel and has in fact consulted with independent counsel or chosen not to do so.

BY SIGNING THIS LETTER, CLIENT ACKNOWLEDGES THAT ANY ISSUE ARISING OUT OF OR RELATING TO CEC'S SERVICES (INCLUDING ANY CLAIM FOR PROFESSIONAL LIABILITY) MUST BE DECIDED IN ARBITRATION AS SPECIFIED IN SECTION 12 ABOVE AND THAT IT IS GIVING UP ITS RIGHT TO A JURY OR COURT TRIAL.

ACKNOWLEDGED and AGREED to

Dated: April 18, 2022

Peninsula Clean Energy

By: \_\_\_\_\_  
Name: David Silberman  
Title: General Counsel

David Silberman  
Peninsula Clean Energy  
April 18, 2022

**RETAINER PAYMENT INSTRUCTIONS**

**ACH TRANSFER INSTRUCTIONS – CEC TRUST ACCOUNT:**

JPMorgan Chase Bank NA  
San Francisco California  
ABA Routing Number: 322 271 627  
Acct: 626 392 893

**WIRE INSTRUCTIONS – CEC TRUST ACCOUNT:**

**ONLY USE THIS IF REQUESTING YOUR BANK TO SEND A FEDERAL WIRE**

JPMorgan Chase Bank NA  
270 Park Avenue  
New York, NY 10017  
Routing number: 021 000 021  
Acct: 626 392 893



**PENINSULA CLEAN ENERGY  
JPA Board Correspondence  
General Counsel**

**DATE:** May 16, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable PCE Joint Powers Board

**FROM:** David A. Silberman, General Counsel  
Jennifer Stalzer, Associate General Counsel

**SUBJECT:** Authorize the General Counsel to execute with the law firm of Sheppard, Mullin, Richter & Hampton LLP, an Engagement Agreement allowing for a Term from April 2022 through December 2023 in an amount not to exceed of \$1,700,000.

**RECOMMENDATION:**

Adopt Resolution Authorizing the General Counsel to execute with the law firm of Sheppard, Mullin, Richter & Hampton LLP, an engagement agreement allowing for a term from April 2022 through December 2023 in an amount not to exceed of \$1,700,000.

**BACKGROUND:**

The County Counsel's Office provides legal services to the Peninsula Clean Energy Authority pursuant to a contract approved by the Board March 24, 2016, and subsequently amended to extend the term and increase the amount.

Pursuant to that agreement, the County Counsel serves as General Counsel to the Board and has authority to retain services of outside counsel in an amount not to exceed \$25,000.

Certain projects important to Peninsula Clean Energy can benefit from time-to-time by the assistance of lawyers who focus primarily on those areas of law, including the litigation of complicated regulatory proceedings before the California Public Utilities Commission ("CPUC") and negotiation of complex power purchase agreements.

Peninsula Clean Energy's first outside counsel for power purchase agreements was Steve Hall, then of Troutman Sanders. Mr. Hall had worked with Marin Clean Energy and Sonoma Clean Power on their launches.

Subsequently, Winston & Strawn has been providing Peninsula Clean Energy with significant assistance in negotiating almost all of its Power Purchase Agreements since

approval by the Board to retain its services on October 27, 2016. We have been very satisfied with that assistance to date. In April 2022, the attorneys that we've worked with at Winston & Strawn moved to a new law firm, Sheppard, Mullin, Richter & Hampton LLP.

**DISCUSSION:**

Based on the productive working relationship between Peninsula Clean Energy staff, Peninsula Clean Energy general counsel and the lawyers at Winston & Strawn, staff recommends executing a new engagement letter with the firm of Sheppard Mullin, where the Winston & Strawn attorneys have moved.

There is a relatively limited number of lawyers specializing in the negotiation of power purchase agreements. The transactions being negotiated are very complex and collectively worth hundreds of millions of dollars and require a very high level of assistance from specialized lawyers. Therefore, it is important for staff and Peninsula Clean Energy general counsel to have a positive and productive working relationship with the lawyers representing Peninsula Clean Energy in these matters.

The retention agreements do not obligate Peninsula Clean Energy to expend any particular sum of money on legal services. It provides a framework to access to those services as they become necessary.

Accordingly, we are asking the Board to authorize the General Counsel to execute an engagement agreement, for a total expenditure not to exceed \$1,700,000 for terms from April 2022 through December 2023.

**FISCAL IMPACT:**

The financial impact of will not exceed \$1, 700,000.

**STRATEGIC PLAN:**

This contract supports staff's ability to meet the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis
- Objective B: Procure power resources to meet regulatory mandates and internal priorities at an affordable cost

**ATTACHMENTS:**

Sheppard Mullin Engagement Letter

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

**\* \* \* \* \***

**RESOLUTION AUTHORIZING GENERAL COUNSEL TO EXECUTE WITH THE LAW  
FIRM OF CLEAN ENERGY COUNSEL AN ENGAGEMENT AGREEMENT  
ALLOWING FOR A TERM FROM APRIL 2022 THROUGH DECEMBER 2023 AND IN  
A TOTAL NOT TO EXCEED AMOUNT OF \$1,700,000.**

---

**RESOLVED**, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

**WHEREAS**, the Peninsula Clean Energy Authority (“Peninsula Clean Energy”) was formed on February 29, 2016; and

**WHEREAS**, the JPA Agreement forming Peninsula Clean Energy delegates to the Board the power to hire a General Counsel pursuant to Paragraph 3.3.2; and

**WHEREAS**, the San Mateo County Counsel’s Office has been appointed General Counsel and has been delegated authority to retain outside legal services in amounts not to exceed \$25,000; and

**WHEREAS**, the General Counsel has determined it was necessary to seek outside legal services related to negotiation of Power Purchase Agreements.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the General Counsel is authorized to execute with the law firm of Sheppard, Mullin, Richter & Hampton LLP an engagement agreement for a term from April 2022 through December 2023 in an amount not to exceed \$1,700,000.

\* \* \* \* \*

[CCO-113499]

Joe Karp  
4157743118 direct  
jkarp@sheppardmullin.com

May 27, 2022

**VIA EMAIL**

David Silberman  
Peninsula Clean Energy Authority  
2075 Woodside Rd  
Redwood City, CA 94061

Re: Engagement of Sheppard, Mullin, Richter & Hampton LLP

Dear David:

The purpose of this letter is to confirm our engagement by Peninsula Clean Energy Authority (the "Company") to represent it in connection with energy transactions (the "Matter"). We appreciate your confidence and thank you for selecting us as counsel.

1. Scope of Representation. Except as we may agree otherwise in writing, we will be representing only the Company and will not be representing any parent, subsidiary or other affiliated entity nor any shareholder, partner, member, director, officer, employee, agent or insurer of the Company. Except as we may otherwise agree, the terms of this letter apply to other engagements for the Company that we may undertake.

2. Fees and Charges. Our fees are based on hours charged at scheduled rates that are periodically adjusted, generally as of the beginning of a calendar year. The hourly rates at this time are \$1,340 for me; however, we will provide a 10% discount off my rate and the rates of other attorneys expected to work on your matters. Our scheduled hourly rates for other attorneys range from \$530 to \$1,640. At this time, the Company is authorizing the incurrence of an amount of fees and costs not to exceed \$1,700,000 in the aggregate during calendar years 2022 and 2023. When we become aware of a reasonable likelihood that fees and/or costs under this agreement will exceed \$1,700,000, we will notify you before we incur fees and costs in excess of \$1,700,000. In addition to fees, the Company is responsible for costs associated with our representation (collectively "Charges"). Charges include but are not limited to copy costs at \$.10 and \$.25 per page (B&W/color), legal and business research databases charged at retail less 10%, fees of governmental agencies and disbursements and/or charges for third parties, travel, postage delivery and other costs. Our standard practice is to have certain charges for outside retained services such as process service, court and deposition reporting and transcription services, expert witnesses, and investigation services invoiced to the Company directly. This letter constitutes the Company's agreement to pay all such invoices prior to delinquency and to hold us harmless from its failure to do so. Of course, to the extent such third party charges are paid directly by us they will be included in our statements.

Statements are submitted monthly and are due and payable upon receipt. The Company agrees to notify us promptly in writing if you dispute any entry for legal services or charges on any statement. In the absence of any written objection thereto within thirty (30) days of the Company's receipt of an invoice, the Company will be deemed to have accepted and acknowledged the invoice as correct through the period covered by the invoice. Pursuant to the Rules of Professional Conduct, we will withdraw from the representation if invoices are not paid per the terms of this agreement. Also, interest is charged at 10% per annum from date of statement for amounts outstanding more than sixty (60) days.

Unless we otherwise expressly agree in writing, any estimates we may provide from time to time and any deposits, retainers, or advances against costs we may require are not a limitation on our fees and other charges.

3. Advance Waiver of Conflicts of Interest. We undertake this engagement on the condition that the Company consents to our representation of existing clients or new clients in business negotiations, bankruptcy proceedings as co-creditors or in preference actions, transactions, discovery requests and related disputes we make on behalf of another Firm client, administrative proceedings, regulatory applications or other legal advice matters, even if the interests of the clients in those other matters are directly adverse to the Company's interests, provided that the matters are not substantially related to the current engagement for the Company and we do not have material confidential information. The Company agrees that we may represent other clients adverse to the Company in these matters so long as they are not substantially related to the legal matter(s) on which we represent the Company. Except as to third party discovery requests and related disputes, this waiver does not extend to litigation or any matter where we have material and relevant confidential information of the Company.

In particular, by signing this letter, the Company consents in advance to our representing a party in another matter that is adverse or becomes adverse to the Company in this matter, while at the same time we continue to represent the Company, provided that the other matter (1) is not substantially related to any matter we have handled or are handling for the Company and (2) does not involve the Company as a party. The Company agrees, however, that, in the event the Company or one of its affiliates is a bidder or potential purchaser of an asset, we may simultaneously represent other bidders or purchasers in that bidding process with the understanding that we will have separate lawyers represent each client. When relying on these advance waivers, we will notify the Company in advance of our intent to do so, to the extent permitted by the applicable rules of professional conduct.

In addition, an ethical wall will be established preventing all attorneys not involved in the representation of the Company from accessing the Company's files.

When clients are asked to waive a conflict of interest, they typically consider whether they are concerned that their lawyer will be less zealous by virtue of the conflict. In addition, clients typically consider whether there is a risk that their confidential information will be accessed and either disclosed or used against them as a result of the conflicted representation. Because this waiver does not apply to litigations, arbitrations or other forms of alternative dispute resolution (except as to discovery proceedings), and because an ethical wall will be established preventing all attorneys not involved in the representation of the Company from accessing the Company's

files or other confidential information, we believe this risk is minimal. This, however, is something that the Company needs to decide for itself. By consenting to this arrangement, the Company is waiving a portion of our obligation of loyalty to it so long as we maintain confidentiality and adhere to the foregoing limitations. We encourage the Company to consult other counsel concerning this waiver. By signing this letter, the Company acknowledges that it has had an opportunity to consult with other counsel. If you need additional time to do so, please let us know.

4. In-Firm Privilege. We may have occasion to seek legal advice about our own rights and responsibilities regarding our engagement by the Company. We may seek such advice from attorneys in our internal Office of the General Counsel who do not do work for the Company or from outside attorneys at our own expense. The Company agrees that any such communications and advice are protected by our own attorney-client privilege and neither the fact of any communication nor their substance is subject to disclosure to the Company.

5. Termination of Representation. The Company has the right to terminate our representation at any time. Subject to our ethical obligation to give the Company reasonable notice to arrange for alternate representation, we may terminate our representation at any time. Our work for the Company and our attorney-client relationship on any matter for which we are engaged will end upon the earliest of: our completion of our work on the matter; the passage of six (6) months without fees being billed on the matter (unless the matter remains active but we are waiting on a court, other tribunal, or administrative body to rule or act on a pending pleading, motion, request, or other submission); our sending the Company written notice that our representation has ended; or sending our final bill for services rendered. Upon the occurrence of any one of the foregoing, the Company will be deemed a former client on such matter for conflict purposes. That will be the case whether or not, as is not uncommon, we are designated to receive copies or courtesy copies of notices under one or more transaction documents. If you ask us to represent the Company on another matter, we may agree or decline to do so in our discretion.

6. Disclosures and Public Announcements. We will be permitted to disclose to third parties the fact that we represented the Company in transactions we complete on its behalf, and to describe in general terms our role, the services we performed, and the nature of the transaction. These disclosures may be made to current or prospective clients or to others, and may consist of announcements and advertisements placed at our own expense in legal, business, financial and other periodicals and publications.

7. Our Document Retention. It is our policy and practice to destroy our files seven (7) years after the file is first closed unless the client requests a shorter or longer retention period in writing. Files are generally closed at the conclusion of a lawsuit or completion of a transaction. In addition, the Company agrees that our work product including our internal emails, internal drafts, notes and mental impressions belong to us as lawyers and are not part of your client file.

8. Arbitration, Choice of Law and Forum. Arbitration has the potential to provide a more timely, more economic and more confidential resolution of any dispute between us. Any dispute between us concerning our fees or charges shall, if you so elect, be submitted to arbitration under the rules of the State Bar of California ("the Rules"), and shall be binding if (i) each of us

so agrees after any such dispute arises, or (ii) such arbitration becomes binding under the Rules. Any dispute between us concerning our fees or charges not so submitted to binding arbitration under the Rules, or that remains unresolved after non-binding arbitration under the Rules and any other dispute between or among the Company and us or any of our attorneys and agents, including but not limited to claims of malpractice, errors or omissions, the scope or applicability of this agreement to arbitrate or any other claim of any kind regardless of the facts or the legal theories, shall be finally settled by mandatory binding arbitration in San Francisco with each party to bear its own costs and attorneys' fees and disbursements. The Arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures, except that notwithstanding anything to the contrary in the JAMS rules, full discovery shall be permitted as allowed by California Code of Civil Procedure section 1283.05. The arbitration shall commence when any party serves a demand for arbitration on the other party. Any arbitration hereunder, and all submissions, testimony, transcripts, evidence, etc., related to such arbitration, shall be kept confidential by all parties. Such arbitration shall be conducted before a single arbitrator, except in matters involving a dispute greater than One Million Dollars (\$1,000,000), which shall be conducted before a three-arbitrator panel. The Arbitrator(s) shall be appointed according to the JAMS rules. All arbitrators shall serve as neutral, independent and impartial arbitrators and must act in conformity with the rules of evidence and law. Judgment on a binding arbitration award may be entered in any court of competent jurisdiction. *We mutually acknowledge that, by this agreement to arbitrate, each of us irrevocably waives our rights to court or jury trial. The Company has the right to consult separate legal counsel at any time as to any matter, including whether to enter into this engagement letter and consent to the foregoing agreement to arbitrate.* The Company agrees that this agreement will be governed by the laws of California without regard to its conflict rules provided that nothing herein shall limit the full applicability of the Federal Arbitration Act. The foregoing arbitration provision shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. Subject in all cases to the arbitration provision set forth herein, the Company agrees that (i) with regard to the courts, exclusive jurisdiction and exclusive venue for any dispute between us shall lie solely with the California Superior Court for the county named above as the site for arbitration and the corresponding U.S. District Court and (ii) consents to service of process pursuant to the applicable California state statutes and federal rules.

If these terms are acceptable, please sign and return. If you have any questions or concerns, please call me or seek the advice of an independent counsel of your choice.

Once again, thank you for selecting us to represent the Company.

Sincerely,

Joe Karp  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP



David Silberman  
April 12, 2022  
Page 5

The undersigned has read and understands this engagement letter and agrees that it correctly sets forth the terms upon which Sheppard, Mullin, Richter & Hampton LLP has been engaged by the undersigned in connection with the representation described herein and has waived any conflict of interest on the part of this Firm arising out of the representation described above.

Peninsula Clean Energy

By: \_\_\_\_\_  
David Silberman

Its:



**PENINSULA CLEAN ENERGY AUTHORITY**  
**JPA Board Correspondence**

**DATE:** May 20, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority (PCEA) Board of Directors  
**FROM:** Jan Pepper, Chief Executive Officer  
**SUBJECT:** CEO Report

**REPORT**

**Staff Updates**

We are currently recruiting for the following open positions. The job descriptions can be found on the website:

[Chief Financial Officer](#)  
[Electric Vehicles Associate Programs Manager](#)  
[Power Resources Manager](#)  
[Renewable Energy Analyst](#)

**Strategy Session**

On May 17, we held an outdoor in-person lunch and strategy session with the department directors, the COO, and the CEO to provide an opportunity for our new COO, Shawn Marshall, to meet everyone in person and to have an opportunity for all of us to brainstorm together on challenges and opportunities for Peninsula Clean Energy.

**Meet and Greets with CPUC Commissioners**

Peninsula Clean Energy staff are having a follow up meeting with CPUC Commissioner Cliff Rechtschaffen to provide more information about our transportation electrification activities.

**Meet and Greets with CEC Commissioners**

Jeremy Waen (Director of Regulatory Policy) and I, along with Board Chair Rick DeGolia, met with California Energy Commission Chair David Hochschild on May 12. We

discussed the general challenges facing us and all LSEs regarding renewable energy and storage procurement due to price increases and supply chain issues.

## Presentations

On Monday May 9, I participated in a webinar sponsored by the World Resources Institute on “An Introduction to 24/7 Carbon Free Energy and Hourly Matching” along with Jesse Jenkins of Princeton University and Tanuj Deora of the White House Council on Environmental Quality.

## Impact of COVID-19 on PCE Load

Attached to this report are summary graphs of the impact of COVID-19 on Peninsula Clean Energy’s load. The first graph, “Monthly Load”, shows the change in load on a monthly basis from May 2020 through April 2022. Continuing the pattern reported last month, there was a 2% decrease in Peninsula Clean Energy’s load in January-April 2022 compared to January-April 2021. Also continuing the same pattern as reported last month, the second graph, “Monthly Load Changes by Customer Class”, shows that industrial and residential load was lower in January-April 2022 compared to the same months in 2021. Commercial load was higher in January-April 2022 compared to January-April 2021. The third graph, “Load Shapes (PCE)”, shows the change overall in our load on an hourly basis. The load in January – April 2022 continued to be lower than 2020 and 2021 in the afternoon and late evening hours. However, the 2022 load was higher than 2020 load in the early morning hours. Thank you to Mehdi Shahriari on our Power Resources team for compiling these graphs.

## Monthly Load

- Almost same amount of load in May 2021 – July 2021 compared to May 2020 – July 2020
- 4% decrease in PCE’s load in August-December 2021 compared to August-December 2020. Load in August-October of 2020 was significantly higher than forecast due to heatwaves, fires, and smokes.
- 2% decrease in PCE’s load in January-April 2022 compared to January-April 2021



## Monthly Load Changes by Customer Class

- For May-July, we noticed an increase in C&I load in 2021 compared to 2020 and a decrease in residential load in 2021 compared to 2020.
- In August-December 2021, Residential and Industrial load was significantly lower compared to same months in 2020, mainly due to the heatwaves that we experienced in 2020.
- In January-April of 2022, Industrial and Residential load was lower compared to same months in 2021. Commercial load was higher in January-April 2022 compared to January-April 2021.

Agricultural	26%	3%	-9%	5%	4%	0%	6%	0%	-5%	-7%	-7%	-12%
Industrial	-8%	-8%	-11%	-21%	-22%	-25%	-21%	-29%	-23%	-20%	-16%	-16%
Small Commercial	7%	4%	2%	0%	1%	-3%	-5%	-4%	-4%	-4%	-6%	-3%
Medium Commercial	9%	7%	6%	4%	3%	0%	13%	17%	18%	20%	14%	11%
Large Commercial	4%	3%	5%	4%	1%	2%	9%	8%	5%	7%	0%	1%
Residential	-6%	-7%	-6%	-13%	-12%	-7%	-11%	-2%	-5%	-6%	-9%	-4%
Street Lights-Other	0%	-2%	-4%	-4%	-3%	-4%	-4%	-5%	-5%	-4%	-5%	-5%
PCE	0%	-1%	-1%	-6%	-6%	-5%	-4%	0%	-1%	-1%	-4%	-1%
Month	5	6	7	8	9	10	11	12	1	2	3	4

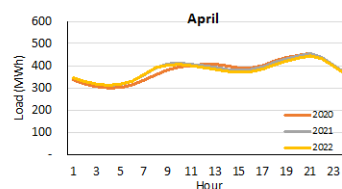
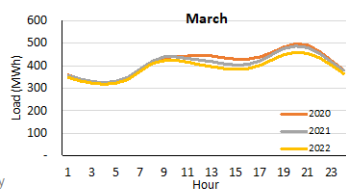
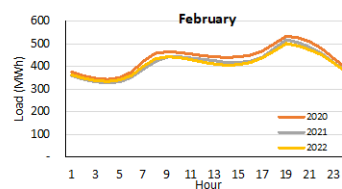
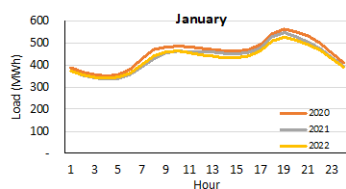
Peninsula Clean Energy

\* For months 5-12, the heatmap shows how much load in 2021 was lower/higher compared to same month in 2020. For months 1-4, the heatmap shows how much load in 2022 was lower/higher compared to same month in 2021.

3

## Load Shapes (PCE)

- January-March: 2022 load was lower than 2020-2021 load in the afternoon and late evening hours.
- April: 2022 load was lower than 2021 load in the afternoon and evening hours. 2022 Load was higher than 2020 load in early morning hours.



Peninsula Clean Energy

4

## Reach Codes

Below is an updated table showing the status of Reach Code adoption by Peninsula Clean Energy jurisdictions. Changes since the last report include:

- NEW: Belmont: Approved first reading on April 26. Council vote expected in June.

Member Agency	Reach Code Status	Building (proposed)	EV
Brisbane	Adopted	All-electric w/ exceptions	PCE model code (variant)
Burlingame	Adopted	All-electric w/ exceptions	PCE model code (variant)
Daly City	Adopted	All-electric w/ exceptions	PCE model code
East Palo Alto	Adopted	All-electric w/ exceptions	PCE model code (variant)
Millbrae	Adopted	All-electric w/ exceptions	PCE model code (variant)
Menlo Park	Adopted	All-electric w/ exceptions	(existing EV code)
Pacifica	Adopted	All-electric w/ exceptions	(existing EV code)
County of San Mateo	Adopted	All-electric w/ exceptions	PCE model code
Redwood City	Adopted	All-electric w/ exceptions	PCE model code
San Mateo	Adopted	All-electric w/ exceptions (updated)	Increase EV capable
San Carlos	Adopted	All-electric w/ exceptions (updated)	PCE model code
South San Francisco	Adopted	All-electric w/ exceptions (residential)	PCE model code
Half Moon Bay	Adopted	All-electric new construction + end of flow	Under consideration
Hillsborough	Adopted	Electric-preferred code	
Colma	Adopted	Prewiring required	Increase EV capable
Belmont	Approved on first reading Apr 26. Council vote expected in June		
Atherton	Study session Feb 16. Intent to proceed in 2022.		
San Bruno	Study session Mar. 8. Intent to proceed.		
Portola Valley	Council intent to proceed in 2020.		
Foster City	Council briefing 2020		
Woodside	Declined		

## Other Meetings and Events Attended by CEO

Attended weekly and monthly CalCCA Board and Executive Committee meetings.

Participated in SV5 (formerly called MAG5) meetings.

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 18, 2022

**BOARD MEETING DATE:** May 26, 2022

**SPECIAL NOTICE/HEARING:** None

**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** KJ Janowski, Director of Marketing and Community Relations  
Marc Hershman, Director of Government Affairs

**SUBJECT:** Recognition of Peninsula Clean Energy's Fifth Anniversary of Service  
to San Mateo County (Discussion)

**RECOMMENDATION:**

Invite and accept comments in recognition of Peninsula Clean Energy's fifth anniversary of service to San Mateo County.

**BACKGROUND:**

Peninsula Clean Energy in May 2022 is celebrating its fifth anniversary of providing clean, affordable electricity to all of San Mateo County, while also marking its sixth year since its 2016 inception.

Established with the vision of giving residents a clear community-led choice in their electricity generation, Peninsula Clean Energy was created after receiving unanimous approval in each of the 20 cities and towns it serves in San Mateo County as well as from the County Board of Supervisors.

It has since transformed San Mateo County into a recognized leader in renewable energy generation and consumption, building electrification codes, electric transportation and providing clean and affordable electricity equity across our diverse communities.

Since 2016, Peninsula Clean Energy has led to a reduction of more than 1.2 million metric tons of heat-trapping carbon dioxide emissions, an amount equivalent to avoiding the use of more than 141 million gallons of gas. During that time, San Mateo County residents and businesses have also saved more than \$90 million in electricity costs, demonstrating that it's possible to receive cleaner and greener electricity at a lower cost.

From the beginning, Peninsula Clean Energy has accelerated the State's clean energy goals by providing all its customers with 50% renewable energy in 2016, which was 14 years ahead of California's target.

Peninsula Clean Energy has continued to be a trend-setter by providing all its customers with emission-free power beginning in 2021, well ahead of California's 2045 zero-emission power mandate and is aggressively moving toward a nation-leading goal of providing 100% renewable energy on a 24/7 basis by 2025.

As a not-for-profit Joint Powers Authority (JPA), Peninsula Clean Energy has reinvested in our communities to the benefit of residents in all corners of San Mateo County, including home upgrades, electric transportation and appliance rebates, clean emergency backup power for medically- and wildfire-vulnerable residents, and countywide bill credits when all our residents and small businesses were economically ravaged during the COVID pandemic.

**DISCUSSION:**

Members of the Board are invited to share their thoughts on the occasion.

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 19, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Kirsten Andrews-Schwind, Senior Manager of Community Relations

**SUBJECT:** Resolution to Honor Members of the Citizens Advisory Committee

**RECOMMENDATION:**

Adopt a resolution honoring members of the Peninsula Clean Energy Citizens Advisory Committee who have term or stepped off the Committee in recent months.

**BACKGROUND:**

Peninsula Clean Energy's Citizens Advisory Committee (CAC) was formed by its Board of Directors in 2017. The committee is made up of up to 15 dedicated community volunteers who give their time and expertise as community liaisons and provide feedback on priorities of the organization.

**DISCUSSION:**

Peninsula Clean Energy would like to formally recognize and honor key contributions of Citizens Advisory Committee members who are terming off the committee or have stepped off it in recent months. These dedicated community members are (in alphabetical order) Tim Busiek, Morgan Chaknova, Janet Creech, Terri Givens, Ray Larios, and Alex Melendrez. A resolution to that effect is attached hereto.



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

**PENINSULA CLEAN ENERGY AUTHORITY BOARD OF DIRECTORS,**

**COUNTY OF SAN MATEO, STATE OF CALIFORNIA**

\* \* \* \* \*

**RESOLUTION HONORING THE SERVICE OF RECENT CITIZENS ADVISORY  
COMMITTEE MEMBERS**

---

**RESOLVED**, by the Peninsula Clean Energy Authority Board of Directors of the County of San Mateo, State of California, that

**WHEREAS**, Peninsula Clean Energy's Citizens Advisory Committee (CAC) was formed by its Board of Directors in 2017. The committee is made up of up to 15 dedicated community volunteers who give their time and expertise as community liaisons and provide feedback on priorities of the organization; and

**WHEREAS**, Peninsula Clean Energy would like to formally recognize and honor key contributions of Citizens Advisory Committee members who are terming off the committee or have stepped off it in recent months. These dedicated community members are (in alphabetical order) Tim Busiek, Morgan Chaknova, Janet Creech, Terri Givens, Ray Larios, and Alex Melendrez; and

**WHEREAS**, **Tim Bussiek** passionately advocated for Peninsula Clean Energy to set more ambitious community climate action goals and provided analysis on what that

would take. His advocacy contributed to the organization setting the goal of supporting the decarbonization of San Mateo County by 2035; and

**WHEREAS, Morgan Chaknova** drafted the Citizens Advisory Committee's original work plan template in 2020, and also supported its work plan creation in 2021 and 2022. These work plans created the working group structure for the committee and staff to collaborate more deeply on specific projects. She served as Vice Chair and then Chair of the committee in 2021 and into 2022; and

**WHEREAS, Janet Creech** is an instrumental advocate who spearheaded a grassroots group supporting the creation of Peninsula Clean Energy as early as 2015. As an original member of the Peninsula Clean Energy Citizens Advisory Committee, Janet played a leading role in the creation of its programs to support schools and education. Janet volunteered significant hours of her expertise to finalize Peninsula Clean Energy's Eco Hero energy education curriculum; and

**WHEREAS, Terri Givens** offered Peninsula Clean Energy her deep professional expertise on the topic of Diversity, Equity, Accessibility, and Inclusion (DEAI). She drafted the Citizens Advisory Committee's Equity Statement in 2020, which launched an organization-wide effort to assess and implement DEAI practices at all levels of Peninsula Clean Energy's operations; and

**WHEREAS, Ray Larios** supported Peninsula Clean Energy in expanding its outreach to San Mateo County's Latinx community, providing feedback on the organization's multicultural communication strategies. He generously volunteered his

time to represent Peninsula Clean Energy at bilingual events throughout the County. Ray served as Chair of committee in 2021; and

**WHEREAS, Alex Melendrez** expanded Peninsula Clean Energy's reach to San Mateo County's young Latinx community members, passionately promoting our program offerings through his personal social media channels. He connected the organization with San Mateo County's affordable housing community, and helped identify potential sites for community solar installations.

**BE IT RESOLVED** that Peninsula Clean Energy expresses its deep gratitude for the contributions of each of these members to the success of the organization.

\* \* \* \* \*



**PENINSULA CLEAN ENERGY AUTHORITY  
Board Correspondence**

**DATE:** May 13, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable Peninsula Clean Energy Authority (PCE) Board of Directors  
**FROM:** Board Committee on Citizens Advisory Committee Recruitment  
**SUBJECT:** Appointment of Members to Citizens Advisory Committee (CAC)

**RECOMMENDATION:** Adopt a Resolution Appointing Members to the Peninsula Clean Energy Authority Citizens Advisory Committee.

**BACKGROUND:**

On February 23, 2017, the PCE Board of Directors approved a proposal and a resolution approving the formation of a Citizens Advisory Committee (CAC) and indicating that it should consist of 11 to 15 members. On May 24, 2017, the PCE Board of Directors appointed 15 members to the Citizens Advisory Committee (CAC).

As outlined by the PCE Board of Directors, the general term for CAC members is three years. However, initial CAC members were appointed to staggered terms of either one year, two years, or three years. CAC members are eligible for re-appointment.

Four CAC members have terms ending in May 2022: Morgan Chaknova, Janet Creech, Steven Booker, and Jason Mendelson. Two members requested to be re-appointed to another three-year term: Steven Booker and Jason Mendelson. Morgan Chaknova and Janet Creech did not seek reappointment to the Committee.

In addition, four CAC members, Tim Bussiek, Terri Givens, Ray Larios, and Alexander Melendrez, stepped down from the Committee before their term ended, creating four additional openings.

Peninsula Clean Energy staff publicly solicited applications to gather a pool of potential appointees. Thirteen applications were received, of which twelve were considered by staff to be complete applications. In April 2022, all twelve candidates who submitted a complete application were invited to interview with a committee of the Board of Directors consisting of Jeff Aalfs, Rick Bonilla, Donna Colson, and Marty Medina. CAC members seeking re-

appointment were evaluated amongst the new pool of applicants, with overall contributions and history of CAC meeting attendance considered.

**Discussion:**

The Board Committee on Citizens Advisory Committee Recruitment recommends that the PCE Board of Directors reappoint the two CAC members whose three-year terms expired in May and who requested reappointment. These members are Steven Booker of Half Moon Bay and Jason Mendelson of Redwood City.

The Board Committee on Citizens Advisory Committee Recruitment also recommends the Board appoint the following applicants as new appointees.

- Brandon Chan of South San Francisco
- Kathleen Goforth of San Carlos
- Michael Garvey of San Carlos
- Margaret Li of South San Francisco
- Ed Love of Half Moon Bay
- Bryan Tran of South San Francisco

More information on their qualifications is included in Attachment 1 to the Resolution accompanying this memo.

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

**STATE OF CALIFORNIA**

\* \* \* \* \*

**RESOLUTION APPOINTING MEMBERS TO THE PENINSULA CLEAN ENERGY  
AUTHORITY CITIZENS ADVISORY COMMITTEE (CAC)**

---

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

**WHEREAS**, PCE was formed on February 29, 2016; and

**WHEREAS**, Section 3.5 of the PCE Joint Powers Agreement states that the “Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board”; and

**WHEREAS**, PCE believes that establishment of an advisory committee, made up of members drawn from the community, would assist PCE in carrying out its mission; and

**WHEREAS**, the Board approved the creation of a Citizens Advisory Committee (“Committee” or “CAC”) on February 23, 2017, to be appointed by the PCE Board through an application process including review and recommendation by a committee of the PCE Board; and

**WHEREAS**, the Board appointed fifteen members to the Citizens Advisory Committee on May 24, 2017, and

**WHEREAS**, there are four members whose terms are expiring in May 2022 and who are eligible for reappointment, and

**WHEREAS**, two members of the CAC sought reappointment,

**WHEREAS**, there are four additional members of the CAC who are stepping down from their seats and for which new appointments are needed, and

**WHEREAS**, the Board publicly solicited applications for the Citizens Advisory Committee, these applications were reviewed by the committee in April 2022, and that committee has recommended specific applicants for appointment.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board appoints the individuals listed in Attachment 1 hereto as members of the Citizens Advisory Committee for the term 2022-2025.

\* \* \* \* \*

## Attachment 1

### May 2022 Recommendations for Appointment<sup>1</sup> to the PCE Citizens Advisory Committee

Term	Name	City	Selected Background
Renewed Term	Steven Booker	Half Moon Bay	Political Director and Community Affairs Liaison with IBEW 617. A former electrician for 20+ years, working with Building Management Systems to reduce energy consumption.
Renewed Term	Jason Mendelson	Redwood City	Active in developing Woodside's Climate Action plan and city sustainability ordinances, organizing Earth Day celebrations in Portola Valley/Woodside, owns TV and film production studio.
New Term	Brandon Chan	South San Francisco	Current member of Community Advisory Committee General Plan 2040 for City of South San Francisco. Interested in supporting the electrification of existing buildings equitably.
New Term	Kathleen Goforth	San Carlos	Brings experience from a career with the U.S. Environmental Protection Agency and volunteer work with local environmental organizations. Passionate about building public support for building electrification and reach codes.
New Term	Michael Garvey	San Carlos	Led various energy and energy efficiency efforts through a career in local government, including as City Manager of San Carlos. Vision is to increase education around electrification programs.
New Term	Margaret Li	South San Francisco	Environmental engineer with the San Francisco Public Utilities Commission. Enthusiastic about contributing to community through local environmental advocacy.
New Term	Ed Love	Half Moon Bay	Architect focused on the Coastsides with experience in design and construction. Interested in programs for electrifying homes, including new technologies and pilots such as Harvest Thermal.
New Term	Bryan Tran	South San Francisco	Passionate about community service and addressing the rising cost of energy for households. Former member of the YMCA Urban Services Philanthropy Board and mentor for at-risk youth.

<sup>1</sup> The length of the appointment is three years, from May 2022 until May 2025.



**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 10, 2022  
**MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Kirsten Andrews-Schwind, Senior Manager of Community Relations  
and Vanessa Shin, Community Outreach Associate

**SUBJECT:** Updated Work Plan for the Citizens Advisory Committee

**BACKGROUND:**

At its April 2021 regular meeting, the Peninsula Clean Energy Board of Directors approved a [work plan for its Citizens Advisory Committee \(CAC\)](#). This work plan included a list of specific projects that are important to PCE's mission.

The Citizens Advisory Committee completed many of the projects on its previous work plan and would like to update it with a new list of projects.

**DISCUSSION:**

Staff from each department have been consulted on projects for which CAC collaboration would be useful. The CAC and staff shaped the workplan proposal together. In April 2022 CAC voted to approve sending this proposed work plan to the Executive Committee for discussion and the Peninsula Clean Energy Board of Directors for approval. The Executive Committee reviewed the workplan on May 9, 2022 and suggested minor changes, which are reflected below.

Note that in addition to working on these specific projects, CAC members will also continue to serve in their core roles described below. This includes serving as community liaisons, which are critical for getting the word out about PCE programs and initiatives and conveying community feedback to the organization.

See the proposed 2022 work plan below.

## **Peninsula Clean Energy Citizens Advisory Committee 2022 Work Plan**

**Goal:** Make it easy for CAC members to align with PCE staff priorities and get involved in driving PCE strategic initiatives

**Brown Act reminder:** Communication about working groups to must be limited to less than a quorum (50%) of CAC members

### **Guiding Principles**

- Ensure PCE Staff and Board understand how to leverage CAC in a way that is useful and drives PCE strategic priorities
- Ensure CAC members feel fully engaged and utilized if they have interest and bandwidth
- Maximize efficiency of CAC impact on staff resources

### **CAC role & responsibilities:**

Current Objectives:

- Act as liaison to community
- Provide feedback on PCE policy and operational objectives
- Engage in outreach to community, including encouraging ratepayers to participate in PCE offerings and programs, and implement other carbon reducing practices
- Assist with legislative advocacy in conjunction with staff and board
- Provide an initial forum for community discussions on wide variety of strategies to reduce carbon emissions in conjunction with staff and board
- Support PCE in strategic initiatives, such as the Diversity, Equity, Accessibility, and Inclusion (DEAI) project

### **PCE strategic goals for 2022**

The CAC will support and align its work with these goals.

**MISSION:** To reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions.

**VISION:** A sustainable world with clean energy for everyone.

Organizational priorities:

- Design a power portfolio that is sourced by 100% renewable energy by 2025
- Contribute to our community reaching a goal of being 100% greenhouse gas-free by 2035

Strategic plan on PCE website [here](#)

## 2022 Peninsula Clean Energy Citizens Advisory Committee

### Working Group Proposals

Note: Once the specified deliverable is completed, the working group shall no longer meet unless a new deliverable is identified and it is requested to meet by staff.

