2075 Woodside Road | Redwood City, CA 94061
(650) 260-0005 | peninsulacleanenergy.com

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

Thursday, February 22, 2024
6:30 pm

PLEASE NOTE: This meeting will be held in a hybrid format with both in-person and Zoom participation options for members of the public; Board members shall appear in person.

In-Person Meeting Locations:
PCEA Lobby, **2075 Woodside Road, Redwood City, CA 94061**
Los Banos City Hall, Conference Room A, **520 J Street, Los Banos, CA 93635**

Zoom, **Virtual Meeting Link:** https://pencleanenergy.zoom.us/j/87496649657
Meeting ID: 874-9664-9657 **Passcode:** 2075 **Phone:** +1 (669) 444-9171

This meeting of the Board of Directors will be held at the Peninsula Clean Energy Lobby: 2075 Woodside Road, Redwood City, CA 94061 and Los Banos City Hall, Conference Room A, 520 J Street, Los Banos, CA 93635 and by teleconference pursuant to California Assembly Bill 2449 and the Ralph M. Brown Act, CA Gov't Code. Section 54950, et seq. **Members of the Board are expected to attend the meeting in person** and should reach out to Assistant General Counsel for Peninsula Clean Energy, Jennifer Stalzer, with questions or accommodation information (jstalzer@smcgov.org). For information regarding how to participate in the meeting remotely, please refer to the instructions at the end of the agenda. In addition, a video broadcast of the meeting can be viewed at https://www.peninsulacleanenergy.com/board-of-directors following the meeting.

Public Participation

The PCEA Board meeting may be accessed through Zoom online at https://pencleanenergy.zoom.us/j/87496649657. The webinar ID is: 874-9664-9657 and the passcode is 2075. The meeting may also be accessed via telephone by dialing +1(669) 444-9171. Enter the webinar ID: 874-9664-9657, then press #. (Find your local number: https://pencleanenergy.zoom.us/u/kTlH1Ocod). Peninsula Clean Energy uses best efforts to ensure audio and visual clarity and connectivity. However, it cannot guarantee the connection quality.

Members of the public can also attend this meeting physically at the **Peninsula Clean Energy Lobby** at 2075 Woodside Road, Redwood City, CA 94061 or **Los Banos City Hall**, Conference Room A, 520 J Street, Los Banos, CA 93635.

Written public comments may be emailed to PCEA Board Clerk, Nelly Wogberg (nwogberg@peninsulacleanenergy.com) and such written comments should indicate the specific agenda item on which the member of the public is commenting.

Spoken public comments will be accepted during the meeting in the Board Room(s) or remotely through Zoom at the option of the speaker. Please use the "Raise Your Hand" function in the Zoom platform, or press *6 if you phoned into the meeting, to indicate that you would like to provide comment.

Please note that Peninsula Clean Energy Board of Directors meetings are a limited public forum, and all public comment must relate to something that is within the subject matter jurisdiction of the Board. If comments do not relate to the subject matter jurisdiction of the Board, we will stop the comment and move on to the next speaker. General Counsel will assist in identifying comments that are not related to the subject matter jurisdiction of the Board.

ADA Requests

Individuals who require 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, should contact Nelly Wogberg, Board Clerk, by 10:00 a.m. on the day before the meeting at (nwogberg@peninsulacleanenergy.com). Notification in advance of the meeting will enable PCEA to make reasonable arrangements to ensure accessibility to this meeting, the materials related to it, and your ability to comment.

Closed Captioning is available for all PCEA Board meetings. While watching the video broadcast in Zoom, please enable captioning.

CALL TO ORDER / ROLL CALL / APPROVE TELECONFERENCE PARTICIPATION UNDER AB 2449

This item is reserved to approve teleconference participation request for this meeting by Director pursuant to Brown Act revisions of AB 2449 due to an emergency circumstance to be briefly described.

PUBLIC COMMENT

This item is reserved for persons wishing to address the Board 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 Committee 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. Approval of Minutes from the May 25, 2023, June 22, 2023 and January 25, 2024 Board Meetings
2. Joint Powers Authority Agreement Weighted Voting Shares Allocation

REGULAR AGENDA

3. Chair Report (Discussion)
4. CEO Report (Discussion)
5. CAC Report (Discussion)
6. Three-year Contract with Franklin Energy in an Amount Not-to-Exceed $26,000,000 for the Implementation of a Turnkey Electrification Installation Service for Single-family Homes (Action)
7. Study Session on Project Ownership (Discussion)
8. Selection of Board of Directors Chair and Vice Chair to be effective March 2024 (Action)

INFORMATIONAL REPORTS

9. Regulatory Policy Team Quarterly Report

10. Update on Legislative Activities

11. Energy Supply Procurement Quarterly Report

12. Informational Update on the Energy Storage Tolling Agreement for the Wallace Energy Storage Project with ESCA-PLD-LONGBEACH2, LLC

13. Report on California Community Power (CCP) Joint Powers Authority

14. Acronym List

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 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

- Videoconference with Computer Audio - see Option 1 below
- Videoconference with Phone Call Audio - see Option 2 below
- Calling in via Telephone/Landline - see Option 3 below

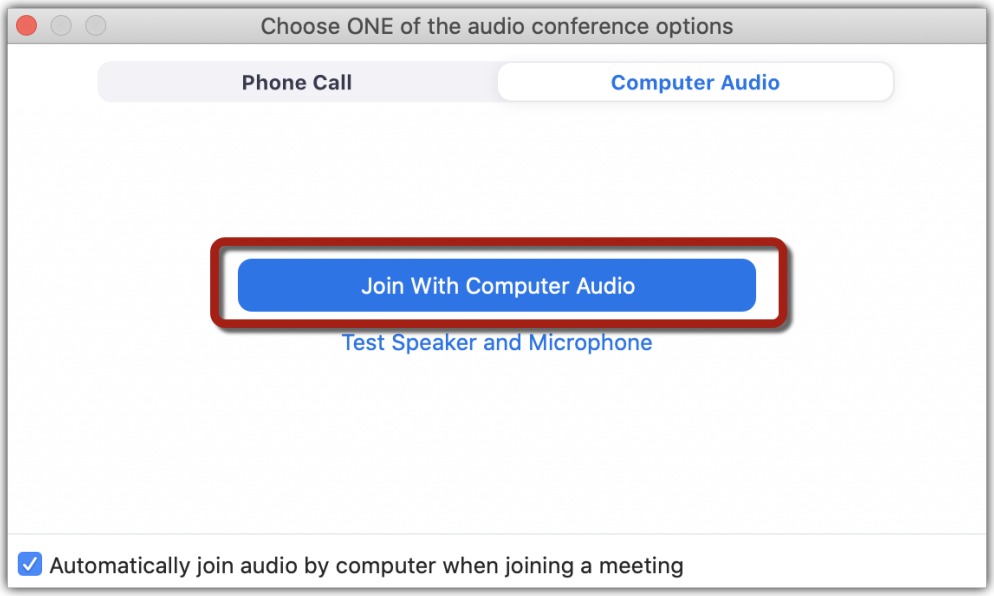
Videoconference Options:

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:

- From your computer, click on the following link that is also included in the meeting calendar invitation: https://pencleanenergy.zoom.us/j/87496649657
- The Zoom application will open on its own or you will be instructed to open Zoom.
- 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.

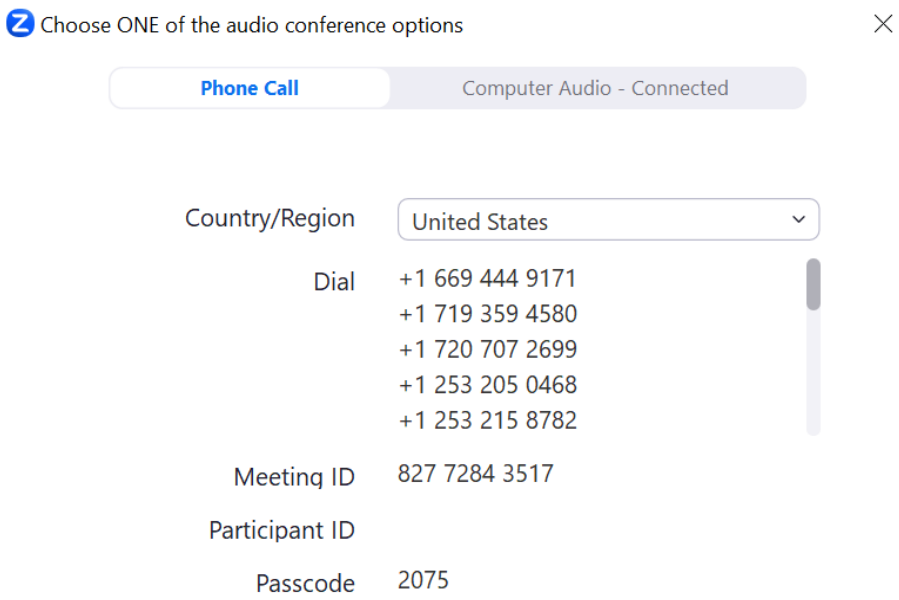


- Click the blue, "Join with Computer Audio" button.
- In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

Option 2 Videoconference with Phone Call Audio

- From your computer, click on the following link that is also included in the meeting calendar invitation: https://pencleanenergy.zoom.us/j/87496649657
- The Zoom Application will open on its own or you will be instructed to Open Zoom.

- After the application opens, the pop-up screen below will appear asking you to choose ONE of the audio conference options. Click on the Phone Call option at the top of the pop-up screen.



- Please dial +1 (669) 444-9171.
- You will be instructed to enter the meeting ID: **874-9664-9657 followed by #**.
- 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.
- After a few seconds, your phone audio should be connected to the Zoom application on your computer.
- 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:

- Please dial +1 (669) 444-9171.
- You will be instructed to enter the meeting ID: **874-9664-9657 followed by #**.
- 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.
- You will be instructed to enter the meeting passcode **2075 followed by #.**

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Nelly Wogberg, Board Clerk

SUBJECT: Approval of Minutes from the May 25, 2023, June 22, 2023 and January 25, 2024 Board Meetings

RECOMMENDATION

Approve Minutes from the January 25, 2024 Board Meeting

BACKGROUND

The only minutes requiring approval are from the January 25, 2024 Board meeting. Staff inadvertently included minutes from the May 25, 2023 and June 22, 2023 Board meetings in this item's title. The May 25, 2023 minutes were approved at the June 22, 2023 Board meeting. The June 22, 2023 minutes were approved at the July 27, 2023 Board meeting.

ATTACHMENTS:
01-25-2024 BOD Draft Minutes.docx

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

Thursday, January 25, 2024
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:33 p.m. in virtual teleconference, in the Peninsula Clean Energy Authority lobby and in the Los Banos City Hall conference room A.

ROLL CALL

Participating:

Dave Pine, San Mateo County
Ray Mueller, San Mateo County
Rick DeGolia, Atherton, *Chair*
Tom McCune, Belmont
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Vice Chair*
Roderick Daus-Magbual, Daly City
Carlos Romero, East Palo Alto, participating remotely under AB 2449, just cause exemption
Sam Hindi, Foster City
Harvey Rarback, Half Moon Bay
Leslie Ragsdale, Hillsborough
Paul Llanez, Los Banos
Betsy Nash, Menlo Park
Anders Fung, Millbrae, participating remotely under AB 2449, just cause exemption
Tygarjas Bigstyck, Pacifica
Jeff Aalfs, Portola Valley
Elmer Martinez Saballos, Redwood City
Marty Medina, San Bruno, participating remotely under AB 2449, just cause exemption
John Dugan, San Carlos
Adam Loraine, San Mateo
James Coleman, South San Francisco, arrived at 6:40 p.m.
Ned Fluet, Woodside

Absent:

Ken Gonzalez, Colma

A quorum was established.

SWEARING IN OF NEW BOARD MEMBER

Jennifer Stalzer, Assistant General Counsel, presided over a swearing-in ceremony for new Board Member, Ned Fluet from Woodside.

PUBLIC COMMENT

None

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

MOTION: Director Hindi moved, seconded by Director Mates to set the Agenda, and approve Agenda Item Numbers 1-2.

1. Approval of Minutes from the January 26, 2023, February 23, 2023, and December 21, 2023 Board Meetings
2. Approval of One EV Ready Program Fund Reservation Agreement, Providing Approximately $205,000 in Customer Incentives

MOTION PASSED: 22-0 (Absent: Colma)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	X			
Atherton	Director DeGolia	X			
Belmont	Director McCune	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 Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet	X			
	Total	22			1

REGULAR AGENDA

3. Chair Report

Chair DeGolia noted appointments to the Chair and Vice Chair Nominating Committee as Jeff Aalfs, Coleen Mackin and Anders Fung. Chair DeGolia also gave a recap of a presentation from the Nexus Project.

4. CEO Report

Shawn Marshall, Chief Executive Officer, gave a presentation including a follow up on the Surplus Fund plan, an update on 2024 Key Initiatives, follow up on Board Retreat items, information on the 9th Circuit ruling, reach codes and Bay Area Air Quality Management District (BAAQMD) considerations, an update on Phase 1 of the GovPV project, updates from the CalCCA and California Community Power (CC Power) board meetings, a legislative update, and staffing updates.

5. Community Advisory Committee Report

Cheryl Schaff, Community Advisory Committee (CAC) Chair, gave an update on the January 11, 2024 CAC meeting.

6. 2024 Peninsula Clean Energy Generation Rate Analysis and Staff Recommendation to Maintain PCE Generation Rates at 2023 Levels Through at least June 2024 for Most Customers (Action)

Leslie Brown, Director of Account Services, gave a presentation on the Peninsula Clean Energy Generation Rate Analysis.

Chair DeGolia asked for the allocation of the 15% rate increase between generation and transmission and distribution (T&D). Leslie explained that the 15% increase is on generation and the T&D increase is around 25%.

Leslie continued the presentation with information on days cash on hand. Nick Bijur, Chief Financial Officer, added that the Surplus Funds Committee funds will not be distributed until 2025.

Leslie continued the presentation with the change in net position and the customer impact of maintaining 2023 rates under the E-TOU-C customer rate schedule.

Chair DeGolia noted that the discount for Los Banos residents would be higher. Leslie explained it varies but would be roughly between 10-15%.

Chair DeGolia asked for clarification on “at parity”. Leslie explained it as matching PG&E’s rates for the couple of periods notated in the Staff recommendation.

Director Bigstyck asked if a letter would be sent out independent of a bill to inform customers. Leslie explained that a direct mailer is not in the works, but more aggressive marketing is being planned. Shawn Marshall, Chief Executive Officer, noted that this might be worth discussing with the Marketing Department.

Director Mackin asked if the Net Position was utilized in the “at parity” calculation. Leslie explained that it would be a rounding error and not impact the number.

Director Hindi asked if the fiscal impact would be $28 million. Nick explained that is would be around $11 million in difference.

Director Loraine expressed support for the recommendation and thanked the team for creating an opportunity to distinguish Peninsula Clean Energy as a superior alternative.

Director Nash asked that the increase on customer's bills be explained as an increase in T&D.

Director Ragsdale requested to make it clear that if a normal procedure had been done what it would have meant on the bill.

Director Dugan shared that this would be a marketing opportunity and differentiation from PG&E and supports a mailing.

Chair DeGolia noted that there are two marketing efforts, one to our customers, and one to the Community Choice Aggregator (CCA) community.

Vice Chair Colson added that Peninsula Clean Energy is in a good position to do this as reserves are built up and programs are funded in thanks to the hard work of the past few years and provides stable rates which is very important to customers.

Director Mueller asked if there would be a point in time to play catch up. Nick shared that in July there will be more information from PG&E and Staff will return to the Board with more information. Shawn added that the Surplus Funds Committee effort set a target for 250 days cash on hand as a water mark to consider additional discounts.

Director Mueller noted that alternatives in the future may affect narrative now. Vice Chair Colson added that the correspondence should note that this is a temporary adjustment or grace period.

Director Aalfs added that this energy is cleaner and cheaper and this is a message to share.

MOTION: Director Bigstyck moved, seconded by Director Mackin to Approve a Resolution to maintain Peninsula Clean Energy generation rates at 2023 levels through at least June 2024 for the majority of customer classes, and implement rate adjustments to Winter Super Off Peak Rates for B-19 and B-20 and AG-5 Summer Demand rates to align with PG&E's new 2024 rates to take effect March 1, 2024.

MOTION PASSED: 22-0 (Absent: Colma)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	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 Ragsdale	X			

Los Banos	Director Llanez	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet	X			
	Total	22			1

7. Resolution Delegating Authority to Chief Executive Officer to Execute an Energy Storage Tolling Agreement for the Wallace Energy Storage Project with ESCA-PLD-LONGBEACH2, LLC, and any Necessary Ancillary Documents with a Delivery Term of Twenty (20) Years Starting at the Commercial Operation Date on or About June 1, 2026, in an Amount Not-to-Exceed $211 Million

Roy Xu, Director of Power Resources, gave a presentation on the Wallace Energy Storage Project including background and project overview.

Sara Maatta, Power Resources and Compliance Manager, continued the presentation with expected operations and fit in portfolio, and the California Public Utilities Commission (CPUC) mid-term reliability procurement mandate.

Director Rarback asked for clarification on why this project in Southern California is needed when there are many parking lots in San Mateo County. Roy explained that Peninsula Clean Energy is not a developer and needs to rely on projects submitted to the RFP, and if a project were submitted from Peninsula Clean Energy's territory we would be happy to consider that project.

Public Comment: David Mauro

Director Romero asked for clarification on when the stored power would be discharged. Sara explained that the answer to this would be part of the upcoming 24/7 strategy discussion.

Director Romero added that he believes there are ways of dispatching battery power that may seem more cost beneficial in the short-term, but there are studies suggesting that may not be the case, and would like to participate in future discussions.

Sara explained that in California Independent Service Operator (CAISO) the price signal is often correlated with emissions so higher priced periods of the day have higher emissions. Roy added that there is a requirement of adding the resource and allowing CAISO to dispatch it, but that we may operate this battery differently following the 24/7 discussion.

Director Aalfs shared enthusiasm for the project.

MOTION: Director Aalfs moved, seconded by Director Mueller to Approve Resolution Delegating Authority to Chief Executive Officer to Execute an Energy Storage Tolling Agreement for the Wallace

Energy Storage Project with ESCA-PLDLONGBEACH2, LLC, and any Necessary Ancillary Documents with a Delivery Term of Twenty (20) Years Starting at the Commercial Operation Date on or About June 1, 2026, in an Amount Not-to-Exceed $211 Million.

MOTION PASSED: 22-0 (Absent: Colma)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	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 Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet	X			
	Total	22			1

8. Approval of Contract with McMillan Electric for up to $23,000,000 for Construction of Solar Systems on Local Government Facilities and Approval of Power Purchase Agreements with Participating Agencies (Action)

Rafael Reyes, Senior Director of Energy Programs, gave a presentation on the Solar and Storage for Public Buildings contract with McMillan Electric including an overview on the GoVPV program, the approach with Peninsula Clean Energy services, contract structure, model for local renewable, the status of round 1 installations, background on round 2, the 2a and 2b portfolios, details on proposed contracts with Intermountain Electric and McMillan Electric.

Michael McCallister, Vice President of Construction at McMillan Electric, introduced himself and McMillan Electric.

Rafael continued the presentation with the EPC contract and key details, customer PPA overview, fiscal impact, and timeline.

Director Mackin asked for clarification on the 30% return investment tax credit. Rafael explained that a benefit of the Inflation Reduction Act was Elective Pay which allows Peninsula Clean Energy to get direct monetary compensation with tax credits returning as a financial sum to PCE.

Director Dugan shared that San Carlos is a participating agency and has had a positive experience.

Director Rarback shared that Half Moon Bay is considering joining this program or creating their own infrastructure. Rafael added that if capital is available, owning is often a good deal.

Shalini Swaroop, Chief Operating Officer, added that any city contemplating would want to be under NEM 2.0 tariffs versus the Net Billing Tariff. Shawn Marshall, Chief Executive Officer, noted that in the second round of the PPA a new provision will be drafted that allows municipal entities to elect to purchase the project.

Peter Levitt, Programs Manager for Distributed Energy Resources, highlighted two key aspects of the program: the highly innovative structure and the expansion to the organizational model by establishing contract based relationships with our customers providing guaranteed revenue streams.

Public Comment: David Mauro

MOTION: Director Mates moved, seconded by Vice Chair Colson to Recommend approval of Resolutions:

1. Delegating Authority to Chief Executive Officer to Execute Engineering, Procurement, and Construction (EPC) Contract with McMillan Electric in an amount not to exceed $23,000,000 for the deployment of local solar systems on public buildings.
2. Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreements (PPAs) with Participating Jurisdictions (Buyers) for a term of 20 years to sell the energy generated by these systems with revenues expected to fully offset cost of EPC Contract over the PPA term.

Director Aalfs shared that this program is what the organization hoped to bring to the portfolio from the start.

Chair DeGolia added that Peninsula Clean Energy worked hard for an economic base to design programs that can change the market, noting that this is innovative and creating a partnership with cities and public agencies.

Director Pine shared that he is impressed with the work that will be accomplished by 2025.

MOTION PASSED: 22-0 (Absent: Colma)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	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 Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet	X			
	Total	22			1

9. Approval of 2024 Regulatory / Legislative Policy Platform (Action)

Marc Hershman, Director of Government Affairs, gave a presentation on the 2024 Regulatory and Legislative Policy Platform.

Director Loraine asked for clarification on hydrogen and inclusion of hydrogen for light-duty vehicles. Marc explained that there has not been a Board discussion on hydrogen and that Peninsula Clean Energy is currently promoting electric and clean energy.

Director Loraine asked if there would be any interest on the Board to discuss non-renewable or other things of this nature as an alternative to going ahead with all-hydrogen and revisiting at a later date. Marc explained that this has not been discussed with the Board. Shawn Marshall, Chief Executive Officer, shared that the amendment to the policy could be removed and discussed at a later time.

Shalini Swaroop, Chief Operating Officer, asked for clarification on the reference to the use of hydrogen in gas pipelines or in light duty vehicles and suggested an investment in hydrogen for light duty vehicles. Director Loraine clarified that the concern was with light duty vehicles and noted a SamTrans discussion on pursuing hydrogen.