Project	Proposed Task Description and Deliverables	Staff Liaison	CAC Working Group Members (* indicates lead)
<b>Home Upgrade Program</b>	<p>Review data and results from the first completed homes. Provide input on technical design guidelines, outcomes for the program, and future program enhancement as needed.</p> <p><i>Deliverable: Brief memo summarizing input on technical design guidelines and outcomes for the program provided between June 2022 and April 2023. Delivered to staff prior to the April 2023 CAC meeting.</i></p>	Alejandra Posada, Programs Team	
<b>Building Electrification Education</b>	<p>Conduct community education around the Reach Code 2.0 effort and/or building electrification contribution to 2035 decarbonization goal.</p> <p><i>Deliverable: Brief memo summarizing community education conducted by CAC members regarding reach codes and/or building electrification between June 2022 and April 2023. Delivered to staff prior to the April 2023 CAC meeting.</i></p>	Rafael Reyes, Programs Team	

<b>Demand-Side Strategies for 24/7 Grid Decarbonization</b>	<p>Provide input on the Distributed Energy Resources (DER) framework, focusing on demand-side strategies (e.g., load management / shaping) to accomplish our planned 24/7 grid decarbonization.</p> <p><i>Deliverable: Brief memo summarizing input for DER programs provided between June 2022 and April 2023. Delivered to staff prior to the April 2023 CAC meeting.</i></p>	<p>Peter Levitt and Dave Fribush, Programs Team</p>	
<b>Education Initiatives</b>	<p>Provide input on initiatives to expand clean energy curriculum and decarbonization projects in schools.</p> <p><i>Deliverable: Brief memo summarizing input on education initiatives provided between June 2022 and April 2023. Delivered to staff prior to the April 2023 CAC meeting.</i></p>	<p>Vanessa Shin, Marketing Team</p>	
<b>Role of Citizen Advisory Committees</b>	<p>Research the roles, objectives, basic functioning, and impact to date of citizen advisory committees at other CCAs and similar public agencies in California.</p> <p><i>Deliverable: Brief memo summarizing research on citizen advisory committees and any resulting recommendations for Peninsula Clean Energy, keeping in mind the CAC's advisory role, provided between June 2022 and April 2023. Delivered to staff prior to the April 2023 CAC meeting.</i></p>	<p>Kirsten Andrews-Schwind, Marketing Team</p>	

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

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

**STATE OF CALIFORNIA**

\* \* \* \* \*

**RESOLUTION APPROVING 2022 CITIZENS ADVISORY COMMITTEE WORK PLAN**

---

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

**WHEREAS**, PCE was formed on February 29, 2016; and

**WHEREAS**, PCE appointed a Citizens Advisory Committee (CAC) in May 2017; and

**WHEREAS**, in April 2021 the PCE Board of Directors approved a Work Plan for its CAC; and

**WHEREAS**, the CAC has completed most of the tasks in this Work Plan and would like to update it; and

**WHEREAS**, PCE staff have worked with the CAC and PCE Executive Committee to develop an updated 2022 CAC Work Plan including a new list of projects; and

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board approves the 2022 Citizens Advisory Committee Work Plan.

\* \* \* \* \*



**PENINSULA CLEAN ENERGY AUTHORITY**  
**JPA Board Correspondence**

**DATE:** May 16, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jan Pepper, Chief Executive Officer  
Siobhan Doherty, Director of Power Resources

**SUBJECT:** Approve Resolution to Delegate Authority to Peninsula Clean Energy  
Chief Executive Office to Vote on California Community Power (CC  
Power) Board Items (Action)

**RECOMMENDATION:**

Approve Resolution Delegating Authority to Chief Executive Officer to Vote on California Community Power (CC Power) Board Items

**BACKGROUND:**

In December of 2020, the Peninsula Clean Energy Board of Directors approved Peninsula Clean Energy's membership in the California Community Power (CC Power) Joint Powers Authority. CC Power is currently a Joint Powers Authority of 10 CCAs who leverage their combined buying power to provide cost effective joint services, programs, and procurement of energy resources and products. The respective CEOs of each CC Power member serve as the board members for CC Power.

CC Power uses a two-step process to enter into energy procurement agreements. The first step is to have the CC Power Board of Directors approve having CC Power enter into an agreement with the energy supplier. The members of CC Power actively participate in the defining the acceptable terms of this energy supply agreement including the labor and environmental provisions of each project. The second step is for the participating CCAs to execute: (a) a project participation share agreement between the participating CCAs and CC Power and (b) a Buyer Liability Pass Through Agreement (BLPTA) between the CCA and the energy suppliers. There is a 90-day period between the first step and the second step to allow each CCA to gain approval from their respective boards for their CCA to participate in the CC Power project.

To date, CC Power has executed two power purchase agreements for long-duration energy storage, with different CC Power members participating in those projects.

Peninsula Clean Energy is one of 7 CCAs participating in the Tumbleweed Long Duration Energy Storage project, which is a 69 megawatt/552 megawatt-hour energy storage project utilizing lithium-ion battery storage, located near Rosamond in Kern County, with an expected online date of 2026. At a special meeting of the Peninsula Clean Energy board held on January 18, 2022, the board approved two resolutions to: 1) direct me as the CEO to vote as a CC Power director to approve the agreement between CC Power and the Tumbleweed Long Duration Energy Storage project and 2) delegated authority to me as the CEO to execute the (a) project participation share agreement between Peninsula Clean Energy, CC Power and other participating CCAs, and (b) the BLPTA Agreement between Peninsula Clean Energy and Tumbleweed Energy Storage.

At the February 24, 2022 Peninsula Clean Energy board meeting, the Board approved a resolution to direct the CEO to vote as a CC Power director to approve the agreement between CC Power and the Goal Line Battery Energy Storage System Lithium-ion long duration energy storage project, of which Peninsula Clean Energy is not a participant.

**DISCUSSION:**

In January 2022, Peninsula Clean Energy held a special Board meeting to approve the Tumbleweed project because of a mismatch in timing between when the materials were ready to be shared publicly and Peninsula Clean Energy's Board meeting schedule. We expect that this mismatch in timing will recur making it difficult or in some cases impossible to schedule a Peninsula Clean Energy Board meeting between the time that CC Power has publicly released materials and the schedule of its Board meeting.

This memo is to request that the Board modify the current approach for allowing Peninsula Clean Energy's CEO to vote on CC Power matters at CC Power board meetings. In general, matters will be brought to the Peninsula Clean Energy Board first for discussion and a vote prior to a vote at the CC Power board. However, when it is not possible to come to the Peninsula Clean Energy Board prior to the meeting of the CC Power Board regarding approval of CC Power agreement with a power supplier due to the timing of the respective board meetings, the CEO is requesting discretion to vote on such matters without prior direction of the PCE Board. Such votes do not obligate Peninsula Clean Energy to participate in any CC Power project until appropriate agreements are executed. Any vote regarding Peninsula Clean Energy's participation in a particular project agreement would be brought to the Peninsula Clean Energy Board for approval and for delegation of authority to the CEO to execute the project participation share agreement and the BLPTA agreement.

From the beginning of our participation at CC Power, I have advocated for the strongest labor and environmental policies for any project that CC Power is considering. In asking for this delegation of authority, I would continue to advocate for these policies for those agreements CC Power enters into with power suppliers. Our power resources staff who work closely with the other CCAs in negotiating the agreements that come before the CC Power board also advocate for the strongest labor and environmental policies for any CC Power projects.

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

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

\* \* \* \* \*

**RESOLUTION DELEGATING AUTHORITY TO PENINSULA CLEAN ENERGY CHIEF  
EXECUTIVE OFFICE TO VOTE ON CALIFORNIA COMMUNITY POWER (CC  
POWER) BOARD ITEMS**

---

**RESOLVED**, by the Peninsula Clean Energy Authority of the County of San Mateo,  
State of California, that

**WHEREAS**, in December of 2020, the Peninsula Clean Energy Board of Directors  
approved Peninsula Clean Energy's membership in the California Community Power (CC  
Power) Joint Powers Authority; and

**WHEREAS**, the Board directed the CEO to receive Board approval prior to voting  
as a Director on the CC Power Board; and

**WHEREAS**, it may be difficult or impossible to schedule a Board meeting to review  
CC Power decisions between when CC Power is making information public and the CC  
Power Board meeting; and

**WHEREAS**, not voting at CC Power meetings would diminish Peninsula Clean  
Energy's ability to influence decisions; and



**WHEREAS**, providing the CEO discretion to vote on CC Power matters that do not obligate Peninsula Clean Energy to participate in a CC Power project would allow Peninsula Clean Energy the ability to influence CC Power decisions; and

**WHEREAS**, staff will seek prior Board approval for any specific Peninsula Clean Energy participation in a CC Power project related decision that requires Peninsula Clean Energy Board approval under our JPA Agreement.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board delegates authority to Peninsula Clean Energy Chief Executive Office to vote on California Community Power (CC Power) Board Items.

\* \* \* \* \*



**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 16, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jan Pepper, Chief Executive Officer  
Siobhan Doherty, Director of Power Resources

**SUBJECT:** Approve Resolution Delegating Authority to the Chief Executive Officer to Execute a Second Amended and Restated Power Purchase and Sale Agreement for Renewable Supply with Wright Solar Park, LLC, and any necessary ancillary documents with a Power Delivery Term of 25 years, which commenced at the Commercial Operation Date which occurred on January 3, 2020 in an amount not to exceed \$900 million.

**RECOMMENDATION:**

Approve Resolution Delegating Authority to Chief Executive Officer to Execute a Second Amended and Restated Power Purchase and Sale Agreement for Renewable Supply with Wright Solar Park, LLC, and any necessary ancillary documents with a Power Delivery Term of 25 years, which started at the Commercial Operation Date which occurred on January 3, 2020 in an amount not to exceed \$900 million.

**BACKGROUND:**

In October 2016, the Peninsula Clean Energy board adopted a strategic goal to source 100% of Peninsula Clean Energy's energy from California RPS eligible renewables by 2025. As a step in meeting this strategic goal, Peninsula Clean Energy conducted a request for proposals for renewable energy. One of the projects selected through this process was the Wright Solar project. On January 26, 2017, the Board approved and Peninsula Clean Energy executed a Power Purchase and Sale Agreement (PPA) with Wright Solar Park, LLC to procure the energy generated by the project. At that time, it was known that the project developer was going to seek financing and sell the project to a third party, and it was anticipated that additional negotiations would take place to complete the deal in a mutually agreeable way.

In the summer of 2017, Peninsula Clean Energy and Wright negotiated an Amended and Restated Power Purchase and Sale Agreement (PPA) to effectuate the financing necessary to construct the project. On September 23, 2017, Peninsula Clean Energy's Board approved the Amended and Restated PPA. The project completed construction and started operating on January 3, 2020.

In December 2017, Peninsula Clean Energy published a strategic Integrated Resource Plan. As part of this plan, the Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy on a time coincident basis by 2025. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy will need to procure renewable supply from solar resources paired with battery energy storage. Pairing solar with energy storage allows the project to shift power delivery from the middle of the day to the evening peak when it is needed. It also provides flexibility to Peninsula Clean Energy's supply portfolio to store and deliver energy at times that would help us to meet our 24/7 renewable goal.

In June 2021, the California Public Utilities Commission issued D.21-06-035, which requires all load serving entities to procure new resources to support grid reliability.

When the Wright Solar PPA was initially signed, Peninsula Clean Energy staff and the project owner discussed the possibility of adding storage to the project at some point in the future. Staff have been working with the project owner to negotiate an amendment to the PPA to add a storage component to the project.

### ***Overview of Project***

<b>Project Name</b>	Wright Solar, LLC
<b>Technology</b>	Solar + Li-Ion Storage
<b>Solar Capacity</b>	200 MW
<b>Storage Capacity</b>	80 MW / 320MWh
<b>Solar Commercial Operation Date</b>	1/3/2020
<b>Storage Commercial Operation Date</b>	12/31/2023
<b>Developer</b>	Clenera
<b>Location</b>	Merced County, CA

The Wright project is an operating 200 MW solar located near Los Banos, CA in Merced County. The Commercial Operation Date was January 3, 2020. The project is to deliver enough energy to meet approximately 14% of Peninsula Clean Energy's energy needs and provides Portfolio Content Category (PCC) 1 energy to meet Peninsula Clean Energy's RPS requirements. The storage component will be 80 MW / 320 MWh lithium-ion battery storage facility. The storage project is expected to start construction by June 2023.

Under the contract, Peninsula Clean Energy will continue to pay for the output of the solar generating portion of the project at a fixed-price rate per MWh and will pay for the use of

the storage portion of the project at a fixed-price rate per kW-month, both with no escalation, for the full term of the contract (25 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including energy, renewable energy, ancillary services, and resource adequacy.

**DISCUSSION:**

The Strategic Plan approved by the Board in 2020 set Peninsula Clean Energy's Priority One to "design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24x7 basis". Solar paired with storage will play a key role in meeting Peninsula Clean Energy's renewable energy goals.

This project will help Peninsula Clean Energy meet its customers' large renewable energy demand, while maintaining competitiveness. This project will also help us to meet the requirements of CPUC decision D21-06-035. This will be Peninsula Clean Energy's third solar + storage project. In 2021, Peninsula Clean Energy signed two PPAs for solar + storage projects – the Chaparral and Arica projects.

**FISCAL IMPACT:**

The financial impact of adding the storage to the Wright solar project on Peninsula Clean Energy's portfolio of supply resources is a decrease in expected supply costs.

**STRATEGIC PLAN:**

The addition of storage to the Wright solar project supports the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis

**ATTACHMENTS:**

Second Amended and Restated Wright Solar Power Purchase Agreement (Redacted Version)

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

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

**\* \* \* \* \***

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER  
TO EXECUTE A SECOND AMENDED AND RESTATED POWER PURCHASE AND  
SALE AGREEMENT FOR RENEWABLE SUPPLY WITH WRIGHT SOLAR PARK,  
LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER  
DELIVERY TERM OF 25 YEARS, WHICH COMMENCED AT THE COMMERCIAL  
OPERATION DATE WHICH OCCURRED ON JANUARY 3, 2020 IN AN AMOUNT  
NOT TO EXCEED \$900 MILLION.**

---

**RESOLVED**, by the Peninsula Clean Energy Authority of the County of San Mateo,  
State of California, that

**WHEREAS**, the Peninsula Clean Energy Authority (“Peninsula Clean Energy”) was formed on February 29, 2016; and

**WHEREAS**, launch of service for Phase I occurred in October 2016, and launch of service for Phase II occurred in April 2017; and

**WHEREAS**, Peninsula Clean Energy is purchasing energy, renewable energy, carbon-free energy, and related products and services (the “Products”) to supply its customers; and

**WHEREAS**, Peninsula Clean Energy executed a Power Purchase and Sale Agreement with Wright Solar Park, LLC (“Contractor”) on January 26, 2017, executed an Amended and Restated Power Purchase and Sale Agreement (“PPA”) with Contractor on September 23, 2017, and executed an amendment to the PPA with Contractor on March 7, 2019; and

**WHEREAS**, consistent with its mission of reducing greenhouse gas emissions by expanding access to sustainable and affordable energy solutions, Peninsula Clean Energy seeks to execute a Second Amended and Restated Power Purchase and Sale Agreement with Contractor, to add an 80 MW storage resource to the existing 200 MW solar project for a term of twenty-five years that commenced on January 3, 2020, based on Contractor’s desirable offering of products, pricing, and terms; and

**WHEREAS**, the addition of storage to the existing solar project will contribute toward the Board’s goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy; and

**WHEREAS**, staff is presenting to the Board for its review the Power Purchase and Sale Agreement, reference to which should be made for further particulars; and

**WHEREAS**, the Board wishes to delegate to the Chief Executive Officer authority to execute the Agreements and any other ancillary documents required for said purchase of power from the Contractor.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board delegates authority to the Chief Executive Officer to:

Execute the Agreements and any ancillary documents with the Contractor with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to twenty-five years, in an amount not to exceed \$900 million.

\* \* \* \* \*

**SECOND AMENDED AND RESTATED  
POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

**Seller:** Wright Solar Park LLC, a Delaware limited liability company

**Buyer:** Peninsula Clean Energy, a California joint powers authority

**Description of Generating Facility and Storage Facility:** A 200 MW AC photovoltaic electric generating facility located in Merced County, California that commenced commercial operation prior to the Effective Date (as further defined herein, the “**Generating Facility**”), plus an energy storage facility of 320 MWh and 80 MW AC of nameplate capacity with at least four (4) hours of continuous discharging at the Maximum Rate of Discharge, located at the same site as the Generating Facility in Merced County, California (as further defined herein, the “**Storage Facility**”).

**Guaranteed Storage Commercial Operation Date:** December 31, 2023, as may be adjusted in accordance with Exhibit B.

**Milestones—Generating Facility:**

<b>Generating Facility Milestone</b>	<b>Completion Date</b>
<b>Site Control</b>	Complete
<b>Conditional Use Permit</b>	Complete
<b>Phase II Interconnection Study Results</b>	Complete
<b>Executed Interconnection Agreement</b>	Complete
<b>Financial Close</b>	Complete
<b>Construction Start</b>	Complete
<b>Initial Synchronization</b>	Complete
<b>Commercial Operation Date</b>	Complete
<b>Deliverability Network Upgrades completed</b>	Complete



**Milestones—Storage Facility**

<b>Storage Facility Milestone</b>	<b>Completion Date</b>
<b>Site Control</b>	Complete
<b>Conditional Use Permit</b>	Complete
<b>Phase II Interconnection Study Results</b>	Complete
<b>Executed Interconnection Agreement</b>	Complete
<b>Battery Supply Agreement Executed and Payment of Related Deposits</b>	December 1, 2022
<b>Financial Close (Close of Construction Financing or the Equivalent)</b>	May 1, 2023
<b>Storage Construction Start</b>	June 1, 2023
<b>Finalize Facility Resource IDs and Aggregate Capability Constraint Configuration</b>	September 1, 2023
<b>Initial Synchronization</b>	November 1, 2023
<b>Storage Commercial Operation Date</b>	December 31, 2023
<b>Deliverability Network Upgrades completed</b>	Complete

**Delivery Term:** The period which commenced on January 3, 2020 under the First Amended and Restated PPA (as defined herein), and shall continue for twenty-five (25) Contract Years thereafter and expire on January 3, 2045, unless terminated earlier pursuant to the terms of this Agreement.

**Storage Delivery Term:** Commencing on the Storage Commercial Operation Date (as defined herein) and continuing until the end of the Delivery Term.

**Delivery Term Expected Energy (Generating Facility Only):**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	550,378
2	547,626
3	544,888
4	542,164
5	539,453
6	536,755
7	534,072
8	531,401
9	528,744
10	526,101
11	523,470
12	520,853
13	518,248
14	515,657
15	513,079
16	510,514
17	507,961
18	505,421
19	502,894

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
20	500,380
21	497,878
22	495,388
23	492,911
24	490,447
25	487,994

**Contract Year 1 Expected Energy (Generating Facility Only):**

<b>Month</b>	<b>Expected Energy (MWh)</b>
January	20,348
February	26,311
March	45,976
April	52,517
May	65,190
June	68,232
July	68,695
August	62,582
September	51,830
October	40,974
November	26,772

Month	Expected Energy (MWh)
December	20,951

**Storage Contract Capacity:** As of the Effective Date, 80 MW AC capacity at four (4) hours of continuous discharging at the Maximum Rate of Discharge (320 MWh) measured at the Storage Facility Meter, as further defined in Article I and as may be adjusted (and subject to the limitation) specified in such definition in Article 1.

**Guaranteed PV Capacity:** 200 MW AC capacity measured at the Delivery Point.

**Guaranteed Interconnection Capacity:** 200 MW AC

**Contract Price:**

The “**Renewable Rate**” shall be as specified below:

Contract Year	Renewable Rate (\$/MWh)
1	████
2	████
3	████
4	████
5	████
6	████
7	████
8	████
9	████
10	████
11	████
12	████

Contract Year	Renewable Rate (\$/MWh)
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	

The “**Storage Rate**” shall be:

Contract Years	Storage Rate (\$/kW-month)
All	



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Product:**

x Energy

- x Green Attributes:
  - x Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
- x Capacity Attributes
- x Storage Product

**Deliverability:**

- ☐ Energy Only Status
- X Full Capacity Deliverability Status

- a) If Full Capacity Deliverability Status is selected, provide the Expected FCDS Date: January 3, 2020 for the Generating Facility; and for the Storage Facility, not later than the date that the Storage Facility is initially synchronized.
- b) Guaranteed RA Amount: Subject to Section 3.9: (a) from the Storage Facility, an Effective Flexible Capacity equal to the Guaranteed Flexible Storage Capacity and a Net Qualifying Capacity equal to the Guaranteed Qualifying Storage Capacity; plus (b) from the Generating Facility, a Net Qualifying Capacity equal to the Generating Facility's then current Qualifying Capacity as determined by application of the CPUC's resource adequacy counting rules for co-located or hybrid resources, as applicable.

**Scheduling Coordinator:** Buyer or Buyer's Agent

**Interconnection Customer:** Seller

**Seller Performance Security:**

[REDACTED]

**Seller Storage Development Security:**

[REDACTED]

**Storage Damage Payment:** The dollar amount that is equal to the Seller Storage Development Security amount required hereunder, subject to Section 7 of Exhibit B.

**Notice Addresses:**

**Seller:**

Company Name: Wright Solar Park LLC

[REDACTED]



[REDACTED]

[REDACTED]

With a further copy of notices (which shall not constitute legal notice), invoices and certificates of insurance to:

Wright Solar Park LLC

[REDACTED]

Buyer:

Peninsula Clean Energy  
2075 Woodside Rd  
Redwood City, CA 94061  
Attention: Director of Power Resources

[REDACTED]

With a copy to:

Peninsula Clean Energy  
400 County Center, 6<sup>th</sup> Floor  
Redwood City, CA 94063  
Attention: General Counsel

[REDACTED]

*[Signatures on following page.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER  
Wright Solar Park LLC

By:   

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BUYER  
Peninsula Clean Energy Authority

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

## TABLE OF CONTENTS

	Page
ARTICLE 1 DEFINITIONS.....	2
1.1    Contract Definitions.....	2
1.2    Rules of Interpretation .....	24
ARTICLE 2 TERM; CONDITIONS PRECEDENT.....	25
2.1    Contract Term .....	25
2.2    Conditions Precedent .....	26
2.3    Progress Reports .....	28
2.4    Remedial Action Plan .....	28
2.5    Coordination of Outages.....	28
2.6    Facility Configuration.....	29
ARTICLE 3 PURCHASE AND SALE .....	29
3.1    Sale of Product.....	29
3.2    Sale of Green Attributes.....	30
3.3    Compensation .....	30
3.4    Imbalance Energy .....	32
3.5    Ownership of Renewable Energy Incentives.....	33
3.6    Future Environmental Attributes .....	33
3.7    Test Energy .....	33
3.8    Capacity Attributes .....	34
3.9    Resource Adequacy Failure .....	34
3.10    CEC Certification and Verification .....	37
3.11    Eligibility .....	37
3.12    California Renewables Portfolio Standard.....	37
3.13    Compliance Expenditure Cap .....	37
3.14    Guaranteed Interconnection Capacity.....	38
ARTICLE 4 OBLIGATIONS AND DELIVERIES .....	39
4.1    Delivery.....	39
4.2    Title and Risk of Loss .....	39
4.3    Scheduling Coordinator Responsibilities.....	39
4.4    Forecasting and Updates .....	42
4.5    Dispatch Down/Curtailment .....	43
4.6    Charging and Discharging Energy.....	43
4.7    Reduction in Delivery Obligation.....	48
4.8    Expected Energy and Guaranteed Energy Production.....	48
4.9    WREGIS .....	49
4.10    Financial Statements .....	50
4.11    Access to Data and Installation and Maintenance of Weather Station .....	51
4.12    Storage Availability and Efficiency.....	53
4.13    Storage Capacity Tests.....	53
4.14    Storage Facility Modifications.....	54
4.15    Ancillary Services.....	54

ARTICLE 5 TAXES .....	55
5.1 Allocation of Taxes and Charges .....	55
5.2 Cooperation .....	55
ARTICLE 6 MAINTENANCE OF THE FACILITIES .....	55
6.1 Maintenance of the Facility .....	55
6.2 Maintenance of Health and Safety .....	56
ARTICLE 7 METERING .....	56
7.1 Metering .....	56
7.2 Meter Verification .....	57
ARTICLE 8 INVOICING AND PAYMENT; CREDIT .....	57
8.1 Invoicing .....	57
8.2 Payment .....	57
8.3 Books and Records .....	58
8.4 Payment Adjustments; Billing Errors .....	58
8.5 Billing Disputes .....	58
8.6 Netting of Payments .....	59
8.7 Seller Storage Development Security .....	59
8.8 Seller Performance Security and Seller Additional Security .....	60
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral .....	62
8.10 [Reserved] .....	62
8.11 [REDACTED] .....	63
ARTICLE 9 NOTICES .....	63
9.1 Addresses for the Delivery of Notices .....	63
9.2 Acceptable Means of Delivering Notice .....	63
ARTICLE 10 FORCE MAJEURE .....	64
10.1 Definition .....	64
10.2 No Liability If a Force Majeure Event Occurs .....	65
10.3 Notice .....	65
10.4 Termination Following Force Majeure Event .....	66
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION .....	66
11.1 Events of Default .....	66
11.2 Remedies; Declaration of Early Termination Date .....	69
11.3 Termination Payment .....	71
11.4 Notice of Payment of Termination Payment .....	72
11.5 Disputes With Respect to Termination Payment .....	72
11.6 Rights And Remedies Are Cumulative .....	72
11.7 Mitigation .....	72

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.....	73
12.1 No Consequential Damages.....	73
12.2 Waiver and Exclusion of Other Damages.....	73
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY .....	74
13.1 Seller’s Representations and Warranties .....	74
13.2 Buyer’s Representations and Warranties .....	74
13.3 General Covenants .....	75
ARTICLE 14 ASSIGNMENT .....	76
14.1 General Prohibition on Assignments .....	76
14.2 Permitted Assignment; Change of Control of Seller .....	76
14.3 Permitted Assignment; Change of Control of Buyer.....	76
ARTICLE 15 LENDER ACCOMMODATIONS .....	77
15.1 Granting of Lender Interest.....	77
15.2 Rights of Lender .....	77
15.3 Cure Rights of Lender.....	77
ARTICLE 16 DISPUTE RESOLUTION .....	78
16.1 Governing Law .....	78
16.2 Dispute Resolution.....	78
16.3 Attorneys’ Fees .....	78
16.4 Venue .....	78
ARTICLE 17 INDEMNIFICATION.....	78
17.1 Indemnification .....	78
17.2 Claims .....	79
ARTICLE 18 INSURANCE.....	79
18.1 Insurance .....	79
ARTICLE 19 CONFIDENTIAL INFORMATION .....	81
19.1 Definition of Confidential Information.....	81
19.2 Duty to Maintain Confidentiality.....	81
19.3 Irreparable Injury; Remedies .....	81
19.4 Disclosure to Lender .....	81
19.5 Disclosure to Credit Rating Agency .....	81
19.6 Public Statements.....	82
ARTICLE 20 MISCELLANEOUS .....	82
20.1 Entire Agreement; Integration; Exhibits.....	82
20.2 Amendments .....	82

20.3	No Waiver .....	82
20.4	No Agency, Partnership, Joint Venture or Lease.....	82
20.5	Severability .....	82
20.6	Mobile-Sierra .....	83
20.7	Counterparts .....	83
20.8	Facsimile or Electronic Delivery .....	83
20.9	Binding Effect.....	83
20.10	No Recourse to Members of Buyer .....	83
20.11	Change in Electric Market Design.....	83
20.12	Service Contract.....	84

**Exhibits:**

Exhibit A	Description of Generating Facility and Storage Facility
Exhibit B	Storage Facility Construction and Commercial Operation
Exhibit C	Reserved
Exhibit D	Emergency Contact Information
Exhibit E	Form of Seller Parent Guaranty
Exhibit F	Guaranteed Energy Production Damages Calculation
Exhibit G	Progress Reporting Form
Exhibit H	Reserved
Exhibit I-1	Form of Commercial Operation Date Certificate
Exhibit I-2	Form of Installed Storage Capacity Certificate
Exhibit J	Form of Storage Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Annual Storage Availability
Exhibit M	Storage Capacity Tests
Exhibit N	Operating Restrictions
Exhibit O	Metering Diagram
Exhibit P	Round Trip Efficiency

## SECOND AMENDED AND RESTATED POWER PURCHASE AND SALE AGREEMENT

This Second Amended and Restated Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of [REDACTED], 2022 (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

### RECITALS

WHEREAS, Seller has developed, designed, and constructed, and intends to continue to own or otherwise have control over, and operate the Generating Facility;

WHEREAS, Buyer and Seller entered into that certain Power Purchase and Sale Agreement, dated as of January 26, 2017 (the “**Original Agreement**”) with respect to the sale and purchase of the output of the Generating Facility;

WHEREAS, Buyer and Seller subsequently entered into that certain Amended and Restated Power Purchase Agreement, dated as of September 23, 2017 (which amended, restated, and replaced the Original Agreement), as amended by that certain Amendment No. 1, entered into and effective as of March 7, 2019, and that certain Amendment No. 2, entered into and effective as of May [REDACTED], 2022 (as so amended, the “**First Amended and Restated PPA**”);

WHEREAS, Seller intends to develop, design, construct, own or otherwise have control over, and operate the Facility (as defined below) and the Storage Facility is designed and intended to be operated as an integral part of, and prior to the end of the Recapture Period will be designed to store electricity that is generated exclusively at, the Generating Facility;

WHEREAS, this Agreement amends, restates and replaces the First Amended and Restated PPA and, as of the Effective Date hereof, the First Amended and Restated PPA is hereafter of no further force and effect, except [REDACTED] in which case the First Amended and Restated PPA automatically shall be reinstated and effective and binding on the Parties in accordance with its terms, and this Agreement shall terminate with no further liability or obligation of either Party;

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Generating Facility, all Green Attributes related to the generation of such Energy, and all Capacity Attributes; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Storage Product.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to amend and restate the First Amended and Restated PPA as follows:

## ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.13.

“**Accepted Grid Charging Compliance Costs**” has the meaning set forth in Section 4.6(h)(iii).

“**Adjusted Energy Production**” has the meaning set forth in Exhibit F.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly Controls, is Controlled by, or is under common Control with such designated Person.

“**Aggregate Capability Constraint**” has the meaning set forth in the CAISO Tariff, or if no definition is set forth in the CAISO Tariff, means an Energy and Ancillary Services market award and production constraint that reflects the combined maximum injection capability and the combined minimum withdrawal capability of generating facilities or portion thereof so that the aggregate schedules and dispatches do not exceed the Facility’s interconnection service capacity (or portion thereof) or charging capacity specified in the Interconnection Agreement.

“**Agreement**” has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Ancillary Services**” means ancillary services as defined in the CAISO Tariff, if any (to the extent permitted by CAISO and the CAISO Tariff) that are associated with the Facility and any related service.

“**Annual Storage Availability**” has the meaning set forth in Exhibit L.

“**Availability Incentive Payment**” has the meaning set forth in the CAISO Tariff.

“**Available Generating Capacity**” means the capacity from the Generating Facility, expressed in whole MWs, that is available at a particular time to generate Energy.

“**Available Storage Capacity**” means the capacity from the Storage Facility, expressed in whole MWs, that is available at a particular time to deliver Discharging Energy.

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors,



(d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

**“Battery Supply Agreement”** has the meaning set forth on the Cover Sheet.

**“Bid”** has the meaning set forth in the CAISO Tariff.

**“Business Day”** means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

**“Buyer”** has the meaning set forth on the Cover Sheet.

**“Buyer Bid Curtailment”** means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to produce less PV Energy from the Generating Facility than is reflected in the VER Forecast for the Generating Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or the SC for the Generating Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of PV Energy forecasted to be produced from the Generating Facility; and

(c) no other circumstances exist that constitute a Planned Outage, Forced Facility Outage, Force Majeure Event, and/or a Curtailment Period during the same time period as referenced in (a).

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce delivery of PV Energy by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order, which instruction may be communicated to Seller in writing by electronic notice or other commercially reasonable means.

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces the generation or delivery of PV Energy pursuant to (i) Buyer Bid Curtailment or (ii) a Buyer Curtailment Order.

**“Buyer Default”** means a failure by Buyer to perform its obligations hereunder.

[REDACTED]

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.9(a).

**“CAISO”** means the California Independent System Operator Corporation or any successor entity performing similar functions.

**“CAISO Approved Facility Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved Data Processing Gateway or Remote Intelligence Gateway (as such terms are defined in the CAISO Tariff), telemetering equipment and data acquisition services.

**“CAISO Charges Invoice”** has the meaning set forth in Section 4.3(d).

**“CAISO Grid”** has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

**“CAISO Operating Order”** means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures, and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018), codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

**“Capacity Attribute”** means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also include all rights to provide and all benefits related to the provision of Ancillary Services and, subject to Section 3.8(c), reactive power.

**“Capacity Damages”** has the meaning set forth in Exhibit B.

**“CEC”** means the California Energy Resources Conservation and Development Commission or its successor agency.

**“CEC Final Certification and Verification”** means that the CEC has certified the Generating Facility as an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard, meeting all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Eighth Edition* (or its successor), and that all Energy generated by the Generating Facility qualifies as generation from an Eligible Renewable Energy Resource.

**“Change of Control”**, in the case of Seller, means any circumstance in which Seller’s ultimate parent ceases to be the ultimate parent or to own, directly or indirectly through one or more intermediate entities, more than [REDACTED] of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by its ultimate parent indirectly through one or more intermediate entities shall not be counted towards the ultimate parent’s ownership interest in Seller unless the ultimate parent directly or indirectly owns more than [REDACTED] of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

**“Charging Energy”** means all PV Charging Energy and Grid Charging Energy delivered to the Storage Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter. During the Recapture Period all Charging Energy shall be supplied solely by PV Charging Energy.

**“Charging Notice”** means the operating instruction, and any subsequent updates, given by Buyer or the CAISO, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction shall be in accordance with Section 4.6 and the Operating Restrictions, and (b) during the Recapture Period only, and only if Seller is in compliance with the requirements of Section 4.6(h)(i)(A), if, during a period when the Storage Facility is instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging Notice” shall (for purposes of this Agreement) be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. For the avoidance of doubt any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

**“Commercial Operation Test”** means a Storage Capacity Test conducted in accordance with Exhibit M that successfully demonstrates all of the elements specified in Exhibit M and: (i) achievement of at least [REDACTED] of the Guaranteed Storage Capacity of 80 MW; and (ii) delivery of at least [REDACTED] of the Guaranteed Storage Capacity of 80 MW continuously for four (4) consecutive hours of discharging the Storage Facility.

**“Compliance Actions”** has the meaning set forth in Section 3.13.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.13.

**“Confidential Information”** has the meaning set forth in Section 19.1.

**“Contract Price”** means each of the Renewable Rate and the Storage Rate.

**“Contract Term”** has the meaning set forth in Section 2.1(a).

**“Contract Year”** means a period of twelve (12) consecutive months occurring under the First Amended and Restated PPA and this Agreement. The first Contract Year commenced under

the First Amended and Restated PPA on January 3, 2020, and each subsequent Contract Year shall commence on each anniversary of such date.

**“Control”** (including, with correlative meanings, the terms “Controlled by” and “under common Control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than [REDACTED] of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than [REDACTED] of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

**“Costs”** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

**“Cover Sheet”** means the cover sheet to this Agreement.

**“COVID-19”** means the viral pneumonia named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations thereof.

**“CPM Soft Offer Cap”** has the meaning set forth in the CAISO Tariff.

**“CPUC”** means the California Public Utilities Commission, or successor entity.

**“Credit Rating”** means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, in either case by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

**“Current Battery Price”** has the meaning set forth on the Cover Sheet.

**“Curtailment Cap”** means Guaranteed PV Capacity times 50 hours MWh per Contract Year.

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for any reason other than a Buyer Bid Curtailment;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent

circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's or distribution operator's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For the avoidance of doubt, if Buyer or the SC submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of PV Energy forecasted to be produced by or delivered from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy pursuant to a Curtailment Order.

**"Day-Ahead Forecast"** has the meaning set forth in Section 4.4(c).

**"Day-Ahead LMP"** has the meaning set forth in the CAISO Tariff.

**"Day-Ahead Market"** has the meaning set forth in the CAISO Tariff.

**"Day-Ahead Schedule"** has the meaning set forth in the CAISO Tariff.

**"Deemed Delivered Energy"** means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility and delivered to the Storage Facility or the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the VER Forecast expressed in MWh, applicable to the Buyer Curtailment Period, or (b) if there is no VER Forecast available or Seller demonstrates to Buyer's reasonable satisfaction that the VER Forecast does not represent an accurate forecast of generation from the Generating Facility, the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Generating Facility as a function of Available Generating Capacity, solar insolation and panel temperature and using relevant Generating Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, in either case less the amount of PV Energy delivered to the Delivery Point during the Buyer Curtailment Period; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

**"Defaulting Party"** has the meaning set forth in Section 11.1(a).

**“Deficient Month”** has the meaning set forth in Section 4.9(e).

**“Delivery Point”** means the PNode designated by the CAISO for the Facility.

**“Delivery Term”** shall have the meaning specified on the Cover Sheet, unless terminated earlier in accordance with the terms and conditions of this Agreement.

**“Discharging Energy”** means all Energy delivered to the Delivery Point from the Storage Facility, net of Electrical Losses and Storage Facility Station Use, as measured by the Storage Facility Meter. For the avoidance of doubt, during the Recapture Period, provided that Seller has complied with its obligations under Section 4.6(h)(i)(A), all Discharging Energy will have originally been delivered to the Storage Facility as PV Charging Energy.

**“Discharging Notice”** means the operating instruction, and any subsequent updates, given by Buyer or the CAISO to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction or updates shall be in accordance with Section 4.6 and the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by the SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall (for purposes of this Agreement) be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer issues a further modified Discharging Notice. For the avoidance of doubt any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

**“Early Termination Date”** has the meaning set forth in Section 11.2(a)(i).

**“Effective Date”** has the meaning set forth on the Preamble.

**“Effective Flexible Capacity”** or **“EFC”** has the meaning set forth in the CAISO Tariff.

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, and (iii) delivery of Discharging Energy to the Delivery Point.

**“Eligible Intermittent Resources Protocol”** or **“EIRP”** has the meaning set forth in the CAISO Tariff.

**“Eligible Renewable Energy Resource”** has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

**“Energy”** means metered electrical energy meeting CAISO grid specifications, measured in MWh.

[REDACTED]

**“Energy Price Variance”** has the meaning set forth in Section 3.1(b).

**“Energy Supply Bid”** has the meaning set forth in the CAISO Tariff.

**“Event of Default”** has the meaning set forth in Section 11.1.

**“Excess MWh”** has the meaning set forth in Section 3.3(c).

**“Executive Order”** has the meaning set forth in Section 10.1(a)(i).

**“Executive Order Delay”** has the meaning set forth in Section 10.1(a)(i).

**“Expected Energy”** has the meaning set forth in Section 4.8.

**“Expected FCDS Date”** means each date set forth in the deliverability section of the Cover Sheet which is the date the Generating Facility is expected to achieve Full Capacity Deliverability Status, and the date the Storage Facility is expected to achieve Full Capacity Deliverability Status.

**“Expected Storage Rate Discount Period”** has the meaning set forth in Section 3.3(f).

**“Experience Test”** has the meaning set forth in the definition of “Qualified Manager.”

**“Facility”** means (a) prior to the commencement of the Storage Delivery Term, the Generating Facility and (b) from and after the commencement of the Storage Delivery Term, the Generating Facility and the Storage Facility; provided, however, that if this Agreement is terminated with respect to the Storage Facility in accordance with the terms of this Agreement, then for all periods thereafter references herein to the Facility shall mean the Generating Facility.

**“Facility Energy”** means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period.

**“FERC”** means the Federal Energy Regulatory Commission or any successor government agency.

[REDACTED]

**“First Amended and Restated PPA”** has the meaning set forth in the third recital set forth above.

**“Flexible Capacity”** has the meaning set forth in the CAISO Tariff.



**“Flexible Capacity Category”** has the meaning set forth in the CAISO Tariff.

**“Flexible Resource Adequacy Benefits”** means the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load serving entity, including Flexible Capacity.

**“FMM Schedule”** has the meaning set forth in the CAISO Tariff.

**“Force Majeure Event”** has the meaning set forth in Section 10.1.

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating or delivering power at the Delivery Point or providing Storage Product and that is not the result of a Force Majeure Event.

**“Full Capacity Deliverability Status”** has the meaning set forth in the CAISO Tariff.

**“Full Network Model”** has the meaning set forth in the CAISO Tariff.

**“Future Battery Price”** has the meaning set forth on the Cover Sheet.

**“Future Environmental Attributes”** shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

**“Gains”** means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of



which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

**“Generating Capacity Reduction”** has the meaning set forth in Section 3.9(b)(iii).

**“Generating Facility”** means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver PV Energy to the Delivery Point or to the Storage Facility; provided that the “Generating Facility” does not include the Storage Facility.

**“Generating Facility Meter”** means the CAISO Approved Facility Meter(s) with a 0.3 accuracy class, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment, and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy generated by the Generating Facility and calculated as delivered to Buyer at (i) the Delivery Point or (ii) the Storage Facility as PV Charging Energy and adjusted for Electrical Losses and Generating Facility Station Use. For clarity, the Facility may contain multiple measurement devices and calculations that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

**“Generating Facility Station Use”** means the following, without any double-counting: (a) the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems, and other electrical loads that are necessary for operation of the Generating Facility; and (b) the electric energy produced or discharged by the Generating Facility that is consumed within the Generating Facility’s electric energy distribution system as losses.

**“Governmental Authority”** means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; provided, however, that “Governmental Authority” shall not in any event include any Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or

production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Grid Charging Compliance Actions”** has the meaning set forth in Section 4.6(h)(iii).

**“Grid Charging Compliance Expenditure Cap”** has the meaning set forth in Section 4.6(h)(iii).

**“Grid Charging Energy”** means charging Energy supplied by the CAISO Grid.

**“Guaranteed Discharging Capability”** means the demonstrated capability to discharge electric energy for four (4) consecutive hours of continuous discharging at the rate of discharge of the Guaranteed Storage Capacity of 80 MW (for a total of 320 MWh).

**“Guaranteed Energy Production”** has the meaning set forth in Section 4.8.

**“Guaranteed Flexible Storage Capacity”** means, at any point in time, the quantity of Effective Flexible Capacity that applies under then-applicable CPUC and CAISO resource adequacy rules to a storage facility having a storage capacity of 320 MWh and 80 MW with at least four (4) hours of continuous discharging at the Maximum Rate of Discharge, as may be reduced by the Storage Capacity Reduction in accordance with Section 3.9(c)(iii).

**“Guaranteed Interconnection Capacity”** means the interconnection rights provided under the Interconnection Agreement in the amount set forth on the Cover Sheet.

**“Guaranteed PV Capacity”** means the amount set forth on the Cover Sheet.

**“Guaranteed RA Amount”** means, subject to Section 3.9: (a) from the Storage Facility, an Effective Flexible Capacity equal to the Guaranteed Flexible Storage Capacity and a Net Qualifying Capacity equal to the Guaranteed Qualifying Storage Capacity; plus (b) from the Generating Facility, a Net Qualifying Capacity equal to the Generating Facility’s then current Qualifying Capacity as determined by application of the CPUC’s resource adequacy counting rules for co-located or hybrid resources, as applicable.

**“Guaranteed Round Trip Efficiency”** has the meaning set forth in Exhibit P.

**“Guaranteed Qualifying Storage Capacity”** means, at any point in time, the quantity of Qualifying Capacity that applies under then-applicable CPUC and CAISO resource adequacy rules to a storage facility having a storage capacity of 320 MWh and 80 MW with at least four (4) hours of continuous discharging at the Maximum Rate of Discharge, as may be reduced by the Storage Capacity Reduction in accordance with Section 3.9(c)(iii).

**“Guaranteed Storage Availability”** has the meaning set forth in Section 4.12(a).

**“Guaranteed Storage Capacity”** means 80 MW AC of capacity.

**“Guaranteed Storage Commercial Operation Date”** has the meaning set forth in Exhibit B.

**“Guaranteed Storage Construction Start Date”** has the meaning set forth in Exhibit B.

**“Guaranteed Total Facility Capacity”** means two hundred and eighty (280) MW.

**“Imbalance Energy”** has the meaning set forth in Section 3.4(a).

**“Indemnified Party”** has the meaning set forth in Section 17.1.

**“Indemnifying Party”** has the meaning set forth in Section 17.1.

**“Independent Battery Audit”** has the meaning set forth in the Cover Sheet.

**“Independent Engineer”** means one of: DNV Energy USA Inc.; Leidos Engineering, LLC; Luminate, LLC; or another licensed, independent, third party engineer reasonably acceptable to both Parties and not affiliated with either Party.

**“Initial Synchronization”** means the initial delivery of Energy discharged from the Storage Facility to the interconnection point specified in the Interconnection Agreement.

**“Installed PV Capacity”** means the Guaranteed PV Capacity.

**“Installed Storage Capacity”** means the maximum dependable operating capability of the Storage Facility to discharge electric energy for four (4) consecutive hours at the maximum discharge rate (up to but not in excess of the Guaranteed Storage Capacity of 80 MW), as measured in MW(ac) at the Delivery Point, that achieves Storage Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto.

**“Inter-SC Trade”** or **“IST”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Agreement”** means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term, as such agreement is amended or amended and restated from time to time.

**“Interconnection Capacity Limit”** means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point, in the amount of 200 MW.

**“Interconnection Customer”** has the meaning set forth in the CAISO Tariff.

**“Interconnection Facilities”** means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

**“Interest Rate”** has the meaning set forth in Section 8.2.

**“Joint Powers Act”** means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated February 29, 2016 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

**“Law”** means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

**“Lender”** means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K or in such other form reasonably acceptable to the Parties.

**“Local Capacity Area”** has the meaning set forth in the CAISO Tariff.

**“Local Capacity Area Resources”** has the meaning set forth in the CAISO Tariff.

**“Local Capacity Area Resource Adequacy Benefits”** means the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load serving entity.

**“Locational Marginal Price”** or **“LMP”** has the meaning set forth in the CAISO Tariff.

**“Losses”** means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

**“Lost Output”** has the meaning set forth in Exhibit F.

**“Master Data File RTE”** has the meaning set forth in Section 4.3(g).

**“Maximum Adjusted Storage Rate”** has the meaning set forth on the Cover Sheet.

**“Maximum Charging Capacity”** has the meaning set forth in Exhibit M.

**“Maximum Discharging Capacity”** has the meaning set forth in Exhibit M.

**“Maximum Rate of Discharge”** means the maximum Discharging Energy the Storage Facility is capable of delivering such that the Discharging Energy does not exceed 80 MW.

**“Metering Diagram”** means the Metering Diagram attached as Exhibit O.

**“Milestones”** means the development activities for significant permitting, interconnection, financing and construction milestones with respect to the Storage Facility set forth in the Cover Sheet.

**“Minimum Credit Rating”** has the meaning set forth in Section 8.11.

**“Moody’s”** means Moody’s Investors Service, Inc., or its successor.

**“MW”** means megawatts measured in alternating current.

**“MWh”** means megawatt-hour measured in AC.

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP is less than [REDACTED]

**“Negative LMP Costs”** has the meaning set forth in Section 3.3(c).

**“Net Qualifying Capacity”** or **“NQC”** has the meaning set forth in the CAISO Tariff. For the avoidance of doubt, the term “Net Qualifying Capacity” as used in the calculations in

Section 3.9 of this Agreement is subject to any applicable adjustments expressly set forth in Section 3.9.

**“Network Upgrades”** has the meaning set forth in the CAISO Tariff.

**“Non-Availability Charge”** has the meaning set forth in the CAISO Tariff.

**“Non-Defaulting Party”** has the meaning set forth in Section 11.2.

**“Notice”** shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

**“Operating Restrictions”** means the requirements and limitations set forth on Exhibit N.

**“Original PPA”** has the meaning set forth in the second recital set forth above.

**“Partial Capacity Deliverability Status”** has the meaning set forth in the CAISO Tariff.

**“Participating Transmission Owner”** or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas & Electric Company.

**“Party”** has the meaning set forth in the Preamble.

**“Performance Measurement Period”** has the meaning set forth in Section 4.8.

**“Person”** means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

**“Planned Outage”** means an outage for Scheduled Maintenance under Section 6.1(b).

**“PNode”** has the meaning set forth in the CAISO Tariff.

**“Portfolio Content Category”** means PCC1, PCC2 or PCC3, as applicable.

**“Portfolio Content Category 1”** or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code

Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

**“Product”** means (i) Energy, (ii) Green Attributes, (iii) Capacity Attributes, (iv) any Future Environmental Attributes as applicable in accordance with Section 3.6, and (v) during the Storage Delivery Term only, the Storage Product.

**“Progress Report”** means a progress report including the items set forth in Exhibit G.

**“Project”** has the same meaning as Generating Facility.

[REDACTED]

**“Prudent Operating Practice”** means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry in the Western United States for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

**“PV Charging Energy”** means charging Energy that is supplied by the Generating Facility to the Storage Facility.

**“PV Energy”** means all Energy, including PV Charging Energy, that is delivered from the Generating Facility, net of Electrical Losses and Generating Facility Station Use, as measured by the Generating Facility Meter.

**“Qualified Manager”** means any Person that (a) whether directly or through its Affiliate,

[REDACTED]

or is reasonably expected to engage in litigation with Seller or Seller's Lender or any of their

[REDACTED]

[REDACTED]

**"Qualifying Capacity"** has the meaning set forth in the CAISO Tariff.

**"RA Deficiency PV Amount"** has the meaning set forth in Section 3.9(b)(i).

**"RA Deficiency Storage Amount"** has the meaning set forth in Section 3.9(c)(i).

**"RA Guarantee Date"** means the Guaranteed Storage Commercial Operation Date.

**"RA Plan"** means the RA plan, or similar or successor filing, that a Scheduling Coordinator representing resources providing Resource Adequacy Benefits submits to the CAISO or other applicable Governmental Authority pursuant to Applicable Laws in order for the Resource Adequacy Benefits, including any Local Capacity Area Resource Adequacy Benefits and Flexible Resource Adequacy Benefits, to count towards a load serving entity's resource adequacy obligations.

**"RA PV Expenditure Cap"** has the meaning set forth in Section 3.9(b)(iii).

**"RA Shortfall Month"** means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits in amounts greater than or equal to the Guaranteed RA Amount as required hereunder.

**"RA Storage Expenditure Cap"** has the meaning set forth in Section 3.9(c)(iii).

**"Real-Time LMP"** means the LMP for the Real-Time Market.

**"Real-Time Market"** has the meaning set forth in the CAISO Tariff.

**"Recapture Period"** means the period of time commencing on the Effective Date and ending on the date that is [REDACTED] following the commercial operation date under the Interconnection Agreement.

**"Remedial Action Plan"** has the meaning in Section 2.4.

**"Renewable Energy Credit"** has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

**"Renewable Energy Incentives"** means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986,



as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, provided in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

**“Renewable Rate”** has the meaning set forth on the Cover Sheet, as may be adjusted by Section 3.3.

**“Replacement Energy”** has the meaning set forth in Exhibit F.

**“Replacement Green Attributes”** has the meaning set forth in Exhibit F.

**“Replacement Product”** has the meaning set forth in Exhibit F.

**“Replacement RA”** means Resource Adequacy Benefits equivalent to the Guaranteed RA Amount that would have been provided by the Facility with respect to the applicable month in which a RA PV Deficiency Amount or RA Storage Deficiency Amount is due to Buyer, including Effective Flexible Capacity and an equivalent quantity of Net Qualifying Capacity, that: (i) are of the same system designation or local designation, the same Flexible Capacity Category, and the same Resource Category as the Generating Facility (if provided for a RA PV Deficiency Amount), or the Storage Facility (if provided for a RA Storage Deficiency Amount); (ii) are from a resource located within the Northern Area TAC Area (as described in the CAISO Tariff); and (iii) to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, are from a resource in the same Local Capacity Area. Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include any Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

**“Resource Category”** means the resource category or maximum cumulative capacity category described in the most recent filing guide for system, local, and flexible resource adequacy compliance filings issued or published on the CPUC’s website by the CPUC or its staff specifying the guidelines, requirements, and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

**“Resource ID”** has the meaning set forth in the CAISO Tariff.

**“Retail Tariff”** means the applicable tariff of the load serving entity that provides retail service to the Site.

**“Round Trip Efficiency”** has the meaning set forth in Exhibit P.

**“Round Trip Efficiency Adjustment”** has the meaning set forth in Exhibit P.

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

**“Schedule”** has the meaning set forth in the CAISO Tariff.

**“Scheduled Maintenance”** has the meaning set forth in Section 6.1(b).

**“Scheduling Coordinator”** or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

**“Security Interest”** has the meaning set forth in Section 8.9.

**“Self-Schedule”** has the meaning set forth in the CAISO Tariff.

**“Seller”** has the meaning set forth on the Cover Sheet.

**“Seller Additional Security”** means (i) a Letter of Credit in the amount of [REDACTED], or (ii) the Project Assets Lien.

**“Seller Storage Development Security”** means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

**“Seller Performance Security”** means (i) cash, (ii) a Letter of Credit, or (iii) a Seller Parent Guaranty, in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.8.

**“Seller Parent Guarantor”** means, with respect to Seller, any Person that Seller proposes to guaranty the obligations of Seller hereunder and that Buyer approves in its sole discretion, exercised without undue delay.

**“Seller Parent Guaranty”** means a guaranty from the Seller Parent Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit E.

**“Seller Storage Performance Security”** has the meaning set forth in Section 8.8(a).

**“Settlement Amount”** means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other, in each case, solely with respect to the applicable Terminated Transaction. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

**“Settlement Interval”** has the meaning set forth in the CAISO Tariff.

**“Settlement Period”** has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

**“Showing Deadline”** means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO or any other Governmental Authority. For illustrative purposes only, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Storage Construction Start Date Certificate to Buyer, in substantially the form of the Form of Storage Construction Start Date Certificate in Exhibit J.

**“Site Control”** means that Seller: (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

**“Storage Availability Adjustment”** has the meaning set forth in Exhibit L.

**“Storage Capacity”** means the maximum dependable operating capability of the Storage Facility (expressed in MW AC) to discharge electric energy at the maximum discharge rate that can be sustained for four (4) consecutive hours, equivalent to the Storage Contract Capacity.

**“Storage Capacity Payment”** has the meaning set forth in Section 3.3(d).

**“Storage Capacity Reduction”** has the meaning set forth in Section 3.9(c)(iii).

**“Storage Capacity Test”** means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Exhibit M.

**“Storage Commercial Operation”** has the meaning set forth in Exhibit B.

**“Storage Commercial Operation Date”** has the meaning set forth in Exhibit B.

**“Storage Commercial Operation Delay Damages”** means an amount equal to [REDACTED]

**“Storage Construction Start”** has the meaning set forth in Exhibit B.

**“Storage Construction Start Date”** has the meaning set forth in Exhibit B.

**“Storage Contract Capacity”** means the maximum dependable operating capability of the Storage Facility to charge, store, and discharge electric energy at the maximum discharge rate that can be sustained for four (4) consecutive hours, as set forth in the Cover Sheet as of the Effective Date, that Seller has committed to provide to Buyer hereunder, as the same is to be established as of the Storage Commercial Operation Date and adjusted from time to time pursuant to Section 5(b)



of Exhibit B, Section 4.13(c) or Exhibit M to reflect the results of the most recently performed Storage Capacity Test; provided that the Storage Contract Capacity (measured in MW) shall not at any time exceed the lesser of (a) 80 MW, and (b) the Storage Facility's then current PMax in the Storage Facility's CAISO's Master Data File and Resource Data Template (or successor data systems).

**"Storage Daily Delay Damages"** means an amount equal to [REDACTED]

**"Storage Damage Payment"** means the dollar amount that is equal to the Seller Storage Development Security amount required hereunder, subject to Section 7 of Exhibit B.

**"Storage Delivery Term"** has the meaning set forth on the Cover Sheet.

**"Storage Early Termination Date"** has the meaning set forth in Section 11.2(a)(ii).

**"Storage Facility"** means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver the Storage Product.

**"Storage Facility Meter"** means the bi-directional CAISO Approved Facility Meter(s) (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, (i) the amount of Charging Energy delivered to the Storage Facility, and (ii) the amount of Discharging Energy discharged from the Storage Facility adjusted for Electrical Losses and any Energy that serves Storage Facility Station Use and adjusted for transformation and transmission losses to reflect the energy delivered to or from the Delivery Point. For clarity, the Facility may be comprised of multiple measurement devices and calculations that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

**"Storage Facility Retail Station Power"** has the meaning set forth in the Retail Tariff and includes energy consumed by the Storage Facility as measured by the Storage Facility Meter during periods when the Storage Facility is not responding to a Charging Notice or Discharging Notice.

**"Storage Facility Station Use"** means the electric energy consumed by the Storage Facility that is necessary for operation of the Storage Facility when responding to a valid Charging Notice or Discharging Notice inclusive of control systems, thermal regulation, and losses within system components and wiring.

**"Storage Integrity Test"** means a test of the Storage Facility, other than a Storage Capacity Test, conducted to demonstrate achievement of the values and attributes in Exhibit N in accordance with Prudent Operating Practice and at times reasonably agreed to between the Parties, or pursuant to a binding notice from CAISO, the PTO or any other Governmental Authority;



provided that there shall be no more than [REDACTED]

**“Storage Product”** means the ability of the Storage Facility to accept and store Charging Energy and to deliver Discharging Energy in accordance with the terms of this Agreement, including (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

**“Storage Rate”** has the meaning set forth on the Cover Sheet.

**“Storage Rate Adjustment Date”** has the meaning set forth in the Cover Sheet.

**“Storage Rate Adjustment Notice”** has the meaning set forth in the Cover Sheet.

**“Storage Rate Discount”** has the meaning set forth in Section 3.3(e).

**“Storage Rate Discount Period”** has the meaning set forth in Section 3.3(e).

**“Storage Rate Factor”** has the meaning set forth on the Cover Sheet.

**“Stored Energy Level”** means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

**“System Emergency”** means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability; and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

**“Tax”** or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

**“Terminated Transaction”** means (a) with respect to any termination pursuant to Section 11.2(a)(i), this Agreement and (b) with respect to any termination pursuant to Section 11.2(a)(ii) or Section 11.2(b), the portion of this Agreement terminated with respect to the Storage Facility and the Storage Product as specified therein.

**“Termination Payment”** has the meaning set forth in Section 11.3.

**“Test Energy”** means the Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Storage Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional

or temporary permission to parallel and (b) ending upon the occurrence of the Storage Commercial Operation Date.

**“Transmission System”** means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

**“Variable Energy Resource”** or **“VER”** has the meaning set forth in the CAISO Tariff.

**“Variable Energy Resource Forecast”** or **“VER Forecast”** means, for a given period, the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

**“WECC”** means the Western Electricity Coordinating Council or its successor.

**“WREGIS”** means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.9(e).

**“WREGIS Certificates”** has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment,

supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars, and references to a LMP shall mean the LMP associated with the Delivery Point unless expressly provided otherwise;

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

## **ARTICLE 2**

### **TERM; CONDITIONS PRECEDENT**

#### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**").

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties,



obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(c) Seller shall use commercially reasonable efforts to execute a Battery Supply Agreement for the Storage Facility in form and substance satisfactory to Seller. [REDACTED]

2.2 **Conditions Precedent.** The Delivery Term for the Generating Facility commenced on January 3, 2020. The Storage Delivery Term shall not commence until Seller completes each of the following conditions with respect to the Storage Facility:

(a) Seller shall have delivered to Buyer certificates from an Independent Engineer substantially in the form of Exhibits I-1 and I-2 confirming to Buyer's reasonable satisfaction that:

(i) All interconnection tests required under the Interconnection Agreement have been completed to ensure the Storage Facility is physically interconnected with the Transmission System;

(ii) The Storage Facility is capable of receiving PV Charging Energy and delivering Discharging Energy to the Delivery Point in accordance with the terms and conditions of this Agreement, including the Operating Restrictions;

(iii) At least [REDACTED] of the Guaranteed Storage Capacity of 80 MW has been installed and commissioned, Seller has demonstrated delivery of at least [REDACTED] of the Guaranteed Storage Capacity of 80 MW continuously for four (4) consecutive hours of discharging the Storage Facility, and the Commercial Operation Test has been completed successfully in accordance with the definition thereof; and

(iv) All applicable permits and government approvals required for commencement of the operation of the Storage Facility have been obtained;

(b) Seller shall have delivered to Buyer either of the following, at Seller's sole discretion: (i) a certificate from an Independent Engineer confirming to Buyer's reasonable satisfaction that the Storage Facility has been constructed in a configuration and with equipment, including meters, that allow the Storage Facility to be converted from a storage facility co-located with solar to a hybrid solar and storage facility to the extent permissible under the CAISO Tariff and based on the requirements for such conversion established in the CAISO Tariff; or (ii) an officer's certificate and accompanying report confirming that Seller conferred with the CAISO regarding the procedures and requirements for effectuating the conversion referenced in the foregoing clause (i), and containing: (A) a detailed description of such procedures and



requirements as communicated by the CAISO to Seller; (B) the dates of Seller's conferences or meetings with the CAISO; (C) the names, titles, and contact information of the CAISO personnel involved in such conferences; and (D) a description of the time and work required to effectuate the conversion as understood by Seller based on Seller's communication with the CAISO;

(c) A Participating Generator Agreement for the Storage Facility, a Meter Service Agreement for the Storage Facility, and all other agreements required between Seller and CAISO shall have been executed and delivered and shall be in full force and effect, and a copy of each such agreement delivered to Buyer;

(d) An Interconnection Agreement for the Facility among Seller, the PTO, and CAISO shall have been executed and delivered and be in full force and effect, and shall have been amended to comply with Seller's obligations under Section 4.6(h)(i)(A), and a copy of the Interconnection Agreement, as so amended, shall have been delivered to Buyer and the Storage Facility has been authorized by the CAISO and the PTO to operate in parallel;

(e) The Storage Facility has achieved Full Capacity Deliverability Status and all conditions and requirements shall have been satisfied such that the Storage Facility qualifies for and will obtain from the CAISO, within ten (10) Business Days after the Storage Commercial Operation Date except as may be delayed as a result of the CAISO's administrative process, a certified Net Qualifying Capacity value and an Effective Flexible Capacity value equal to the Guaranteed RA Amount for each, and Seller shall have delivered evidence of such satisfaction to Buyer;

(f) Seller shall have caused the Storage Facility to be included in the Full Network Model and eligible for inclusion in Bids into the CAISO day-ahead and real-time markets;

(g) Seller shall have completed all necessary steps to sell Ancillary Services from the Storage Facility (solely to the extent permitted by CAISO and the CAISO Tariff), including completing the certification requirements in Section 8 and Appendix K of the CAISO Tariff;

(h) Seller shall have delivered the increased amount of Seller Storage Performance Security to Buyer in accordance with Section 8.8 and satisfied the requirements in Section 8.8(a);

(i) Seller shall have satisfied the insurance requirements for the Storage Facility as specified in Article 18, and shall have delivered evidence of such satisfaction to Buyer;

(j) Seller shall have paid Buyer for all Storage Daily Delay Damages and Storage Commercial Operation Delay Damages owing under this Agreement for the Storage Facility, if any;

(k) Seller has delivered to Buyer confirmation from CAISO that the Facility's option for the Aggregate Capability Constraint is in effect; and

(l) Seller shall have delivered to Buyer a certificate from an Independent Engineer confirming that the Storage Facility has been constructed in a configuration, and with equipment, including meters, that allow the Storage Facility to be charged using Grid Charging Energy after the Recapture Period ends, in each case based on the design of the Facility contemplated by Seller in compliance with this Agreement, and Law in effect as of the date on which the Battery Supply Agreement is fully executed and effective.

2.3 **Progress Reports.** The Parties agree time is of the essence in regard to this Agreement. For the Storage Facility, within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Storage Construction Start Date, and (ii) each calendar month from the first calendar month following the Storage Construction Start Date until the Storage Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. Seller shall also provide Buyer with any reasonable requested documentation directly related to the achievement of Storage Facility Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan.** If Seller misses [REDACTED] or more Milestones, or misses any one (1) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90<sup>th</sup>) day after the missed Milestone completion date, as applicable), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Storage Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Storage Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is not the Guaranteed Storage Construction Start Date or the Guaranteed Storage Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

2.5 **Coordination of Outages.** The Parties shall cooperate to schedule and obtain any required CAISO approval for any outages of the Generating Facility that may be necessary to interconnect, test, commission, and achieve the Commercial Operation Date for the Storage Facility. Seller shall notify Buyer at least five (5) Business Days in advance of any such outage prior to the Commercial Operation Date that affects less than one (1) MW of capacity at the Generating Facility. For any such outage prior to the Commercial Operation Date that affects one (1) MW or more of the Generating Facility's capacity, Seller shall notify Buyer at least sixty (60) days before the beginning of the month in which the outage will occur, which notice shall specify the date, time, duration, and capacity affected by the outage. Seller shall use commercially reasonable efforts to schedule Planned Outages and maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not

require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility for use by Buyer.

**2.6 Facility Configuration.** The Parties agree that the Facility configuration will be as co-located resources with separate CAISO Resource IDs for each of the Storage Facility and Generating Facility. If requested by Buyer not later than six (6) months before the Guaranteed Storage Commercial Operation Date, Seller shall convert the Storage Facility from a storage facility co-located with solar to a hybrid solar and storage resource with a single CAISO Resource ID in accordance with the CAISO Tariff; provided that such conversion would not delay the Storage Commercial Operation Date or result in any material additional obligations, liabilities or costs or expenses for Seller that are not reimbursed or indemnified by Buyer hereunder. Not more than once per Contract Year during the Delivery Term, if requested by Buyer, at Buyer's cost as specified below, Seller shall request that CAISO convert the Storage Facility from the configuration then in effect to the other configuration, and take all commercially reasonable steps necessary to effectuate the conversion, subject to the limitations set forth in this Section 2.6. For all such conversions, Buyer shall reimburse Seller for its reasonable and documented costs and expenses incurred to effectuate the conversion. Seller shall provide an estimate of such costs and expenses for Buyer's review within thirty (30) days after Buyer's request for the conversion. Once Buyer approves the costs and expenses for reimbursement, the conversion shall be completed promptly within the timeline in the CAISO's administrative process. In addition to the other limitations specified in this Section 2.6, if a request or conversion of the Storage Facility from a storage facility co-located with solar to a hybrid solar and storage facility (a) is not permitted by the CAISO or any Governmental Authority, (b) could (i) cause a delay in the achievement of any milestones hereunder (including Storage Commercial Operation), (ii) increase any of Seller's costs or expenses that are not reimbursed by Buyer, (iii) materially increase Seller's obligations or liabilities, (iv) require any material modification of the Facility, (v) reasonably be expected to have an adverse impact on the expected economic benefit to Seller or any Lender arising out of this Agreement or in connection with any Renewable Energy Incentive (for the avoidance of doubt, including any recapture thereof), or (c) would require an amendment to any material terms of this Agreement or the Interconnection Agreement, Seller shall provide notice of the same to Buyer with a reasonably detailed explanation. Upon receipt of a notice from Seller pursuant to the foregoing sentence, unless the conversion is not permitted by the CAISO or any Governmental Authority, the Parties shall use commercially reasonable efforts to reach agreement on a plan for effectuating the conversion in a manner that is mutually acceptable to both Parties. If the Parties are unable to reach such agreement despite their use of commercially reasonable efforts, then Seller shall not be required to effectuate the conversion at that time, but shall remain subject to the provisions of this Section 2.6 for Buyer's future requests.

### **ARTICLE 3 PURCHASE AND SALE**

#### **3.1 Sale of Product.**

(a) Subject to the terms and conditions of this Agreement Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the Contract Price, (i) during the Delivery Term, all of the Product produced by the Generating Facility, and (ii) during the Storage Delivery Term, all of the Storage Product produced by the Storage Facility. Buyer shall

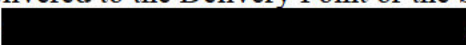
re-sell all of the Energy during the Delivery Term and may, at its sole discretion, re-sell or use for another purpose all or a portion of the remainder of the Product during the Delivery Term; provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Except for Deemed Delivered Energy, Buyer has no obligation to pay Seller for any Product that is not delivered as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, Scheduled Maintenance, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA and Replacement Product.

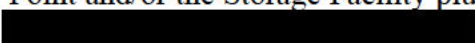
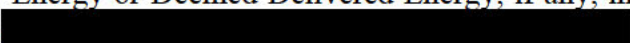

(b)


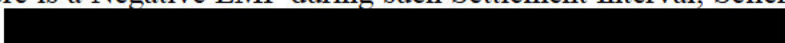



3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility.

3.3 **Compensation.** Buyer shall compensate Seller for the Product in accordance with this Section 3.3 and for Replacement Product in accordance with Section 4.8.

(a) Buyer shall pay Seller the Renewable Rate for each MWh of PV Energy delivered to the Delivery Point or the Storage Facility, plus Deemed Delivered Energy, if any, up to  of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the aggregate amount of PV Energy delivered to the Delivery Point and/or the Storage Facility plus the amount of Deemed Delivered Energy, if any, exceeds  of the Expected Energy for such Contract Year, for each additional MWh of PV Energy or Deemed Delivered Energy, if any, in such Contract Year, the price to be paid shall be   


(c) If during any Settlement Interval, Seller delivers PV Energy in excess of the product of the Installed PV Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be  and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal   
 ("**Negative LMP Costs**").



(d) For the Storage Product, for each month of the Storage Delivery Term, Buyer shall pay Seller an amount equal to: (i) the Storage Rate minus any applicable Storage Rate Discount, multiplied by an amount equal to (ii) the Storage Contract Capacity (in kW), multiplied by the applicable Storage Availability Adjustment determined in accordance with Exhibit L, multiplied by the applicable Round Trip Efficiency Adjustment determined in accordance with Exhibit P (the result is the “**Storage Capacity Payment**”). The Storage Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(e) If none of the Storage Facility’s Net Qualifying Capacity can be counted toward meeting Buyer’s resource adequacy obligations during the first month of the Storage Delivery Term, then solely for such month and each month thereafter until the first month when any portion of the Storage Facility’s then-current Net Qualifying Capacity can be so counted (the “**Storage Rate Discount Period**”), the Storage Rate paid by Buyer for such months shall be reduced by the discount specified for the applicable calendar month in the table below (subject to any applicable adjustment in accordance with Section 3.3(f), the “**Storage Rate Discount**”). For the avoidance of doubt: (i) in any month when the Storage Rate Discount applies, Seller shall not be obligated to pay any RA Deficiency Storage Amount under Section 3.9; and (ii) beginning with the first month when any portion of the Storage Facility’s then-current Net Qualifying Capacity can be counted toward meeting Buyer’s resource adequacy obligations, Buyer shall not be entitled to the Storage Rate Discount (and the Storage Rate shall not be reduced under this Section 3.3(e)) and Seller will be subject to the terms and conditions of Section 3.9 with respect to any obligation to pay an RA Storage Deficiency Amount.

Calendar Month	Storage Rate Discount (in \$/kW-month)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

(f) The Parties acknowledge and agree that under the resource adequacy rules in effect on the Effective Date the Storage Facility’s Net Qualifying Capacity may not be eligible

to be counted toward meeting Buyer's resource adequacy requirements during the period commencing on the first day of the Storage Delivery Term and ending on the last day of the second full calendar month after the month in which the Storage Delivery Term commences (such period is the "**Expected Storage Rate Discount Period**"). If the Storage Facility's Net Qualifying Capacity cannot be counted toward meeting Buyer's resource adequacy obligations during any portion of the Storage Rate Discount Period that follows after the Expected Storage Rate Discount Period as a result of or arising out of a change in Law occurring after the Effective Date, and provided such extended reduction cannot be avoided through Seller's expenditure of costs and expenses in an aggregate amount that does not exceed (when combined with amounts incurred under Section 3.9(b)(iii) and 3.9(c)(iii)) the RA Expenditure Cap, then until the effects of such change in Law have terminated: (A) after the end of the Expected Storage Rate Discount Period, Buyer shall not be entitled to the Storage Rate Discount (and the Storage Rate shall not be reduced) under Section 3.3(e), and Seller shall not be required to pay any RA Deficiency Storage Amount until the occurrence of the circumstances specified in the following clause (B); and (B) beginning with the first month when any portion of the Storage Facility's then-current Net Qualifying Capacity can be counted toward meeting Buyer's resource adequacy obligations, Buyer shall not be entitled to the Storage Rate Discount (and the Storage Rate shall not be reduced under Section 3.3(e)) and Seller will be subject to the terms and conditions of Section 3.9 with respect to any obligation to pay an RA Storage Deficiency Amount.

#### 3.4 **Imbalance Energy.**

(a) Buyer and Seller recognize that from time to time and in any given Settlement Period, the amount of PV Energy, and the amount of Charging Energy and/or Discharging Energy, may deviate from the amounts thereof scheduled with or dispatched by the CAISO ("**Imbalance Energy**"). Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible and on mutually agreeable terms.

(b) Except to the extent set forth in Sections 3.4(c), 4.3(c), 4.6(b), (d) and (f), 4.11(c)(iii), and 7.1(b), to the extent there are such deviations, any CAISO costs, charges, penalties, or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

(c) Following the Effective Date the Parties shall cooperate to prepare and mutually agree upon a written protocol (the "**Imbalance Energy Cost Protocol**") to set forth appropriate administrative details to carry out the Parties' agreement as follows:

(i) the Parties shall coordinate to maintain detailed records of all CAISO revenues and charges associated with Imbalance Energy; and

(ii) (A) with respect to the Generating Facility, if Seller is not in compliance with EIRP; (B) with respect to the entire Facility, if Imbalance Energy results from: the circumstances specified in the second, third, and fourth sentences of Section 4.3(c); Seller's failure to comply with Section 4.4 or Section 4.5(c); any outage or reduction in the availability of the Facility that is not communicated to Buyer at least one hour before the deadline to submit Schedules to CAISO (or within ten (10) minutes after the start of the outage or reduction if the

outage or reduction starts later than one hour before the deadline); or the circumstances in Section 4.11(c)(iii); and (C) with respect to the Storage Facility, if Imbalance Energy results from Seller's failure to comply with Charging Notices or Discharging Notices in accordance with Section 4.6(b), (d) or (f), or due to failure to achieve the Master Data File RTE, then, in each of the circumstances in subsections (A) through (C) above, Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance or other circumstance above to the extent reasonably attributable to such noncompliance or other circumstance above within the applicable Contract Year.

**3.5 Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

**3.6 Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes at no additional cost. Subject to Section 3.13, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; provided that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

**3.7 Test Energy.** Buyer shall be entitled to all Discharging Energy during periods when PV Charging Energy is used for commissioning and testing the Storage Facility and shall pay Seller for Charging Energy that is PV Charging Energy at a price equal to [REDACTED]. For the period when Buyer is testing the Storage Facility prior to the Storage Commercial Operation Date, Buyer shall have the right to receive all revenues from such testing and Buyer agrees to pay Seller the following for not more than sixty (60) consecutive days:

(a) if the Storage Facility's then-current Net Qualifying Capacity can be counted by Buyer in its monthly resource adequacy compliance showings for the period prior to



the Storage Commercial Operation Date, then Buyer shall pay Seller for each month when such Net Qualifying Capacity can be counted a monthly payment equal to: (i) [REDACTED] multiplied by (ii) the amount of installed Storage Contract Capacity (in kW); multiplied by (iii) the result of (A) the number of hours in the month when the Storage Facility was charged or discharged for testing purposes, divided by (B) the number of hours in the month; and

(b) in all other circumstances, Buyer shall pay Seller a monthly payment equal to the result of the calculation in the foregoing Section 3.7(a) but calculated using a price equal to [REDACTED] as the price in clause (i) thereof.

3.8 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status for the Storage Facility in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, subject to Section 3.9, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall, subject to Section 3.9: (i) from and after the Storage Commercial Operation Date, maintain Full Capacity Deliverability Status for the Storage Facility from the CAISO; (ii) until the Storage Commercial Operation Date, maintain Full Capacity Deliverability Status for the Generating Facility from the CAISO; (iii) from and after the Storage Commercial Operation Date, maintain Full Capacity Deliverability Status for the Generating Facility from the CAISO to the extent available and possible without incurring material costs, and at a minimum maintain Partial Capacity Deliverability Status for the Generating Facility from the CAISO, and (iv) perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, subject to Section 3.9, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, subject to Section 3.9, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) For the duration of the Delivery Term, Seller shall maintain an interconnection capacity under its Interconnection Agreement of at least 200 MW.

### 3.9 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, if Seller has failed to obtain Full Capacity Deliverability Status for the Storage Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits in the applicable Guaranteed RA Amount as required hereunder, then, Seller shall pay to Buyer the RA Deficiency PV Amount and/or the RA Deficiency Storage Amount, as applicable, for each RA Shortfall Month as liquidated damages



due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer. Notwithstanding any other provision of this Agreement, Seller shall not be obligated to pay any RA Deficiency Storage Amount with respect to any month in which the Storage Rate has been reduced by a Storage Rate Discount. Payment of the RA Deficiency PV Amount and/or RA Deficiency Storage Amount when due under this Section 3.9 shall be Buyer's sole remedy (together with Buyer's rights under Section 3.3(e), subject to Section 3.3(f)) for Seller's failure to provide Resource Adequacy Benefits in the applicable Guaranteed RA Amount, without limiting Buyer's other rights and remedies under this Agreement applicable to Seller's failure to comply with its other obligations in this Agreement, including Seller's obligations under Section 3.8.