Shawn clarified that some of the Board confusion may come from the presentation not clarifying that Staff is requesting adoption of the whole legislative plank, including redlines and the hydrogen comment, and not only the two points shared on the screen.

Marc explained this policy doesn't have to be approved in January and could be brought back, noting that the two planks presented are the ones Staff identified as having significance. Marc shared the other proposed changes in the platform.

Vice Chair Colson noted that legislation is in session now and important to get this going, adding that she is willing to put 2 planks in, accept the drafted changes, with the potential to amend it in the future.

Director Mueller asked to remove the investment in hydrogen vehicles, adding that the SamTrans had a robust discussion and would like to have a discussion on how this may impact. Rafael Reyes, Director of Energy Programs, added that this would apply to strictly light duty vehicles and would not apply to buses. Directors Mueller and Loraine withdrew the request to remove hydrogen.

Director Romero thanked Rafeal Reyes for the explanation on light duty hydrogen vehicles.

MOTION: Director Mueller moved, seconded by Director Dugan to Approve the 2024 Regulatory / Legislative Policy Platform.

Director Ragsdale appreciated the clarification on light duty vehicles.

MOTION PASSED: 22-0 (Absent: Colma)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Pine	X			
San Mateo County	Director Mueller	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 Ragsdale	X			
Los Banos	Director Llanez	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Bigstyck	X			
Portola Valley	Director Aalfs	X			
Redwood City	Director Martinez Saballos	X			
San Bruno	Director Medina	X			
San Carlos	Director Dugan	X			
San Mateo	Director Loraine	X			
South San Francisco	Director Coleman	X			
Woodside	Director Fluet	X			
	Total	22			1

10. Strategic Accounts Initiatives for 2024 (Discussion)

Justin Pine, Strategic Accounts Manager, gave a presentation on strategic accounts and commercial load growth in 2024 including information on the customer confidentiality policy, background, load growth opportunities, Caltrain updates and next steps.

Chair DeGolia asked for clarification on the 5 PG&E bundled customers with the rate change this year which would give Peninsula Clean Energy (PCE) the opportunity to address those customers. Justin explained that there is an open line of communication with 1 of the 5 customers, and that the 4 remaining customers are large national corporations would extend beyond PCE's footprint and decision making isn't happening locally.

Director Nash asked about opportunities for marketing to promote large companies using our clean energy, including anything with Caltrain and legislation. Shawn Marshall, Chief Executive Officer, shared that we want to if the companies will allow us to disclose.

11. Board Members' Reports

Director Mackin shared that when installing electric water heaters and HVAC units, you have to ask PG&E to increase your baseline to electric appliances or they keep it as gas, adding that contractors never mentioned this. Director Aalfs noted that contractors should be educated as well.

ADJOURNMENT

Meeting was adjourned at 8:47 p.m.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Masha Doubrovskaia, Account Services Analyst and Leslie Brown, Director of Account Services

SUBJECT: Joint Powers Authority Agreement Weighted Voting Shares Allocation

RECOMMENDATION

Approve recalculated weighted voting shares based on 2023 annual energy consumption.

BACKGROUND

As the Board is aware, the Joint Powers Authority (JPA) Agreement creating Peninsula Clean Energy includes a "weighted" voting option. The voting procedure is as follows: votes are first taken by simple majority vote. Voting automatically ends if the majority votes against an agenda item. However, if there is a majority vote for approval of an agenda item, a "weighted" vote by shares can be called by any Board member.

Weighted votes are covered by Section 3.7 of the JPA Agreement:

3.7 Voting. In general, as described below in Section 3.7.3, action by the Authority Board will be taken solely by a majority vote of the Directors present. However, as described below in Section 3.7.4, upon request of a Director, a weighted vote by shares will also be conducted. When such a request is made, an action must be approved by both a majority vote of Directors present and a majority of the weighted vote by shares present. No action may be approved solely by a vote by shares.

Specifically, sections 3.7.1, 3.7.2, 3.7.3 and 3.7.4 state the following:

3.7.1 Voting Shares. Each Director shall have a voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100.

3.7.2. Exhibit Showing Voting Shares. The initial voting shares will be set forth in Exhibit D. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Parties and changes in the Parties' Annual Energy Use. Exhibit D and adjustments shall be approved by the Board.

3.7.3. Approval Requirements Relating to CCA Program . Except as provided in Sections 3.7.4 and 3.7.5 below, action of the Board shall require the affirmative vote of a majority of Directors present at the meeting.

3.7.4. Option for Approval by Voting Shares. Notwithstanding Section 3.7.3, any Director present at a meeting may demand that approval of any matter related to the CCA Program be determined on the basis of both voting shares and by the affirmative vote of a majority of Directors present at the meeting. If a Director makes such a demand with respect to approval of any such matter, then approval of such matter shall require the affirmative vote of a majority of Directors present at the meeting and the affirmative vote of Directors having a majority of voting shares present, as determined by Section 3.7.1 except as provided in Section 3.7.5.

If, pursuant to the weighted vote of the present members, the item is rejected or approved, the weighted vote prevails. In other words, the weighted vote can serve as a possible veto of the simple majority vote.

DISCUSSION

Staff has recalculated the weighted shares based on 2023 PCE energy sales to member jurisdictions and prepared revised Exhibits C and D to be attached to the JPA Agreement. The JPA states that the values for Annual Energy Use will be designated in Exhibit C and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year. These adjustments require approval by the Board. Exhibits C and D Annual Energy Use and Voting Shares were last updated and approved by the Board on February 22, 2023.

The table below includes the weighted shares for each service territory or member of the JPA based on data sourced from billing data provided by PCE's Data Management Provider, Calpine Energy Solutions, based on billing records for 2023. Staff is requesting Board approval of this revised schedule. Last year's Voting Shares table is included as well for reference:

2023 Peninsula Clean Energy Voting Shares Distribution

Twelve Months Ended December 2023	
Service Territory	**Distribution Weight (%)**
REDWOOD CITY INC	12.66%
SO SAN FRANCISCO INC	12.63%
SAN MATEO INC	12.35%
MENLO PARK INC	7.86%
DALY CITY INC	7.12%
UNINC SAN MATEO CO	6.30%
FOSTER CITY INC	5.51%
BURLINGAME INC	5.40%
SAN CARLOS INC	4.47%
SAN BRUNO INC	3.78%
LOS BANOS INC	3.64%
PACIFICA INC	2.72%

BELMONT INC	2.45%
MILLBRAE INC	2.20%
BRISBANE INC	2.06%
ATHERTON INC	1.82%
EAST PALO ALTO INC	1.78%
HILLSBOROUGH INC	1.60%
HALF MOON BAY INC	1.33%
WOODSIDE INC	1.13%
PORTOLA VALLEY INC	0.64%
COLMA INC	0.55%
Total	100%

2022 Peninsula Clean Energy Voting Shares Distribution

Twelve Months Ended December 2022	
Service Territory	**Distribution Weight (%)**
SO SAN FRANCISCO INC	13.39%
REDWOOD CITY INC	12.41%
SAN MATEO INC	12.39%
MENLO PARK INC	8.08%
DALY CITY INC	7.14%
UNINC SAN MATEO CO	6.37%
FOSTER CITY INC	5.49%
BURLINGAME INC	5.34%
SAN CARLOS INC	4.45%
SAN BRUNO INC	3.65%
LOS BANOS INC	3.19%
PACIFICA INC	2.74%
BELMONT INC	2.42%
MILLBRAE INC	2.08%
BRISBANE INC	1.95%
ATHERTON INC	1.86%
EAST PALO ALTO INC	1.73%
HILLSBOROUGH INC	1.63%
HALF MOON BAY INC	1.35%
WOODSIDE INC	1.14%
PORTOLA VALLEY INC	0.65%
COLMA INC	0.54%
Total	100%

ATTACHMENTS:

Item 03.3 - Draft - JPA Voting Shares Exhibits C and D_JP.docx

RESOLUTION NO. _____

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

JOINT POWERS AUTHORITY AGREEMENT WEIGHTED VOTING SHARES ALLOCATION

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

WHEREAS, the Joint Powers Authority Agreement creating Peninsula Clean Energy Authority includes a weighted voting option; and

WHEREAS, the voting share allocation shall be updated annually based on energy sales; and

WHEREAS, Peninsula Clean Energy Authority staff has re-calculated the weighted voting allocation based on 2023 PCE energy sales to member jurisdictions.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board adopt the updated voting shares allocation and replace the existing Exhibits C and D to the Joint Powers Authority Agreement with the revised Exhibits C and D prepared by Peninsula Clean Energy staff.

Exhibits C and D
Annual Energy Use and Voting Shares

ANNUAL ENERGY USE WITHIN PENINSULA CLEAN ENERGY JURISDICTIONS AND VOTING SHARES	
Twelve Months Ended December 2023	
Party	Voting Share
REDWOOD CITY INC	12.66%
SO SAN FRANCISCO INC	12.63%
SAN MATEO INC	12.35%
MENLO PARK INC	7.86%
DALY CITY INC	7.12%
UNINC SAN MATEO CO	6.30%
FOSTER CITY INC	5.51%
BURLINGAME INC	5.40%
SAN CARLOS INC	4.47%
SAN BRUNO INC	3.78%
LOS BANOS INC	3.64%
PACIFICA INC	2.72%
BELMONT INC	2.45%
MILLBRAE INC	2.20%
BRISBANE INC	2.06%
ATHERTON INC	1.82%
EAST PALO ALTO INC	1.78%
HILLSBOROUGH INC	1.60%
HALF MOON BAY INC	1.33%
WOODSIDE INC	1.13%
PORTOLA VALLEY INC	0.64%
COLMA INC	0.55%
Total	100.00%

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Shawn Marshall, Chief Executive Officer

SUBJECT: CEO Report (Discussion)

BACKGROUND

This report is provided monthly to the Board of Directors and is informational only.

DISCUSSION

During the Board meeting, Shawn Marshall, CEO will provide an update on a variety of PCE topics including a few administrative items, feedback on the Board's recent action to freeze rates through June, upcoming City Council briefings, and Cal-CCA activities.

PCE Staffing Update

Please welcome to our team:

- Cyndi Lopez-Spencer, HR Senior Specialist, who started with us on February 16th.
- Jana Kopyciok-Lande, Associate Director of Innovation Strategy, who will start with us on March 1st
- Ross Fisher, Associate Program Manager for Distributed Energy Resources, who will start with us on March 18th

Staff Promotions -- please extend a warm congratulations to:

- Kirsten Andrews-Schwind was promoted to Associate Director, Community Relations & Climate Equity
- Hailey Wu was promoted to Manager, Financial Planning and Analysis
- Carlos Moreno was promoted to Senior Analyst, Energy Programs
- Michael Arnaldo was promoted to Senior Specialist of Digital Marketing

Posted Positions - PCE is hiring! Please help us spread the word.