(b) RA Deficiency PV Amount Calculation. In addition to any RA Deficiency Storage Amount due, for each RA Shortfall Month, the following shall apply:

(i) Seller shall pay to Buyer an amount (the "**RA Deficiency PV Amount**") equal to the product of (A) the difference, expressed in kW, of the Qualifying Capacity of the Generating Facility for such month, minus the Net Qualifying Capacity of the Generating Facility for such month (as may be increased by any Generating Capacity Reduction in accordance with Section 3.9(b)(iii), if applicable), multiplied by (B) [REDACTED];

(ii) Seller may, as an alternative to paying RA Deficiency PV Amounts, provide Replacement RA in some or all the amount of the calculation in Section 3.9(b)(i) above as long as all such Replacement RA capacity is provided to Buyer at least ten (10) Business Days before the CPUC and CAISO Showing Deadline for the operating month for the purpose of annual and monthly RA Plan reporting;

(iii) if the Net Qualifying Capacity of the Generating Facility is reduced as a result of a change occurring after the Effective Date in the CPUC's or the CAISO's resource counting rules or the CAISO's generator deliverability assessment methodology for all solar or photovoltaic facilities as a resource class, and provided that such reduction (A) is not the result of: the Generating Facility's failure to satisfy the performance-related requirements applicable to the Generating Facility set forth in this Agreement; any additional construction at the Site affecting the Facility's interconnection; any sales from the Storage Facility under Section 11.2(b)(ii)(D); or Seller's failure to operate and maintain the Generating Facility in accordance with Prudent Operating Practice, and (B) cannot be avoided through Seller's expenditure of costs and expenses in an aggregate amount of (when combined with amounts incurred under Section 3.3(f)) up to: [REDACTED] of the Guaranteed PV Capacity (the "**RA PV Expenditure Cap**") (the amount of any such reduction in Net Qualifying Capacity, expressed in kW, is a "**Generating Capacity Reduction**"), then the Generating Capacity Reduction shall be automatically added to the then current Net Qualifying Capacity of the Generating Facility and the total shall be used as the "Net Qualifying Capacity" in the calculations in Sections 3.9(b)(i) and (ii) above; and

(iv) The RA PV Expenditure Cap shall be calculated and applied separately from and in addition to the RA Storage Expenditure Cap and the Compliance Expenditure Cap.



(c) RA Deficiency Storage Amount Calculation. In addition to any RA Deficiency PV Amount due, for each RA Shortfall Month, the following shall apply:

(i) Seller shall pay to Buyer an amount (the “RA Deficiency Storage Amount”) equal to the product of:

(A) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(ii) Seller may, as an alternative to paying RA Deficiency Storage Amounts, provide the Replacement RA in the amount of the calculation in Section 3.9(c)(i)(A) above as long as any such Replacement RA is provided to Buyer at least ten (10) Business Days before the CPUC and CAISO Showing Deadline for the operating month for the purpose of annual and monthly RA Plan reporting;

(iii) if the Net Qualifying Capacity, Qualifying Capacity, or Effective Flexible Capacity of the Storage Facility is reduced as a result of a change occurring after the Effective Date in the CPUC’s or the CAISO’s resource counting rules or the CAISO’s deliverability assessment methodology for storage facilities that applies to all storage facilities as a resource class or in the CAISO Tariff, and such reduction (A) is not the result of the Storage Facility’s failure to: satisfy the performance-related requirements applicable to the Storage Facility set forth in this Agreement (including the Exhibits hereto); achieve the Guaranteed Storage Availability; achieve the Guaranteed Storage Capacity; achieve the Guaranteed Discharging Capability; or achieve the Guaranteed Round Trip Efficiency; (B) is not the result of Seller’s failure to operate and maintain the Storage Facility in accordance with Prudent Operating Practice; and (C) cannot be avoided through Seller’s expenditure of costs and expenses in an aggregate amount of (when combined with amounts incurred under Section 3.3(f)) [REDACTED]

[REDACTED] of the Guaranteed Storage Capacity of 80 MW (the “RA Storage Expenditure Cap”) (the amount of any such reduction in Net Qualifying Capacity, expressed in kW, is a “Storage Capacity Reduction”), then (in addition



to any Generating Capacity Reduction), the Guaranteed Qualifying Storage Capacity and Guaranteed Flexible Storage Capacity shall each be automatically (without any further action required by either Party) be reduced by the amount of the Storage Capacity Reduction;

(iv) The Generating Capacity Reduction shall not apply to or be credited in any calculation of the RA Deficiency Storage Amount; and

(v) The RA Storage Expenditure Cap shall be calculated and applied separately from and in addition to the RA PV Expenditure Cap and the Compliance Expenditure Cap.

3.10 **CEC Certification and Verification**. As of the Effective Date, Seller has obtained CEC Final Certification and Verification for the Generating Facility. Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to maintain CEC Final Certification and Verification throughout the remainder of the Delivery Term. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Final Certification and Verification.

3.11 **Eligibility**. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 **California Renewables Portfolio Standard**. Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by California statute or by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap**. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.13(a), (b), (c), and (d), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at [REDACTED] of Guaranteed PV Capacity per Contract Year [REDACTED] of Guaranteed PV Capacity cumulatively during the Delivery Term if the Storage Delivery Term has not commenced, or (ii) [REDACTED] of Guaranteed Total Facility Capacity per Contract year and [REDACTED] of Guaranteed Total Facility Capacity cumulatively during the Delivery Term if the Storage Delivery Term has commenced (as applicable, the "**Compliance**

**Expenditure Cap**”), which shall be calculated and applied separately from and in addition to the RA Expenditure Cap:

- (a) CEC Certification and Verification;
- (b) Green Attributes;
- (c) Future Environmental Attributes; and
- (d) Any Capacity Attributes other than Net Qualifying Capacity and Effective Flexible Capacity (for the avoidance of doubt, compliance obligations regarding Net Qualifying Capacity and Effective Flexible Capacity are addressed in Section 3.9).

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the **“Compliance Actions.”**

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the **“Accepted Compliance Costs”**), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.

The term “commercially reasonable efforts” as used in Sections 3.11 and 4.9(h) means efforts consistent with and subject to this Section 3.13. For purposes of Section 3.11, the Generating Facility’s output delivered to Buyer will be deemed to qualify under the requirements of the California Renewables Portfolio Standard only if it qualifies as PCC 1.

3.14 **Guaranteed Interconnection Capacity.** Buyer shall have the exclusive right to use the Guaranteed Interconnection Capacity, in accordance with the terms and conditions hereof.

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept at the Delivery Point all Product. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Facility as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility. Seller shall, at Buyer's request and at Seller's sole expense, take all actions and execute all documents or instruments necessary to ensure that the Generating Facility is certified in the Center for Resource Solutions Green-e certification program, or successor program.

(c) Station Use. Seller shall not bill Buyer and Buyer will not pay Seller for any Discharging Energy that serves Storage Facility Station Use or any PV Energy that serves Storage Facility Retail Station Power.

### **4.2 Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Grid Charging Energy shall pass and transfer from Buyer to Seller at the Storage Facility Meter.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

### **4.3 Scheduling Coordinator Responsibilities.**

(a) Buyer as Scheduling Coordinator for the Facility. Prior to the Effective Date, Buyer was authorized and designated as Seller's Scheduling Coordinator for the Generating Facility. Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point, including for the Storage Facility after initial synchronization of the Storage Facility to the CAISO Grid, and shall notify Seller of the name and contact information for any third party Scheduling Coordinator. At least thirty (30) days prior to the initial synchronization of the Storage Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Storage Facility effective as of the initial synchronization of the Storage Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Storage Facility effective as of the initial synchronization of the Storage Facility to the CAISO

Grid. Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator, on and after the Effective Date, with respect to the Generating Facility and on and after the initial synchronization of the Storage Facility to the CAISO Grid with respect to the Storage Facility, unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, Forced Facility Outages, Forced Facility Outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below and in Sections 3.4(c), 4.6, 4.11(c)(iii), and 7.1(b), Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement or resulting from Seller's failure to ensure that the Facility's Interconnection Agreement is amended as required under Section 4.6(h)(i)(A) (except to the extent such failure or non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility) or its obligations hereunder. At Buyer's request based on directions from CAISO, Seller shall use commercially reasonable efforts to deliver Discharging Energy to the Delivery Point at an average rate of delivery at least equal to the Storage Contract Capacity during periods of CAISO-declared system emergency for as long as necessary to respond to the CAISO-declared system emergency; *provided* that such commercially reasonable efforts are limited by the state of charge of the Storage Facility at the beginning of any such CAISO-declared system emergency and are subject to applicable Laws. If Seller fails to comply with the foregoing sentence or to deliver forecasts in accordance with Section 4.4, then in addition to any Storage Availability Adjustment under Exhibit L, Seller shall reimburse Buyer for all costs imposed or charged by CAISO and/or FERC (including costs, penalties, Imbalance Energy costs, and other charges) as a result of such noncompliance or failure to deliver forecasts. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller (except to the extent (i) such non-compliance is caused by Buyer's failure to perform its

duties as the Scheduling Coordinator for the Facility or (ii) Buyer is expressly responsible for such amounts under Section 3.4 above), the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement, including as specified in Sections 3.4(c), 4.3(c), 4.6(b), (d) and (f), 4.11(c)(iii), and 7.1(b). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under Section 4.3(e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as Seller's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld. Notwithstanding the foregoing sentence, the Parties agree that Buyer shall, or shall cause the Scheduling Coordinator to, submit periodic updates to the CAISO for the Master Data File so that the Master Data File reflects the lower of (x) the Guaranteed Round Trip Efficiency or (y) the Round Trip Efficiency determined as part of the most recent Storage Capacity Test (such lower value, the "**Master Data File RTE**").

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall



include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

4.4 **Forecasting and Updates.** Seller shall provide the forecasts described below. Seller's Available Generating Capacity forecasts shall include availability and updated status of key equipment for the Generating Facility. Seller shall use commercially reasonable efforts to forecast the Available Generating Capacity and expected Energy of the Generating Facility and Available Storage Capacity of the Storage Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Expected PV Energy.** No less than ninety (90) days before the beginning of each calendar year for each Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) **Monthly Forecast of Available Capacity.** No less ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Generating Capacity and, from and after the date that is thirty (30) days prior to the expected Storage Commercial Operation Date, Available Storage Capacity, in each case, for each day of the following month in a form reasonably acceptable to Buyer.

(c) **Daily Forecast of Available Capacity.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Available Generating Capacity (or if requested by Buyer, the expected Energy) and, from and after the date that is thirty (30) days prior to the commercial operation date for the Storage Facility that is used for CAISO purposes, Available Storage Capacity for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Available Generating Capacity (or if requested by Buyer, the expected Energy) and Available Storage Capacity, as applicable.

(d) **Real-Time Available Capacity.** Seller shall notify Buyer of any changes in Available Generating Capacity during the Delivery Term or Available Storage Capacity during the Storage Delivery Term, in each case, of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity or Available Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or Available Storage Capacity, as applicable, the expected end date and time of such event, the expected Available Generating Capacity or Available Storage Capacity, as applicable, in MW, and any other



information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Generating Capacity or Available Storage Capacity, as applicable, shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone to Buyer and shall be sent to Buyer's web based system.

#### **4.5 Dispatch Down/Curtailment.**

(a) General. Seller agrees to reduce the Facility Energy by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, or for any Product that could not be delivered to the Delivery Point due to a Force Majeure Event.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller, which also shall be deemed to terminate any outstanding Discharging Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the applicable Renewable Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Cost (calculated with respect to Facility Energy that should have been curtailed, instead of Excess MWh), if any, for the applicable Settlement Intervals during the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges actually incurred or owed by Buyer as a result of Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

**4.6 Charging and Discharging Energy.** This Section 4.6 applies during the Storage Delivery Term.

(a) Buyer will be the Scheduling Coordinator for the Storage Facility and will have sole and exclusive rights to direct the charging and discharging of the Storage Facility (via directions or instructions to Seller) and to bid and schedule the Storage Facility in CAISO markets, subject to the terms of this Agreement, including the Operating Restrictions and the requirement that during the Recapture Period the Storage Facility shall be charged using only PV Charging Energy and shall not be charged using Grid Charging Energy.

(b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement. Upon receipt of a valid Charging Notice, Seller shall deliver the PV Charging Energy to or accept the Grid Charging Energy at the Storage Facility, as applicable, in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Charging Notice. Upon receipt of a valid Discharging Notice, Seller shall deliver the Discharging Energy to the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Discharging Notice. For the avoidance of doubt, provided that Seller has complied with its obligations under Section 4.6(h)(i), Seller is not required to comply with a Charging Notice that would violate Section 4.6(h)(ii).

(c) Subject to compliance with the CAISO Tariff and other applicable Laws and the Operating Restrictions, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including Operating Restrictions, and the availability of PV Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(d) Seller shall not charge the Storage Facility during the Contract Term other than pursuant to a valid Charging Notice, including in connection with a Storage Capacity Test or Storage Integrity Test (for which Seller shall request a Charging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. If, during the Contract Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.6(d), then, in addition to any other costs and charges for which Seller is responsible hereunder, including the imbalance costs specified in Sections 3.4(c), 4.3(c), 4.6(b), (d) and (f), 4.11(c)(iii), and 7.1(b), and without limiting any of Buyer's other rights under this Agreement:

(A) Seller shall be responsible for all energy costs actually incurred or duly owed and payable by Buyer as a result of such charging of the Storage Facility;

(B) Buyer shall not be required to pay for the charging of such energy (*i.e.*, Charging Energy) (including PV Energy if used as Charging Energy); and

(C) the Annual Storage Availability calculation shall be affected to the extent specified in Exhibit L.

(e) Subject to compliance with the CAISO Tariff, other applicable Laws and the Operating Restrictions, Buyer will have the right to direct the discharging of the Storage Facility (via directions or instructions to Seller) seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective

unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(f) Seller shall not discharge the Storage Facility during the Storage Delivery Term other than pursuant to a valid Discharging Notice, including in connection with a Storage Capacity Test or Storage Integrity Test (for which Seller shall request a Discharging Notice from Buyer), pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. In the case of a Storage Integrity Test, Buyer shall pay for costs associated with the Charging Energy (including PV Charging Energy at the Renewable Rate, if applicable) and may retain any revenue from the discharge of such energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice. If, during the Contract Term, Seller (i) discharges the Storage Facility to a Stored Energy Level less than the Stored Energy Level provided for in the Discharging Notice (except as permitted in the first sentence of this Section 4.6(f)), or (ii) discharges the Storage Facility in violation of the first or second sentence of this Section 4.6(f), then, in addition to any other costs and charges for which Seller is responsible hereunder, including the imbalance costs specified in Sections 3.4(c), 4.3(c), 4.6, 4.11(c)(iii), and 7.1(b), and without limiting any of Buyer's other rights under this Agreement:

(A) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge;

(B) Seller shall be responsible for and reimburse Buyer for all energy costs actually incurred or owed by Buyer as a result of charging the Storage Facility to the level specified by Buyer before the discharge; and

(C) the Annual Storage Availability calculation shall be affected to the extent specified in Exhibit L.

(g) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, any Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Discharging Notices applicable to such Settlement Interval (but not over Charging Notices which are consistent with such Curtailment Orders, Buyer Curtailment Orders, or Buyer Bid Curtailment Orders), and Seller shall have no liability for violation of this Section 4.6 or any Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment, or other instruction or direction from a Governmental Authority or the PTO. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order consistent with the CAISO Tariff and the Operating Restrictions.

(h) Notwithstanding any other provision of this Agreement;

(i) during the Recapture Period:

(A) Seller shall be responsible for taking all steps and meeting all requirements and conditions to ensure that the Storage Facility is designed to disallow charging using any Grid Charging Energy during the Recapture Period, and can only be

charged using PV Charging Energy during the Recapture Period. The Parties acknowledge that the Facility's Interconnection Agreement has been amended to include the following or substantially similar language: "For the avoidance of doubt, until the date that is seventy-five (75) months following the Commercial Operation Date of the Storage Addition, the Charging Capacity provided under this LGIA, as measured at the Point of Interconnection, shall be zero (0) MW and the Storage Addition shall not include a grid charging feature and shall be incapable of charging from the grid." Any capitalized terms used in such language shall have the meanings defined in the Facility's Interconnection Agreement;

(B) Buyer shall not issue (or cause the issuance of) any instruction requiring Seller to and Seller shall not be required to, and nothing in this Agreement shall be construed as requiring Seller to, comply with any instruction, order, Charging Notice, Discharging Notice, or other communication requesting or requiring the Storage Facility to be charged from any source other than the Generating Facility, and the Parties shall cooperate to address and resolve any of the foregoing to be consistent with this Section 4.6(h) unless Seller has breached its obligation under the first sentence of Section 4.6(h)(i)(A) and the Interconnection Agreement has been amended to allow Grid Charging Energy, in which case Buyer may issue such instruction solely as may be required by a valid CAISO order or discharging instruction that the Storage Facility is physically capable of complying with;

(C) Seller shall be responsible for designing, constructing, operating, and maintaining the Facility in a manner that both complies with this Section 4.6(h) and allows the Facility to be reconfigured to accommodate a future Buyer request to charge the Storage Facility with Grid Charging Energy after the Recapture Period; and

(ii) at any and all times:

(A) Buyer shall not issue any instruction requiring Seller to, Seller shall not be required to, and nothing in this Agreement shall be construed as requiring Seller to, comply with any instruction, order, Charging Notice, Discharging Notice, or other communication requesting or requiring the Storage Facility to be charged, discharged, or operated in any manner which results in or gives rise to any inconsistency with or breach of the Interconnection Agreement;

(B) in the event of any conflict or inconsistency between or among this Section 4.6(h), the Operating Restrictions, or the other terms of this Agreement, the terms and conditions of this Section 4.6(h) will prevail; and

(C)



(iii) Following the end of the Recapture Period and for the remainder of the Delivery Term, the Storage Facility may be charged with any combination of PV Charging Energy and/or Grid Charging Energy at Buyer's sole election but subject to the other terms of this Agreement, including the Operating Restrictions. Buyer shall be responsible for paying the costs of all Grid Charging Energy. Seller shall take all steps and actions that are commercially reasonable, including requesting an amendment to the Interconnection Agreement (in the future and if necessary), that are required to ensure that the Storage Facility can be charged with Grid Charging Energy commencing following the end of the Recapture Period and continuing for the remainder of the Delivery Term. Notwithstanding any other provision of this Agreement, Seller shall not be required to incur out-of-pocket expenses in excess of [REDACTED] in aggregate to ensure that the Storage Facility can be charged with Grid Charging Energy (including any amounts required to be spent arising out of any change in Law occurring after the Effective Date) commencing following the end of the Recapture Period and continuing for the remainder of the Delivery Term ("**Grid Charging Compliance Expenditure Cap**"), subject to the following requirements.

(A) Any actions required by Seller to ensure that the Storage Facility can be charged with Grid Charging Energy commencing following the end of the Recapture Period and continuing for the remainder of the Delivery Term are referred to herein collectively as the "**Grid Charging Compliance Actions**." If requested by Buyer, Seller shall take all Grid Charging Compliance Actions; provided, that if Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Grid Charging Compliance Expenditure Cap in order to take any Grid Charging Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(B) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Grid Charging Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Grid Charging Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Grid Charging Compliance Costs**"), or (2) waive Seller's obligation to take such Grid Charging Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(C) If Buyer does not respond to a Notice given by Seller under this Section 4.6(h)(iii) within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Grid Charging Compliance Actions that are the subject of the Notice. If such deemed waiver occurs, or if Buyer expressly waives Seller's obligation under clause (B)(2) above, then Seller shall have no further obligation to take, and no liability for any failure to take, these Grid Charging Compliance Actions for the remainder of the Contract Term, and Buyer's obligations (including payment obligations) hereunder shall not be modified in any way.

(D) If Buyer agrees to reimburse Seller for the Accepted Grid Charging Compliance Costs, then Seller shall take such Grid Charging Compliance Actions covered by the Accepted Grid Charging Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Grid Charging Compliance Actions, not to exceed the Accepted Grid Charging Compliance



Costs, within thirty (30) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.

4.7 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of Scheduled Maintenance.

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.8 **Expected Energy and Guaranteed Energy Production.** The quantity of PV Energy that Seller expects to be able to deliver to Buyer at the Delivery Point or the Storage Facility during each Contract Year is set forth on the Cover Sheet ("**Expected Energy**"). Seller shall be required to deliver to the Delivery Point or the Storage Facility an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period [REDACTED] during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of PV Energy, as measured in MWh, equal to [REDACTED]

[REDACTED] Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent that Seller was unable to deliver PV Energy as a result of any Force Majeure Events, Buyer Default, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit F in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller has paid damages calculated in accordance with Exhibit F, Energy in the amount equal to the greater of the amount of PV Energy actually delivered in such Contract Year, less Excess MWh, or [REDACTED]

[REDACTED] If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance

with Exhibit F; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event that Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; provided further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.8 at the Renewable Rate. For avoidance of doubt, PV Energy shall be deemed delivered to Buyer for the purposes of this Section 4.8 based on measurements of PV Energy by the Generating Facility Meter, whether it is delivered to the Delivery Point or delivered to the Storage Facility as PV Charging Energy.

4.9 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy measured by the Generating Facility Meter are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and issuance of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

(a) Prior to the Effective Date, Seller shall have registered the Generating Facility with WREGIS and establish an account with WREGIS in Buyer's name ("**Buyer's WREGIS Account**"), which shall be maintained until the end of the Delivery Term. Seller shall cause and allow Buyer to be the "Account Holder" for Buyer's WREGIS Account (as that term is defined by WREGIS). Seller shall be responsible for all expenses associated with registering the Generating Facility with WREGIS, establishing and maintaining Buyer's WREGIS Account, and paying WREGIS Certificate issuance fees.


(b) Seller shall cause itself or its agent to be designated as the "Qualified Reporting Entity" (as that term is defined by WREGIS) for the Facility.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the amount of PV Energy measured by the Generating Facility Meter for such calendar month as evidenced by the Generating Facility's metered data, except to the extent that WREGIS Certificates are unavailable due to CEC requirements regarding the Storage Facility.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally issued to Buyer in accordance with the WREGIS Operating Rules and this Section 4.9. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates issued to Buyer for a calendar month as compared to the PV Energy

measured by the Generating Facility Meter, for the same calendar month (“**Deficient Month**”).



(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.9 after the Effective Date, the Parties promptly shall modify this Section 4.9 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy measured by the Generating Facility Meter in the same calendar month.

(g) STC REC-2. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(h) STC REC-1. Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

**4.10 Financial Statements.** In the event a Seller Parent Guaranty is provided as Seller Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Seller Parent Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Seller Parent Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.



#### 4.11 **Access to Data and Installation and Maintenance of Weather Station.**

(a) Commencing on the Effective Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis for the Generating Facility. Commencing on the Storage Commercial Operation Date and continuing throughout the Storage Delivery Term, Seller also shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis for the Storage Facility. Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Delivery Term or Storage Delivery Term, as applicable, which changes Buyer determines are necessary to forecast output from the Facility and/or comply with Law:

(i) in respect of the Generating Facility only, read-only access to meteorological measurements and, if applicable, all parameters necessary for use in the equation under item (viii) of this list,

(ii) in respect of the entire Facility, read-only access to transformer availability and any other Facility availability information;

(iii) read-only access to PV Energy, Charging Energy, Discharging Energy, Facility Energy, Storage Facility state-of-charge, and battery rack and inverter status (online or offline) information and meteorological measurements collected by the supervisory control and data acquisition (SCADA) system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide such information and meteorological measurements to Buyer in 1 minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

(iv) read-only access to the Generating Facility Meter and Storage Facility Meter data at the Site;

(v) full, real time access to the Generating Facility's and Storage Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system;

(vi) net plant electrical output at the Generating Facility Meter and Storage Facility Meter and for the Storage Facility, real time, read-only access to state-of-charge and battery containers and inverter status (online or offline);

(vii) in respect of the Generating Facility only, instantaneous data measurements at sixty (60) second or increased frequency for the following parameters, which measurements shall be provided by Seller to Buyer in a consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup: (i) back panel temperature (ii) global horizontal irradiance, (iii) plane of array irradiance (if the panels are fixed) or direct normal irradiance (if the panels are tracking), (iv) wind speed, (v) peak wind speed (within one minute), (vi) wind direction, (vii) ambient air temperature, (viii) dewpoint air temperature or relative humidity, (ix) horizontal visibility, (x)

precipitation (rain rate), (xi) precipitation (running 30 day total), and (xii) barometric pressure; and

(viii) in respect of the Generating Facility only, an equation, updated on an ongoing basis to reflect the potential generation of the Generating Facility as a function of insolation (and, if applicable, other weather factors). Such equation shall take into account the expected availability of the Generating Facility. Seller shall reasonably cooperate with any request from Buyer to adjust the equation due to results that are inconsistent with the observed Generating Facility output.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Generating Facility's and Storage Facility's monthly actual available capacity in a form reasonably acceptable to Buyer.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.11(a), which shall be available on a minimum time interval of one-hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) Installation, Maintenance and Repair.

(i) Seller, at its own expense, shall install and maintain at least one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 4.11(a) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.11(a) of this Agreement.

(ii) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided, further, that Seller shall not be relieved from liability for any Imbalance Energy costs incurred under Section 3.4(c) during this additional period for repair or replacement.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for Seller, including from the Participating Transmission Operator. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the Participating Transmission Operator information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.

(e) As of the Effective Date, Seller has provided one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (i) the parameters (other than back panel temperature) identified in Section 4.11(a)(vi) above (all data, except peak values, should be 1-second samples averaged into 10-minute periods); (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

**4.12 Storage Availability and Efficiency.** The provisions of this Section 4.12 apply during the Storage Delivery Term.

(a) Storage Availability. During the Storage Delivery Term, the Storage Facility shall maintain an Annual Storage Availability (calculated in accordance with Exhibit L) during each month of no less than [REDACTED] (the "**Guaranteed Storage Availability**"). If, in any twelve (12) month period after the Storage Commercial Operation Date, the Annual Storage Availability is less than the Guaranteed Storage Availability, then, except as provided in Section 11.1(b)(v), Buyer's sole and exclusive remedy for such shortfall shall be the Storage Availability Adjustment if required under Exhibit L.

(b) Round Trip Efficiency. During the Storage Delivery Term, the Storage Facility shall maintain a Round Trip Efficiency (calculated in accordance with Exhibit P) during each month of no less than the Guaranteed Round Trip Efficiency. If, in any month during the Storage Delivery Term, the Round Trip Efficiency is less than the Guaranteed Round Trip Efficiency, then, except as provided in Section 11.1(b)(vi), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the adjustment of the monthly Storage Capacity Payment for the Storage Product as provided in Section 3.3(d).

**4.13 Storage Capacity Tests.**

(a) Prior to the Storage Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit M. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with Exhibit M.

For the avoidance of doubt, Seller shall have no obligation during the Recapture Period to use Grid Charging Energy in connection with a Storage Capacity Test.

(b) Buyer shall have the right to send one or more representatives to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Storage Capacity Test.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit M. If the actual capacity determined pursuant to a Storage Capacity Test is less or more (subject to the terms of Exhibit M) than the then-current Storage Contract Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

(d) If the Round Trip Efficiency determined during a Storage Capacity Test is less than the Guaranteed Round Trip Efficiency, Buyer shall, or shall cause its Scheduling Coordinator to, submit an update to the Master Data File RTE in accordance with Section 4.3(g). Any such updates to the Master Data File RTE shall reflect the lower of

Notwithstanding anything herein to the contrary, updates to the Master Data File RTE shall not affect the calculation of Round Trip Efficiency or the Round Trip Efficiency Adjustment for purposes of this Agreement or any resulting reductions to the Storage Capacity Payment or consequences under Section 11.1(b)(vi).

4.14 **Storage Facility Modifications.** Seller shall not modify, augment, supplement, or replace all or any part of the Storage Facility without Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided that Seller may, without Buyer's consent, conduct the foregoing only to the extent they are routine maintenance, augmentation, improvement, replacements, or repairs undertaken in accordance with Prudent Operating Practice that do not change the Storage Facility's ability to meet the performance specifications of this Agreement or the Operating Requirements and do not have any material adverse impact on Buyer's ability to receive Product from the Facility or charge or discharge the Storage Facility in the manner provided for in this Agreement; provided further that Seller shall provide Buyer with prior written notice of any augmentation of the Storage Facility or replacement of any inverter.

4.15 **Ancillary Services.** To the extent permitted by CAISO under the CAISO Tariff, Seller shall maintain certification to sell Ancillary Services from the Storage Facility, including through compliance with applicable requirements in Section 8 and Appendix K of the CAISO Tariff.

## ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to delivery or making available to Buyer, including on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy or other Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided, however, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

## ARTICLE 6 MAINTENANCE OF THE FACILITIES

### 6.1 **Maintenance of the Facility.**

(a) Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

(b) Seller shall have the right to perform (i) not more than fifty (50) hours of scheduled maintenance on the Generating Facility per Contract Year, and (ii) not more than an additional fifty (50) hours of scheduled maintenance on the Storage Facility per Contract Year (collectively, "**Scheduled Maintenance**") *provided*, that for the purposes of determining the number of hours of Scheduled Maintenance performed for the Storage Facility only, any hours of Scheduled Maintenance will be prorated based on the proportion of total inverters at the Storage Facility that are unavailable during such hour. Seller shall provide Buyer with its schedule of all Scheduled Maintenance no later than October 1 of each Contract Year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance and shall, to the extent feasible and consistent with Prudent Operating Practice, arrange for Scheduled Maintenance to occur only between November 1 through December 31, and January 1 through April 30, of each year; *provided that* Seller may in its discretion perform Scheduled Maintenance during any off-peak hours during the

months of May through October if the CAISO grants approval for Seller's outage as an Off-Peak Opportunity RA Maintenance Outage (as defined in the CAISO Tariff) without any requirement to provide replacement resource adequacy capacity. Seller may modify its schedule of Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair, and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit D of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

## **ARTICLE 7 METERING**

### **7.1 Metering.**

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 2.6, the Facility shall have separate CAISO Resource IDs for each of the Generating Facility and the Storage Facility. Seller shall measure the following using CAISO-approved meters and CAISO-approved methodologies: the amount of PV Energy produced by the Generating Facility; the amount of Charging Energy and Discharging Energy; and the amount of Grid Charging Energy. The Generating Facility Meter and Storage Facility Meter shall be maintained at Seller's cost. The meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to each of the Generating Facility, the Storage Facility, and the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

(b) The foregoing Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meters for the Facility the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller or Buyer as Scheduling Coordinator violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent



practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld. In the case of preceding clause (iii), until the Parties agree on an alternative approach: [REDACTED]

and (B) in connection with any automatic adjustment to a Discharging Notice set forth in the definition of Discharging Notice, if any such automatic adjustment is prohibited by CAISO, then Seller shall instead reduce deliveries of PV Energy to the Delivery Point as necessary to avoid exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries to the Delivery Point shall constitute (and be treated as) [REDACTED]

7.2 **Meter Verification.** If Seller has reason to believe there may be a meter malfunction, Seller may test the meter. Annually, upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

## **ARTICLE 8 INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than [REDACTED] after the end of the prior monthly billing period. Each invoice shall provide Buyer: (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Generating Facility and the Storage Facility for any Settlement Period during the preceding month, the amount of Product in MWh produced by the Facility as read by the Generating Facility Meter and Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Renewable Rate applicable to such Product; (b) records and calculations sufficient to show the calculation of the Storage Capacity Payment, including calculations of any applicable Storage Availability Adjustment and Round Trip Efficiency Adjustment; and (c) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall render separate invoices to Seller for any damages and other amounts owing under Sections 3.9 and 4.6, and under Exhibits B, F, and L.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Seller shall make payment to

Buyer for amounts due hereunder by wire transfer or ACH payment to the bank account provided on the invoice from Buyer, subject to Seller's right to net and offset such amounts against amounts owed by Buyer hereunder. Buyer or Seller, as applicable, shall pay undisputed invoice amounts within [REDACTED] after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus [REDACTED] (the "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least [REDACTED] or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within [REDACTED] after the invoice is rendered or subsequently adjusted.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error, within [REDACTED] of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date



of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within [REDACTED] after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a party other than the Party seeking the adjustment and such party corrects its information after the [REDACTED]. If an invoice is not rendered within [REDACTED] after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Sections 3.9 and 4.6, and pursuant to Exhibits B, F, and L, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller Storage Development Security.** To secure Seller's obligations under this Agreement with respect to the development and construction of the Storage Facility, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Seller Storage Development Security to Buyer in the amount of [REDACTED]

Buyer will have the right to draw upon the Seller Storage Development Security only if (a) Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or (b) Seller fails to pay the Storage Damage Payment when due pursuant to Exhibit B or a Termination Payment owed to Buyer pursuant to Section 11.2(b). Seller shall maintain the Seller Storage Development Security in full force and effect [REDACTED]

Upon the earlier of (x) Seller's delivery of the Seller Storage Performance Security in accordance with the last sentence of Section 8.8(a), or (y) sixty (60) days after termination of this Agreement with respect to the Storage Facility pursuant to Section 11.2, Buyer shall promptly return the Seller Storage Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Seller Storage Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Seller Storage Development Security.

8.8 **Seller Performance Security and Seller Additional Security.**

(a) To secure its obligations under this Agreement, as of the Effective Date, Seller has delivered to Buyer the Seller Performance Security in the amount of [REDACTED] and the [REDACTED]. Buyer shall make a claim against the Seller Performance Security prior to making a claim against the Seller Additional Security. Prior to December 1, 2022, the Parties shall negotiate in good faith, execute and deliver, and record and file, the agreements, instruments, and documentation necessary to ensure that this Agreement and its terms are reflected adequately in the documents comprising the Projects Assets Lien. As a condition to the occurrence of the Storage Commercial Operation Date, Seller shall increase the Seller Performance Security previously delivered to Buyer or provide additional Seller Performance Security in an amount equal to [REDACTED] (“**Seller Storage Performance Security**”), such that the total amount of Seller Performance Security posted by Seller as of the Storage Commercial Operation Date equals [REDACTED].

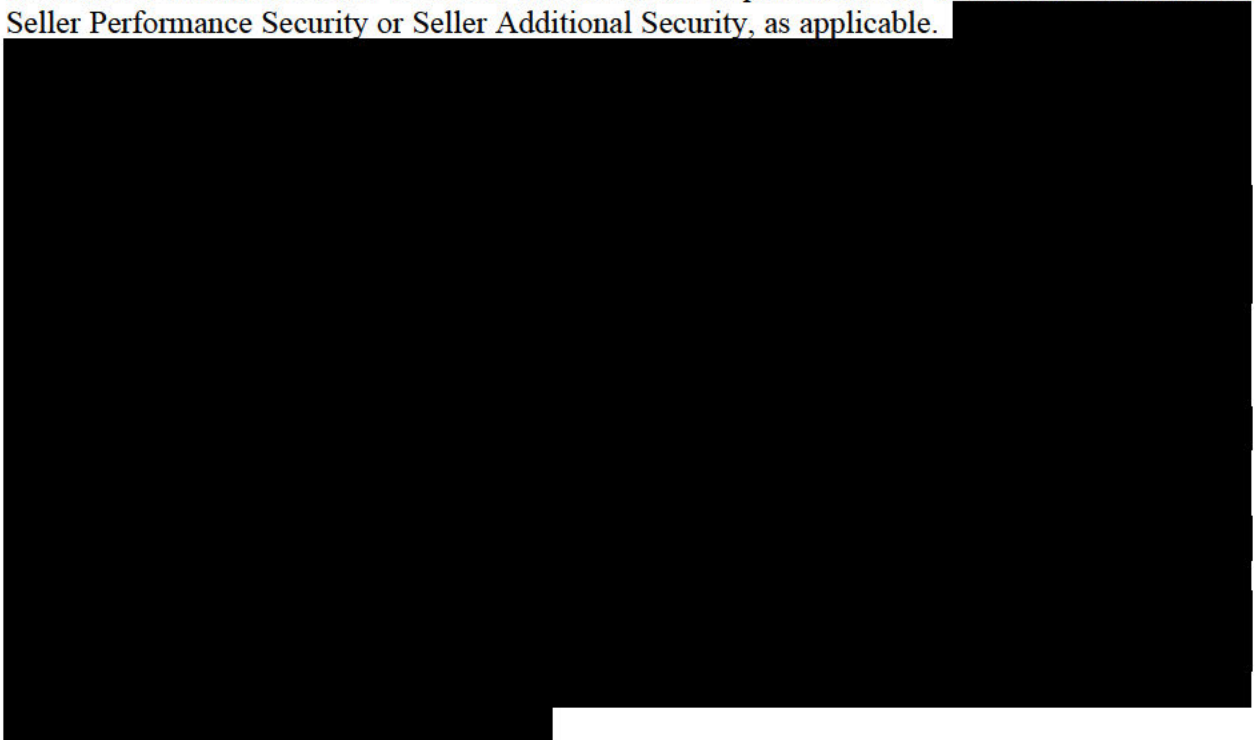
(b) Seller shall maintain the Seller Performance Security (as increased by the Seller Storage Performance Security when required) and the Seller Additional Security in full force and effect and Seller shall replenish such Seller Performance Security (as so increased) in the event Buyer collects or draws down any portion of the Seller Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment in connection with the termination of this Agreement with respect to the entire Facility.

(c) Subject to Section 8.8(d), Seller shall maintain the Seller Performance Security (as increased by the Seller Storage Performance Security when required) and the Seller Additional Security in full force and effect until: (i) the Delivery Term has expired or been terminated early; and (ii) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both (i) and (ii) above, Buyer shall promptly return to Seller the unused portion of the Seller Performance Security and release the Seller Additional Security.

(d) If this Agreement is terminated early only with respect to the Storage Facility pursuant to Section 11.2(a)(ii), then after all payment obligations of Seller arising under this Agreement with respect to the Storage Facility, including compensation for penalties, the Storage Damage Payment, the Termination Payment, indemnification payments, and other damages are paid in full (whether directly or indirectly such as through set-off or netting), Seller thereafter shall be obligated to post Seller Performance Security in the amount of [REDACTED], plus the Seller Additional Security, and Buyer shall return any unused portion of the Seller Storage Performance Security in excess of those amounts.

(e) If the Seller Performance Security is provided in the form of a Seller Parent Guaranty, it shall be substantially in the form set forth in Exhibit E. If the Seller Performance Security and/or Seller Additional Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer’s properly documented request to draw

on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Seller Performance Security or Seller Additional Security, as applicable.



(f) If requested by Seller in connection with any financing for the Storage Facility (including construction, interim or long-term indebtedness), in conformance with Section 15.2, Buyer and Seller agree that either:

(i)



(ii)





(iii)

**8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, (i) Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Seller Storage Development Security, Seller Performance Security (as increased by the Seller Storage Performance Security when required), any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Seller Storage Development Security or, except to the extent set forth in Section 8.7(a) and (b), Seller Performance Security (as increased by the Seller Storage Performance Security when required), Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9) with the Seller Storage Development Security or Seller Performance Security, as applicable:

(a) Exercise any of its rights and remedies with respect to the Seller Storage Development Security or Seller Performance Security (as increased by the Seller Storage Performance Security when required), as applicable, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Seller Storage Development Security or Seller Performance Security (as increased by the Seller Storage Performance Security when required), as applicable; and

(c) Liquidate all Seller Storage Development Security or Seller Performance Security (as increased by the Seller Storage Performance Security when required), as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement, subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

**8.10 [Reserved]**

## ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (b) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the

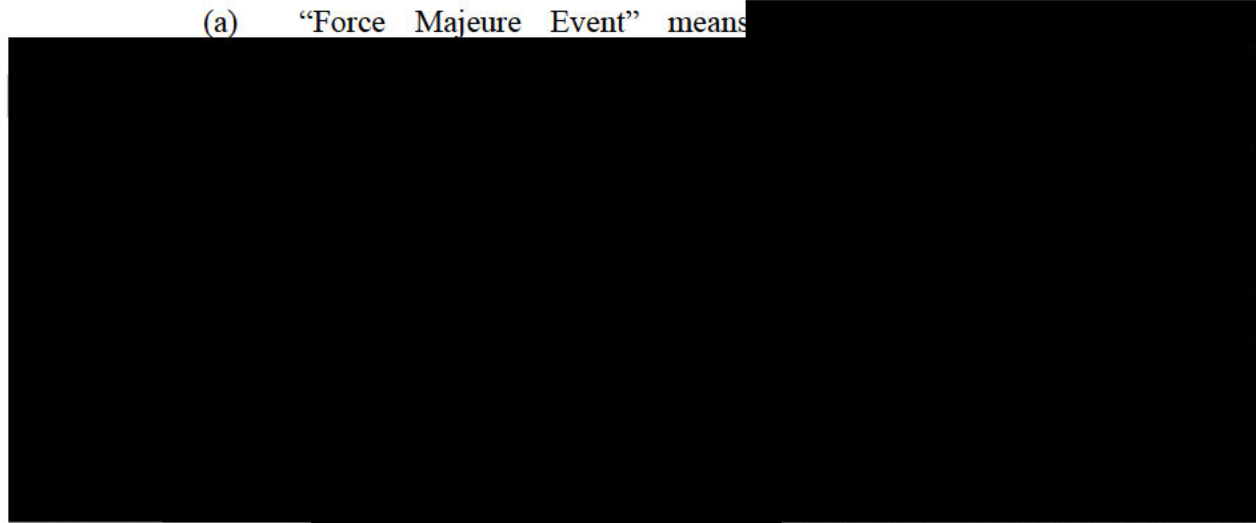


time stamp upon delivery; or (c) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## **ARTICLE 10 FORCE MAJEURE**

### **10.1 Definition.**

(a) “Force Majeure Event” means



or (ii) any act or event ( ) that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic (except as excluded in Section 10.1(c) below); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include any of the following: (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Renewable Rate); it being understood and agreed, for the avoidance of doubt, that the occurrence

of an Executive Order Delay may give rise to a Development Cure Period; (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a temporary disruption to any filing or other system that prevents timely application for or timely issuance of such permits or approvals and is caused by an event or circumstance that separately meets the definition of Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by an event or circumstance that separately meets the definition of a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by an event or circumstance that separately meets the definition of Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by an event or circumstance that separately meets the definition of Force Majeure Event; (viii) Seller's inability to achieve the Storage Construction Start of the Facility following the Guaranteed Storage Construction Start Date or achieve Commercial Operation following the Guaranteed Storage Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period; or (ix) the COVID-19 pandemic, except for any of the following that are a direct result of or response to the COVID-19 pandemic: (A) mandatory restrictions imposed by a Governmental Authority that are more restrictive than any measures in effect at any time prior to the Effective Date; or (B) new events, circumstances, or conditions arising after the Effective Date, provided that, in each case, such restrictions, events, circumstances, and conditions otherwise meet the definition of a Force Majeure Event, and the affected Party has taken commercially reasonable precautionary measures to mitigate the impacts of COVID-19.

**10.2 No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of Force Majeure. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

**10.3 Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the

anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive [REDACTED], then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event; provided, however, that this Section 10.4 shall not limit Buyer's rights and remedies as specified in Section 11.1(b)(ii), Section 11.2(b), and Exhibit B. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), Buyer shall promptly return to Seller any Seller Storage Development Security and Seller Performance Security (as increased by the Seller Storage Performance Security when required) then held by Buyer and Seller shall promptly return to Buyer any Buyer Development Security or Buyer Performance Security then held by Seller.

## **ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION**

11.1 **Events of Default.** An "**Event of Default**" shall mean,

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof; provided that if such failure cannot be cured within such thirty (30) day period despite reasonable commercial efforts and such failure is not a failure to make a payment when due, such Party shall have up to sixty (60) additional days to cure;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as applicable;

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such



consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(vii) with respect to Buyer only, failure by Buyer to satisfy the collateral requirements pursuant to Section 8.11; or

(viii) with respect to any outstanding Letter of Credit provided for the benefit of a Party that is not then required under this Agreement to be canceled or returned, the failure by Party required to post such Letter of Credit to provide for the benefit of the other Party either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after the Party providing the Letter of Credit receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) the Party required to maintain such Letter of Credit shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve the Storage Construction Start within [REDACTED] after the Guaranteed Storage Construction Start Date or to achieve the Storage Commercial Operation within [REDACTED] after the Guaranteed Storage Commercial Operation Date;

(iii) [Reserved];

(iv) [REDACTED]

(v) [REDACTED]

(vi) if, for any Contract Year, the annual average Round Trip Efficiency is more than [REDACTED]

(vii) [REDACTED]

(viii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Seller Storage Development Security or Seller Performance Security (as increased by the Seller Storage Performance Security when required) amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Storage Damage Payment or a Termination Payment, if such failure is not remedied within five (5) Business Days after Notice thereof; *provided that* such five (5)-Business Day cure period shall not apply with respect to a failure to post the Seller Storage Development Security within ten (10) Business Days after the earlier of (i) the full

execution of the Battery Supply Agreement and (ii) the date that is six (6) months after the Effective Date pursuant to Section 8.7.

(ix) with respect to any Seller Parent Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Seller Parent Guaranty from a different guarantor meeting the criteria set forth in the definition of Seller Parent Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Seller Parent Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Seller Parent Guarantor to make any payment required or to perform any other material covenant or obligation in any Seller Parent Guaranty;

(C) the Seller Parent Guarantor becomes Bankrupt;

(D) the Seller Parent Guarantor shall fail to meet the criteria for an acceptable Seller Parent Guarantor as set forth in the definition of Seller Parent Guarantor;

(E) the failure of the Seller Parent Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Seller Parent Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Seller Parent Guaranty; or

(x) the occurrence of six (6) consecutive months in which a WREGIS Certificate Deficit was caused, or was the result of any action or inaction, by Seller; provided, that if Seller is taking reasonable steps to prevent subsequent WREGIS Certificate Deficits and is reasonably likely to succeed in preventing the occurrence in the seventh (7th) consecutive month, then an Event of Default shall not be deemed to have occurred until the seventh (7th) consecutive month.

#### 11.2 **Remedies; Declaration of Early Termination Date.**

(a) If an Event of Default with respect to a Defaulting Party (other than an Event of Default of Seller under Section 11.1(b)(ii)) shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(i) if (A) Seller is the Defaulting Party and the Event of Default is not solely attributable to the Storage Facility, or (B) Buyer is the Defaulting Party, to (1) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement and ends the Delivery Term effective as of the Early Termination Date, and (2) accelerate all amounts owing between the Parties, and to collect as liquidated damages the Termination Payment calculated in accordance with Section 11.3 below; and

(ii)

[REDACTED]

Agreement; (iii) to withhold any payments due to the Defaulting Party under this

(iv) to suspend performance; and/or

(v) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Termination Payment shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

(b) If an Event of Default of Seller under Section 11.1(b)(ii) shall have occurred and be continuing, Buyer shall have the following rights and remedies:

(i) Buyer may collect the Storage Damage Payment from Seller and Seller shall be obligated to [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of

this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date or Storage Early Termination Date, as applicable. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement to the extent such attributes exist as of the date of termination and are not based upon speculation as to future changes in Law. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Storage Damage Payment or Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Storage Damage Payment or Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

**11.4 Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Storage Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

**11.5 Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

**11.6 Rights And Remedies Are Cumulative.** Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

**11.7 Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

**ARTICLE 12**  
**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE STORAGE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN SECTIONS 3.3(e) AND (f), SECTION 3.9, AND IN EXHIBIT B AND EXHIBIT E, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES



AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All

persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

## **ARTICLE 14 ASSIGNMENT**

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; or (b) subject to Section 15.1, a Lender as collateral. Any direct or indirect Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Article 14 and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld. Upon Buyer's receipt of a notice from Seller setting forth the name of a prospective assignee (including a prospective deemed assignee in connection with a Change of Control) and reasonable information concerning such prospective assignee's business activities (including any experience owning and operating solar powered electricity generating facilities), ownership (including the identity and business activities of the prospective assignee's or deemed assignee's ultimate parent company) and financial wherewithal, Buyer shall respond in writing to Seller within five (5) Business Days indicating whether Buyer consents to a prospective assignment to the prospective assignee. Buyer shall cooperate with any assignment by Seller consented to or otherwise permitted under this Section 14.2, including (i) as soon as reasonably practical following Buyer's receipt of a request from Seller for written documentation of Buyer's consent to an assignment to an approved prospective assignee, delivering such documentation to Seller in a form reasonably satisfactory to Seller, and (ii) by executing or arranging for the delivery of any other usual and customary certificates, consents, estoppels, or other documents reasonably requested by the assignee or Seller, at the expense of the Seller with respect to any third-party costs (including reasonable attorney's fees), in connection with the permitted assignment.

14.3 **Permitted Assignment; Change of Control of Buyer.** Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, provided, that in each of the foregoing situations, the assignee (a) has a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; provided, further, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment and (y) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as

described in Section 15.2(b). Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

## **ARTICLE 15**

### **LENDER ACCOMMODATIONS**

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; provided that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 hereof to any Lender, and such Party

shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

## **ARTICLE 16 DISPUTE RESOLUTION**

16.1 **Governing Law.** This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

16.4 **Venue.** The Parties agree that any litigation arising with respect to this Agreement is to be venued in either the Superior Court for the County of San Mateo, California or the Federal District Court for the Northern District of California in San Francisco, California.

## **ARTICLE 17 INDEMNIFICATION**

### **17.1 Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the violation of Law or the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE 18 INSURANCE**

### **18.1 Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of this Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during construction of the Storage Facility prior to the Storage Facility Commercial Operation Date, construction all-risk form property insurance covering the Storage Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case, with limits determined to be appropriate by Seller. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of this Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.



## **ARTICLE 19**

### **CONFIDENTIAL INFORMATION**

19.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court, or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion. Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand of any third person or entity not a party to this Agreement for production, inspection and/or copying of this Agreement (in whole or in part) or any information designated by Seller as Confidential Information, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any information designated as Confidential Information by Seller whether or not advance written notice has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect information deemed by it to be Confidential Information. The obligation to maintain the confidentiality of Confidential Information shall survive for a period of one (1) year following the expiration or termination of this Agreement.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or, notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender, agents, consultants, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

19.5 **Disclosure to Credit Rating Agency.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by either Party to any nationally

recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.

19.6 **Public Statements.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

## **ARTICLE 20 MISCELLANEOUS**

20.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

20.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008).

20.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.8 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **No Recourse to Members of Buyer.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

20.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the

foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event.

20.12 **Service Contract.** The Parties agree and acknowledge that this Agreement is a “service contract” and shall be treated as a service contract in accordance with Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

*[Exhibits begin on following page.]*

**EXHIBIT A**  
**DESCRIPTION OF THE FACILITY**

**Generating Facility:**

**Site Name:** Wright Solar Park

**APNs:** 088-020-003, 088-020-002, 078-200-081, 078-200-082, 078-200-083, 088-020-038, 078-200-028, 078-200-030, 078-200-027, 088-020-040, 088-020-041, 088-020-027, 078-200-026

**County:** Merced County

**Guaranteed PV Capacity:** 200 MW AC (net, at the Delivery Point)

**Generation Technology:** Single-axis tracker photovoltaic

**P-node/Delivery Point:** the PNode designated by the CAISO for the Facility at the Padre Flats Substation

**Additional Information:**

**Storage Facility:**

**Site Name:** Wright Battery

**APNs:** 088-020-003, 088-020-002, 078-200-081, 078-200-082, 078-200-083, 088-020-038, 078-200-028, 078-200-030, 078-200-027, 088-020-040, 088-020-041, 088-020-027, 078-200-026

**County:** Merced County

**Guaranteed Storage Capacity:** As defined in Article 1 of this Agreement

**Guaranteed Discharging Capability:** As defined in Article 1 of this Agreement.

**Storage Technology:** Lithium-ion Batteries

**Expected Maximum Stored Energy Level at COD (MWh):** 320 MWh

**Expected Maximum Charging Capacity at COD:** 80 MW

**Expected Maximum Discharging Capacity at COD:** 80 MW

**Guaranteed Round Trip Efficiency Rate:** See Exhibit P

**Ramp Rate:** See Exhibit N

**P-node/Delivery Point:** the PNode designated by the CAISO for the Facility at the Padre Flats Substation

**Additional Information:**

## EXHIBIT B

### STORAGE FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

#### 1. Construction of the Storage Facility.

- a. Seller shall cause construction to begin on the Storage Facility by June 1, 2023 (as such date may be extended by the Development Cure Period, the “**Guaranteed Storage Construction Start Date**”). Seller shall demonstrate the beginning of construction through execution of Seller’s engineering, procurement and construction contract, Seller’s issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and the physical movement of soil at the Storage Facility (“**Storage Construction Start**”). On the date of the beginning of construction (the “**Storage Construction Start Date**”), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
- b. If Storage Construction Start is not achieved by the Guaranteed Storage Construction Start Date, Seller shall pay Storage Daily Delay Damages to Buyer on account of such delay. Storage Daily Delay Damages shall be payable for each day for which Storage Construction Start has not begun by the Guaranteed Storage Construction Start Date. Storage Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches the Storage Construction Start of the Storage Facility;

On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Storage Daily 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 Storage Daily Delay Damages set forth in such invoice. Storage Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Storage Daily Delay Damages shall be Buyer’s sole and exclusive remedy for the delay in achieving the Storage Construction Start Date on or before the Guaranteed Storage Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Storage Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2(b) should such delay exceed

2. Commercial Operation of the Storage Facility. “**Storage Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of this Agreement and (ii) Seller has provided Notice to Buyer that Storage Commercial Operation has been achieved. The “**Storage Commercial Operation Date**” shall be the date on which Storage Commercial Operation is achieved.



- a. Seller shall cause Storage Commercial Operation for the Storage Facility to occur by December 31, 2023 (as such date may be accelerated as provided in (d) below or extended by the Development Cure Period (defined below), the “**Guaranteed Storage Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Storage Commercial Operation at least sixty (60) days before the anticipated Storage Commercial Operation Date.
  - b. If Seller achieves Storage Commercial Operation by the Guaranteed Storage Commercial Operation Date, all Storage Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Storage Daily Delay Damages with the first invoice to Buyer after the Storage Commercial Operation Date.
  - c. If Seller does not achieve Storage Commercial Operation by the Guaranteed Storage Commercial Operation Date, Buyer shall retain Storage Daily Delay Damages, as applicable, and Seller shall pay Storage Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Storage Commercial Operation Date until the Storage Commercial Operation Date; [REDACTED]  
[REDACTED] Storage Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Storage Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Storage Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer’s retention of Storage Daily Delay Damages and receipt of Storage Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for the first [REDACTED] of delay in achieving the Storage Commercial Operation Date on or before the Guaranteed Storage Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.1(b)(ii) and receive a Storage Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2(b) should such delay exceed [REDACTED]  
[REDACTED]
  - d. Seller shall have the option to accelerate the Guaranteed Storage Commercial Operation Date and the RA Guarantee Date; provided that Seller shall provide written notice of such acceleration to Buyer at least six months in advance of the new Guaranteed Storage Commercial Operation Date and the RA Guarantee Date and Seller may not accelerate one such date without also accelerating the others.
3. **Termination for Failure to Timely Achieve Storage Construction Start or Storage Commercial Operation.** If the Storage Facility has not achieved Storage Construction Start within [REDACTED] after the Guaranteed Storage Construction Start Date, or has not achieved Storage Commercial Operation within [REDACTED] after the Guaranteed Storage Commercial Operation Date, Buyer may elect to terminate this

Agreement with respect to the Storage Product pursuant to Section 11.1(b)(ii) and Section 11.2(b), which termination shall be effective upon Notice to Seller as provided in Section 11.2(b).

4. **Extension of the Guaranteed Dates.** The Guaranteed Storage Construction Start Date and the Guaranteed Storage Commercial Operation Date shall be extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of each of the following delays, subject to the limitations specified below:
  - a. a Force Majeure Event occurs; or
  - b. Buyer has not made all necessary arrangements to receive the Storage Product at the Delivery Point by the Guaranteed Storage Commercial Operation Date.

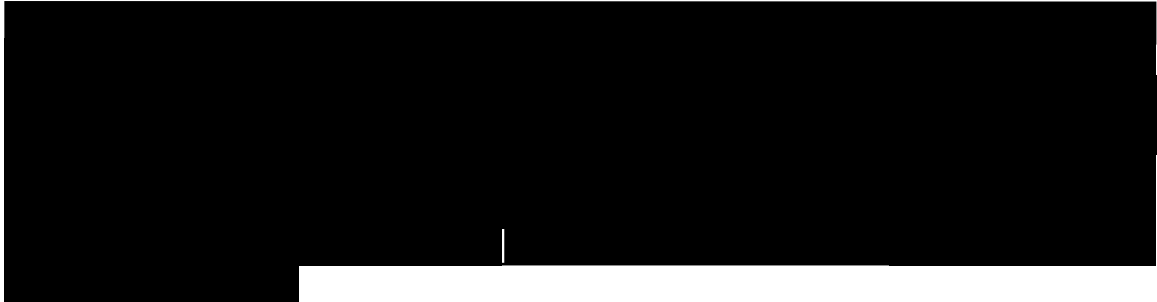
Notwithstanding anything in this Agreement to the contrary: the cumulative extensions granted pursuant to clause 4(a) above shall not exceed [REDACTED], for any reason, and no such extension shall be given if the delay was the result of Seller’s failure to take all commercially reasonable actions to 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. Extensions granted pursuant to clause 4(b) above shall not be limited.

5. **Failure to Reach Guaranteed Storage Capacity.** If, at Storage Commercial Operation, the Installed Storage Capacity is at least [REDACTED] of the Guaranteed Storage Capacity of 80 MW, and Seller has demonstrated the capability to deliver at least [REDACTED] of the Guaranteed Storage Capacity of 80 MW continuously for four (4) consecutive hours, but the results are less than 100% of the Guaranteed Storage Capacity of 80 MW or less than the Guaranteed Discharging Capability of 320 MWh over four (4) consecutive hours, then (a) Seller shall have ninety (90) days after the Storage Commercial Operation Date to install additional capacity such that the Installed Storage Capacity is increased, but not to exceed the Guaranteed Storage Capacity, and to demonstrate the Guaranteed Discharging Capability of 320 MWh over four (4) consecutive hours, (b) Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed Storage Capacity and confirming achievement of such Guaranteed Discharging Capability, and (c) until such certificate is provided or Seller makes an early election to pay Capacity Damages in accordance with the following sentence, Seller shall continue to pay Storage Commercial Operation Delay Damages as though the Storage Commercial Operation Date were not yet achieved. If Seller reasonably determines that Seller cannot install additional capacity above the [REDACTED] thresholds specified above or achieve the Guaranteed Discharging Capability, then Seller may elect to pay Capacity Damages by providing written notice of such election to Buyer and as of the date of such written notice Buyer shall not be obligated to continue paying Daily Delay Damages. In the event that the Installed Storage Capacity is still less than the Guaranteed Storage Capacity of 80 MW and Seller has not demonstrated the Guaranteed Discharging Capability of 320 MWh over four (4) consecutive hours as of the

ninety (90)-day deadline specified above, or if Seller has elected to pay Capacity Damages in accordance with the preceding sentence, then Seller shall pay “**Capacity Damages**” to Buyer in an amount equal to [REDACTED] for each MW that the Guaranteed Storage Capacity of 80 MW exceeds the amount of capacity (in MW) demonstrated as Installed Storage Capacity discharged at the Maximum Rate of Discharge demonstrated continuously over four (4) consecutive hours, and the Guaranteed Storage Capacity, Guaranteed Discharging Capability, and other applicable portions of this 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 lesser of the Installed Storage Capacity and the Maximum Rate of Discharge demonstrated continuously over four (4) consecutive hours as of such date, to the original Guaranteed Storage Capacity.

6. **Buyer’s Right to Draw on Seller Storage Development Security.** If Seller fails to timely pay any Daily Delay Damages or Storage Commercial Operation Delay Damages, Buyer may draw upon the Seller Storage Development Security to satisfy Seller’s payment obligation thereof, and Seller shall replenish the Seller Storage Development Security to its full amount (provided that in no event shall the aggregate amount of Seller Storage Development Security exceed the cap set forth in Section 7 of this Exhibit B) within five (5) Business Days after such draw.

7.



**EXHIBIT C**  
**RESERVED**

Exhibit C - 1

**EXHIBIT D**

**EMERGENCY CONTACT INFORMATION**

BUYER:

Peninsula Clean Energy  
2075 Woodside Road  
Redwood City, CA 94061  
Attn: Director of Power Resources

Phone No.:

Email:

SELLER:

Wright Solar Park LLC  
c/o KKR & Co. Inc.

[REDACTED]

or

Wright Solar Park LLC

[REDACTED]

## EXHIBIT E

### FORM OF SELLER PARENT GUARANTY

This Seller Parent Guaranty (this “Guaranty”) is entered into as of [\_\_\_\_\_] (the “Effective Date”) by and between [\_\_\_\_\_] a [\_\_\_\_\_] (“Guarantor”), and Peninsula Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

#### Recitals

- A. Buyer and [\_\_\_\_\_] a [\_\_\_\_\_] (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [\_\_\_\_], 2016.
- B. Guarantor is entering into this Guaranty as Seller Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

#### Agreement

**1. Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA in an aggregate liability not to exceed [\_\_\_\_\_] (the “Guaranteed Amount”). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly, after giving effect to all applicable notice and grace, pay such amount as required herein.

**2. Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount

Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

**3. Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller). Notwithstanding the foregoing, this Guaranty shall automatically terminate and be of no further force or effect if Seller replaces this Guaranty with an alternative form of Seller Performance Security acceptable to Buyer. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount,  
or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or



(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction.

**4. Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

Notwithstanding any other provision of this Guaranty to the contrary, Guarantor hereby reserves all rights and remedies accorded by applicable laws to sureties or guarantors based on the defense of the statute of limitations related to the enforceability of this Guaranty in any action or proceeding for the payment of any Guaranteed Amount.

**5. Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

**6. Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate corporate powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational

documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

**7. Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 7.

If delivered to Buyer, to it at

Peninsula Clean Energy

Attn: Contract Manager, Director of Power  
Resources

Fax:

If delivered to Guarantor, to it at

[ ]

Attn: [ ]

Fax: [ ]

**8. Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

**9. Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty

may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

#### **10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.**

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

Exhibit E - 5

*[Signatures on next page]*

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[\_\_\_\_\_]

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

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

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

BUYER:

PENINSULA CLEAN ENERGY

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

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

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

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

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

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

## EXHIBIT F

### GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which

D = the Renewable Rate for the Performance Measurement Period, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

#### **Additional Definitions:**

**“Adjusted Energy Production”** shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output + Replacement Product – Excess MWh.

**“Lost Output”** means the sum of PV Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using an equation provided by Seller, as approved by Buyer in its reasonable discretion, to reflect the potential generation of the Generating Facility as a function of Available Generating Capacity, solar insolation and panel temperature, and using relevant Generating Facility availability, weather, historical and other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

**“Replacement Green Attributes”** means Renewable Energy Credits of the same Portfolio Content Category (e.g., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

**“Replacement Energy”** means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

**“Replacement Product”** means (a) Replacement Energy, and (b) all Replacement Green Attributes.

**EXHIBIT G**  
**PROGRESS REPORTING FORM**

For new facilities, within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Storage Construction Start Date, and (ii) each calendar month from the first calendar month following the Storage Construction Start Date until the Storage Commercial Operation Date, Seller shall provide to Buyer a written Progress Report in the form specified below.

Each Progress Report must include the following items:

1. Executive Summary.
2. Storage Facility description.
3. Site plan of the Storage Facility.
4. Description of any planned changes to the Storage Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that could potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Any other documentation reasonably requested by Buyer.



**EXHIBIT H**  
**RESERVED**

Exhibit H - 1

## EXHIBIT I-1

### FORM OF STORAGE COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Storage Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] (“**Engineer**”) to Peninsula Clean Energy (“**Buyer**”) in accordance with the terms of that certain Second Amended and Restated Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) The Storage Facility has achieved Full Capacity Deliverability Status and met all Interconnection Agreement requirements;
- (2) The Storage Facility is capable of receiving Charging Energy from the Generating Facility and delivering Discharging Energy to the Delivery Point and commissioning of equipment at the Storage Facility has been completed in accordance with the manufacturer’s specifications;
- (3) \_\_\_\_\_ of the Guaranteed Storage Capacity of 80 MW has been installed and commissioned and the Storage Facility has satisfied the Commercial Operation Test by demonstrating (i) achievement of at least \_\_\_\_\_ of the Guaranteed Storage Capacity of 80 MW, and (ii) delivery of at least \_\_\_\_\_ of the Guaranteed Storage Capacity of 80 MW continuously for four (4) consecutive hours of continuous discharging of the Storage Facility;
- (4) All applicable permits and government approvals required for commencement of the operation of the Storage Facility have been obtained;
- (5) Authorization to parallel the Storage Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on \_\_\_\_\_ [DATE] \_\_\_\_\_;
- (6) The Participating Transmission Owner or Distribution Provider has provided documentation supporting full unrestricted release for Storage Commercial Operation by [Name of Participating Transmission Owner as appropriate] on \_\_\_\_\_ [DATE] \_\_\_\_\_; and
- (7) The CAISO has provided notification supporting Storage Commercial Operation, in accordance with the CAISO tariff on \_\_\_\_\_ [DATE] \_\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_  
Exhibit I-1 - 1

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT I-2

### FORM OF INSTALLED STORAGE CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Storage Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to PENINSULA CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Second Amended and Restated Power Purchase and Sale Agreement dated \_\_\_\_\_ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Storage Facility performance test under Seller’s EPC contract for the Storage Facility demonstrated [\_\_\_\_\_] at the Delivery Point (“**Installed Storage Capacity**”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT J

### FORM OF STORAGE CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Storage Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to PENINSULA CLEAN ENERGY ("**Buyer**") in accordance with the terms of that certain Second Amended and Restated Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the EPC Contract related to the Storage Facility was executed on \_\_\_\_\_;
2. the Notice to Proceed with the construction of the Storage Facility was issued on \_\_\_\_\_ (attached);
3. the Storage Construction Start Date has occurred; and
4. the precise Site on which the Storage Facility is located is, which must be within the boundaries of the previously identified Site:

\_\_\_\_\_  
(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

*[Issuing Bank Letterhead and Address]*

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$ [XXXXXXXX]

Expiry Date:

Beneficiary:

Peninsula Clean Energy

**[Address]**

Ladies and Gentlemen:

On behalf of [XXXXXXXX] ("Applicant"), we, **[insert bank name and address]** ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") in favor of Peninsula Clean Energy, Address \_\_\_\_\_, for an amount not to exceed the aggregate sum of U.S. \$ [XXXXXXXX] (United States Dollars [XXXXXXXX] and 00/100), pursuant to that certain **[Agreement]** dated as of \_\_\_\_\_ (the "Agreement") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry date of \_\_\_\_\_, 20\_\_ subject to the automatic extension provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, mentioning thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer in person, by courier or by fax at **[insert bank address]**. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date (as may be extended below) on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents without the need of originally signed documents.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at **[insert bank address information]**, referring specifically to Issuer's Letter of Credit No. **[XXXXXXX]**. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at **[XXX-XXX-XXXX]** and have this Letter of Credit available.

**[Bank Name]**

---

**[Insert officer name]**  
**[Insert officer title]**

**DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)**

Drawing Certificate

**[Insert Bank Name and Address]**

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Peninsula Clean Energy, Address \_\_\_\_\_ as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. **[XXXXXXXX]** (the "Letter of Credit") issued by **[insert bank name]** (the "Bank") by order of **[XXXXXXXX]** (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of **[XXXXXXXX]** (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ \_\_\_\_\_.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ \_\_\_\_\_, which equals the full available amount under the Letter of Credit, because the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.

3. The undersigned is a duly authorized representative of Peninsula Clean Energy and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Peninsula Clean Energy by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_



## EXHIBIT L

### ANNUAL STORAGE AVAILABILITY

#### 1. Annual Storage Availability.

(a) For each twelve (12) month period ending upon an annual anniversary of the Storage Commercial Operation Date, Seller shall calculate the “Annual Storage Availability” using the formula set forth below:

$$\frac{\text{[REDACTED]}}{\text{[REDACTED]}} \times 100$$

where:

$y$  = relevant twelve (12) month period for which availability is calculated;

ANNUALHRS $y$  = the total number of hours for the twelve (12) month period;

UNAVAILHRS $y$ , = the sum of the following without duplication: (i) the total number of hours in the twelve (12) month period during which the Storage Facility was unavailable to be dispatched, in whole or in part, to deliver Storage Product for any reason other than the occurrence of an Excused Event; (ii) the total number of hours in the twelve (12) month period during which the Storage Facility failed to comply with a valid Charging Notice or Discharging Notice that complies with this Agreement, including any such failure to charge or discharge at the times, in the quantities, and at the levels specified in such Charging Notice or Discharging Notice; and (iii) the total number of hours in the twelve (12) month period during which the Storage Facility was charged or discharged other than pursuant to a valid Charging Notice or Discharging Notice that complies with this Agreement, or pursuant to a notice from the CAISO, any PTO, or any other Governmental Authority. For the avoidance of doubt when determining partial compliance with respect to this UNAVAILHRS $y$  calculation: partial availability in part (i) will result in prorated unavailability hours based on the portion of the hour during which the Storage Facility was not available for dispatch and the portion of the Storage Facility that was unavailable, partial compliance in any hour for part (ii) will result in prorated unavailability hours based on the portion of the hour during which the Storage Facility failed to comply and the magnitude of the noncompliance in MW, and partial compliance in any hour for part (iii) will result in prorated unavailability hours based on the portion of the hour during which the Storage Facility was charged or discharged without a valid notice.

“Excused Event” means a Force Majeure Event, System Emergency, Scheduled Maintenance up to [REDACTED] in any Contract Year (and any hours of unavailability during Scheduled Maintenance in excess of the [REDACTED] limit shall be included in UNAVAILHRS $y$ ), an Event of Default by Buyer, or the Operating Restrictions. To be clear, hours of unavailability caused by any Excused

Event will not be included in UNAVAILHRSy for such twelve (12) month period to the extent that the unavailability was caused by such Excused Event. Any other event that results in unavailability of the Storage Facility, in whole or in part, for less than a full hour, and any other circumstance addressed in the definition of UNAVAILHRSy above, will count as an equivalent percentage of the applicable hour(s) and availability for this calculation.

(b) If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

(c) If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

**2. Storage Availability Adjustment.** The “**Storage Availability Adjustment**” shall be calculated as follows and applied to the Storage Capacity Payment due each and every month after the end of the twelve (12) month period for which the Annual Storage Availability is calculated, until such time as a new Annual Storage Availability is calculated for the next succeeding twelve (12) month period.

(a) If the Annual Storage Availability is greater than or equal to [REDACTED], then:

[REDACTED]

(b) If the Annual Storage Availability is less than [REDACTED], and clause (c) immediately below does not apply, then:

[REDACTED]

(c) If the Annual Storage Availability is less than [REDACTED], then:

[REDACTED]

## EXHIBIT M

### STORAGE CAPACITY TESTS

#### **Storage Capacity Test Notice and Frequency**

A. Storage Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days' Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Storage Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit M and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Storage Commercial Operation Date, but not more than once per Contract Year, upon no less than ten (10) Business Days' Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test and to update the Storage Facility's Pmax, Guaranteed Round Trip Efficiency, and other relevant information and values in the CAISO's Master Data File and Resource Data Template (or successor data systems). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test (and to update the Storage Facility's PMax and other relevant information and values as specified above) at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Contract Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Contract Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.13(c) of this Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test that is discharged continuously for four (4) consecutive hours (up to, but not in excess of, the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

#### **Storage Capacity Test Procedures**

##### PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit M. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit M as a "**SCT**". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its



own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity at the Storage Facility Meter;
- Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

- (1) Time;
- (2) Charging Energy;
- (3) Discharging Energy;
- (4) Stored Energy Level (MWh).

C. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
- (3) Ambient air Temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Storage Facility:

- (1) successfully started;

- (2) operated for at least four (4) consecutive hours at the Storage Facility's maximum discharging capability (measured in MW by the Storage Facility Meter), which shall not exceed 80 MW ("**Maximum Discharging Capacity**") ;
- (3) operated for at least four (4) consecutive hours at the Storage Facility's maximum charging capability (measured in MW by the Storage Facility Meter), which shall not exceed 80 MW ("**Maximum Charging Capacity**");
- (4) is able to ramp upward and downward at the contract Ramp Rate;
- (5) has a Storage Contract Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and
- (6) is able to deliver Discharging Energy to the Delivery Point as measured by the Storage Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

- (i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.
- (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
- (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- (iv) Ambient Temperature. For tests requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 – 33 degrees Celsius.

- F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force

Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted, at its discretion, to (x) complete such incomplete portion of the SCT or (y) reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
- (3) the level of Storage Contract Capacity, Charging Capacity, Discharging Capacity, Charging Ramp Rate, Discharging Ramp Rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit M with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit M.

I. Adjustment to Storage Contract Capacity. The total amount of Discharged Energy delivered to the Delivery Point (expressed in MWh AC) during the first four hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity of 80 MW, as such Guaranteed Storage Capacity in MW may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Contract Capacity, which shall be expressed

in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.13(c) of this Agreement.

**EXHIBIT N**  
**OPERATING RESTRICTIONS**

1. Defined Terms The following terms, when used with initial capitalization in this Exhibit N, shall have the meanings set forth below

“Charge Cycle” means a cycle of charging the Storage Facility from 0% to 100% Stored Energy Level.

“Cmax” means the Storage Contract Capacity, as may be adjusted by the provisions of the Agreement.

“Cmin” means zero (0).

“Discharge Cycle” means a cycle of discharging the Storage Facility discharging from 100% to 0% Stored Energy Level.

“Dmax” means the Storage Contract Capacity, as may be adjusted by the provisions of the Agreement.

“Dmin” means zero (0).

2. Operating Restrictions:

Maximum Cycle Limits: Number of times Buyer may fully charge and discharge the Storage Facility. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Storage Facility over the course of a calendar year equals the Maximum Storage Level. This could occur in one continuous charge or over multiple charges, even if some energy is discharged in between. The inverse is true for a full discharge.

Annual: [REDACTED]

Daily dispatch limits: [REDACTED]

Stored Energy Levels:

Maximum Time at Minimum Storage Level:

- [REDACTED]
- [REDACTED]

Exhibit N - 1



[REDACTED]

I [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

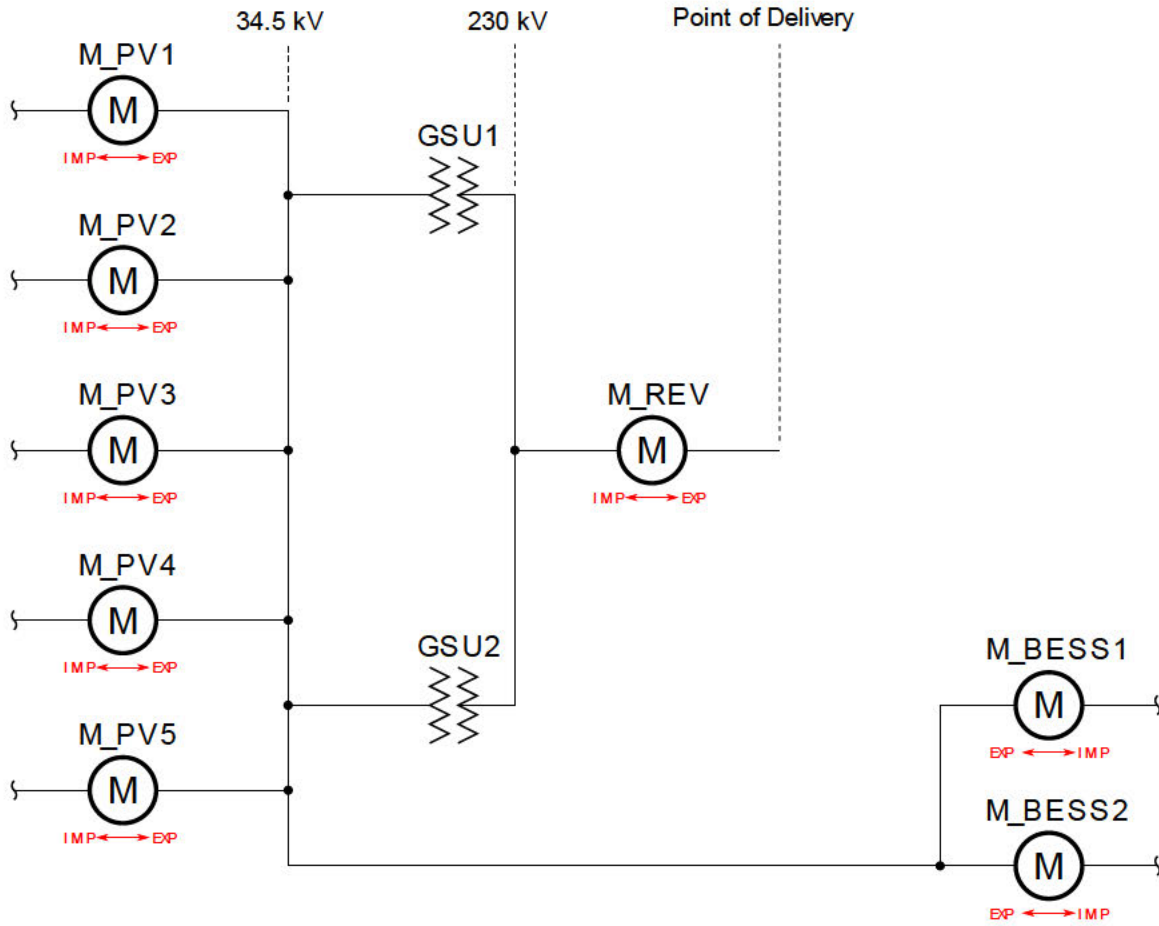
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**EXHIBIT O**  
**METERING DIAGRAM**



All information presented in this Exhibit O is subordinate to the terms and definitions of the Agreement.

Metering equipment, the above schematic, and calculation formulas are subject to CAISO and PG&E review and may be revised from time to time as permitted by CAISO and PG&E and as agreed between Buyer and Seller.

PV Energy is the export energy from the M\_PV# meters, less estimated PV auxiliary loads and adjusted for estimated transformation and transmission losses to the Delivery Point. These M\_PV# meters and associated adjustments together constitute the Generating Facility Meter.