Sr Specialist / Associate Programs Manager, Building Electrification

Risk Manager

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Alejandra Posada, Program Manager

SUBJECT: Three-year Contract with Franklin Energy in an Amount Not-to-Exceed $26,000,000 for the Implementation of a Turnkey Electrification Installation Service for Single-family Homes (Action)

RECOMMENDATION

Delegate authority to the Chief Executive Officer to execute a 3-year contract with Enertouch Inc. DBA Franklin Energy Demand Response for the implementation of a turnkey electrification installation service for single-family homes in an amount not to exceed $26 million through March 30, 2027. $24 million are Peninsula Clean Energy funds and $2 million are funds from an anticipated contract with Menlo Park as described below. This program is an extension and expansion of the existing Home Upgrade program. Franklin Energy and their installation contractor partners were selected through an RFP process in the Fall of 2023.

BACKGROUND

Peninsula Clean Energy's mission is to reduce greenhouse gas (GHG) emissions by expanding access to sustainable and affordable energy and energy program solutions. Nearly 30% of GHGs in San Mateo County are from methane gas usage in buildings. Reducing GHG emissions from the existing building stock is critical for achieving decarbonization in Peninsula Clean Energy member agency communities.

In September 2018, the Board approved the PCE Program Roadmap, which identifies programs for 2019 and beyond to include measures for building electrification. In May 2020, the Board approved an Existing Building Electrification plan for existing buildings covering appliance incentives, home upgrades for low-income households, and innovation pilots. In March 2021, the Board approved a $2 million contract with RHA, selected through a competitive solicitation, to implement the income-qualified direct-install program, also known as "Home Upgrade". In February 2023, the Board approved an extension of this contract to continue the program in its current form for another year with an additional $1.5 million. Outcome volumes are detailed below.

In September 2021, the Board adopted a new target supporting the region in reaching 100%

decarbonization in buildings and transportation by 2035 and directed staff to analyze the feasibility of that target and return with an assessment and plan. In September 2022, staff presented the findings from the 2035 Decarbonization Feasibility & Plan which included targets and program concepts for the decarbonization of certain building classes. The plan concluded that Peninsula Clean Energy is best positioned to affect change in select areas of transportation and buildings. For existing buildings, “small residential” (single-family and small multi-family residential units) were identified as priority targets. The analysis indicates that Peninsula Clean Energy has the technical potential for electrifying 25%-35% of small residential homes within its scope and 2035 timeframe given the anticipated budget from all sources. To meet this volume, the equivalent of 560 homes would need to be electrified in 2024 with additional growth to follow. The plan calls for reach codes and regulatory requirements to drive the market. However, for such regulations to be feasible and successful, there must be robust programs in place to support residents in making this transition. The 2035 Plan established that flexible funding incentives, high touch support, and links to finance should be the primary focus of future building electrification programs.

Electrification of the building sector in Peninsula Clean Energy's service territory and California at large is very early in its market development. Per the 2035 analysis, in San Mateo County, 98% of small residential homes have gas water heaters and 68% have gas furnaces, which make up the largest sources of methane gas combustion in the home. Some of the main challenges that customers face in switching to electric systems include high installation costs, lack of familiarity with technology, and limited support from contractors. Peninsula Clean Energy currently offers the following residential building electrification programs to help overcome these challenges:

1. **Rebates:** Up to $4,500+ in rebates for fuel-switching to heat pump water heating and heat pump HVAC systems with installation by customer-selected contractor.
2. **Zero percent loans:** On-bill finance up to $10,000 to reduce the upfront cost of heat pump water heater and heat pump HVAC upgrades. Repayment is through customer’s electric bill.
3. **Home Upgrade program:** No-cost direct install of one electrification upgrade (heat pump water heater, electric dryer, or induction stove) and minor repairs per home for income-qualified residents (defined as having an income below 80% the Average Median Income).

The below table summarizes the programs’ status as of the end of January 2024.

Participants	**Count**
Rebate & loan program participants	1,862
Home Upgrade program participants	281
Appliances installed (all programs)	**Count**
Heat pump water heaters	1,114
Heat pump HVAC	1,096
Induction cooktop/range	75
Electric dryer	73
Total GHG emissions avoided	**1,660 MT CO2e**

The income-qualified Home Upgrade program is currently oversubscribed; all funding currently available has been reserved. The program has received high customer satisfaction (average

4.7 out of 5 satisfaction ranking) and has strong demand despite its very limited promotion. Interested customers are being placed on a waitlist.

The rebate and loan programs, open to all residents, address the cost barrier of electrification by reducing the upfront cost of the upgrades but provide minimal guidance and support. Residents are largely on their own to find a contractor, compare bids, and figure out technical questions. Numerous customers and stakeholders have communicated that more guidance and support is needed, beyond rebates. The electrification market is still very early in its development – only 1% of homes in PCE service territory are estimated to have completed any electrification step. Approximately 12,000 water heaters and 7,000 gas furnaces are estimated to be replaced annually. Based on PCE rebate data, in 2023 5% of gas water heaters replaced were electrified during replacement. Space heaters are seeing faster adoption; 15% of gas furnaces were replaced with heat pump space heaters.

To meet the 2035 Decarbonization Plan goals for residential building electrification, more robust program infrastructure is proposed to address customer barriers and make the switch easier for all types of customers, including those who want to manage the details (select products, contractors or "do it yourself-ers"), those who want work done with minimal involvement (turnkey planning and installation), and those who cannot afford to make the upgrades. The following planned services will provide deeper customer assistance than is currently available:

1. **"One-stop shop" virtual services:** website with more robust electrification information including all rebates, bill calculator tool, etc.;
2. **Concierge service:** a hotline for process and technical guidance;
3. **Turnkey installation service:** option that would use pre-selected contractors and products for immediate engagement. The turnkey service would be an extension of the Home Upgrade program, with new services added, and described in more detail below.

Staff is leading the development of the first two services in-house. The one-stop-shop website is led by the Marketing Team but may include using third-party software tools. The concierge will be an in-house service, with a dedicated Programs staff person providing technical support to customers on a scheduled basis. The PCE call center is being explored to support the concierge by handling less technical subjects such as rebate and process questions. For the administration of the turnkey installation service a competitive solicitation was issued as detailed below.

DISCUSSION

In August 2023, staff issued a request for proposals (RFP) to select an implementation team for a multi-year single-family home electrification turnkey installation service. The RFP was developed in collaboration with Silicon Valley Clean Energy (SVCE) as they intend to launch the same services in their territory. In October 2023, five proposals were received, and two of those were shortlisted for interviews. PCE and SVCE selected Franklin Energy and their partners to implement the program. The team is comprised of Franklin Energy as the program administrator, three vetted electrification installation contractors–Enso Buildings Solutions, Electrify My Home, and Fuse Service–and XeroHome, a software technology company with a bill impact and energy modeling tool that will be utilized in the program implementation.

This turnkey installation service will include three components:

1. **Income-Qualified No-Cost Electrification** – this will be an expansion of the existing Home Upgrade program. It will offer income-qualified homeowners the option of "whole-home" electrification and minor home repairs at no cost to them; this would allow the program to address needs the current program is unable to.
2. **Market-Rate Cost-Share Electrification** – this will be a new offering for homeowners who are not income-qualified to access the no-cost service, referred to as "market-rate" customers. It will provide a seamless way for residents to electrify, including home assessments, fixed pricing from a pre-selected contractor, and a single point of contact for the project. Customers would have a "co-pay" which would be the cost of the upgrades minus all rebates they qualify for. This service will not replace the existing rebate program; market-rate customers will continue to have the option to select their own contractor and complete projects on their own and apply for a rebate.
3. **Emergency Water Heater Replacement** – this will be a new service for both income-qualified and market-rate customers. It will provide rapid replacement of failing gas water heaters with heat pump water heaters including innovative use of temporary units to ensure hot water is available while additional remediation is done if necessary.

To focus on quality of delivery and customer experience, staff propose to phase in the services in the order listed above. The income-qualified service would launch in Spring 2024, first serving the waitlist from the current Home Upgrade program. The other two services would follow in the Summer and early Fall timeframe. It is anticipated that the three services would be branded under a single program–one that provides turnkey installation services to all residents and provides different levels of financial support based on income. Franklin Energy would oversee all aspects of the program, including customer support, doing in-person site assessments, and providing electrification proposals with cost, contractor oversight, applying for any third-party incentives, and providing reports and analysis for the program.

The turnkey electrification service will leverage local, federal, and state incentives for building electrification ("third party incentives"). Using design approaches developed by PCE to avoid service upgrades and other expenses, the average cost to fully electrify a home under the program is expected to be ~$32,000 for typical homes, before factoring in any third-party incentives. Third-party incentives will reduce PCE's costs for income-qualified projects–where it pays for the entire cost–and reduce a customer's cost in the case of market-rate projects where the customer is paying for the upgrades. PCE has negotiated fixed pricing for a comprehensive list of electrification measures with Franklin Energy and the three participating contractors. Additionally, PCE and Franklin Energy will leverage the scale of the program to seek discounted equipment costs with manufacturers and distributors, with the intent to lower total costs for PCE and its customers. Lastly, in addition to electrification upgrades, some income-qualified homes will also receive minor home repairs, light energy efficiency, and resiliency measures.

The turnkey electrification service will pay prevailing wage to all installation contractors in all three program segments. Franklin will be responsible for ensuring compliance from all participating contractors, and PCE will have the option to audit records to confirm compliance.

The following table outlines the total proposed budget by service and the *minimum* number homes to be served with this budget. This is the number of homes served if every home was fully electrified; however, there will be some homes that only get one or two measures and thus the total number of homes served may be greater. $19.29M (80%) of the total PCE $24M budget is for the direct installation cost of electrifying at least 525 income-qualified homes at

no cost to them. All installation costs, which account for $21M of the$24M budget, will be paid based on the actual number of measures installed and their fixed measure cost. The implementation costs, paid on a time and materials basis, are expected to be lower if SVCE launches the same services. Proposed expenditures are consistent with program department budget forecasts.

In addition, the state of California is awarding a $4.5M grant to the City of Menlo Park to support a city-wide electrification project. The City has proposed to partner with PCE to utilize its funds through PCE's income-qualified no-cost electrification service, pending Council approval. The intention is to leverage the existing program structure and to deliver on Menlo Park's objectives, which are consistent with PCE's objectives. An initial $2.15M is proposed by the City to be allocated to PCE through a formal contract with a mutually agreed upon scope of work. As this contract is imminent and Franklin Energy will be the one implementing the program and paying installation contractors, $2M from the City is included in the total proposed $26M contract budget as outlined in the table below. The City's funds will enable PCE to electrify more income-qualified homes in Menlo Park than PCE's program could do on its own. The City's funds will be focused on income-qualified single-family homes in the Belle Haven district and PCE will work with the City to define exact eligibility guidelines.

Budget Estimate:

		FY23-24	**FY24-25**	**FY25-26**	**FY26-27**	**Total**
Income-Qualified[1]	Count	15	150	180	180	525
	Budget	$530,000	$5,300,000	$6,700,000	$7,030,000	$19,290,000
Market-Rate[2]	Count	0	30	45	100	175
	Budget	N/A	$185,000	$260,000	$615,000	$1,300,000
Emergency Water Heaters	Count	0	20	40	67	127
	Budget	N/A	$60,000	$120,000	$190,000	$400,000
Implementation Costs[3]	Budget	$190,000	$685,000	$955,000	$1,180,000	$3,010,000
Total PCE Budget		$720,000	$6,230,000	$8,035,000	$9,015,000	$24,000,000
Total Menlo Park Budget		$200,000	$1,8000,000	N/A	N/A	$2,000,000
Total Contract Amount						$26,000,000

The turnkey service is expected to save 4,148 MT CO2e through the life of the program. [4]

[1] Installation costs (materials and labor) paid by PCE. The count represents the number of homes that can be served with this budget if every home is fully electrified and requires all four main electrification upgrades (water heating, space heating, cooking, and dryer). As there will be homes that only get one or two upgrades, the actual number of homes served is likely to be greater.