Charging Energy and Discharging Energy is the import or export energy respectively from M\_BESS#, adjusted for transformation and transmission losses to the POI. These M\_BESS# meters and associated adjustments together constitute the Storage Facility Meter.

## EXHIBIT P

### ROUND TRIP EFFICIENCY

#### Round Trip Efficiency

“**Round Trip Efficiency**” is defined as the amount of Energy discharged by the Storage Facility relative to the amount of Charging Energy, measured or calculated during the most recent Storage Capacity Test as described in Exhibit M by the Storage Facility Meter as adjusted for transformation and transmission losses to the Delivery Point, calculated as shown below:

$$\text{Round Trip Efficiency (RTE)} = \frac{\text{Discharging Energy (MWh)}}{\text{Charging Energy (MWh)}}$$

Uncertainties and test tolerance of 0.5% will be applied to the calculation of the Round Trip Efficiency. For purposes of testing the Round Trip Efficiency, the Charging Energy and Discharging Energy shall be measured by the Storage Facility Meter as adjusted for transformation and transmission losses to the Delivery Point.

The monthly Storage Capacity Rate under Section 3.3(d) shall be adjusted by the Round Trip Efficiency Adjustment, expressed as a decimal, based on the Guaranteed Round Trip Efficiency, as follows:

The “**Round Trip Efficiency Adjustment**” or “ $RTE_{Adj}$ ” for each month is given by:

$$\text{If } RTE < RTE_G, \text{ then } RTE_{Adj} = \frac{RTE}{RTE_G}$$

where:

$RTE$  = the Round Trip Efficiency as determined by the most recently completed Storage Capacity Test.

$RTE_G$  = the Guaranteed Round Trip Efficiency

The “**Guaranteed Round Trip Efficiency**” shall be, with respect to each Contract Year during the Storage Delivery Term, the percentage set forth in the chart below:

Storage Delivery Term Contract Year	Guaranteed Round Trip Efficiency
1	██████
2	██████
3	██████

Storage Delivery Term Contract Year	Guaranteed Round Trip Efficiency
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 18, 2022

**BOARD MEETING DATE:** May 26, 2022

**SPECIAL NOTICE/HEARING:** None

**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Andy Stern, Chief Financial Officer

**SUBJECT:** Review of Fiscal Year 2022-2023 Draft Budget (Discussion)

**SUMMARY:**

A Presentation covering a draft Budget for the Fiscal Year (FY) 2022-2023 will be presented at the meeting.

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 20, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** Majority Present

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Siobhan Doherty, Director of Power Resources  
Doug Karpa, Senior Regulatory Analyst

**SUBJECT:** PG&E Voluntary Allocation and Market Offer Renewable Energy Credit Solicitation (Discussion)

**BACKGROUND:**

The California Public Utilities Commission (“CPUC”) opened Rulemaking (“R.”)17-06-026 on June 26, 2017, to review, revise and consider alternatives to the Power Charge Indifference Adjustment (“PCIA”). In October 2018, D.18-10-019 opened a second phase of the proceeding with a working group process resulting in four decisions to address three specific topic areas: (1) the market price benchmarks, (2) a voluntary prepayment option, and (3) portfolio optimization and cost reduction of the investor-owned utilities’ (“IOUs”) PCIA portfolios.

Peninsula Clean Energy was extensively involved in the working group process to develop the Voluntary Allocation and market offer process to address access by CCAs to the PCIA portfolio procured on behalf of our customers. This proposal was designed to place CCAs on even footing with the IOUs in having the option to pay for the resources or opt to sell them into the market. However, the CPUC largely rejected the proposal of the working group and made significant revisions that markedly reduced the value of the framework.

D.21-05-030 was issued on May 24, 2021, as part of Phase 2 of the PCIA proceeding. Specifically, D.21-05-030 addresses portfolio optimization activities associated with renewable portfolio standard (“RPS”) resources subject to PCIA cost recovery. A Voluntary Allocation and Market Offer (“VAMO”) mechanism was adopted, including authorizing a process for the IOUs to allocate a “slice” of an IOU’s entire PCIA-eligible RPS portfolio to eligible load serving entities (“LSEs”) in proportion to their vintaged, forecasted annual load share. The IOUs are required to administer one allocation

process per RPS compliance period. LSEs must inform their respective IOU (i.e. PG&E) by July 8th whether they accept or decline the allocation for the current RPS compliance period, which ends in 2024. The next RPS compliance period is 2025 through 2027 at which time, the IOUs will be required to administer a second allocation process.

Under VAMO, LSEs have the option to contract for a long-term or short-term allocation from the PCIA portfolio or decline their allocation.

The timeline for accepting an allocation was initially set for May 31, 2022, but on May 20, 2022, this was extended to July 8, 2022. Staff will provide an update and recommendation at the June Board meeting. At this time, staff recommend rejecting the allocation for the reasons described in the following section.

### **DISCUSSION:**

Participation in VAMO carries uncertainty around resource types, quantity, REC price and term. Additionally, PG&E's portfolio consists of pre-2009 vintaged resources referred to as PCC0 which if sold may be reclassified as out-of-state RPS resources ("PCC2") and un-bundled RECs ("PCC3") which are both limited from an annual compliance standpoint and carry reportable greenhouse gas emissions. On May 20, 2022, the CPUC issued a proposed decision in this matter which would maintain these as PCC0 status. We expect a final decision to be voted on at the June 23, 2022 CPUC meeting. Additionally, Peninsula Clean Energy has a policy against the procurement of PCC3. The following is a description of the major VAMO elements and concerns.

#### **1. Price Risk – Costs based on Market Price Benchmarks**

Normally, when Peninsula Clean Energy signs a contract to procure RPS resources, the contract has a fixed price. Under VAMO, the price is variable year to year. The price is structured as an index-price plus a REC adder. LSEs electing to accept allocations shall be required to pay the applicable year's market price benchmark (MPB), which is determined through the PCIA proceeding, for RPS attributes received. In each year, LSEs will pay the forecasted MPB for deliveries received. In the following year, there will be a true up based on the final RPS Adder.

For reference the 2021 published MPB and 2022 forecasted MPB is in the table below.

2021 Final RPS Adder	\$14.23
2022 Forecast RPS Adder	\$13.70

Additionally, we have generally found that index plus pricing structures are not as valuable as bundled pricing structures. Under an index plus pricing structure, we do not receive any hedging benefits of the energy resource and would additionally need to procure a separate hedge product to manage our energy price risk.

#### **2. Volume Risk - Slice Elections**

There is significant difficulty predicting the volume of renewables we should expect to receive through this process. Voluntary Allocations comprise a "slice" of an IOU's entire

PCIA-eligible RPS portfolio. LSEs will be offered allocations of the PCIA-eligible RPS portfolio in proportion to their vintaged, forecasted annual load share. Each election shall be made in 10 percent increments of the LSE's vintaged, forecasted annual load share.

Peninsula Clean Energy's allocation share will vary year to year based on our load and there will be different vintage resources applicable to San Mateo County load versus Los Banos load because these geographic areas have different PCIA vintages. Additionally, because we are procuring renewable resources, there will be natural variation in actual energy production.

PG&E can add or remove resources from the portfolio for certain reasons and provide notice "as soon as reasonably practicable". PG&E can remove resources if the contract terminates or expires, the resource is no longer in their PCIA-eligible portfolio due to an order from a Governmental Authority or Governmental Entity, or the Resource is owned by PG&E, but ceases operation. PG&E can add resources to the portfolio for Resources that have a PCIA vintage that corresponds with the Buyer's Allocation Share and from specific Customer Programs including GTSR and DAC.

Finally, under the contract PG&E has the right to sell all or any portion of the renewable resource. There does not appear to be any limit on this or any requirement of notice of these third-party sales until we receive the invoice, which will occur four months after energy generation. Without timely information about the volume of resources we will receive, we may end up under or over-procured for a particular year. This could result in a power content label that does not meet our internal goals of at least 50% renewable and 50% from carbon-free resources.

### 3. Allocation Will Not Help PCE Meet 24/7 Goal

PG&E will be the scheduling coordinator for the resources. Peninsula Clean Energy will not have the ability to manage resources to meet our time-coincident goal. In fact, we may not even know the day or hour for when generation occurs.

Additionally, due to the ability of PG&E to sell portions to third-parties, we cannot be sure of the resources that will be included in our allocation and could not schedule our own resource portfolio around the allocation

### 4. May Increase Portfolio GHG Emissions

Due to this shifting of the underlying resource pool, we will have less certainty in the resource mix under contract than with standard REC purchases. The portfolio includes some renewable resources that have GHG emissions associated with them, such as biomass and geothermal. A large allocation of these resources may result in a higher GHG emissions factor.

### 5. May Result in Procurement of Unbundled RECs

Under the RPS, there are three product content categories (PCC). Peninsula Clean Energy only procures PCC1 resources. PCC2 resources are located outside of California



and PCC3 resources are unbundled RECs. Peninsula Clean Energy Policy #11<sup>1</sup> prohibits the purchase of unbundled RECs. PCC2 and PCC3 RECs also have negative implications for reporting GHG emissions.

The IOUs have some resources that were procured prior to the PCC classification system. These resources were assigned a PCC0 classification and grandfathered into the program. However, if these resources are re-sold, they would lose their grandfathering status and take on the appropriate classification (PCC2 or PCC3). On May 20, 2022, the CPUC issued a proposed decision in this matter which would not classify these RECs as “*re-sold*”, but rather “*allocated*” and therefore would maintain their PCC0 status with the same benefits and limitations that apply to the IOUs’ use of PCC0 RECs. We expect a final decision to be voted on at the CPUC meeting on June 23, 2022.

PG&E makes no representation or warranty concerning PCC categorization of allocated product in its VAMO Contract. Further, the VAMO Contract provides the LSE the right to account for or report the allocated products to a governmental entity for compliance with RPS or Power Content Label reporting. Thus, any CPUC resolution of the IOU’s proposal will not impact the terms and conditions of the VAMO Contract. This remains as a large regulatory concern for VAMO, as a reclassification of PCC0s to PCC2 or PCC3 would have negative power content label impacts and violate Policy #11.

### **STRATEGIC PLAN:**

This supports the following objectives in Peninsula Clean Energy’s strategic plan:

Power Resources Objective B. Procurement – Procure power resources to meet regulatory mandates and internal priorities at affordable cost

---

<sup>1</sup> <https://www.peninsulacleanenergy.com/wp-content/uploads/2021/12/PCE-Policy-11-Unbundled-Renewable-Energy-Credits-RECs.pdf>

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 10, 2022  
**MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Executive Committee

**FROM:** Kirsten Andrews-Schwind, Senior Manager of Community Relations  
and Vanessa Shin, Community Outreach Associate

**SUBJECT:** 2021 Work Plan Deliverables for the Citizens Advisory Committee

**BACKGROUND:**

In 2021, the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members.

The Citizens Advisory Committee has completed many of the projects on the 2021 work plan and would like to submit their deliverables.

**DISCUSSION:**

Each working group of the Citizens Advisory Committee has submitted a brief report describing their progress on their specified task.

The list of 2021 Citizens Advisory Committee working groups can be found in Table 1. The submitted deliverables for each working group are included below.

**Table 1. 2021 Citizens Advisory Committee Projects**

<b>Project</b>	<b>Description</b>	<b>Staff Liaison</b>	<b>CAC Members (*Lead)</b>
<b>Assist with design and launch of income-qualified home upgrade program</b>	Assist staff with a) community relationships and outreach, and b) technical design guidelines and outcomes for the program. <i>Deliverable: Brief memo summarizing input on technical design guidelines and outcomes for the program.</i>	Alejandra Posada, Programs Team	Diane Bailey*, Janet Creech, Kathryn Green

<b>Support building electrification</b>	Conduct community education about reach codes and other electrification measures and their importance to GHG reduction goals. <i>Deliverable: Brief memo summarizing community education conducted by CAC members regarding reach codes.</i>	Rafael Reyes, Programs Team	Jason Mendelson*, Diane Bailey, Ray Larios, Daniel Baerwaldt
<b>Assess EV charging infrastructure permitting processes</b>	Conduct an assessment of current EV charging infrastructure permitting processes across PCE jurisdictions, focusing on those that have not yet begun streamlining these processes. <i>Deliverable: Written assessment of EV charging permitting processes.</i>	Phillip Kobernick, Programs Team	Cheryl Schaff*
<b>Support site identification for Community Solar DER installations</b>	Research possible sites for community solar development in disadvantaged communities and introduce local site managers to PCE staff. <i>Deliverable: Email introductions to local site managers.</i>	Peter Levitt and Dave Fribush, Programs Team	Desiree Thayer*, Alex Melendrez
<b>Microgrids research</b>	Conduct a literature review on methods for establishing quantifiable value streams for societal and customer-level benefits of microgrids. <i>Deliverable: Summary of findings and annotated literature review with citations and links.</i>	Peter Levitt and Dave Fribush, Programs Team	Michael Closson*, Ray Larios, Jason Mendelson
<b>Review DER program grading and evaluation criteria</b>	Provide feedback to staff on criteria for choosing future community Distributed Energy Resources projects, emphasizing diverse perspectives. <i>Deliverable: Brief memo summarizing feedback to staff.</i>	Peter Levitt and Dave Fribush, Programs Team	Jason Mendelson*, Michael Closson, Janet Creech
<b>Assist with distribution and replication of PCE education resources</b>	Leverage the impact of an existing PCE educational resources by getting it implemented in more schools and youth programs. <i>Deliverable: Brief memo summarizing actions taken to expand the use of PCE student activity packet.</i>	KJ, Marketing Team	Janet Creech*, Ray Larios, Desiree Thayer, Daniel Baerwaldt



## **Citizens Advisory Committee**

### **Home Upgrade Program Working Group**

### **Deliverable Report**

**DATE:** April 29, 2022  
**MEETING DATE:** May 26, 2022

#### **BACKGROUND**

In 2021 the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members. The work plan also describes deliverables for these tasks, usually reporting back to the Board on the working group activities.

The specified task for this working group is to provide feedback and recommendations on the draft guidelines for the new Low-Income Turnkey Electrification & Home Upgrade Program before it launches and to monitor the program after it launches. The deliverable for this working group is to correspond with the staff lead for the program and provide feedback on the program. Citizen Advisory Committee members Diane Bailey, Janet Creech, Katie Green, and Alexander Melendrez participated in this working group.

#### **DISCUSSION**

This working group initially met monthly and after the program launched, decided to meet every two months to monitor progress. The workgroup reviewed and commented on the draft guidelines for the program. We recommended increasing the cost cap per household to allow for replacement of gas furnaces with heat pump heaters that also provide cooling in the same device. The group and staff also exchanged information on how to best conduct outreach to potentially qualifying households.

The program launch went very well with many more households expressing interest than available slots in the program. The working group discussed how to make the funding stretch to provide the most benefits per household. Our working group would like to continue to monitor and support the program as more homes are upgraded.

Alejandra Posada is the staff liaison and has shared program metrics and information with our workgroup in bimonthly updates. Our working group is small; we welcome other interested CAC members to join us.

*Signed Diane Bailey, Janet Creech, Katie Green and Alexander Melendrez*



## **Citizens Advisory Committee**

### **Building Electrification Working Group**

### **Deliverable Report**

**DATE:** April 29, 2022  
**MEETING DATE:** May 26, 2022

#### **BACKGROUND**

In 2021 the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members. The work plan also describes deliverables for these tasks, usually reporting back to the Board on the working group activities.

The specified task for this working group is to conduct community education about reach codes and other electrification measures and their importance to GHG reduction goals.

The deliverable for this working group is to create a Brief memo summarizing community education conducted by CAC members regarding reach codes. Citizen Advisory Committee members Jason Mendelson, Diane Bailey, Daniel Baerwaldt, and Ray Larios participated in this working group.

#### **DISCUSSION**

This working group met monthly and reviewed the current state of the push for reach code adoption in the PCE jurisdiction and beyond. The group and staff exchanged information on how to best reach out to our networks and support reach code adoption. The members of the group attended municipal meetings to help educate and expand the adoption of reach codes. The members of the group met with other community groups to help share information on the same. The goal of exchanging information and mobilization for support of reach codes was met. Reach code adoption went well beyond the initial goal, and the working group discussed how to expand the reach codes for reach code 2.0, and how a working group like this may be able to continue to support the current and future adoptions of reach codes. Rafael Reyes as staff liaison provided enormous troves of information and sought input from the working group on his and the staffs' work in this space. This working group also prepared a draft of a resolution that what was eventually adopted by the CAC as recommendations for the Board 2035 Decarbonization Subcommittee in support of the draft framework on achieving zero carbon by 2035.

We would recommend expanding and reforming the working group to work on either reach code adoption or support for the decarbonization efforts of PCE in the future.

*Signed Jason Mendelson, Diane Bailey, and Daniel Baerwaldt*



## Citizens Advisory Committee EV Charging Permitting Working Group Deliverable Report

**DATE:** April 29, 2022  
**MEETING DATE:** May 26, 2022

### **BACKGROUND**

In 2021 the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members. The work plan also describes deliverables for these tasks, usually reporting back to the Board on the working group activities.

The specified task for this working group is to assess current EV charging infrastructure permitting processes across Peninsula Clean Energy jurisdictions, focusing on those that have not yet begun streamlining these processes. The goal of this working group was to assess each jurisdiction's status on the [GO-Biz statewide map](#) of EV charging infrastructure permit streamlining. The table below describes the [scoring system](#) by which jurisdictions are assessed through GO-Biz. Citizen Advisory Committee member Cheryl Schaff participated in this working group. The deliverable for this working group is a written assessment of EV charging permitting processes.

EVCS Permit Ready Score:
Green – City or County is EVCS Permit Ready, charging infrastructure permitting is streamlined
Yellow – City or County EVCS permit streamlining is in progress, or partially complete
Red – City or County is <b>not</b> streamlined for EVCS permitting

### **DISCUSSION**

I contacted all 21 entities in the county, had pleasant conversations with dozens of people while trying to find staff responsible for streamlining (still waiting to confirm exactly correct contact in two cases), providing a gentle nudge toward becoming compliant AND completing the steps that GO-Biz requires for “green” status on their map. Responses have been more robust in the current state of the pandemic than they were during lockdowns. But I heard more than once that communities are struggling to staff their departments, even when offering nice salaries.

Compliance with AB 1236 and AB 970 is provided by different employees in different cities. Some cities have been careful to ensure that their compliance not only allows for quick and easy permitting, but that they complete every step required by GO-Biz to ensure best status on the map. Others say they churn out permits quickly but are not

aware of or concerned with GO-Biz status. San Mateo County recently got a request from GO-Biz about why they were not compliant, so GO-Biz may be conducting a nudging process similar to mine for PCE.

A couple of communities moved from “yellow” to “green” in response to my nudge. A number of still “yellow” cities, will become “green” soon, if they follow through on their recent commitments to take the one or two steps they have left to complete. I feel that I made progress.

The work is not finished; I’m sure I’ll continue to get email responses and phone calls from staff in several cities. In some cases, there seem to be huge discrepancies between communities saying they award permits for EVCS quickly—even instantaneously—and their Go-Biz Map status. I’m sure more conversations with city and GO-Biz personnel will reveal the source of the discrepancies.

Please let me know if you want me to continue gently nudging San Mateo County entities to become compliant in the eyes of GO-Biz. Kirsten said in a recent CAC discussion that you do not. In that case, I’ve submitted my working notes about contacts, conversations, discoveries and progress to staff.

Cheryl Schaff

### **CITIES’ STATUS**

#### **Green per GO-Biz**

Brisbane  
Burlingame  
Foster City  
Menlo Park  
Pacifica  
Redwood City  
San Carlos  
San Mateo

#### **Yellow per GO-Biz**

Atherton  
Belmont  
Half Moon Bay  
Portola Valley  
San Bruno  
South San Francisco  
Woodside

#### **Red per GO-Biz**

Daily City  
East Palo Alto  
Hillsborough  
Millbrae  
San Mateo County



## **Citizens Advisory Committee**

### **Community Solar Site Identification**

### **Working Group Deliverable Report**

**DATE:** April 29, 2022  
**MEETING DATE:** May 26, 2022

#### **BACKGROUND**

In 2021 the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members. The work plan also describes deliverables for these tasks, usually reporting back to the Board on the working group activities.

The specified task for this working group is to *research possible sites for community solar development in disadvantaged communities and introduce local site managers to PCE staff*. The deliverable for this working group is *email introductions to local site managers*. Citizen Advisory Committee members Desiree Thayer and Alex Melendrez participated in this working group.

#### **DISCUSSION**

The working group met with PCE staff (Dave Fribush and Peter Levitt) for a kickoff meeting on June 8, 2021. Dave shared details about the community solar DER installation programs, including both the Disadvantaged Community Green Tariff (DAC-GT) and Community Solar Green Tariff (CS-GT). Alex Melendrez created a shared spreadsheet for working group members to share organizations and points of contact with Dave.

PCE staff provided an update of the DAC-GT and CS-GT programs at the Board of Directors meeting in June. Following this meeting, Desiree Thayer contacted Board member Flor Nicholas, and Flor introduced the city staff member for capital projects. A meeting was arranged with the working group, Dave, and several City of South San Francisco (SSF) staff members. At that meeting on July 23, 2021, Dave shared details of the DAC-GT and CS-GT programs and site criteria, and the City of SSF staff shared potential community solar sites and community partners.

The working group continued to reach out to other organizations for site identification. In October, 2021, the working group was put on hold as the DAC-GT program was changing with the addition of 350+ Los Banos customers. This change did not affect the CS-GT project and need to find locations in San Mateo County. Dave informed the working group that he would re-engage following solicitation of DAC-GT customers.

PCE ran its solicitation for permanent DAC-GT and CS-GT resources but did not receive any bids for CS-GT projects. The immediate focus will be on executing an



agreement for the DAC-GT allocation, after which attention can be turned to the CS-GT allocation. It should be noted that no CCA in California has received CS-GT bids, and staff expects that the small size of these projects, combined with the additional requirements on project developers, have been a deterrent. The CPUC is monitoring this and may be considering changes to facilitate more deployments.



## **Citizens Advisory Committee**

### **Microgrids Research Working Group**

### **Deliverable Report**

**DATE:** April 29, 2022  
**MEETING DATE:** May 26, 2022

#### **BACKGROUND**

In 2021 the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members. The work plan also describes deliverables for these tasks, usually reporting back to the Board on the working group activities.

The specified task for this working group is to Conduct a literature review on methods for establishing quantifiable value streams for societal and customer-level benefits of microgrids. The deliverable for this working group is to create a summary of findings and annotated literature review with citations and links. Citizen Advisory Committee members Jason Mendelson, Michael Closson, and Ray Larios participated in this working group.

#### **DISCUSSION**

This group evaluated a couple of research papers and provided a summary of the literature (reports attached). After initially meeting, and preparing the first two reports, we did not meet again or discuss the findings of the reports or establish a protocol for future reports.

We do not believe we met our goals, which included helping to prepare PCE for microgrids, but we believe this is a worthwhile endeavor and that the research should be conducted as soon as possible.

The two of us in the working group believe that there should be more advocacy, in addition to more research and meetings and discussion on this important topic and opportunity.

*Signed Jason Mendelson and Michael Closson*

DATE: August 24, 2021

TO: PCE's DER Microgrid Team

FROM: Michael Closson

SUBJECT: Report on Microgrid Knowledge's Special Report: *Why Energy-as-a Service Microgrids are the Logical Next Step for California . . . and the Rest of the U.S.*

#### Chapter 1 — *The Cost of Power Outages in an Era of Climate Change*

- Destructive extreme weather events are becoming more frequent leading to a great increase in grid-based power outages.
- These power outages not only are inconvenient, they are dangerous and economically costly.
- California has been hard-hit by power outages and is also seeking to phase out fossil fuels. Hence, it makes sense for our leaders and citizenry to seriously undertake the development of microgrids.

#### Chapter 2 — *Why Microgrids are at an Inflection Point*

- Benefits of microgrids:
  - Can seamlessly “island” themselves when a power outage occurs and then reconnect to the grid when the power is restored.
  - Can use several different types of generators: e.g. solar, batteries, combined heat and power, and gas-fired generators
  - Have sophisticated software and control systems that allow for “advanced energy management” — e.g. switching back and forth to the grid depending on the price of grid-based electricity.
  - PG&E plans to rely on microgrids to power a significant number of its customers during future power safety shutoffs.
- Microgrid economics are now compelling
  - Costs of building and operating are declining linked to a drop in the price tag for solar and batteries
  - They can help energy users manage utility demand charges.
  - They can generate revenue for their owners by selling services to the grid.
  - They can be aggregated contractually into “virtual power plants” that offer grid services of a greater magnitude.
- Increased need for reliable electricity
  - The digital economy requires reliable electric power.
- Increased corporate interest in sustainability
  - Installing microgrids enable corporate leaders to take control of their companies' energy supply, thereby helping them fulfill their environmental, societal and economic responsibilities (ESG focus on “corporate citizenship”).
- Desire for local control of energy

- CCAs and others are interested in taking more control of their energy production and use.
- Innovative microgrid financing models make them more appealing and affordable

### Chapter 3 — *Energy-as-a-Service: Making Microgrids Easy and Affordable*

- Under the energy-as-a-service model, the customer takes on none of the burden associated with a microgrid's capital investment nor its operation. That is handled by third-party operators and investors.
- A microgrid customer pays a charge for receiving the microgrid's benefits. In California, that charge is likely to be no higher than what one currently pays for electricity.
- An energy-as-a-service contract may also assume costs for energy efficiency upgrades, off-site renewables, and load optimization, which can further improve project economics.
- A third-party owner can design an energy-as-a-service contract that takes a customer's other embedded energy costs (e.g. missed opportunities for energy efficiency) into account. The length of the contract can be adjusted as well.
- In some cases, companies have multiple facilities which the energy-as-a-service provider can link virtually or contractually.
- Already, 31% of total microgrid capacity operates under the energy-as-a-service model.

### Chapter 4 — *Why microgrids are the next logical step*

- Microgrids enhance energy efficiency and the use of renewable energy.
- Short-term, microgrids keep the lights on.
- Long-term, they help to reduce carbon emissions.
- Also, they help to moderate the cost of operating the grid — e.g. providing the ability to manage intermittency, reduce the need for new grid infrastructure.
- As their numbers increase, microgrids will start to interact with each other, sharing resources and coordinating activities to achieve levels of efficiency and reliability not possible with today's centralized grid — "a grid of microgrids."
- Microgrid examples (described)
  - Blue Lake Rancheria Microgrid — Humboldt County
  - Stone Edge Farm Microgrid — Sonoma County
  - Gordon Bubolz Nature Preserve — Appleton, Wisconsin
  - Port of Long Beach Microgrid — Long Beach, CA — serves as site for agencies and other interested parties to visit and learn about microgrids.

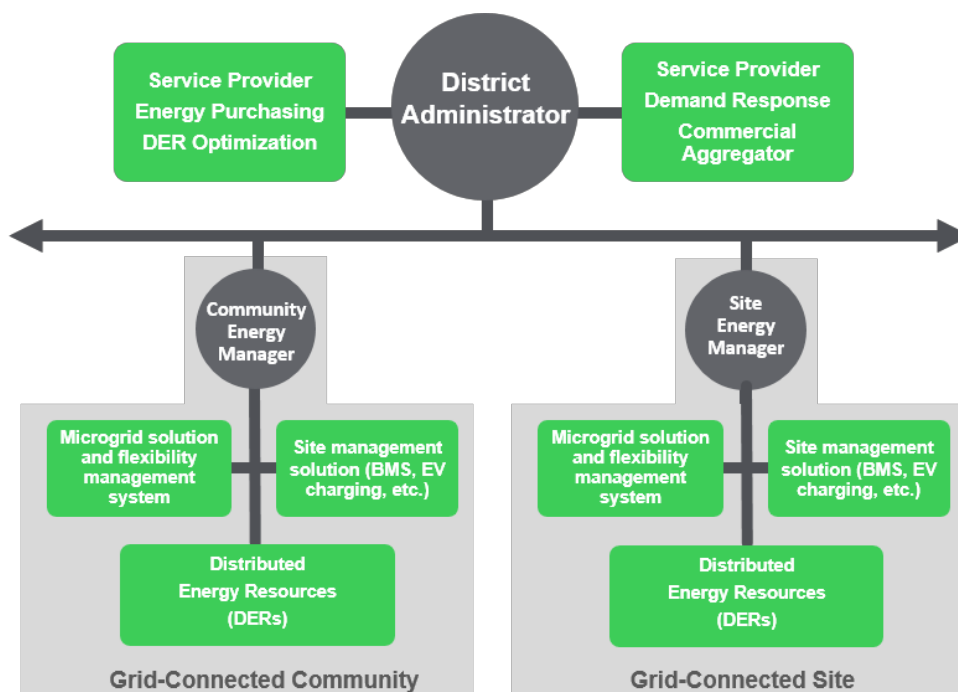
### Chapter 5 — *The AlphaStruxure Energy Vision: From Coast to Coast*

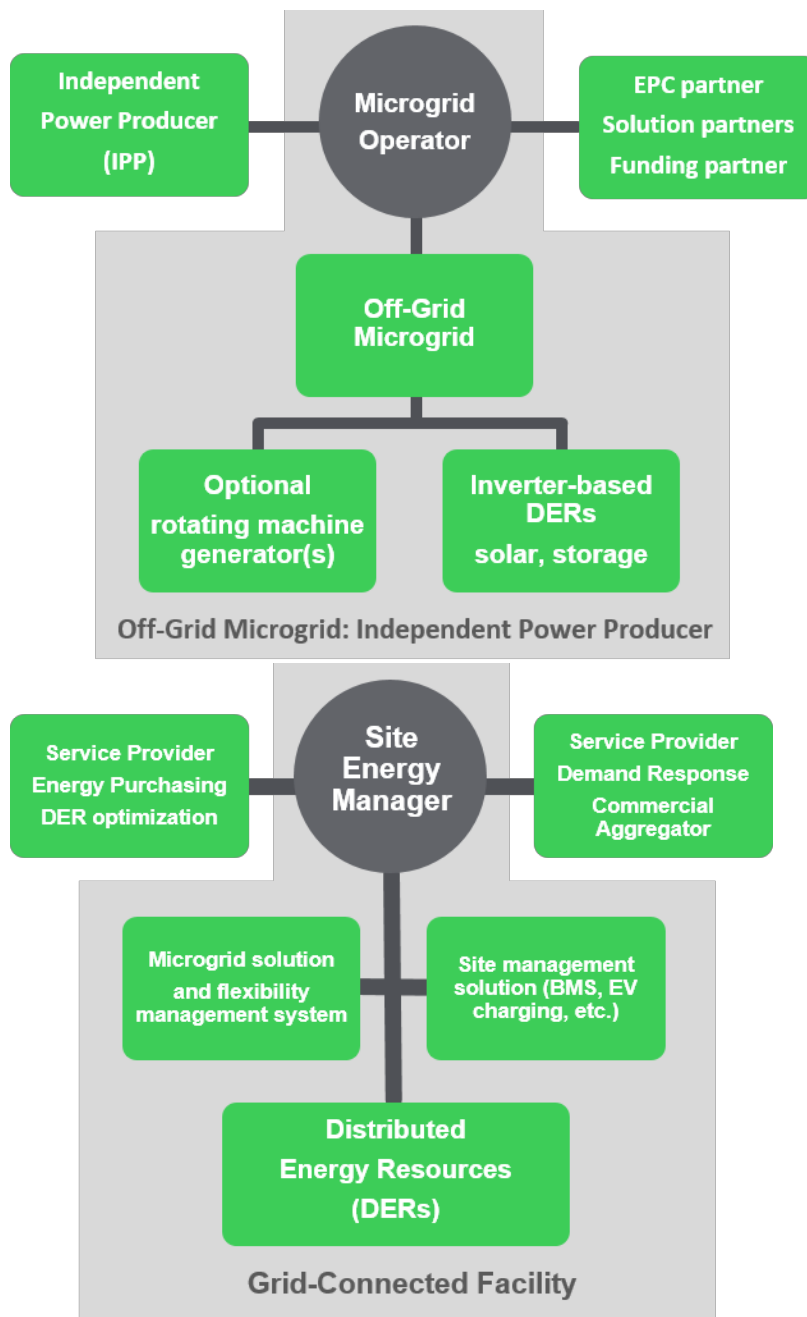
- This page is a pitch for potential microgrid customers to consider employing a joint venture called *AlphaStruxure* formed by the Carlyle Group and Schneider Electric.

Link: *Microgrid Business Models and Value Chains by Schneider Electric*

- Typical Business Models
  - Customer-owned — all financial risk on customer
  - Microgrids-as-a-service — third party development and financing (a PPA which may have an equity or debt financing structure)
  - Pay as you go — by customers (typically small remote systems)
- Microgrid Categories
  - Off-grid facilities (e.g. remote military bases and industrial sites)
  - Off-grid communities (e.g. an island)
  - Grid-connected facility (e.g. a campus or hospital)
  - Grid-connected community (e.g. small municipalities or district of a city)

Three Charts displaying the different microgrid categories





Reviewed by Jason Mendelson

July 28, 2021

*How New Microgrid Technologies Enable Optimal Cooperation Among Distributed Energy Resources* by Veronique Boutin et al. Schneider Electric

10 pages

Discussing how microgrids work. How they are coordinated new systems and require forethought and planning.

There are figures and examples of how they would **work in a system**, and what **tech** is needed.

- A collection of: network infrastructure – generation, distribution and understanding of users/consume
- Sensors, meters and network protection
- Controls for DER level
- Controls for management level to optimize
- Supervisory controls for data gathering and operators
- Cloud based services for management for load, tariff management, demand response, self consumption – blackout and CO2 reduction

Need to balance needs – **resiliency, economy, security and CO2 reduction**– all need to be evaluated and also there will need to be technological innovation to accomplish the goals. This may not be ready-to-wear yet. But key is evaluating goals/priorities and PERFORMANCE OBJECTIVES and then assessing particular systems to accomplish these.

Looks at different systems – From Grid only – versus from local sources and storage “Island” vs. “grid connected” vs. hybrid systems

Discussion of **Safety** and protecting people/property from faults. Inherent difficulties with multi-source systems. Discussion of Solar and low danger with those, but how the bi-directional energy flow can be a challenge. This all requires project specific energy studies.

Discussion of power **Quality**: need to track and react to all the electricity measurements. Harmonics (and pollution from same), frequency variations, transients, voltage sags and wells, can all cause problems (page 5). Need to be able to measure these to manage. Reliability is key or this won't work.

Discussion of **Stability**– classic grid all works the same, once DERs are introduced, then need stability and control to integrate. This includes proper controls and planning. Control loops that are automatic. Once inverters (from solar, wind etc..) get introduced they can cause asynchronous voltage issues.

**Possible Solutions:** Inverter-Based Generators “IBG” (a. Renewable DER – like Solar; b. electronic-based inverters with voltage and frequency control loops (though innovation); c storage that is decoupled generation from load demand for smoothing variability. Use VSG – Virtual Synchronix Generators to mimic existing systems (p. 7); balancing power amongst DERs through “secondary” regulations using power management algorithms – to create a system to manage the flows. IBG can allow for Grid-forming capabilities.

Discussion of **optimization**– by balancing control of the power, which systems are on, how it is stored, accounting for tariffs, weather, all planned and controlled for optimization – this requires planning and analytics on all fronts. Proposes a couple of models: 1. Central controller does everything; or 2. Have distributed micro-grid controllers – where each “actor” in the chain has control and helps the whole (possible benefits include redundancy and plug and play, more people/systems can help, more involved in the system optimization); or 3 a mix of the two

Jason's take away – I had not thought about the security aspect very much before, but that is a big component in this white paper. The rest makes sense about evaluating needs and goals and then designing appropriately.

Also – making sure that when adding microgrids, that the variability issues are addressed to keep stability for the grid and planning of the systems is key – considering all these factors.





## **Citizens Advisory Committee**

### **Distributed Energy Resources Evaluation**

### **Working Group Deliverable Report**

**DATE:** April 29, 2022  
**MEETING DATE:** May 26, 2022

#### **BACKGROUND**

In 2021 the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members. The work plan also describes deliverables for these tasks, usually reporting back to the Board on the working group activities.

The specified task for this working group is to Provide feedback to staff on criteria for choosing future community Distributed Energy Resources projects, emphasizing diverse perspectives. The deliverable for this working group is create a brief memo summarizing feedback to staff. Citizen Advisory Committee members Jason Mendelson, Michael Closson, and Janet Creech participated in this working group.

#### **DISCUSSION**

This group met twice, the second time being July 13, 2021, where the DER priorities of PCE were discussed. The group provided oral feedback on the presentation and Michael Closson prepared the attached response that will serve as our memo summarizing feedback to staff.

We believe the initial goals of reviewing and providing feedback on the program plan were met, but further evaluations meetings will be required to fully address the goals of the group and PCE. No other meetings occurred or were requested. We believe it would be valuable for staff to have CAC input on criteria and evaluation of DER programs going forward.

*Signed Jason Mendelson, Michael Closson, and Janet Creech*



---

## Thoughts on today's meeting

---

Hi Peter, Jason and Janet,

I apologize for needing to leave today's good meeting a little early — a guy showed up with some documents I needed to sign.

Also, I hope this is the correct format for sharing thoughts among us. That said, here are my thoughts:

- Peter did a good job explaining PCE's four top DER priorities for achieving our target of 20MW of new local power generation.
- It is hard for me to imagine Peter and his colleagues fully developing all four of the top priorities simultaneously. So, I suggest that PCE needs to prioritize these priorities.
- I think that "Residential PV and Storage" should be last on the priority list because
  - As we discussed, I think it will be very difficult to administer with a lot of hand-holding of customers required — leading to a good deal of staff time expended
  - It is really nibbling away at the goal of 20MW of new power generation and as a result the staff would need to give a lot of attention to at least one of the other priorities as well
- For the top among the priorities, I recommend "FTM Large Generation and Storage" for the following reasons:
  - It would give PCE the most "bang for the buck" in terms of a good deal of new local power generation.
  - It avoids most of the BTM complexities and issues
  - It enables optimizing the generating capacity at host sites
  - It does not contribute to PCE revenue erosion
  - PCE could purchase all of the power generated for our own use
  - It could create some quite large generation facilities (e.g. at the San Carlos Airport) that would generate some good publicity for PCE
- The only other thought I have is not fully formed at this time but here goes. PCE's business model (CCA in the middle) assumes that PCE must pursue an active and ongoing role in organizing DER projects in our service area all of the way to completion. I'm wondering if, in certain cases (e.g. with "FTM Large Generation and Storage") we could simply sow the seeds and let the entity do the development and find funding itself with the understanding that we would purchase the excess power generated from it. (I think that Marin Clean Energy has taken this approach in some cases?)

I welcome your comments.



## **Citizens Advisory Committee**

### **Educational Resources Working Group**

### **Deliverable Report**

**DATE:** April 29, 2022  
**MEETING DATE:** May 26, 2022

#### **BACKGROUND**

In 2021 the Peninsula Clean Energy Board of Directors approved a [work plan](#) for its Citizens Advisory Committee. This work plan detailed specific tasks to be undertaken on a voluntary basis by ad hoc working groups of Citizen Advisory Committee members. The work plan also describes deliverables for these tasks, usually reporting back to the Board on the working group activities.

The specified task for this working group is to leverage the impact of an existing PCE educational resources by getting it implemented in more schools and youth programs.

The deliverable for this working group is a brief memo summarizing actions taken to expand the use of PCE student activity packet. Citizen Advisory Committee members Janet Creech, Ray Larios, Desiree Thayer, and Daniel Baerwaldt participated in this working group.

#### **DISCUSSION**

This group did not meet during 2021.

Peninsula Clean Energy  
Performance at a Glance  
Results for the Fiscal Quarter Ended  
March 31, 2022  
(\$000s)

Peninsula Clean Energy  
Performance at a Glance  
Results for the Fiscal Quarter Ended  
March 31, 2022  
(\$000s)

Net Position Balance

<u>Fiscal Year Ending</u>	<u>Actual/Budget</u>	<u>Amount</u>
June 30, 2016	Audited	(\$1,044)
June 30, 2017	Audited	\$21,711
June 30, 2018	Audited	\$85,365
June 30, 2019	Audited	\$140,135
June 30, 2020	Audited	\$188,923
June 30, 2021	Audited	\$180,343
March 31, 2022	Unaudited	\$145,266
June 30, 2022	Budget	\$165,599

Unrestricted Cash/Investments Balance

<u>Fiscal Year Ending</u>	<u>Actual/Budget</u>	<u>Amount</u>
June 30, 2016	Audited	\$2,333
June 30, 2017	Audited	\$17,382
June 30, 2018	Audited	\$64,889
June 30, 2019	Audited	\$114,069
June 30, 2020	Audited	\$178,176
June 30, 2021	Audited	\$166,173
March 31, 2022	Unaudited	\$138,338
June 30, 2022	Budget	\$165,593

Change in Net Position

<u>Fiscal Year</u>	<u>Actual/Budget</u>	<u>Amount</u>
FY2015-2016	Audited	(\$1,044)
FY2016-2017	Audited	\$22,755
FY2017-2018	Audited	\$63,655
FY2018-2019	Audited	\$54,774
FY2019-2020	Audited	\$48,788
FY2020-2021	Audited	(\$8,285)
March 31, 2022	Unaudited YTD	(\$35,077)
FY2021-2022	Budget	(\$18,672)

Cost of Electricity

<u>Fiscal Year</u>	<u>Actual/Budget</u>	<u>Amount</u>
FY2015-2016	Audited	\$0
FY2016-2017	Audited	\$64,501
FY2017-2018	Audited	\$170,135
FY2018-2019	Audited	\$194,035
FY2019-2020	Audited	\$216,066
FY2020-2021	Audited	\$213,834
March 31, 2022	Unaudited YTD	\$163,831
FY2021-2022	Budget	\$216,706

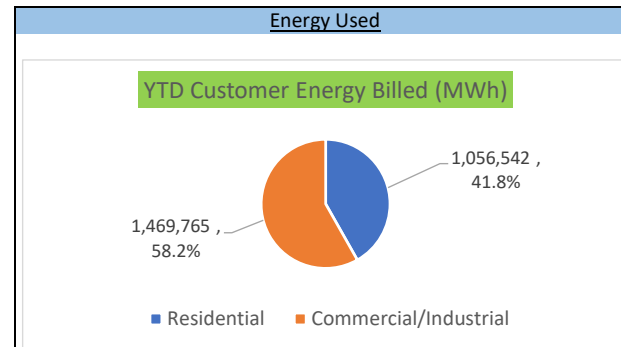
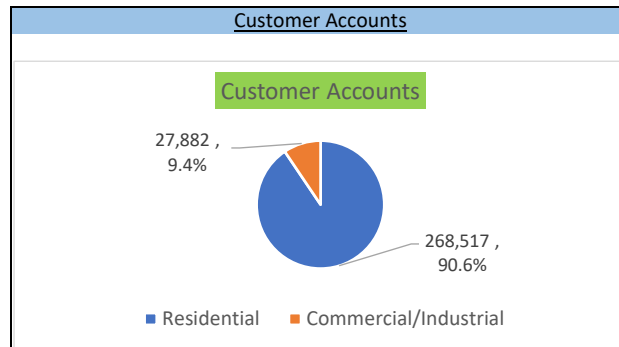
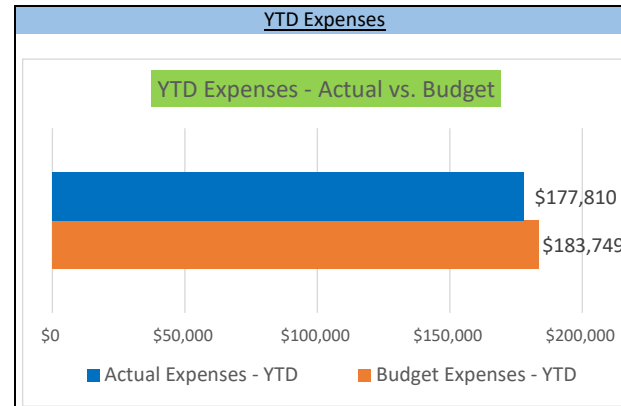
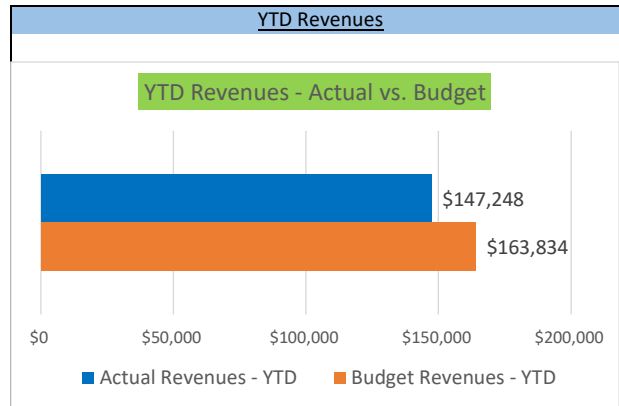
Revenues

<u>Fiscal Year</u>	<u>Actual/Budget</u>	<u>Amount</u>
FY2015-2016	Audited	\$0
FY2016-2017	Audited	\$93,129
FY2017-2018	Audited	\$244,738
FY2018-2019	Audited	\$259,782
FY2019-2020	Audited	\$278,093
FY2020-2021	Audited	\$228,101
March 31, 2022	Unaudited YTD	\$147,248
FY2021-2022	Budget	\$222,240

Total Operating Expenses

<u>Fiscal Year</u>	<u>Actual/Budget</u>	<u>Amount</u>
FY2015-2016	Audited	\$1,041
FY2016-2017	Audited	\$70,104
FY2017-2018	Audited	\$180,970
FY2018-2019	Audited	\$206,964
FY2019-2020	Audited	\$231,482
FY2020-2021	Audited	\$236,373
March 31, 2022	Unaudited YTD	\$177,810
FY2021-2022	Budget	\$241,812

Peninsula Clean Energy  
Performance at a Glance  
Results for the Fiscal Quarter Ended  
March 31, 2022  
(\$000s)



**NOTE: FINANCIAL STATEMENTS ARE PRELIMINARY UNTIL THE ANNUAL AUDIT IS COMPLETED.**

**- Revenues below Budget.** Revenues were \$6.5 MM below Budget in Q3; 12.9% below the budgeted level.

Total load was 7.5% below budget for Q3 and 4.6% below Budget for the YTD.

Residential load was substantially below Budget level. Commercial loads also below Budget, but to a lesser extent.

**- Total Expenses below Budget.** Total Expenses were \$2.4 MM above below Budget in Q3 - Most categories were below except Cost of Energy. Although energy prices had been lower than Budget through most of the year, market prices for energy rose significantly in Q3. Although hedge strategies and practices mitigated much of the price increases significant spikes were felt throughout the market. Expenses were above Budget despite load usage below Budget. Almost all other expense categories are below Budget for YTD. Program expenses ended Q3-YTD \$3.8 MM below Budget, but may increase significantly depending on the timing of a \$2 MM payment to State of California for already-approved EV charger program.

Peninsula Clean Energy  
Performance at a Glance  
Results for the Fiscal Quarter Ended  
March 31, 2022  
(\$000s)

	Year-to-date				Full Year (FY 2021-2022)		
	Actual	Budget	Variance: Favorable / (Unfavorable)	YTD Actual as % of YTD Budget	Budget	YTD Actual as % of Full Year Budget	Prior Year Actual (YTD)
<b>OPERATING REVENUES</b>							
Electricity Sales, net	\$ 145,147	\$ 161,851	\$ (16,704)	89.7%	\$ 219,619	66.1%	\$ 182,192
Green electricity premium	2,101	1,983	118	106.0%	2,621	80.2%	2,007
<b>Total Operating Revenues</b>	<b>\$147,248</b>	<b>\$163,834</b>	<b>(\$16,585)</b>	<b>89.9%</b>	<b>\$222,240</b>	<b>66.3%</b>	<b>\$184,199</b>
<b>OPERATING EXPENSES</b>							
Cost of energy	163,831	164,384	553	99.7%	216,706	75.6%	167,381
Staff compensation	4,601	4,836	235	95.1%	6,464	71.2%	4,136
Data Manager	2,539	2,565	26	99.0%	3,420	74.3%	2,535
Service Fees - PG&E	928	945	17	98.2%	1,260	73.7%	940
Consultants/Professional Svcs	795	1,018	222	78.2%	1,351	58.9%	1,511
Legal	866	1,221	355	70.9%	1,616	53.6%	1,062
Communications/Noticing	1,066	1,592	526	66.9%	2,068	51.5%	1,100
General and Administrative	1,540	1,685	146	91.4%	2,259	68.1%	1,269
Community Energy Programs	1,581	5,423	3,841	29.2%	6,556	24.1%	1,185
Depreciation	62	80	19	76.5%	112	55.1%	69
<b>Total Operating Expenses</b>	<b>177,810</b>	<b>183,749</b>	<b>5,939</b>	<b>96.8%</b>	<b>241,812</b>	<b>73.5%</b>	<b>181,188</b>
<b>Operating Income (Loss)</b>	<b>(\$30,562)</b>	<b>(\$19,915)</b>	<b>(\$10,646)</b>	<b>153.5%</b>	<b>(\$19,572)</b>	<b>156.2%</b>	<b>\$3,011</b>
<b>Total Nonoperating Inc/(Exp)</b>	<b>(4,515)</b>	<b>675</b>	<b>(5,190)</b>	<b>-669.0%</b>	<b>900</b>	<b>-501.7%</b>	<b>(369)</b>
<b>CHANGE IN NET POSITION</b>	<b>(\$35,077)</b>	<b>(\$19,240)</b>	<b>(\$15,837)</b>		<b>(\$18,672)</b>		<b>\$2,642</b>



## ACCOUNTANTS' COMPILATION REPORT

Board of Directors  
Peninsula Clean Energy Authority

Management is responsible for the accompanying financial statements of Peninsula Clean Energy Authority (PCE), a California Joint Powers Authority, which comprise the statement of net position as of March 31, 2022, and the statement of revenues, expenses, and changes in net position, and the statement of cash flows for the period then ended, in accordance with accounting principles generally accepted in the United States of America. We have performed a compilation engagement in accordance with Statements on Standards for Accounting and Review Services promulgated by the Accounting and Review Services Committee of the AICPA. We did not audit or review the accompanying statements nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management. Accordingly, we do not express an opinion, conclusion, nor provide any assurance on these financial statements.

Management has elected to omit substantially all of the note disclosures required by accounting principles generally accepted in the United States of America in these interim financial statements. PCE's annual audited financial statements will include the note disclosures omitted from these interim statements. If the omitted disclosures were included in these financial statements, they might influence the user's conclusions about the Authority's financial position, results of operations, and cash flows. Accordingly, these financial statements are not designed for those who are not informed about such matters.

We are not independent with respect to PCE because we performed certain accounting services that impaired our independence.

*Maher Accountancy*

San Rafael, CA  
April 27, 2022



# PENINSULA CLEAN ENERGY AUTHORITY

## STATEMENT OF NET POSITION

As of March 31, 2022

### ASSETS

#### Current assets

Cash and cash equivalents	\$ 8,820,301
Accounts receivable, net of allowance	15,267,817
Accrued revenue	7,975,307
Investments	17,000,397
Other receivables	995,417
Prepaid expenses	2,082,578
Deposits	7,947,922
Restricted cash	500,000
Total current assets	60,589,739

#### Noncurrent assets

Capital assets, net of depreciation	281,772
Intangible assets	1,903,075
Investments	112,037,057
Deposits and other assets	192,878
Total noncurrent assets	114,414,782
Total assets	175,004,521

### LIABILITIES

#### Current liabilities

Accrued cost of electricity	21,468,404
Accounts payable	996,947
Other accrued liabilities	652,028
User taxes and energy surcharges due to other governments	730,876
Supplier deposits - energy suppliers	1,949,090
Lease liability	461,218
Total current liabilities	26,258,563

#### Noncurrent liabilities

Supplier deposits - energy suppliers	1,593,433
Lease liability	1,886,382
Total noncurrent liabilities	3,479,815
Total liabilities	29,738,378

### NET POSITION

Investment in capital assets	281,772
Restricted for security collateral	500,000
Unrestricted	144,484,371
Total net position	\$ 145,266,143

**PENINSULA CLEAN ENERGY AUTHORITY**

**STATEMENT OF REVENUES, EXPENSES**

**AND CHANGES IN NET POSITION**

**Nine Months Ended March 31, 2022**

**OPERATING REVENUES**

Electricity sales, net	\$ 142,649,987
Green electricity premium	2,101,241
Grant revenue	2,497,067
Total operating revenues	<u>147,248,295</u>

**OPERATING EXPENSES**

Cost of electricity	163,831,444
Contract services	7,321,945
Staff compensation	4,600,723
General and administration	1,618,419
Depreciation and amortization	378,683
Total operating expenses	<u>177,751,214</u>
Operating income (loss)	<u>(30,502,919)</u>

**NONOPERATING REVENUES (EXPENSES)**

Liquidated damages revenue	493,183
Interest and investment income (loss)	(5,008,676)
Finance costs	(58,844)
Nonoperating revenues (expenses), net	<u>(4,574,337)</u>

**CHANGE IN NET POSITION**

	(35,077,256)
Net position at beginning of period (as restated)	<u>180,343,399</u>
Net position at end of period	<u>\$ 145,266,143</u>

# PENINSULA CLEAN ENERGY AUTHORITY

## STATEMENT OF CASH FLOWS Nine Months Ended March 31, 2022

### CASH FLOWS FROM OPERATING ACTIVITIES

Receipts from customers	\$ 156,495,914
Receipts from supplier security deposits	1,889,091
Payments to suppliers for electricity	(164,510,882)
Payments for other goods and services	(9,678,630)
Payments for staff compensation	(4,552,810)
Payments of taxes and surcharges to other governments	(2,650,664)
Net cash provided (used) by operating activities	<u>(23,007,981)</u>

### CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES

Finance costs paid	(58,844)
Deposits and collateral paid	<u>(4,109,931)</u>
Net cash provided (used) by non-capital financing activities	<u>(4,168,775)</u>

### CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES

Payments on lease assets and to acquire capital assets	<u>401,965</u>
--	----------------

### CASH FLOWS FROM INVESTING ACTIVITIES

Proceeds from investment sales	46,227,398
Investment income received	1,431,515
Purchase of investments	<u>(27,717,424)</u>
Net cash provided (used) by investing activities	<u>19,941,489</u>

Net change in cash and cash equivalents	(6,833,302)
Cash and cash equivalents at beginning of period	16,153,603
Cash and cash equivalents at end of period	<u>\$ 9,320,301</u>

### Reconciliation to the Statement of Net Position

Cash and cash equivalents (unrestricted)	\$ 8,820,301
Restricted cash	500,000
Cash and cash equivalents	<u>\$ 9,320,301</u>

**PENINSULA CLEAN ENERGY AUTHORITY**  
**STATEMENT OF CASH FLOWS (continued)**  
**Nine Months Ended March 31, 2022**

**RECONCILIATION OF OPERATING INCOME (LOSS) TO NET  
CASH PROVIDED (USED) BY OPERATING ACTIVITIES**

Operating income (loss)	\$ (30,502,919)
Adjustments to reconcile operating income to net cash provided (used) by operating activities	
Depreciation and amortization expense	376,867
Provision for uncollectible accounts	(363,801)
Nonoperating liquidated damages revenue	493,183
(Increase) decrease in:	
Accounts receivable	3,505,980
Accrued revenue	2,979,704
Other receivables	3,353,485
Prepaid expenses	1,488,634
Increase (decrease) in:	
Accrued cost of electricity	(2,105,852)
Accounts payable	(250,161)
Other accrued liabilities	(1,178,683)
User taxes and energy surcharges due to other governments	(18,111)
Supplier security deposits	(786,307)
Net cash provided (used) by operating activities	<u><u>\$ (23,007,981)</u></u>



PENINSULA CLEAN ENERGY - FRB

Page 3 of 22  
Period from January 1, 2022 to March 31, 2022

## MARKET VALUE RECONCILIATION

	CURRENT PERIOD 01/01/2022 TO 03/31/2022	YEAR TO DATE 07/01/2021 TO 03/31/2022
<b>Beginning Market Value</b>	<b>69,262,874.96</b>	<b>78,460,818.58</b>
<b>Disbursements</b>		
Cash Disbursements	- 2,520,783.92	- 11,326,999.38
<b>Total Disbursements</b>	<b>- 2,520,783.92</b>	<b>- 11,326,999.38</b>
<b>Asset Activity</b>		
Taxable Interest	175,345.65	731,839.81
Realized Gain/Loss	- 203,120.72	- 413,073.33
Change In Unrealized Gain/Loss	- 2,043,875.57	- 2,735,904.83
Change In Accrued Income	45,340.31	- 900.14
<b>Total Asset Activity</b>	<b>- 2,026,310.33</b>	<b>- 2,418,038.49</b>
<b>Net Change In Market Value</b>	<b>- 4,547,094.25</b>	<b>- 13,745,037.87</b>
<b>Ending Market Value</b>	<b>64,715,780.71</b>	<b>64,715,780.71</b>

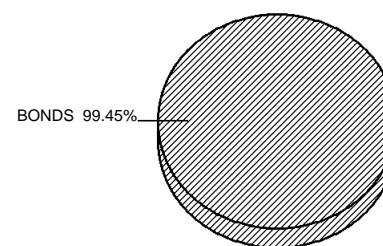


PENINSULA CLEAN ENERGY - FRB

Page 5 of 22  
Period from January 1, 2022 to March 31, 2022

## ASSET SUMMARY

ASSETS	03/31/2022 MARKET VALUE	% OF MARKET
Cash And Equivalents	75,797.40	0.12
U.S. Government Issues	46,835,709.16	72.37
Corporate Issues	17,525,861.23	27.08
<b>Total Assets</b>	<b>64,437,367.79</b>	<b>99.57</b>
Accrued Income	278,412.92	0.43
<b>Grand Total</b>	<b>64,715,780.71</b>	<b>100.00</b>





PENINSULA CLEAN ENERGY - PFM

Page 3 of 51  
Period from January 1, 2022 to March 31, 2022**MARKET VALUE RECONCILIATION**

	CURRENT PERIOD 01/01/2022 TO 03/31/2022	YEAR TO DATE 07/01/2021 TO 03/31/2022
<b>Beginning Market Value</b>	<b>69,580,837.62</b>	<b>78,792,787.40</b>
<b>Disbursements</b>		
Cash Disbursements	- 2,500,000.00	- 11,288,151.39
Benefit Payments	- 17,570.24	- 17,570.24
<b>Total Disbursements</b>	<b>- 2,517,570.24</b>	<b>- 11,305,721.63</b>
<b>Asset Activity</b>		
Taxable Interest	243,213.99	697,242.49
Realized Gain/Loss	- 246,128.32	- 424,256.81
Change In Unrealized Gain/Loss	- 2,131,726.03	- 2,826,733.32
Change In Accrued Income	- 35,346.22	- 40,037.33
<b>Total Asset Activity</b>	<b>- 2,169,986.58</b>	<b>- 2,593,784.97</b>
<b>Net Change In Market Value</b>	<b>- 4,687,556.82</b>	<b>- 13,899,506.60</b>
<b>Ending Market Value</b>	<b>64,893,280.80</b>	<b>64,893,280.80</b>

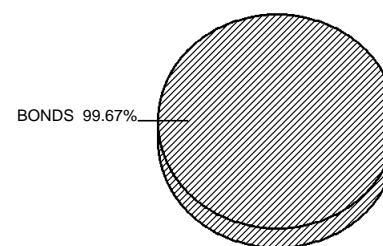


PENINSULA CLEAN ENERGY - PFM

Page 5 of 51  
Period from January 1, 2022 to March 31, 2022

## ASSET SUMMARY

ASSETS	03/31/2022 MARKET VALUE	% OF MARKET
Cash And Equivalents	15,770.60	0.02
U.S. Government Issues	42,844,583.30	66.02
Corporate Issues	15,357,359.96	23.67
Municipal Issues	6,473,940.30	9.98
<b>Total Assets</b>	<b>64,691,654.16</b>	<b>99.69</b>
Accrued Income	201,626.64	0.31
<b>Grand Total</b>	<b>64,893,280.80</b>	<b>100.00</b>







**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 16, 2022

**BOARD MEETING DATE:** May 26, 2022

**SPECIAL NOTICE/HEARING:** None

**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** KJ Janowski, Director of Marketing and Community Relations &  
Leslie Brown, Director of Account Services

**SUBJECT:** Update on Marketing, Outreach Activities, and Account Services

**BACKGROUND**

The Marketing, Community Relations, and Account Services Teams are responsible for enhancing Peninsula Clean Energy's brand reputation, educating and engaging customers, driving participation in programs, and ensuring customer satisfaction and retention. Tactics include community outreach, content creation and storytelling through owned (e.g. online, social media), earned (e.g. public relations), and paid media (advertising), school engagement programs, and customer care.

**DISCUSSION**

The following is an update of activities that are currently underway. See "Strategic Plan" section below for how these activities support Peninsula Clean Energy's strategic plan objectives.

**Heat Pump Water Heater (HPWH) Incentive Program**

Marketing is supporting the program goal to install 200 heat pump water heaters in the first two years. Marketing efforts have been measured based upon visits to our HPWH incentive pages. In the last 30 days, more than 1,500 users visited the page.

**Electrification Messaging Project**

Marketing is developing new messaging centered on encouraging electrification. Message testing research has been completed, and messaging is being developed for a campaign that is planned to start this summer.

**Electric Vehicle (EV) Campaign**

A search advertising campaign addressing barriers and benefits of electric vehicles has been underway since November 2021. Ad performance has continued to improve during this time. In April, the campaign achieved over 76,000 impressions and brought about 4,300 visits to our EV web pages. Results in May so far are showing an average cost-per-click of \$0.81, far lower than industry averages (which are ~\$3.50 across industries and \$2.30-3.20 for automotive related paid search).

We are midway through a three-month advertising program that promotes EVs in the San Mateo Daily Journal, The Almanac, Coastside Magazine, and East Palo Alto Today (online).

### **Building Electrification Awareness Program**

Winning projects in our second annual [All-Electric Awards](#) program are featured on our [website](#) and were recognized at the Sustainable San Mateo County Annual Awards event on May 11. One-minute overview videos of the residential award winners can be found on our Youtube channel:

- [Central Menlo Park Remodel](#)
- [Goforth San Carlos Retrofit](#)

These residential award winners will be featured, along with a panel discussion, in a webinar titled “Wired & Inspired: Virtual Tours of Award-Winning Electric Homes,” to be held on June 2, 2022 at noon. Register [here](#).

### **Los Banos Update**

Our local Los Banos representative Sandra Benetti has been very active providing additional information and answering questions as Los Banos customers began receiving service from Peninsula Clean Energy. This includes tabling twice monthly on bill pay dates at Los Banos City Hall.

Four Peninsula Clean Energy staff members tabled and had over 600 conversations with adults and teens at the 5-day Merced County Fair in Los Banos from April 27 through May 1. Two-thirds of the contacts were neutral and one-third was positive.

We are reaching out to additional community groups to arrange presentations. Sandra is also active in local social media forums addressing questions and providing correct information.

### **Citizens Advisory Committee (CAC)**

The board CAC recruitment subcommittee interviewed applicants and will recommend a slate of appointees at this month’s board meeting. The CAC 2022 workplan and 2021 deliverables have been reviewed with the Board Executive Committee and are also on this month’s board meeting agenda.

### **News & Media**

On April 26, we issued a press release "[Peninsula Clean Energy Names Shawn Marshall as Organization's First-Ever COO](#)." An exclusive interview was offered to the San Mateo Daily Journal which covered the announcement.

Full coverage of Peninsula Clean Energy in the news can be found on our [News & Media](#) webpage.

## **ENROLLMENT UPDATE**

### **ECO100 Statistics (since April report)**

Total ECO100 accounts at end of April:	6,359
ECO100 accounts added in April:	22
ECO100 accounts dropped in April:	36
Total ECO100 accounts at the end of March:	6,373

### **Enrollment Statistics**

Opt-outs during the month of April were 52, 104 less than the previous month of March (156). This includes 28 opt outs in our new service territory of Los Banos during the month of April and 24 from San Mateo County during this month. In May, there have been an additional 8 opt outs from Los Banos and 10 opt outs from San Mateo County as of May 15<sup>th</sup>, 2022. Total participation rate across all of San Mateo County as of May 15<sup>th</sup> was 96.93%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities. The ECO100 towns and cities as of May 16<sup>th</sup>, 2022, include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

The opt-up rates below include municipal accounts, which may noticeably increase the rate in smaller jurisdictions.

Active Accounts as of May 15th								
TOT	RES Count	COM Count	Active Count	Eligible Count	Participation Percent	ECO100 Count	ECO100 Percent	
ATHERTON INC	2409	224	2633	2716	96.94%	59	2.24%	
BELMONT INC	10766	919	11685	12028	97.15%	194	1.66%	
BRISBANE INC	1982	497	2479	2543	97.48%	87	3.51%	
BURLINGAME INC	13271	1967	15238	15650	97.37%	353	2.32%	
COLMA INC	582	287	869	891	97.53%	32	3.68%	
DALY CITY INC	31087	1986	33073	34236	96.60%	108	0.33%	
EAST PALO ALTO INC	7119	442	7561	7934	95.30%	25	0.33%	
FOSTER CITY INC	13671	847	14518	14857	97.72%	333	2.29%	
HALF MOON BAY INC	4202	631	4833	4981	97.03%	113	2.34%	
HILLSBOROUGH INC	3803	140	3943	4064	97.02%	71	1.80%	
LOS BANOS INC	11503	1151	12654	15221	83.14%	1	0.01%	
MENLO PARK INC	13869	1678	15547	15893	97.82%	517	3.33%	
MILLBRAE INC	8409	633	9042	9358	96.62%	110	1.22%	
PACIFICA INC	14016	851	14867	15459	96.17%	176	1.18%	
PORTOLA VALLEY INC	1464	130	1594	1700	93.76%	1497	93.91%	
REDWOOD CITY INC	31475	3276	34751	35604	97.60%	717	2.06%	
SAN BRUNO INC	14746	1057	15803	16467	95.97%	93	0.59%	
SAN CARLOS INC	12225	2103	14328	14734	97.24%	333	2.32%	
SAN MATEO INC	39744	3854	43598	44795	97.33%	689	1.58%	
SO SAN FRANCISCO INC	21389	3116	24505	25485	96.15%	116	0.47%	
UNINC SAN MATEO CO	20861	2986	23847	24670	96.66%	641	2.69%	
WOODSIDE INC	2012	219	2231	2287	97.55%	63	2.82%	

Table reflects data as of May 15th, 2022

In the above table, the participation rate for the City of Los Banos is at 83.14%. This number is artificially low due to us conducting a rolling enrollment for our NEM customers in Los Banos. Approximately 2200 Los Banos NEM customers have yet to be enrolled in Peninsula Clean Energy service. They will be enrolled monthly on their true-up month with PG&E from May through December. These accounts are included in the "Eligible Count" column but are not currently active Peninsula Clean Energy customers, and are therefore not included in the "Active Count" column. The opt-out rate from Los Banos customers who received enrollment notices is currently at 2%.

### Los Banos Enrollment Notices

The first set of Los Banos enrollment notices was mailed to customers February 14<sup>th</sup>, 2022, and the second set of enrollment notices was mailed March 8<sup>th</sup>, 2022. Four sets of enrollment notices are required to be mailed to our future customers in the City of Los Banos; two must be sent pre-enrollment (60 days before and 30 days before), and the other two must be sent post-enrollment (30 days after and 60 days after). Peninsula Clean Energy staff created separate pre-enrollment notices for standard customers, NEM customers, and DAC-GT customers in the City of Los Banos. Our standard welcome postcard will be used as the two required post-enrollment notices.

## STRATEGIC PLAN

This section describes how the above Marketing and Community Care activities and enrollment statistics relate to the overall goal and objectives laid out in the strategic plan.

The table indicates which objectives and particular Key Tactics are supported by each of the Items/Projects discussed in this memo. The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention.

<b>Item/Project</b>	<b>Objective A:</b> Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	<b>Objective B:</b> Educate and engage stakeholders in order to gather input, inspire action and drive program participation	<b>Objective C:</b> Ensure high customer satisfaction and retention
HPWH Incentive		KT6: Promote programs and services, including community energy programs and premium energy services	
Electrification Messaging Project		KT5: Provide inspirational, informative content that spurs action to reduce emissions.	
EV Campaign		KT6 (see above)	
Building Electrification Awareness Program		KT6 (see above)	
Los Banos Update	KT4: Engage community through participation in local events		
CAC Recruitment		KT4: Support the Citizens Advisory Committee	
News and Media Announcements	KT1: Position leadership as experts on CCAs and the industry KT2: Cultivate relationships with industry media and influencers KT3 (see above)		

ECO100 and Enrollment Statistics			Reports on main objective C

\* "KT" refers to Key Tactic

**PENINSULA CLEAN ENERGY AUTHORITY  
JPA Board Correspondence**

**DATE:** May 13, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jeremy Waen, Director of Regulatory Policy  
Doug Karpa, Senior Regulatory Analyst  
Matthew Rutherford, Senior Regulatory Analyst

**SUBJECT:** Update Regarding Regulatory Policy Activities

**SUMMARY**

Over the last month the Regulatory Policy team has continued to be busy. Jeremy has focused his time on preparations for our “meet and greet” sessions, overseeing the advance metering infrastructure customer data privacy audit, and shepherding Peninsula Clean Energy election to administer ratepayer energy efficiency funds through its process. Doug has been particularly focused on work to reform the California Public Utilities Commission’s (CPUC) Resource Adequacy construct. Matthew has continued his work in supporting Peninsula Clean Energy programmatic efforts through Transportation Electrification, Building Decarbonization, Resiliency, Supplier Diversity, and DAC-Green Tariff matters.

**DEEPER DIVE**

**Commissioner Meet and Greet**

Following up on last month’s report, Jan Pepper and Jeremy Waen (along with members of our board and additional members of staff where appropriate) are continuing to conduct our “meet and greet” sessions with the five CPUC and five California Energy Commission (CEC) Commissioners. These meetings happen on an annual cadence. They provide us with the chance to introduce our agency and ourselves to the newly appointed Commissioners and to update those that we have met previously. In both cases, these meetings provide a valuable opportunity to educate these decisionmakers about all the tremendous success that we are having in achieving our agency’s goals and the State’s

goals. These meetings also provide Peninsula Clean Energy staff and board with an opportunity to better understand the primary interests and motivations of each Commissioner.

(Public Policy Objective A, Key Tactic 2)

### **Advanced Metering Infrastructure (AMI) Customer Data Privacy Audit**

In accordance with Commission Decision D.12-08-045, Peninsula Clean Energy, alongside all other CCAs, must annually submit a data privacy report disclosing how many counter parties we share access to customer usage data with and whether any breaches of customer usage data have occurred. Triennially, Peninsula Clean Energy must also undergo an audit performed by an external auditing firm to evaluate our agency's ongoing compliance with this Decision's requirements from both a regulatory and IT perspective. On April 29, 2022, Peninsula Clean Energy submitted both its annual data privacy report and its triennial audit. Based on these filings and the supporting audit, our agency has had no breaches of customer usage data, and we remain in compliance with the requirements imposed upon our agency by this CPUC Decision.

(Public Policy Objective A, Key Tactic 1)

### **Election to Administer Ratepayer Funds for Energy Efficiency Programs**

Starting in November of 2021 with an initial advice letter submission by Peninsula Clean Energy to the CPUC, our agency signaled its desire to leverage its statutory right to elect to administer ratepayer funds presently being collected from Peninsula Clean Energy customers for energy efficiency programs. Peninsula Clean Energy staff was motivated to pursue this funding pathway to enable the agency's participation in a load modification pay-for-performance market structure that MCE Clean Energy originally pioneered with the company Recurve. On May 5, 2022, the CPUC adopted a formal resolution approving Peninsula Clean Energy's request to directly administer these funds. Peninsula Clean Energy staff now have 60-days from that approval date to draft a "Program Implementation Plan" (PIP) that will provide greater detail into how Peninsula Clean Energy's own pay-for-performance load modification market will be structured. Going forward, we will refer to this program as Peninsula Clean Energy FLEXmarket in further communications.

(Public Policy Objective A, Key Tactic 1)

### **Transportation Electrification**

Matthew continues to lead Peninsula Clean Energy policy advocacy to support Peninsula Clean Energy programmatic objectives to enable electrification. The CPUC's Transportation Electrification Framework proceeding had been dormant for some time while the verdict on whether CCAs can administer ratepayer funded programs under this framework remains pending.



On February 25, 2022, the CPUC issued a new Energy Division staff proposal which amounted to a foundational shift away from the TE planning and program implementation model that was previously considered in this docket. The Staff Proposal instead posits that, starting in 2025, incentives for behind the meter (BTM), customer-facing TE investments such as charging equipment and electric panel upgrades (*i.e.*, not distribution grid work) would be run through a single statewide program (the BTM Program). Administration of this program would be handled by a single entity, as would the marketing, administration, and outreach (ME&O). The Proposal also directs all incentives to be provided as rebates, and only for TE programs targeting multi-unit dwellings and medium- and heavy-duty fleets. The Proposal also includes an annual budget of \$200 million of ratepayer funds for this program from 2025 through 2030, for a total budget of \$1 billion. Finally, the Proposal reserves 50% of funding for disadvantaged communities (DACs) and underserved communities.

On April 25, 2022, parties filed Opening Comments in response to the Staff Proposal and the BTM Program. In their comments, the CCAs engaged in this docket expressed concern that creating a new, large-scale program that does not adequately account for local variances and needs of the underserved and low- and middle-income customers we serve would fail to reach those customers that have traditionally faced larger barriers to participating and benefiting from TE investments in similar programs, such as those offered by the IOUs. To address the concerns highlighted in our comments, the CCAs propose that the BTM Program should allow CCAs to design rebate offerings that would be made available to customers in our service areas, as well as to provide technical assistance (TA) and marketing, education, and outreach (ME&O) for our service areas. This arrangement would allow the BTM Program to draw on the experience gained through the CCAs' TE programs to more effectively reach customer segments that are less able to adopt TE and therefore need more assistance, such as older MUD housing stock in San Mateo County that make retrofit projects more challenging.

The CCAs received support from a range of parties in the Opening Comments who advocated that generally the CCAs should be permitted to serve a more direct role in the ME&O in support of the BTM Program. Many parties took issue with the total anticipated funding amount, with some arguing that \$1 billion is too high, considering the concerns around the affordability of electric rates, and others saying that the funding is insufficient to meet California's transportation electrification targets. Still others argued that the BTM Program as currently proposed would not guarantee truly equitable access for underserved communities.

Reply Comments will be filed on May 16, 2022, and the CPUC currently anticipates issuing a PD on the new BTM Program in Q2 2022.

(Public Policy Objective A, Key Tactic 1 and Key Tactic 2)

### **Integrated Resource Planning & Resource Adequacy**

Doug Karpa continues to lead Peninsula Clean Energy engagement in the California Public Utilities Commission's Integrated Resource Plan (IRP) and Resource Adequacy

(RA) efforts on several fronts. The Commission has yet to rule on a new Resource Adequacy framework while the Commission is developing the framework for Integrated Resource Plans submissions in the fall.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

### **Stakeholder Outreach**

Doug continues to host the regular monthly call with staff from CCAs and environmental and environmental justice stakeholders and a range of calls with individual environmental and environmental justice organizations. Dr. Karpa has also engaged with significant stakeholder conversation on legislative proposals.

(Public Policy Objective A, Key Tactic 2)

### **FISCAL IMPACT**

Not applicable.

**PENINSULA CLEAN ENERGY AUTHORITY  
Board Correspondence**

**DATE:** May 10, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors  
**FROM:** Marc Hershman, Director of Government Affairs  
**SUBJECT:** Update on Peninsula Clean Energy's Legislative Activities

**SACRAMENTO SUMMARY:**

The initial round of policy committee hearings in Sacramento has concluded and attention now turns to the fiscal committees: Appropriations and Budget.

Prior to the May meeting of the Board of Directors, Governor Gavin Newsom will announce his revised state budget for 2022-23. On January 10 Governor Newsom unveiled his initial 2022-23 budget at \$286.4 billion, a 9% increase from last year. This included a \$21 billion discretionary surplus, plus billions more for schools, pension payments and reserve accounts.

The revenue projection that underlies the January budget proposal was made before the rise of the omicron variant. Initial tax returns arriving in Sacramento suggest that the budget surplus is likely to grow. The legislature will have its say on the budget and the final version will need to be adopted in June 2022.

**LEGISLATIVE ADVOCACY AND OUTREACH:**

A bill introduced this year that is of interest to Peninsula Clean Energy and the CCA community is **SB 881 (Min)**. The bill is sponsored by the Union of Concerned Scientists, and Senator Becker is the principal coauthor.

Every Load Serving Entity (LSE), including Peninsula Clean Energy and the Investor-Owned Utilities, must submit an integrated resource plan (IRP) to the California Public Utilities Commission (CPUC). The IRP need to outline how the LSE plans to meet future electricity demand, ensure grid reliability, maintain affordability, and achieve the state's environmental justice and clean energy goals. The CPUC aggregates this information and determines whether the state will achieve its clean energy goals. The CPUC also

uses the information to implement new policies and authorize the development of new clean energy projects.

According to the bill's author, **SB 881** changes the nature of the IRP process. Under **SB 881**, an LSE's IRP would describe how it will meet certain GHG reduction targets. It provides new authority to the CPUC to order an LSE to procure appropriate clean energy to meet its emission reductions target, and the CPUC could order another LSE to make that procurement on behalf of the deficient LSE. It also authorizes the CPUC to assess penalties against an LSE for its failure to meet their IRP requirements.