[2] Incentives from PCE to help to reduce the installation costs for market-rate customers, consistent with current incentive levels. Customer co-payments, paid directly to contractor, not included. The count represents the number of homes that can be served with this budget if

every home upgrades both water heating and space heating. As there will be homes that only get one upgrade, the actual number of homes served is likely to be greater.

[3] Refers to any non-direct installation costs or incentives, such as customer support, contractor oversight, site assessments, admin, program start up, reporting, and more.

[4] 3,087 MT CO2e from Income-Qualified, 823 MT CO2e from Market-Rate, and 238 MT CO2e from Emergency Water Heaters.

FISCAL IMPACT

Contract for not-to-exceed $26M in FY23-24 through FY26-27. $24M are Peninsula Clean Energy funds and $2M are funds from an anticipated contract with the City of Menlo Park as described above. Proposed expenditures are consistent with program department budget forecasts previously approved by the PCE Board of Directors.

STRATEGIC PLAN

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

ATTACHMENTS:
2024.02.22 BOD Programs - Franklin Energy BE contact - contract.docx

RESOLUTION NO. _____

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

THREE-YEAR CONTRACT WITH FRANKLIN ENERGY IN AN AMOUNT NOT-TO-EXCEED $26,000,000 FOR THE IMPLEMENTATION OF A TURNKEY ELECTRIFICATION INSTALLATION SERVICE FOR SINGLE-FAMILY HOMES (ACTION)

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

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

WHEREAS, reducing greenhouse gasses to reduce the adverse public wellbeing and economic impacts of climate change is an organizational priority for PCE; and

WHEREAS, natural gas usage in buildings accounts for 30% of directly inventoried GHG emissions within the County; and

WHEREAS, PCE provides low-carbon electricity that can power appliances for all building needs; and

WHEREAS, facilitating the replacement of natural gas appliances with electric appliances in existing buildings to reduce greenhouse gasses is part of PCE's program roadmap approved by the Board; and

WHEREAS, state and regional agencies are putting in place requirements to transition to electric appliances; and

WHEREAS, more robust program infrastructure is needed to address customer barriers and make the switch to electric appliances easier for all types of residential customers; and

WHEREAS, PCE issued a request for proposals on August 28, 2023 seeking proposals to administer and implement a turnkey electrification installation service for single-family homes, which includes no-cost electrification upgrades for income-qualified homes, installation services for non-income-qualified residents at a cost, and an emergency water heater replacement service; and

WHEREAS, Franklin Energy was selected for their experience with energy efficiency and electrification programs and their proposed implementation approach; and

WHEREAS, PCE staff and Franklin Energy have negotiated and agree on the core terms of an agreement to be effective from approximately March 2024 through March 2027 in an

amount not to exceed $26,000,000; and

WHEREAS, $2,000,000 of the $26,000,000 budget is from City of Menlo Park funds routed through PCE pending an agreement between PCE and Menlo Park;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize and execute an agreement with Enertouch Inc. DBA Franklin Energy Demand Response in an amount not to exceed $26,000,000 over three years through March 30, 2027 and in a form approved by the General Counsel.

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND ENERTOUCH, INC. DBA FRANKLIN ENERGY DEMAND RESPONSE

This Agreement is entered into this [day] day of March, 2024 (the "Effective Date"), by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA," and Enertouch, Inc. dba Franklin Energy Demand Response, a Georgia corporation, hereinafter called "Consultant", each a "Party" and together the "Parties".

* * *

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

Whereas, it is necessary and desirable that Consultant be retained for the purpose of implementing the Single-Family Home Electrification Program.

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

1. Exhibits and Attachments

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

Exhibit A—Services
Exhibit B—Schedule

Exhibit C–Compensation

Exhibit D–XeroHome Scope of Work and Pricing

Exhibit E–5-Year Extended Warranty

2. Services to be performed by Consultant

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

REPRESENTATIONS AND WARRANTIES

(a) Commencement and Completion of Services. Consultant shall perform the Services substantially in accordance with the specifications, schedules, milestones, and other requirements set forth in Exhibit A.

(b) Standards of Performance. Warranties. Warranty Remedies. During the term specified in Exhibit A, Consultant shall perform the Services and create or develop the deliverables and work products as mutually agreed in Exhibit A ("Deliverables"). Consultant will perform the Services and create the Deliverables in accordance with (i) the customary practices and standards in the industry of the Consultant; (ii) the specifications and requirements set forth in Exhibit A (ii) any required permit, license, consent or approval for the performance of the Services by any governmental authority; and (iii) all applicable statutes, laws, rules and regulations imposed by a governmental agency or authority. If any of the performed Services or provided Deliverables are proven to be non-conforming to the specifications and requirements mutually agreed in Exhibit A, Consultant will reperform the Services and replace the Deliverable that do not conform to the specifications and other requirements set forth in Exhibit A as mutually agreed upon by the parties. Such reperformance of the Services and replacement of Deliverables shall be at no cost to PCEA; provided, however, that PCEA informs Consultant of any non-conformities within ten (10) days after acceptance by the Company of the Service and Deliverables, or any portion thereof.

(c) Additional Consultant Representations and Warranties:

1. Consultant has the right to enter into this Agreement, to grant the rights granted herein, and to perform fully all Consultant's obligations under this Agreement;
2. Consultant entering into this Agreement with the Company and Consultant's performance of the Services do not and will not conflict with or result in any breach or default under any other agreement to which Consultant is a party;
3. All Deliverables are and shall be Consultant's original work of authorship (except as otherwise expressly provided in Exhibit A or any other applicable Scope of Work) and do not and will not violate or infringe upon any third party's intellectual property or other proprietary rights;
4. Consultant has the required skill, experience, and qualifications to perform the Services and develop or create the Deliverables;
5. The Company will receive good and valid title to all Deliverables, free and clear of all encumbrances and liens of any kind.

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 2, CONSULTANT HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT, AND CONSULTANT SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

3. Payments

In consideration of the services provided by Consultant in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Consultant based on the rates and in the manner specified in Exhibit B. PCEA reserves the right to withhold payment if the work does not meet the specification set forth in the applicable scope of work or purchase order; provided, however, PCEA shall notify Consultant, in writing, within five (5) business days of discovery of any unacceptable work performance. In no event shall PCEA's total fiscal obligation under this Agreement exceed twenty six million dollars ($26,000,000). In the event that the PCEA makes any advance payments, Consultant agrees to refund any amounts in excess of the amount owed by the PCEA at the time of contract termination or expiration.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from the Effective Date, through March 30, 2027.

5. Termination; Availability of Funds

This Agreement may be terminated by Consultant or by the Chief Executive Officer of the PCEA or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Consultant shall be entitled to receive payment for work/services provided prior to termination of the Agreement that are consistent with those services described in Exhibit A and performed to the satisfaction of PCEA. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement. Upon such termination, PCEA will further compensate Consultant for termination costs, including materials, supplies, and software licenses that PCEA approved in writing prior to PCEA's notice of termination and necessary for wind down of Services provided by Consultant to be mutually negotiated at the time of termination.

PCEA may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or PCEA funds by providing prompt written notice to Consultant as soon as is reasonably possible after PCEA learns of said unavailability of outside funding.

6. Intellectual Property and Ownership of Work Product

PCEA shall and does own all titles, rights, and interests in all materials, tangible or not, created in whatever medium pursuant to this Agreement, including publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations therefore, and all forms of intellectual property ("Work Products") created by Consultant and any subcontractors under this Agreement. Consultant hereby assigns all titles, rights, and interests in all Work Products to PCEA. At the end of this Agreement, or in the event of termination, all Work Products shall be promptly delivered to PCEA.

Consultant may not sell, transfer, or permit the use of any Work Products without the express written consent of PCEA. Consultant

Notwithstanding the foregoing and unless specified otherwise Exhibit A to this Agreement, Consultant retains ownership of all right, title, and interest in and to Consultant's pre-existing intellectual property rights, including, without limitation: (i) reports, writings, abstracts, summaries, drawings, flow charts, images, artwork documents, know-how, technology, inventions, discoveries, processes, techniques, methods, methodologies, business processes, ideas, concepts, research, proposals, materials, that are created, prepared, produced, authored, edited, amended, conceived, or reduced to practice by the Consultant solely or jointly with others; (ii) all computer programs (both source code and object code), software, firmware, designs, application programs, operating systems, scripts, animation sequences, interfaces, programming code, applets, executables, objects, formats or page descriptions, data, databases, computer architecture or hierarchies, files and utilities; (iii) all supporting documentation for any of the foregoing, including input and output formats, listings, narrative descriptions, operating instructions and training documentation; and (iv) all tangible media upon which any of the foregoing are recorded, including, without limitation, disks, CDs, tapes, chips or photographs (collectively "Pre-Existing Intellectual Property"). All Intellectual Property rights in and to Consultant's Pre-Existing Intellectual Property shall be owned exclusively by Consultant and its licensors. Consultant and its licensors shall also exclusively own all right, title, and interest in and to any and all enhancements, improvements, modifications, and any other derivative works of Consultant's Pre-Existing Intellectual Property, whenever conceived, developed or otherwise created, either before or during the Term of this Agreement, or after its termination or expiration. For clarity, Consultant and its licensors shall retain ownership of all Pre-Existing Intellectual Property incorporated into the Deliverables, as well as the rights to any pre-existing third-party software or other works licensed by Consultant from third parties that may be contained in any of the Deliverables. Consultant grants the Company a limited, irrevocable, perpetual, fully paid-up, royalty-free non-transferable, non-sublicensable, non-exclusive license to use, reproduce, display, distribute, transmit, modify (including to create derivative works) Pre-Existing Intellectual Property to the extent incorporated in the Deliverables. All other rights in and to Pre-Existing Intellectual Property are expressly reserved

by Consultant. The aforementioned license does not include the right to use any of the Pre-Existing Intellectual property separately or independently from the Deliverables. Consultant.

7. Relationship of Parties

Consultant agrees and understands that the work/services performed under this Agreement are performed as an independent Consultant and not as an employee of PCEA and that neither Consultant nor its employees acquire any of the rights, privileges, powers, or advantages of PCEA employees.

8. Hold Harmless

a. General Hold Harmless

Consultant shall indemnify and save harmless PCEA and its officers, agents, employees, and servants from all third party claims, suits, or actions directly arising from a material breach of this Agreement by Consultant, the performance of any work or services specified in the applicable Exhibit A that results in, the following:

(A) injuries to or death of any person, including Consultant or its employees/officers/agents;

(B) damage to any tangible property by such third party bringing a claim.