On March 18, **SB 881** passed the Senate Committee on Energy, Utilities and Communications by a vote of 9-0-5. It will next be heard in the Committee on Appropriations.

CalCCA took a position of oppose the bill, unless amended.

**SB 1112 (Becker)** encourages the creation of Tariff On-Bill (TOB) financing investment programs to make low-cost capital for climate-beneficial building upgrades.

The bill requires utilities, Electric Service Providers, Publicly Owned Utilities, Co-Ops and CCAs who provide customers with TOB financing for a decarbonization upgrade to notify their county recorder within 10 days of the funding. However, who ultimately must notify the recorder could change should the CPUC determine the responsibility falls to a different party.

In those instances when TOB financing is provided and a property is not owner-occupied, the property owner must disclose the terms of the decarbonization charge to new tenants prior to leasing the property. Through this notification mechanism, an impediment to the establishment of TOB financing is potentially removed by providing some transparency to the customer and incorporating existing methods (lease agreements, titles) of notification.

The bill also directs the California Energy Commission to explore how the state and its utilities can leverage existing and future federal funds and existing state programs to make low-cost financing available to TOB investment programs.

Peninsula Clean Energy continues to be engaged in discussions with Senator Becker regarding the bill's consumer protections for renters and tenants.

**SB 1112** was heard and passed in the Senate Committee on Energy, Utilities and Communications. It is now on the Suspense File at the Committee on Appropriations.

Peninsula Clean Energy has taken a support position on two bills authored by Senator Josh Becker. **SB 887 (Becker)** would help California prepare for the necessary and increasing amounts of transmission of clean energy from offshore wind and solar in rural areas to the state's population centers. The bill requires the PUC and CEC to

provide long term forecasts to the CAISO that extend at least 15 years into the future. The forecasts must be consistent with achieving SB 100 targets for renewable and zero carbon resources and consistent with the ARB's scoping plan targets for economywide GHG reductions. It also requires projections that, by 2035, eliminate the need for carbon-emitting resources when renewables are available elsewhere; projections that include offshore wind and projections for imports of clean energy from outside California.

**SB 1203 (Becker)** would establish a planning goal for all state agencies to achieve zero net GHG emissions by 2035 from state operations (owned and controlled vehicles, buildings, etc.) and electricity purchase by the state. State agencies would also be required to publish their inventories of current emissions, establish interim targets, and create a plan for achieving those targets. This 2035 target is more aggressive than the state's goal of 2045 for the entire economy and ahead of the goal for federal agencies set by President Biden. As such, California government could become an early adopter and set the example as a clean tech innovator that can meet the challenge of decarbonizing. Peninsula Clean Energy has submitted a letter in support of **SB 1203**.

Another bill of great interest to Peninsula Clean Energy is **SB 1158 (Becker)**. Similar in some respects to Senator Becker's **SB 67** from 2021, **SB 1158** would mandate the hourly reporting of GHG intensity of load serving entities like Peninsula Clean Energy. It would also require the LSE to report the GHG profile of its Resource Adequacy portfolios.

Peninsula Clean Energy supports **SB 1158** and the bill's goal of improving transparency of LSE progress in meeting its GHG reduction goals, noting that it reflects our organization's 24/7 goals. We have been working closely with Senator Becker to clarify and address some of the issues raised in the legislation.

Since our last board meeting, CalCCA removed its oppose unless amended position on **SB 1158**, and we are working with the author on changes to the bill.

Peninsula Clean Energy weighed in with support for **SB 1158** when it was heard and passed in the Senate Committee on Energy, Utilities and Communications. The bill has been referred to the Committee on Appropriations.

Peninsula Clean Energy and CalCCA have taken an oppose position on **SB 1393 (Archuleta)**. This bill would expand the California Energy Commission's review of new construction reach codes and require local jurisdictions to consider the CEC's guidance on building electrification when considering adopting ordinances that require electrification of existing buildings. The CEC would review the ordinance and determine whether the local government considered the CEC's published guidance in the adoption of the ordinance. If the CEC determined that the local jurisdiction did not consider the

CEC's guidance, it would be required to consider the guidance, make modifications deemed necessary by the local government and resubmit the ordinance to the CEC. **SB 1393** was passed in the Senate Committee on Energy, Utilities and Communications. It is next before the Committee on Appropriations.

**AB 1944 (Lee, Christina Garcia)** would amend the Brown Act to specify that if a member of a legislative body elects to teleconference from a location that is not public, the address of that location need not be identified in the meeting notice and agenda, or be accessible to the public, when the legislative body has elected to allow members to participate via teleconferencing. Peninsula Clean Energy has submitted a letter of support for **AB 1944**. This bill was heard in May and passed in the Assembly Committee on Local Government and is now headed to the floor of the Assembly.

**SB 1020 (Laird)** was passed in the Senate Committee on Energy in late April. It has been referred to the Senate Committee on Appropriations where it has been placed on the suspense file calendar. This bill is being championed by the leadership of the state Senate as the Clean Energy, Jobs, and Affordability Act of 2022. Among the many provisions of the bill that address climate change issues, it would establish a new state agency regarding clean energy and provide funding, mostly from federal funds, for home infrastructure upgrades. Peninsula Clean Energy and CalCCA have not yet taken a position on the legislation but are watching it very closely.



**PENINSULA CLEAN ENERGY**  
**JPA Board Correspondence**

**DATE:** May 26, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jan Pepper, Chief Executive Officer, Peninsula Clean Energy  
Rafael Reyes, Director of Energy Programs

**SUBJECT:** Community Programs Report

**SUMMARY**

The following programs are in progress, and detailed information is provided below:

1. Building and EV Reach Codes
2. Buildings Programs
  - 2.1. Appliance Rebates
  - 2.2. Low-Income Home Upgrades & Electrification
  - 2.3. Building Pilots
3. Distributed Energy Programs
  - 3.1. Local Government Solar Project Development
  - 3.2. Power On Peninsula – Homeowner
4. Transportation Programs
  - 4.1. “EV Ready” Charging Incentive Program
  - 4.2. Used EV Rebate Program
  - 4.3. EV Ride & Drives/EV Rental Rebate
  - 4.4. E-Bikes for Everyone Rebate Program
  - 4.5. Municipal Fleets Program
  - 4.6. Transportation Pilots
5. 2035 Decarbonization Feasibility and Plan

**DETAIL**

**1. Building and EV Reach Codes**

**Background:** In 2018, the Board approved a building “reach code” initiative to support local governments in adopting enhancements to the building code for low-carbon and EV ready buildings. The initiative is a joint project with Silicon Valley Clean Energy (SVCE).

The program includes small grants to municipalities, technical assistance, and tools, including model codes developed with significant community input. The tools and model code language are available on the project website ([www.PeninsulaReachCodes.org](http://www.PeninsulaReachCodes.org)).

In addition, in January 2020, the Board approved an extension of the reach code technical assistance with additional elements: education and training for developers and contractors, and consumer education program on the benefits of all-electric buildings. This technical assistance is publicly available at [www.AllElectricDesign.org](http://www.AllElectricDesign.org). In December 2020, the Board approved extending the contract with TRC Engineers including technical assistance for developing policy for existing buildings. In February 2022 the Board extended the initiative for another two years.

**Status:**

- **Reach Codes:** The City of Belmont has approved the first reading of reach codes and scheduled the second reading in June. In total, 15 agencies have adopted some form of reach code in the service territory. Peninsula Clean Energy is providing support to numerous additional agencies who plan to pass Reach Codes in 2022. Draft new model codes are available. Multiple jurisdictions have requested model existing building reach codes. Stakeholder workshops were held on January 26, February 15, 16, 17, and most recently April 13 with approximately 250 attendees excluding program staff. The first drafts of the model codes were presented and initial feedback received.
- **Existing Building policy development:** Existing building model codes are being developed with stakeholder feedback. During a poll at a City Staff workshop, 64% of respondents stated that they were interested in exploring an existing building reach code. In addition, SVCE and Joint Venture Silicon Valley are planning an existing building workshop/webinar likely in August specifically for elected officials and have offered that elected officials in San Mateo County may also attend.

**Strategic Plan:**

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 3: Ensure nearly all new construction is all-electric and EV ready
- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

## **2. Buildings Programs**

### **2.1. Appliance Rebates**

**Background:** In May 2020, the Board approved a 4-year, \$6.1 million for electrifying existing buildings. This included \$2.8 million for implementing an appliance rebate program. Peninsula Clean Energy successfully launched the heat pump water heater rebates on January 01, 2021 for San Mateo County residents. Peninsula Clean Energy



rebates are offered in partnership with BayREN's Home+ program. BayREN offers a rebate of \$1,000, and Peninsula Clean Energy offers an additional rebate of \$1,000 for methane gas to heat pump water heater (HPWH) or \$500 for electric resistance to HPWH. Peninsula Clean Energy also offers a bonus rebate for low-income customers (CARE/FERA participants) of \$1,000 and \$1,500 for electrical panel updates of up to 100 Amp and \$750 for up to 200 Amp that might be needed to accommodate the HPWH. In addition, Peninsula Clean Energy offers a small refrigerator recycling program approved in 2018.

**Status:** The HPWH rebate program was launched on January 01, 2021. To date, we have received 198 applications. Overall, the Peninsula Clean Energy program has accounted for approximately 34% of the HPWHs installed across the 9-county Bay Area since 2019. Currently, seven San Mateo County contractors and 21 contractors outside the county are enrolled in the program. Peninsula Clean Energy has been promoting the incentive through digital ads, email outreach and other channels. Volume on this program is being impacted by statewide HPWH supply shortages that staff is currently investigating. The TECH program that has been providing HPWH incentives throughout 2022 has run out of funding in PG&E service territory as of May 12, 2022. TECH offered \$1,100+ to Peninsula Clean Energy customers directly through their contractors, but those incentives will no longer be available in 2022. However, Peninsula Clean Energy and BayREN still offer incentives for customers installing HPWH for a total of \$2,000. Additional incentives are available for income-qualified customers and electrical panel upgrades.

The refrigerator recycling program had low volume during the pandemic but is beginning to increase volume. Since inception, the recycling program has recycled 351 refrigerators and freezers, resulting in 640 MTCO<sub>2</sub>e in greenhouse gas reduction. The program's funds have been exhausted as of May 10, 2022. Staff is moving forward with a contract amendment to continue, and expand, the program with an additional budget of \$200,000 over three years (June 2022 – June 2025). The contract amendment includes adding more appliance types (air conditioning units and allowing non-working units to be eligible) and allowing for bulk pickups from apartment complexes and waste distribution centers.

### **Strategic Plan:**

#### **Goal 3 – Community Energy Programs**

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

## **2.2. (Low-Income) Home Upgrade Program**

**Background:** In May 2020, the Board approved \$2 million for implementing a turn-key low-income home upgrade program. The measures implemented through the program

will vary depending on each home's needs but will include at least one electrification measure, such as installing a HPWH or replacing a gas stove with an electric induction stove. The contract with the administration and implementation firm, Richard Heath & Associates (RHA), was executed after being approved by the Board in the March 2021 meeting.

**Status:** The program was announced on September 28, 2021. The below table summarizes the program's status as of March 31, 2022.

Stage/category	#s as of April 2022
Leads	341
Reached	180
Pre-assessments	136
Enrolled	96
Ineligible	68
Installations in progress	37
Fully complete	11

### **Strategic Plan:**

#### Goal 3 – Community Energy Programs

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

### **2.3. Building Pilots**

**Background:** In May 2020, The Board approved \$300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 3-5 homes within the San Mateo County to assess its performance and demonstrate its effectiveness for emission reductions.

**Status:** The home recruitment process began in late April 2021 and the project received 290 applications. Homes were selected based on technical criteria (home characteristics, energy usage patterns, and technical feasible of the upgrade within budget). The four pilot homes are located in Daly City, South San Francisco, Redwood City, and Menlo Park. As of May 13, 2022, the Daly City, South San Francisco, and Redwood City homes have had their system installed. The Menlo Park home is still awaiting the city permit; Harvest and installation contractor have been in touch with the City's building department regarding the request. The consulting firm TRC has been contracted to provide independent measurement and verification services for the project and have begun collecting data on the homes installed. A final report is anticipated in the summer of 2023

after a year of data has been collected and analyzed. Lastly, the Technical Advisory Committee (TAC) will have its second meeting on June 2, 2022, following the first meeting on September 30, 2021. The objective of the TAC is to review and provide feedback on the project. TAC members include former building officials, a former contractor, a city commissioner, peer CCA program managers, CPUC staff, CAC member and Board member Jeff Aalfs.

### **Strategic Plan:**

#### **Goal 3 – Community Energy Programs**

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

### **3. Distributed Energy Programs**

Peninsula Clean Energy has Board-approved strategies for the promotion of 20 MW of new distributed energy resources in San Mateo County and is advancing distributed energy resources to provide resilience, lower decarbonization costs, and to provide load shaping to support our strategic goal for 24/7 renewables. The projects described below are efforts towards meeting both of these goals.

#### **3.1. Local Government Solar Program**

**Background:** The Local Government Solar program is aimed at aggregating local government facilities into a group procurement of solar and optionally storage systems. Peninsula Clean Energy provides no-cost site assessments and preliminary designs and manages the procurement process. Participating sites have systems installed as part of power purchase agreements directly with Peninsula Clean Energy. As part of the pilot phase, in October 2020, the Board approved a Solar Site Evaluation Services contract with McCalmont Engineering for Solar site evaluation and designs for County and municipal facilities identified as candidates for solar-only or solar + storage resilience projects. In March 2022, the board approved up to \$8 million in capital for system installations to be repaid over 20 years and \$600,000 for technical assistance on the second round of the aggregated solar program.

**Status:** We completed site visits and solar designs for fourteen (14) facilities across 13 agencies including in Los Banos. We began seeking commitments from cities and the County to participate in an aggregate procurement process from which we would offer a 20-year Power Purchase Agreement (PPA) for the solar installation at no upfront cost. The requested commitment is that if we can offer a PPA price that will result in net electric bill savings or deliver other identified community benefits, they will move forward to installation. We have now received commitments from 12 of 13 agencies, with an aggregate portfolio size of approximately 2 MW. We are continuing to work with a

potential tax benefits partner that could capture the tax benefits of the solar projects and share them with Peninsula Clean Energy, and by extension portfolio customers. Peninsula Clean Energy is unable to capture those benefits directly due to its tax-exempt status. We believe developing such a relationship and contracting structure could enable Peninsula Clean Energy to obtain the most competitive pricing on equipment and installation. Our fallback, if this pathway runs into insurmountable obstacles, is to seek a master PPA for the portfolio from an entity that can share tax benefits, similar to Peninsula Clean Energy's wholesale procurements.

We are in final stages of city approval with only San Bruno pending. This is expected to be completed in June. Once complete, we will move to RFP for the full portfolio of sites. We will be soliciting bids that could fit into two procurements models. In Model 1, Peninsula Clean Energy, in partnership with a tax financing partner, would purchase the systems from a contractor that would procure, install, and maintain equipment. In Model 2, Peninsula Clean Energy would secure a master PPA for the full portfolio with an entity that can provide both tax equity and installation. There are pros and cons to each model. We expect the RFP to provide the critical information necessary to inform final model selection, most crucially the relevant costs and the resulting PPA pricing that could be provided to customers.

### **3.2. Power On Peninsula – Homeowner**

**Background:** Power on Peninsula – Homeowner is a solar+storage energy resiliency program run by Peninsula Clean Energy in partnership with Sunrun and TerraVerde Energy. This program provides energy storage systems paired with solar power to single family and multifamily Peninsula Clean Energy customers. Customers who sign up for this program receive an incentive up to \$1,250. At Peninsula Clean Energy's direction, Sunrun will dispatch the stored energy during evening hours when renewable generation on the California grid is low. This will also help Peninsula Clean Energy to reduce its peak load and thereby reduce our resource adequacy requirements.

**Status:** The program has commenced dispatching customer batteries in the evening to help reduce Peninsula Clean Energy's net peak. The program is being impacted by supply chain issues including contractor, materials, and product supply and cost. However, program promotion has been ongoing. The incentive for enrolling in the program is now \$500. Staff is working with a firm to provide labor compliance assistance and has begun developing the process for analyzing workforce data.

### **3.3. FLEXmarket**

**Background:** In November 2021 the Board approved a program plan for the establishment of an innovative "virtual power plant" using what is known as FLEXmarket. FLEXmarket is a market-based program structure that provides incentives to program "aggregators" to implement programs for efficiency and load shaping. The novel elements

of the structure include a “pay-for-performance” approach, which only provides incentives on confirmed performance using meter data. This novel structure was innovated by MCE and has also been adopted by East Bay Community Energy. In addition, the program plan was developed for submission to the CPUC to allow Peninsula Clean Energy to run the program with fully reimbursed funding through the CPUC. Peninsula Clean Energy’s billing data services provider Calpine has entered into a strategic partnership with the firm Recurve to provide FLEXmarket services through a streamlined structure.

**Status:** Peninsula Clean Energy’s proposed FLEXmarket program was approved by the CPUC on May 5<sup>th</sup>. The next major step is the development of an Implementation Plan, which defines the program in greater detail. Development of the Implementation Plan is in progress in collaboration with program partner Recurve. In addition, the required contract between Peninsula Clean Energy and Calpine is under review.

**Strategic Plan:** The activities and programs described in the DER and Energy Resilience activities support the following objectives and key tactics in Peninsula Clean Energy’s strategic plan:

- Distributed Energy Resources: Support strategic decarbonization and local power
  - Key Tactic 1: Create minimum of 20 MW of new local renewable power sources in PCE service territory by 2025
  - Key Tactic 2: Support distributed energy resources to lower costs, support reliability, and advance distributed and grid decarbonization
  - Key Tactic 3: Foster Resilience

## 4. Transportation Programs

### 4.1. Used EV Rebate Program

**Background:** Launched in March 2019, the Used EV Rebate Program (formerly referred to as “DriveForward Electric”) provides an incentive up to \$4,000 for the purchase of used plug-in hybrid electric vehicles (PHEVs) and full battery electric vehicles (BEVs) to income-qualified San Mateo County residents (those making 400% of the Federal Poverty Level or less). The incentives may be combined with other state-funded income-qualified EV incentive programs. In October 2020, the Board approved expanding the program to offer used EV incentives to all San Mateo County residents, while maintaining the increased incentives for income-qualified residents. The program includes a \$25,000 vehicle price cap and local dealership network with point-of-sale rebate. In February 2021, Peninsula Clean Energy executed a competitively bid contract with GRID Alternatives (“GRID”) to administer the expanded program. The ‘old’ program incentivized 105 rebates from March 2019 through August 2021. In August 2021, the program was officially re-launched.

**Status:** Since the re-launch of the program, 61 rebates have been provided under the new program and 200+ customers are actively in the pipeline (customers must apply prior to purchase). Because vehicle supplies are extremely tight due to global supply chain

issues in the market currently and pricing is high, staff has made some temporary modifications to the program to adjust to market conditions. In 2021, average used vehicle prices were 30% higher than 2020 and 40-50% higher than pre-pandemic levels. In 2021, the average used vehicle price in the U.S. was \$28,000.

As a result, staff made the following changes, which took effect March 17, 2022:

Current	Change
To be eligible for rebate, vehicle purchase price (before rebates) cannot exceed \$25,000.	Increase price cap from \$25,000 to \$35,000
Current incentive levels are as follows: <ul style="list-style-type: none"> <li>• All residents: \$700 PHEV, \$1,000 BEV</li> <li>• Income-qualifying residents               <ul style="list-style-type: none"> <li>• If they combine Peninsula Clean Energy incentive with other EV incentive programs: \$1,700 PHEV, \$2,000 BEV</li> <li>• If they do not combine Peninsula Clean Energy incentive with any other EV incentive program: \$3,700 PHEV, \$4,000 BEV</li> </ul> </li> </ul>	Increase incentive by \$2,000 for income-qualifying residents.  New incentive levels would be as follows: <ul style="list-style-type: none"> <li>• All residents: \$700 PHEV, \$1,000 BEV</li> <li>• Income-qualifying residents               <ul style="list-style-type: none"> <li>• If they combine Peninsula Clean Energy incentive with other EV incentive programs: \$2,700 PHEV, \$4,000 BEV</li> <li>• If they do not combine Peninsula Clean Energy incentive with any other EV incentive program: \$5,700 PHEV, \$6,000 BEV</li> </ul> </li> </ul>

Staff will assess changes in 6 months and determine whether to keep them or adjust them again. Lastly, these changes will not require any new budget allocation to the program, and uptake in the program has been slower than expected. Thus, there are enough funds in the existing budget to support these changes.

### Strategic Plan:

#### Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

#### 4.2. “EV Ready” Charging Incentive Program

**Background:** In December 2018 the Board approved \$16 million over four years for EV charging infrastructure incentives (\$12 million), technical assistance (\$2 million), workforce development (\$1 million), and administrative costs (\$1 million). Subsequent to

authorization of funding, Peninsula Clean Energy successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional \$12 million in San Mateo County for EV charging infrastructure. Of Peninsula Clean Energy's \$12 million in incentives, \$8 million is administered through the CEC's California Electric Vehicle Incentive Project (CALeVIP) and \$4 million under a dedicated, complementary Peninsula Clean Energy incentive fund. The dedicated Peninsula Clean Energy incentives address Level 1 charging, assigned parking in multi-family dwellings, affordable housing new construction, public agency new construction, and charging for resiliency purposes.

**Status:** The program is being significantly impacted by supply chain issues, including contractor scheduling materials, and product supply and cost. This is resulting in installation delays. Staff is engaging directly with participating contractors to understand installation delay issues and IBEW 617 to explore solutions. Peninsula Clean Energy's technical assistance and outreach is ongoing. Staff has begun engagement with IBEW 684 (Merced County) to develop relationships with contractors to serve Los Banos projects and to provide additional support in San Mateo County.

In early May, staff received confirmation that 124 Level 2 ports were installed in the County of San Mateo parking garage at 400 Middlefield Road. This is (and is expected to be) the largest EV charging project funded by Peninsula Clean Energy. The City of San Mateo (13 L2 ports) and the City of San Carlos (4 L2 ports) have completed installations as well. Summary of program metrics is outlined in the table below:

	Sites/ Applications	Ports	Incentive Amount
# of sites in Technical Assistance	124	833	-
# of site evaluations delivered	82	1800	-
# of funding applications received in Peninsula Clean Energy incentive program	33	458	\$1,112,500
# of funding applications approved in Peninsula Clean Energy incentive program	19	382	\$813,500
# of CALeVIP applications approved in Year 1*	69	1,014	\$14,868,500
# of CALeVIP applications anticipated in Year 2 & Year 3	56	752	\$3,666,500
Total # of ports installed	10	234	\$701,000

\*Includes DCFC and L2 ports: 298 DCFC, 718 L2 ports

### Strategic Plan:

#### Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 3: Support workforce development programs in the County

#### 4.3. EV Ride & Drives / EV Rental Rebate

**Background:** In February 2019, the Board approved continuation of the EV Ride & Drive program over three years (2019-2021), following a 2018 pilot. It provides for community and corporate events in which community members can test drive a range of EVs. The program generated 19 events and 3,033 experiences since inception in 2018. Event surveys indicate that the ride and drive was the first EV experience for 64% of participants, and 87% report an improved opinion of EVs. Trailing surveys 6 months or more after events have yielded a 33% response rate, and 17% of respondents indicate they acquired an EV after the event. Due to the COVID-19 pandemic, ride & drive events have been paused. As a result, staff developed a suite of virtual EV engagement pilot programs that replaced the in-person ride & drive events. Staff evaluated these pilots in January 2021 and phased out some due to low uptake and to prioritize limited funding for the most successful programs – Virtual EV Forums & EV Rental Rebate. The Virtual EV Forums in partnership with large San Mateo County employers continued through the end of FY20-21. Four EV Forums were held. The EV Rental Rebate is all that currently remains.

**Status:** The EV Rental Rebate, which offers a rebate up to \$200 on the rental of an EV, has issued 168 rebates as of April 30, 2022. Staff sent surveys to participants 6 months after the rental. Of 34 respondents, eight (8%) have purchased an EV since the rental. Most of the FY21-22 EV Ride & Drive/Engagement budget will be dedicated to the EV Rental Rebate. Staff has considered re-starting ride & drive events again this year, however the vehicle supply shortage also means dealerships do not have cars available for ride & drive events, and thus it is not feasible to re-start the program again at this time. Staff will reassess restarting events in 2023 if vehicle inventory is not an issue at that point.

#### Strategic Plan:

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation towards majority adoption

#### 4.4. E-Bikes for Everyone Rebate Program

**Background:** The Board initially approved the income-qualified E-Bikes Rebate program in July 2020 with a budget of \$300,000 and approved an increase of an additional \$300,000 in December 2022, bringing the total program budget to \$600,000. The first phase of the program launched in May 2021 and sold out immediately and provided 276



rebates. The second phase will occur in spring 2022 and provide approximately 320 rebates. The program is available to residents with low to moderate incomes. Silicon Valley Bicycle Coalition is under contract to Peninsula Clean Energy as an outreach and promotional partner and local bike shops are under contract to provide the rebate as a point-of-sale discount to customers. Enrolled bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, Chain Reaction, Woodside Bike Shop, and E-Bix Annex.

**Status:** The second round of the program will open for applications on May 16 with a lottery occurring in early June to award rebates. The new round utilizes more targeted outreach with community partners and a lottery method for awarding incentives, rather than the first-come, first-served method used in the previous round

**Strategic Plan:**

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation, and initiate the transition to clean energy buildings

- Key Tactic 1: Drive personal electrified transportation to majority adoption

Objective B: Community Benefits: Deliver tangible benefits throughout our diverse communities

- Key Tactic 1: Invest in programs that benefit underserved communities

#### **4.5. Municipal Fleet Program**

**Background:** The Board approved the Municipal Fleet Program in November 2020. This program will run for three years with a total budget of \$900,000 and is comprised of three components to help local agencies begin their fleet electrification efforts: hands-on technical assistance and resources, gap funding, and a vehicle to building resiliency demonstration that will assess the costs and benefits of utilizing fleet EVs as backup power resources for agencies in grid failures and other emergencies.

**Status:** Staff has selected a consulting team. Staff expects the contract to be brought to the Board shortly for approval and for the program to become available by mid-2022.

**Strategic Plan:**

Goal 3 – Community Energy Programs

Objective A: Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Objective C: Innovation and Scale: Leverage leadership, innovation, and regulatory action for scaled impact

- Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

## 4.6. Transportation Pilots

### ***Ride-Hail Electrification Pilot***

**Background:** This pilot, approved by the Board in March 2020, is Peninsula Clean Energy's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications with up to 100 EVs. Because ride-hail vehicles drive much higher than average miles per year, each vehicle in this electrification pilot is expected to save over 2,000 gallons of gas and 20 tons of greenhouse gas emissions per year.

**Status:** The 100 EV fleet has been put into service by Lyft. Vehicles include a customer-facing placard that informs riders about the pilot and directs them to the PCE website for more information. PCE staff is finalizing specific data transfer logistics to evaluate performance.

### ***EV Managed Charging Pilot***

**Background:** Peninsula Clean Energy aims to facilitate EV charging that avoids expensive and polluting evening hours through "managed charging" systems. This work is in the second phase of a pilot. In 2020, Peninsula Clean Energy ran a proof-of-concept pilot for EV managed charging with startup FlexCharging to test timing of EV charging through vehicle-based telematics. This was a limited pilot with approximately 10 vehicles. The system utilizes existing Connected Car Apps and allows Peninsula Clean Energy to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The pilot is moving to Phase 2 which is intended for a larger set of 1,000 to 2,000 vehicles. In October of 2021, the Board approved a contract up to \$220,000 with the University of California, Davis' Davis Energy Economics Program (DEEP), to develop and advise on an incentive structure experiment that will be used to inform the Peninsula Clean Energy managed charging program design. This collaboration has been ongoing.

**Status:** Staff released an RFP for the telematics-based platform for the Phase 2 pilot and is currently finalizing contract negotiations. The contract for the recommended winner will be brought to the Board for approval shortly. A Technical Advisory Committee, consisting of staff from CEC, CPUC, CCAs, and NGOs, is also informing the pilot and held its first meeting mid-February.

### **Strategic Plan:**

#### Goal 3 – Community Energy Programs

Community Benefits: Deliver tangible benefits throughout our diverse communities

Key Tactic 1: Invest in programs that benefit underserved communities

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization  
Pilot and scale EV load shaping programs to ensure that 50% of energy for EV charging takes places in non-peak hours

## 5. 2035 Decarbonization Feasibility and Plan

**Background:** In September 2021 the Board adopted a resolution accelerating its goal of reaching carbon neutrality from 2045 to 2035 as follows: “Direct Peninsula Clean Energy to adopt a goal of 100% greenhouse gas free by 2035 and direct staff to return with a plan for achieving that goal.” A Board sub-committee was established, including Chair DeGolia and directors Pine, Aalfs, Nash, Parmer-Lohan to oversee the project. The schedule is as follows:

- Q1:** Schedule, scope, market conditions analysis
- Q2:** Segments, costs, and finance options
- Q3:** PCE investment, finance, marketing, roadmap
- Sept. Retreat:** Present draft analysis & plan
- Q4:** Confirm and align budget forecast and finalize plan

The final deliverable is to be a slide deck for the retreat and potentially a white paper to follow. In addition, Peninsula Clean Energy’s primary scope for decarbonization was approved:

- Transportation: private passenger vehicles, local government and local commercial fleets, ride-hailing, alternative mobility
- Buildings: single-family and small multi-family residential, office, small commercial

It is envisioned that Peninsula Clean Energy may engage beyond these segments on a limited basis.

**Status:** Development of the plan is ongoing. The first major deliverable, “Market Conditions,” analyzes the expected economic, technological and policy conditions anticipated from now through 2035 and includes a “business as usual” projection of decarbonization efforts which can be reasonably expected to occur without Peninsula Clean Energy intervention. This deliverable was presented to the Board sub-committee in April. In addition, an Advisory Committee is being formed and is scheduled to meet in June.

### Strategic Plan:

Goal 3 – Community Energy Programs

Decarbonization Programs: Develop market momentum for electric transportation and initiate the transition to clean energy buildings

Innovation and Scale: Leverage leadership, innovation and regulatory action for scaled impact

Key Tactic 1. Identify, pilot, and develop innovative solutions for decarbonization  
Develop strategy for supporting decarbonization by 2035 (updated 2022)

**PENINSULA CLEAN ENERGY  
JPA Board Correspondence**

**DATE:** May 13, 2022  
**BOARD MEETING DATE:** May 26, 2022  
**SPECIAL NOTICE/HEARING:** None  
**VOTE REQUIRED:** None

**TO:** Honorable Peninsula Clean Energy Authority Board of Directors

**FROM:** Jan Pepper, Chief Executive Officer  
Siobhan Doherty, Director of Power Resources

**SUBJECT:** Energy Supply Procurement Report – May 2022

**BACKGROUND**

This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in April. This summary is provided to the Board for information purposes only.

**DISCUSSION**

<b>Execution Month</b>	<b>Purpose</b>	<b>Counterparty</b>	<b>Term</b>
April	Sale of Resource Adequacy	East Bay Clean Energy Authority	1 Month
April	Purchase of Resource Adequacy	East Bay Clean Energy Authority	6 Months
April	Purchase of Resource Adequacy	San Jose Clean Energy	2 Months
May	Sale of Resource Adequacy	Clean Power SF	1 Month

In January 2020, the Board approved the following Policy Number 15 – Energy Supply Procurement Authority.

**Policy:** “Energy Procurement” shall mean all contracting for energy and energy-related products for PCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage. In Energy Procurement, Peninsula Clean Energy Authority will procure according to the following guidelines:

1) **Short-Term Agreements:**

- a. Chief Executive Officer has authority to approve Energy Procurement contracts with terms of twelve (12) months or less, in addition to contracts for Resource Adequacy that meet the specifications in section (b) and in Table 1 below.
- b. Chief Executive Officer has authority to approve Energy Procurement contracts for Resource Adequacy that meet PCE's three (3) year forward capacity obligations measured in MW, which are set annually by the California Public Utilities Commission and the California Independent System Operator for compliance requirements.

Table 1:

Product	Year-Ahead Compliance Obligation	Term Limit
Local Resource Adequacy	In years 1 & 2, must demonstrate capacity to meet 100% of monthly local obligation for years 1 and 2 and 50% of monthly local obligation for year 3 by November 31 <sup>st</sup> of the prior year	Up to 36 months
System Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of system obligation for summer months (May – September) by November 31 <sup>st</sup> of the prior year	Up to 12 months
Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by November 31 <sup>st</sup> of the prior year	Up to 12 months

- c. Chief Financial Officer has authority to approve any contract for Resource Adequacy with a term of twelve (12) months or less if the CEO is unavailable and with prior written approval from the CEO.
  - d. The CEO shall report all such agreements to the PCE board monthly.
- 2) **Medium-Term Agreements:** Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The CEO shall report all such agreements to the PCE board monthly.
  - 3) **Intermediate and Long-Term Agreements:** Approval by the PCE Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.
  - 4) **Amendments to Agreements:** Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

## **STRATEGIC PLAN**

The contracts executed in November support the Power Resources Objective A for Low Cost and Stable Power: Develop and implement power supply strategies to procure low-cost, reliable power.

## COMMONLY USED ACRONYMS AND KEY TERMS

AB xx – Assembly Bill xx  
ALJ – Administrative Law Judge  
AMP- Arrears Management Plans  
AQM – Air Quality Management  
BAAQMD – Bay Area Air Quality Management District  
BLPTA – Buyer Liability Pass Through Agreement  
CAC – Citizens Advisory Committee  
CAISO – California Independent System Operator  
CalCCA – California Community Choice Association  
CAM – Cost Allocation Mechanism  
CAP – Climate Action Plan  
CAPP – California Arrearage Payment Program  
CARB – California Air Resources Board, or California ARB  
CARE- California Alternative Rates for Energy Program  
CBA – California Balancing Authority  
3CE- Central Coast Community Energy (Formerly Monterey Bay Community Power-MBCP)  
CCA – Community Choice Aggregation (aka Community Choice Programs (CCP) or  
CCE – Community Choice Energy (CCE)  
CCP – Community Choice Programs  
CEC – California Energy Commission  
CPP- Critical Peak Pricing  
CPSF – Clean Power San Francisco  
CPUC – California Public Utility Commission (Regulator for state utilities) (Also PUC)  
CSD – California Department of Community Services and Development  
CSGT - Community Solar Green Tariff  
DA – Direct Access  
DAC-GT - Disadvantaged Communities Green Tariff  
DER – Distributed Energy Resources  
DG – Distributed Generation  
DOE – Department of Energy  
DR – Demand Response  
DRP – Demand Response Provider  
DRP/IDER – Distribution Resources Planning / Integrated Distributed Energy Resources  
EBCE – East Bay Community Energy  
ECOplus – PCE’s default electricity product, 50% renewable and 50% carbon-free (in 2021)  
ECO100 – PCE’s 100% renewable energy product  
EDR – Economic Development Rate  
EE – Energy Efficiency  
EEI – Edison Electric Institute; Standard contract to procure energy & RA  
EIR – Environmental Impact Report  
ELCC – Effective Load Carrying Capability  
ESP – Electric Service Provider



ESS – Energy Storage Systems  
ESSA – Energy Storage Services Agreement  
ERRA – Energy Resource Recovery Account  
EV – Electric Vehicle  
EVSE – Electric Vehicle Supply Equipment (Charging Station)  
FERA- Family Electric Rate Assistance Program  
FERC – Federal Energy Regulatory Commission  
FFS – Franchise Fee Surcharge  
GHG – Greenhouse gas  
GHG-Free – Greenhouse gas free  
GTSR – Green Tariff Shared Renewables  
GWh – Gigawatt Hours (Energy) = 1000 MWh  
IDER – Integrated Distributed Energy Resources  
IOU – Investor-Owned Utility (e.g. PG&E, SCE, SDG&E)  
IRP – Integrated Resource Plan  
IVR – Interactive Voice Response  
ITC – Investment Tax Credit (it's a solar tax credit)  
JCC – Joint Cost Comparison  
JPA – Joint Powers Authority  
JRC – Joint Rate Comparison  
JRM – Joint Rate Mailer  
kW – kilowatt (Power)  
kWh – Kilowatt-hour (Energy)  
LDS – Long Duration Storage  
LDES – Long Duration Energy Storage  
LIHEAP- Low Income Home Energy Assistance Program  
Load Shaping – changing when grid energy is used  
LSE – Load Serving Entity  
MCE – Marin Clean Energy  
Methane Gas - formerly known as 'natural gas'  
Microgrid – building or community energy system  
MW – Megawatt (Power) = 1000 kW  
MWh – Megawatt-hour (Energy) = 1000 kWh  
MUD – Multi-unit Dwelling  
NBCs – non-bypassable charges  
NEM – Net Energy Metering  
NERC – North American Electric Reliability Corporation  
NDA – Non-Disclosure Agreement  
NG – Natural Gas  
OBF – On-bill Financing  
OBR – On-bill Repayment  
OES – Office of Emergency Services  
OIR – Order Instituting Rulemaking  
PACE – Property Assessed Clean Energy  
PCC – Portfolio Content Category (aka "buckets") – categories for RPS compliance  
PCC1 – Portfolio Content Category 1 REC (also called bucket 1 REC)  
PCC2 – Portfolio Content Category 2 REC (also called bucket 2 REC)  
PCC3 – Portfolio Content Category 3 REC (also called bucket 3 REC or unbundled REC)

PCE – Peninsula Clean Energy Authority  
PCIA – Power Charge Indifference Adjustment  
PCL – Power Content Label  
PLA – Project Labor Agreement  
POU – Publicly Owned Utility  
PPA – Power Purchase Agreement  
PPSA – Project Participation Share Agreement (CC Power)  
PSPS – Public Safety Power Shutoff  
PV – Photovoltaics (solar panels)  
RA – Resource Adequacy  
RE – Renewable Energy  
REC – Renewable Energy Credit/Certificate  
RICAPS - Regionally Integrated Climate Action Planning Suite  
RPS – California Renewable Portfolio Standard  
SB xx – Senate Bill xx  
SCP – Sonoma Clean Power  
SJCE – San Jose Clean Energy  
SJVAPCD - San Joaquin Valley Air Pollution Control District  
SMD – Share My Data, interval meter data  
SQMD – Settlement Quality Meter Data  
SVCE – Silicon Valley Clean Energy  
TEF – Transportation Electrification Framework (CPUC Proceeding)  
TNCs – Transportation Network Companies (ridesharing companies)  
TOB – Tariff on Bill  
TOU RATES – Time of Use Rates  
VGI – Vehicle-Grid Integration  
V2G – Vehicle-to-Grid  
VPP – Virtual Power Plant  
WECC – Western Energy Coordinating Council  
WREGIS – Western Renewable Energy Generation Information System  
WSPP – Western Systems Power Pool; standard contract to procure energy and RA