(C) any sanctions, penalties, or claims of damages resulting from Consultant's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) third party claims, loss or cost, arising from A-C of this Section including but not limited to that caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants. However, Consultant's duty to indemnify and save harmless under this Section shall be apportioned pursuant to each party's liability as determined by a court of competent jurisdiction, provided that Consultant shall not be responsible for such indemnification when a court of competent jurisdiction determines that there is apportioned responsibility for the indemnification claim at issue.

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

b. Release and Hold Harmless in Customer/Subcontractor Contracts

PCEA shall have the opportunity to review, prior to their execution, any contracts executed by Consultant to implement this Agreement. PCEA shall review and respond to Consultant within 7 business day of receiving the contract for review. In addition, unless waived in advance in writing by PCEA, any such contracts shall contain the following terms:

Required clause to be included in Flow Down Terms. Subcontractor Release of Claims Against, and Hold Harmless of, Peninsula Clean Energy Authority

Consultant/Subcontractor used by Franklin Energy to provide services for PCE ("Subcontractor") discharges and releases the Peninsula Clean Energy Authority (PCEA) and its officers, employers, employees, and agents from and against any and all claims, demands, liabilities, obligations, damages or chose in action, legal or equitable, of whatever kind or nature, including negligence by PCEA, in which rConsultant/Subcontractor, and Consultant/Subcontractor's successors in interest, heirs, estates or personal representatives, or family members, now may have or assert, or may have had in the past or may have in the future, against PCEA as the result of, based upon, arising out of, or connected with PCEA's involvement with the Project. Consultant/Subcontractor is on notice of and hereby specifically and expressly waives the provisions of California Civil Code § 1542, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Consultant's indemnification obligations under this Agreement are conditioned on (i) PCEA providing timely notice of any claim or proceeding to the Consultant under which it intends to seek to enforce the indemnification obligations; provided, however, that an PCEA failure to notify the Consultant under this Section will relieve the Consultant of its obligations under this Section 8 only if and only to the extent the Consultant was prejudiced by not receiving timely notice of the claim , and (ii) PCEA fully cooperating with the Consultant, including making all defenses available to the Consultant that would be available to PCEA. The obligations of Consultant to indemnify and hold the PCEA harmless under Section 8 exclude Losses resulting from proven and adjudicated grossly negligent acts or omissions attributable to PCEA.

Consultant/Subcontractor also agrees to indemnify and hold harmless PCEA from any and all claims, actions, suits, procedures, costs, expenses, damages, and liabilities, including attorney's fees and costs, brought as a result of PCEA's involvement with the Project, and to reimburse PCEA for any such expenses incurred.

For purposes of this provision, PCEA is hereby intended to be a third-party beneficiary of any and all contracts executed by Consultant to implement this Agreement, pursuant to California Civil Code § 1559.

LIMITATION OF LIABILITY; EXCLUSION OF DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF REVENUE OR LOSS OF OPPORTUNITY IN CONNECTION WITH THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY'S LIABILITY FOR DIRECT DAMAGES RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID BY THE COMPANY TO SERVICE PROVIDER

DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THESE LIMITATIONS OF LIABILITY APPLY REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF NOTIFIED OF THE POSSIBILITY OR LIKELIHOOD OF SUCH DAMAGES.

9. Assignability and Subcontracting

Consultant shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Consultant under this Agreement without the prior written consent of PCEA. Any such assignment or subcontract without PCEA's prior written consent shall give PCEA the right to automatically and immediately terminate this Agreement without penalty or advance notice. Notwithstanding the foregoing, Consultant may in its discretion assign this Agreement or any of its rights under this Agreement to any parent, subsidiary or affiliated business entity of the Consultant in the event of a merger, acquisition or sale. In the event of a merger, acquisition, or sale Consultant shall notify PCEA thirty (30) days prior to the merger, acquisition, or sale.

10. Payment of Permits/Licenses

Consultant bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Consultant's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

11. W-9 Form and Submission of Invoices

Invoices shall only be submitted by electronic form by sending an email to both the **PCEA project contact's email address** and to **PCEA's Finance email address** (finance@peninsulacleanenergy.com). Consultant shall submit a completed W-9 form electronically to the same email addresses. Consultant understands that no invoice will be paid by PCEA unless and until a W-9 Form is received by PCEA.

12. Insurance

a. General Requirements

Consultant shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by PCEA, with such approval not to be unreasonably withheld, and Consultant shall use diligence to obtain such insurance and to obtain such approval. Consultant shall furnish PCEA with certificates of insurance evidencing the required coverage pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to PCEA of any cancellation of the policies, or ten (10) days' notice for any cancellation due to non-payment of premium.

b. Workers' Compensation and Employer's Liability Insurance

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

c. Liability Insurance

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

Yes	Comprehensive General Liability (Applies to all agreements)	$1,000,000
Yes	Motor Vehicle Liability Insurance	$1,000,000
Yes	Professional Liability Insurance	$1,000,000

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

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be canceled, PCEA, at its option, may, notwithstanding any other provision of this Agreement to the contrary, declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement if such breach is not cured within thirty (30) days of written notice of such breach to Consultant.

13. Compliance With Laws

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

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

14. Non-Discrimination and Other Requirements

a. General Non-discrimination

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

b. Equal Employment Opportunity

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

c. Section 504 of the Rehabilitation Act of 1973

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

d. Employee Benefits

With respect to the provision of benefits to its employees, Consultant shall ensure that employee benefits provided to employees with domestic partners are the same as those provided to employees with spouses.

e. Discrimination Against Individuals with Disabilities

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

f. History of Discrimination

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

X No finding of discrimination has been issued in the past 365 days against Consultant by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.

__ Finding(s) of discrimination have been issued against Consultant within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Consultant shall provide PCEA with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting; Violation of Non-discrimination Provisions

Consultant shall report to the Chief Executive Officer of PCEA the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 13, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Consultant that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

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

i. termination of this Agreement;

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

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

15. Prevailing Wage

It is PCEA's requirement that the Consultant, including both its assignees and Subcontractors, that install the equipment described in "Exhibit A" pay prevailing wage as determined by the California Department of Industrial Relations latest prevailing wage determinations applicable to San Mateo County and Los Banos (Merced County). With PCEA's approval, Consultant shall develop a written compliance mechanism including reporting and auditing capabilities for PCEA. Consultant shall be responsible for ensuring Subcontractor/assignee compliance during the Contract Term and shall notify PCEA of any noncompliance at soon as it is discovered. At PCEA's discretion, PCEA may require Consultant to remove a Subcontractor from performance of work pursuant to the Agreement if it is found to be noncompliant with this section.

16. Confidential Information

(a) Contractor shall maintain in confidence and not disclose to any third party or use in any manner not required or authorized under this Agreement any and all Confidential Information held by PCEA.

(b) The term "Confidential Information" includes all information, documents, and materials owned by PCEA, including technical, financial, business, or PCEA customer information which is not available to the general public, as well as information derived from such information. Information received by Contractor shall not be considered Confidential Information if: (i) it is or becomes available to the public through no wrongful act of Contractor; (ii) it is already in the possession of Contractor and not subject to any confidentiality agreement between the Parties; (iii) it is received from a third party without restriction for the benefit of PCEA and without breach of this Agreement; (iv) it is independently developed by Contractor; (v) it is disclosed pursuant to a requirement of law, including, but not limited to, the California Public Records Act (Cal. Gov't Code Section 7920, et seq.); or (vi) is disclosed to or by a duly empowered government agency, or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to PCEA, unless such notice is prohibited.

(c) As practicable, PCEA shall mark Confidential Information with the words "Confidential" or "Confidential Material" or with words of similar import, or, if that is not possible, PCEA shall notify the Contractor (for example, by cover e-mail transmitting an electronic document) that the material is Confidential Information. PCEA's failure or delay, for whatever reason, to mark or

notify Contractor at the time the material is produced shall not take the material out of the coverage of this Agreement.

(d) Contractor will direct its employees, contractors, consultants, and representatives who have access to any Confidential Information to comply with the terms of this Section.

(e) Upon termination or expiration of this Agreement, Contractor shall, at PCEA's exclusive direction, either return or destroy all such Confidential Information and shall so certify in writing, provided, however, any Confidential Information (i) found in drafts, notes, studies, and other documents prepared by or for PCEA or its representatives, or (ii) found in electronic format as part of Contractor's off-site or on-site data storage/archival process system, will be held by Contractor and kept subject to the terms of this provision or destroyed at Contractor's option. The obligations of this provision will survive termination or expiration of this Agreement.

17. Data Security

If, pursuant to this Agreement, PCEA shares with Consultant personal information as defined in California Civil Code Section 1798.81.5(d) about a California resident ("Personal Information"), Consultant shall maintain reasonable and appropriate security procedures to protect that Personal Information and shall inform PCEA immediately upon learning that there has been a breach in the security of the system or in the security of the Personal Information. Consultant shall not use Personal Information for direct marketing purposes without PCEA's express written consent. For purposes of this provision, security procedures are "reasonable and appropriate" when they (i) adequately address all reasonably foreseeable threats to Personal Information, (ii) are appropriate to the quantity, sensitivity, and type of Personal Information accessed and the way that information will be accessed, and (iii) comply with all laws, regulations, and government rules or directives applicable to the Consultant in connection with its access of Personal Information.

18. Retention of Records; Right to Monitor and Audit

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

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

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

during Consultant's normal business hours at Consultant's pace of business at the sole cost of PCEA.

19. Merger Clause; Amendments

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

20. Controlling Law; Venue

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

21. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of PCEA, to:

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

In the case of Consultant, to:

Name/Title: Dean Laube, Regional Vice President
Address: 102 N. Franklin Street, Port Washington, WI 53074

Telephone: 715-304-0366
Email: dlaube@franklinenergy.com

With a copy to:

Name/Title: Corporate Counsel
Address: 102 N. Franklin Street, Port Washington, WI 53074
Email: legal@franklinenergy.com

22. Electronic Signature

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

23. No Recourse Against PCEA's Member Agencies

Except as otherwise stated in the Limitation of Liability provision in Section 8, Consultant acknowledges and agrees that PCEA is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by PCEA in connection with this Agreement are undertaken solely by PCEA and are not debts, liabilities, or obligations of its member agencies. Consultant waives any recourse against PCEA's member agencies.

* * *

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

PENINSULA CLEAN ENERGY AUTHORITY

By: _____

Chief Executive Officer, Peninsula Clean Energy Authority

Date: _____

CONSULTANTENERTOUCH, INC. DBA FRANKLIN ENERGY DEMAND RESPONSE

_____

Consultant's Signature

Date: _____

Exhibit A – Scope of Work

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

Overview

Peninsula Clean Energy's (PCE) mission is to reduce greenhouse gas (GHG) emissions and reinvest in the San Mateo County and Los Banos community. The Single-Family Home Electrification Turnkey and Direct Install Service ("Single-Family Service") installs building electrification[1] measures in single-family residences or multi-family residences, up to four units, with no central systems. Customers will include both residential customers receiving market-rate services and low-income customers receiving no-cost direct-install services. At PCE's discretion, some residences may receive limited energy efficiency, minor home repair, solar, and/or battery storage in addition to building electrification measures.

The Single-Family Service will include three program elements:

1. **Income-qualified direct install electrification ("Direct Install")** – This element will provide direct installation services[2] for electrification measures to eligible low-income customers living in single-family residences. This service will build upon PCE's existing Home Upgrade program to provide whole-home and partial electrification and minor home repair at no cost to the homeowner.

2. **Cost-share turnkey electrification ("Cost-share Turnkey")** – This element will provide turnkey installation services[3] for electrification measures to market-rate customers living in single-family residences. Wiring, circuitry, plumbing, carpentry, and other services required to enable the installation of the equipment will be included in the installation.

3. **Emergency Water Heater Replacement** - This element will provide rapid replacement of failing natural gas water heaters with a heat pump water heater under qualified conditions. If remediation is required, such as an electrical circuit, a loaner gas water heaters may be installed to ensure there is no service interruption while work proceeds through the Direct Install and Cost Share Turnkey services.

[1] Defined as the replacement of methane "natural" gas equipment for space heating, domestic hot water, stove/oven, and clothes drying with efficient electric alternatives.
[2] Direct installation means start-to-finish installation of equipment at no cost to the customer.
[3] Turnkey installation means start-to-finish installation of equipment, which includes a Cost-share-Payment contribution from the customer.

ENERTOUCH, INC. Dba Franklin Energy Demand Response ("Consultant") administers PCE's Single-Family Service. Consultant subcontracts with installation contractors ("Subcontractors") approved by PCE to install the equipment described in Exhibit B. Consultant subcontracts with Vistar Energy Inc., a software technology company, to develop a software platform, XeroHome, that will assist with customer targeting and home assessment tasks (Task 1). XeroHome's scope of work and services as part of this program are outlined in Exhibit D.

Silicon Valley Clean Energy Authority (SVCE) intend to implement the services described in this Exhibit A and execute its own Agreement with Consultant, pending Board approval. In the event that SVCE executes its own Agreement with Consultant, PCE and SVCE will implement the Single-Family Service jointly with Consultant.

Program Goals and Objectives

1. Ensure an affordable and easily accessible option for PCE customers to electrify their homes, including for emergency replacements.
2. Provide safer, healthier, resilient, zero carbon homes with improved indoor air quality, resilience, and lower energy bills.
3. Electrify low-income homes in PCE territory with a target of at least 575 heat pump water heaters and 575 heat pump HVAC systems in three years.
4. Establish dedicated crews of trusted, experienced installers with high quality equipment capable of whole home electrification using advanced methods to minimize the need to upgrade PG&E service lines.
5. Encourage establishment of sustainable and diverse electrification workforce.
6. Leverage all possible local, state, and federal electrification incentives to reduce PCE and/or customer's direct costs.
7. Support PCE's load-shaping needs.

Service Level Expectations (SLE)

The Single-Family Service SLEs sets minimum requirements for how a customer receives program services. The intent of the SLEs is to deliver timely, quality services and maintain high customer satisfaction. Consultant will track and aim to achieve the following SLEs:

1. Emergency replacements or loaners equipment must be installed within 48 hours of customer call including weekends and holidays.
2. For homes receiving a single electrification measure, install and energize equipment within 30 days of customer enrollment[4], barring PG&E service upgrade delays or building department mandated delays regarding planning or building department permit review.

[4] Customer enrollment is determined upon receiving the customer's signed and completed Program Participation Agreement

3. For homes receiving whole-home electrification[5] and/or minor home repair, install and energize all equipment within 60 days of customer enrollment, barring PG&E service upgrade delays.
4. When functioning gas-fired appliances and equipment (water heater, space heater, stovetop, clothes dryer) are electrified through the program, electric replacements must be installed, functional, and operating within 48 hours of the gas appliance(s) removal.
5. Achieve 90% satisfaction rating for program services from customer surveys.

Consultant Tasks

1 Program Design and Set Up

1.1 Kickoff and Check-in Meetings

Consultant will develop an agenda and lead a program kickoff meeting with PCE to review program goals and objectives, budget, timeline, and administrative processes at a mutually determined date following contract execution.

After the kickoff meeting, the Consultant will set up check-in meetings on a biweekly recurring schedule for the duration of the period of performance, unless more frequent meetings are necessary as determined by PCE. For check-in meetings, Consultant will work with the PCE contract administrator(s) to determine the agenda at minimum one day prior to the meeting. Meetings will focus on program progress updates, reviewing deliverables, and determining expected milestones for the next meeting.

Task 1.1 Deliverable: Meeting agendas and meeting minutes

1.2 Provide Compliance Documentation

Consultant will provide PCE with documentation of insurance, all legally required certifications, and other requirements including for all subcontractors. If any materials are renewed or subcontractors changed, updated documents must be provided at that time, in accordance with the terms of the Agreement. Consultant will provide all subcontracts to PCE for review and approval to verify compliance with contract terms prior to execution.

Major supplementary documentation developed while delivering these services must also be provided as determined by PCE. This supplementary documentation shall be defined as: executed subcontracts, technical designs, permits, photographs of installed equipment, and materials developed for PCE and Consultant use.

Task 1.2 Deliverable: Compliance documentation, including for all subcontractors

[5] Whole-home electrification means space heating, domestic hot water, clothes drying, and stoves/ovens are all-electric post-installation.

1.3 Finalize Program Design and Strategy

Consultant will assist PCE in finalizing the program strategy, plan, and design. Prior to program launch, Consultant will:

1.3.1 Develop a detailed project timeline prior to kickoff meeting.

1.3.2 Refine plan for incorporating underserved community opportunities in workforce.

1.3.3 Co-develop with PCE refinements to Direct Install, Cost-Share Turnkey, and Emergency Water Heater Replacement services as needed.

1.3.4 Finalize Eligible Measures List, including measures outlined in Exhibit C. At PCE's discretion, the Eligible Measure List may include additional measures as described in Task 7 and agreed upon by PCE and Consultant.

1.3.5 Determine cost-share pricing structure and operations for Cost-Share Turnkey customers.

1.3.6 Determine approach for procuring equipment including selecting high-quality equipment providers with strong customer ratings for selected equipment and method for securing preferential pricing and any stocking needs.

1.3.7 Finalize staffing plan based on final services and program rollout timing.

1.4 Develop Program Handbook

Consultant will draft a Program Handbook for use by PCE and the Consultant. The Program Handbook will describe in greater detail the design, implementation, and policies of the Single-Family Service. Consultant will submit a draft of the Program Handbook to PCE for review and approval before finalizing. Consultant will provide written revisions and update to the Program Handbook upon PCE request. The Program Handbook will include the following:

1.4.1 Customer and property eligibility requirements for Direct Install, Cost-Share Turnkey, and Emergency Replacement.

1.4.2 The terms and conditions for eligible customers to participate in the program.

1.4.3 The process for enrolling customers in the program, including customer journey, operational steps, and developing program referrals.

1.4.4 Eligible Measures List as outlined in Exhibit C, Table C-3, and any additional measures added as part of Task 7

1.4.5 List of third-party programs that can be co-delivered/leveraged through the program, including measures and incentive amounts, and process for how they are applied for and accounted for through the program.

1.4.6 Home Assessment methodology including the following:

1. List of criteria that would deem a project ineligible for planned services by equipment type or issue (e.g., water heaters in locations too small for a heat pump water heater, knob and tube wiring in home, electric service capacity issues, etc.)
2. Testing and assessing procedures and required certifications, as appropriate.

1.4.7 Field verification standards for Eligible Measures, including handling of hazardous materials (e.g., asbestos and lead safe practices).

1.4.8 The process for getting building permits, including considerations that may be unique to particular jurisdictions.

1.4.9 The process for installing equipment, including manufacturer's and workmanship warranty documentation processes, health and safety protocols, and quality assurance.

1.4.10 The process for emergency replacement processing that enables a restoration of hot water within 48 hours of customer notice, and results in an electrified appliance at the end of the project.

1.4.11 The process for collecting customer payments for the Cost-Share Turnkey and Emergency Water Heater Replacement services, including customer invoices and payment schedule.

1.4.12 Dispute resolution guidelines and standard procedures including processes for handling customer and/or Subcontractor issues.

1.4.13 The process for providing Program Progress Reports (Task 1.10) and Monthly Expense Reports (Task 1.11).

1.4.14 The mechanism and process for ensuring prevailing wage compliance for Subcontractors, including reporting and auditing capabilities for PCE.

Task 1.4 Deliverable: Program Handbook

1.5 Develop and Maintain Technical Design Guidelines

The Technical Design Guidelines will be used by Consultant to guide the development of each participating home's Scope of Work (Task 5.5.1).

The Technical Design Guidelines will be based on the following principles:

1. Maximizing decarbonization with high cost-effectiveness.
2. Favoring installation and operation simplicity and reliability.
3. Delivering operating cost, comfort and air quality benefits to homeowners, while mitigating adverse conditions such as noise.
4. Designing for grid benefits and resilience where possible.
5. Permitting requirements of the local jurisdictions; and
6. Avoiding service upgrades through power-efficient, whole system design whenever possible. All program contractors will be expected to be trained on this topic.

In collaboration with PCE, Consultant will develop and maintain Technical Design Guidelines. Consultant will:

1.5.1 Draft the Technical Design Guidelines to PCE for review and approval before finalizing. Technical Design Guidelines shall, at a minimum, include the following:

1. Installation guidelines and diagrams, if applicable, for Eligible Measures outlined in Exhibit C Table C-3, and any additional measures added as part of Task 7. Eligible Measures will also include minor home repair measures and, in some cases, energy efficiency and resilience measures.
2. Installation guidelines and diagrams, if applicable, for approved New Program Measures, Technologies and Methods (Task 7).
3. Home scenarios and a decision tree.
4. Process and guidelines for decommissioning gas equipment, capping gas lines, and if appropriate or necessary coordination with PG&E to remove gas meter.

1.5.2 Monitor industry best practice through associations such as ASHRAE and other forums.

1.5.3 Provide written revisions and updates to the Technical Design Guidelines based on industry best practices, learnings from the Program, and any additional measures added as part of Task 7 every 12 months or as mutually deemed appropriate

1.5.4 Design Technical Design Guidelines to be public-facing and consistent with PCE's Branding Guidelines.

Task 1.5 Deliverable: Technical Design Guidelines

1.6 Develop Home Assessment Template

Consultant will create a Home Assessment Template for PCE review and approval before use. Consultant will perform an in-home or virtual assessment and use the Home Assessment Template to document existing home conditions and equipment and determine measures' suitability to develop a customized Scope of Work (Task 5.5.1). The Home Assessment will include the following elements regarding equipment and appliances located at the residential property:

1.6.1 An inventory of physical conditions, age, and estimated remaining lifespan(s) of equipment, appliances, and home conditions.

1.6.2 Evaluation of the condition and capacity of the existing electrical systems and recommended upgrades that may be necessary to enable the proposed measures.

1.6.3 Analysis of panel capacity for recommended measures and whole-home electrification (either meter-based or electric load calculations as needed) to ensure home can electrify on service capacity and determine appropriate approach to electrical layout.

1.6.4 Recommended locations for new electrical equipment, noting any observed space or structural constraints and possible remedies.

1.6.5 Photos and diagrams (site, equipment, etc.).

Task 1.6 Deliverable: Home Assessment Template

1.7 Develop Project Scope of Work Template

In coordination with PCE, Consultant will draft a Project Scope of Work template for PCE review and approval before use. The Project Scope of Work will be provided by the Consultant to the homeowner and will include information necessary for the homeowner to understand the electrification opportunities available to them. The Project Scope of Work will be provided in electronic format, and available via paper upon customer request. Consultant will provide revisions and updates to the Project Scope of Work template upon PCE request. The Project Scope of Work template shall include the following elements:

1.7.1 Customer contact information (name, address, email, phone number)

1.7.2 Program contact information (email, phone number)

1.7.3 Recommended Eligible Measures (measure, quantity, cost)

1.7.4 Incentives (PCE and third-party rebates and incentives)

1.7.5 Financing options (PCE and third party financing)

1.7.6 Cost (total and net of incentives)

1.7.7 Proposed workplan and timeline that will be executed if customer opts to receive services

Task 1.7 Deliverable: Scope of Work Template

1.8 Develop Program Participation Agreement

In coordination with PCE, the Consultant will draft a Program Participation Agreement(s) that includes terms and conditions of the program and grants the Consultant and its subcontractors permission to perform activities necessary to participate in the Program including site visits, building evaluations, equipment installation, and evaluation, measurement and verification (EM&V). The Program Participation Agreement will be developed in paper and electronic formats. The Participation Agreement shall be signed by homeowners at the time of enrollment.

Task 1.8 Deliverable: Program Participation Agreement

1.9 Enroll in State or Local Programs

Complementary regional, state, and federal electrification incentive programs ("third-party programs") will be available during the program term, including but not limited to BayREN Home+, TECH Clean CA, CA Smart Energy Homes, GoGreen Financing, and the Inflation Reduction Act (IRA) electrification rebates. Maximizing third-party program incentives is necessary to reduce project costs across the Single-Family Service. Some third-party programs require enrollment as a qualified contractor to be eligible for incentives. As such:

1.9.1 Consultant and/or its Subcontractors shall enroll in third-party programs as directed by PCE and provide PCE with proof of enrollment.

1.9.2 During the program term, Consultant shall complete and submit applications for third-party programs for projects completed.

1.9.3 Consultant and/or its Subcontractors shall capture incentives from third-party programs and report on funds received and net PCE costs on Monthly Expense Report.

Task 1.9 Deliverable: Proof of enrollment in other incentive programs as directed by PCE.

1.10 Setup Customer Relationship Management (CRM) System & Data Exchange

A customer relationship management (CRM) system is critical to manage the pipeline of projects in an easily searchable and reportable way and analyze program performance. Consultant shall:

1.10.1 Set up an electronic customer relationship management (CRM) for the Program.

1.10.2 With PCE, jointly define all the data elements to be captured., Data elements shall include the following:

1. Customer contact information (name, address, phone, email);
2. Customer enrollment in Direct Install, Cost Share Turnkey, or Emergency Water Heater Replacement program element(s) and status for receiving services, including whether projects were declined by customer or infeasible with rationale;
3. Scheduled program activities, including date and time of site assessments, installations, inspections, etc.;
4. Customer Scope of Work and resulting job orders;
5. Photos or diagrams of site conditions prior to installation;
6. Equipment and measures installation costs (quoted, actual);
7. Completed customer forms and records, including Program Participation Agreement, building permits, and inspection reports;
8. Customer payments collected as shown on contractor invoicing;
9. Installed equipment and measures (quantity, model, wattage);
10. Third-party rebate and funding sources utilized (program name, incentive amount, measure).

1.10.3 Transfer data to PCE's Salesforce CRM. With PCE, jointly define data to be transferred and the method and frequency of the automated data transfer.

1.10.4 Ensure data systems meet industry-standard security and that data is encrypted, at rest and in transit.

Task 1.10 Deliverable: Customer Relationship Management system and data exchange method

2 Administrative Reporting Tasks

2.1 Develop and Provide Program Process Reports

Consultant will provide monthly Program Progress Reports. Consultant will share the report findings at the biweekly check-in meeting with the PCE contract administrator. Program

Progress Reports will include at minimum: program performance towards goals and objectives, successes and challenges (e.g., technical problems, implementation barriers, or customer issues, if any), and next steps.

On a regular schedule, but no less than quarterly, review SLEs and participant surveys collected by PCE to assess performance of the program, Consultant and subcontractors, work completed, and recommend to PCE program improvements.

Task 2.1 Deliverable: Program Progress Report

2.2 Develop and Provide Monthly Expense Reports

Consultant will develop a Monthly Expense Report Template for PCE review. After PCE approval of the Monthly Expense Report Template, Consultant will provide Monthly Expense Reports including all associated invoices, including by subcontractors, by a mutually determined day of the month to receive payment for services provided for the previous month. The Expense Report Template will include at minimum the following:

2.2.1 Measures installed (quantity, description, model number, cost);

2.2.2 Administration labor (task, subtask, hours, rate, total);

2.2.3 Project incentives from third-party rebate programs (program name, measure, total revenue);

2.2.4 Customer co-payments, collected by Subcontractors;

2.2.5 Total expenses for the reporting period by program element (i.e., Direct Install, Cost-Share Turnkey, and Emergency Water Heater Replacement);

2.2.6 Total program expenses by program element (i.e., Direct Install, Cost-Share Turnkey, and Emergency Water Heater Replacement); and

2.2.7 Remaining program budget.

Task 2.2. Deliverables: Monthly Expense Report Template and Ongoing Monthly Expense Reports

2.3 Manage Prevailing Wage Compliance and Documentation

Consultant will be responsible for all prevailing wage compliance, including for all Subcontractors. Consultant will develop a written compliance mechanism prior to program launch (Task 1.4, 1.4.14) and abide by those terms during the contract term. Consultant shall:

2.3.1 Provide compliance verification documentation by auditing first invoice of each Subcontractor and one randomly selected invoice of each Subcontractor for each twelve consecutive months and provide reports of such audit results to PCE on a regular basis;

2.3.2 Provide auditing capabilities for PCE, including access to any third-party platforms used for compliance verification.

2.3.3 Notify PCE of any noncompliance as soon as it is discovered;

2.3.4 At PCE's discretion, remove Subcontractor from program if they are found to be noncompliant.

Task 2.3. Deliverables: Ongoing Prevailing Wage Compliance Reports

2.4 Develop Annual Program Report

Consultant will develop an Annual Program Report consistent with PCE Branding Guidelines for public distribution within 3 months after completion of each 12-month period. Consultant will draft the Annual Program Report for PCE review and approval prior to public distribution. The Annual Report will include at minimum the following:

2.4.1 Executive summary;

2.4.2 List of outcomes for each Program Objective;

2.4.3 List of any additional accomplishments;

2.4.4 Summary of each project including home characteristics, measures installed, completion date, project duration, funding sources, costs;

2.4.5 Summary of average project costs for each equipment type, and lessons learned broken down by project type;

2.4.6 Evaluated conclusions drawn from the project including lessons learned and recommendations for future work; and

2.4.7 Financial summary comparing expenditures to the project budget.

Task 2.4 Deliverables: Annual Program Report

3 Marketing and Outreach

3.1 Coordinate Marketing and Outreach Activities

PCE has in-house marketing and communications professionals. PCE's Communications Team will be primarily responsible for marketing and outreach to customers via emails, mailers, digital ads, and messaging at public events and forums. Additionally, PCE will engage with community-based organizations (CBOs) partners to provide pre-qualified customer leads for the Direct Install element of the program. Consultant will:

3.1.1 Work closely with PCE staff to ensure alignment with existing marketing and communications practices, including but not limited to branding guidelines and writing styles.

3.1.2 Participate in regular meetings (anticipated as quarterly) with PCE's Communications Team to discuss marketing approach, program progress, and marketing needs.

3.1.3 As needed, propose additional materials needed for the program and co-develop webpages, flyers, enrollment forms, educational forms, and other program materials with PCE's Communications Team.

3.1.4 Assist in the development of an outreach strategy that targets homes that are most likely to benefit from the services based on electric and gas meter data, building characteristics, demographics and other criteria as mutually determined.

3.2 Develop Case Studies

Consultant will produce two to four case studies per year (2-4 pages each) throughout the program period. The case studies are intended for public distribution and will highlight successes, challenges, costs, and best practices with transition to all-electric construction.

Task 3.2 Deliverable: Case Studies

4 Direct Install Implementation

4.1 Screen, Enroll, and Educate Customers

Consultant will:

4.1.1 Intake customers leads via online interest form hosted on PCE's website. Form will allow customer to specify preferred communication method (phone, text, email).

4.1.2 Screen customer leads based on Program Handbook (Task 1.4).

4.1.3 Respond to customers by their preferred communication channel within three (3) business days to enroll them in the program, which includes collecting eligibility verification documentation, such as income documentation, and scheduling a Home Assessment (Task 4.2).

4.1.4 Manage all customer communications in both English and Spanish by project staff. As needed, offer access to interpretation service for other priority languages (e.g., Mandarin, Cantonese, and Tagalog).

4.1.5 Provide customer with educational materials on home electrification and on use and maintenance of equipment to be installed in customer's homes.

4.1.6 Where appropriate, refer customers to other non-electrification programs, such as energy efficiency and home repair programs that customers may qualify for.

4.2 Perform Home Assessment, Develop Customer Project Scope of Work, and Execute Program Participation Agreement

After completing Task 4.1 with the customer, Consultant will:

4.2.1 Serve as the enrolled customer's principal point of contact for the Program, provide ongoing support, and resolve any customer issues.

4.2.2 Perform an in-person or virtual Home Assessment in eligible customer's homes and update CRM (Task 1.10).

1. If an electrification plan was previously produced for the customer by PCE or a third-party, the electrification plan may be used as initial guidance for the Home Assessment but should be adapted as conditions and professional evaluation dictate.

4.2.3 Using data gathered from the Home Assessment, develop a proposed Project Scope of Work that is consistent with the Technical Design Guidelines (Task 1.5).

1. If within Program budget, whole home electrification scope is to be encouraged with the property owner. Property owner may decline measures, but at least one major electrification measure (i.e., water heater or space heating and cooling) is required to receive services.

4.2.4 Deliver Project Scope of Work to customer. Consultant will offer to review the Scope of Work with customer to explain findings, address any questions, and begin planning any installations.

4.2.5 Provide an unsigned version of the Program Participation Agreement (Task 1.8) to customer for their signature.

4.3 Install Measures and Provide Post-Installation Quality Control

Upon receiving the customer's signed Program Participation Agreement, the Consultant will:

4.3.1 Oversee Subcontractor who shall apply for building permits on behalf of the customer.

4.3.2 Oversee installation and manage Subcontractors installing measures outlined in the customer's Project Scope of Work (Task 1.7)

1. All equipment must be installed in accordance with all applicable federal, state, and local laws, building codes, manufacturer's specifications and permitting requirements.
2. Consultant will notify PCE of any delays which may result in an installation start date later than 120 days from the customer's signed Program Participation Agreement.

4.3.3 Periodically, as mutually determined with PCE, perform quality control procedures to evaluate Subcontractors' performance and implement changes as mutually deemed appropriate.

1. Where an inspection has been provided by the local Authority Having Jurisdiction (AHJ,) provide inspection report, which may be used as type of quality control for that installation. Consultant shall perform site visits in 5% of homes that didn't have an inspection report and provide reports to PCE on quarterly basis.
2. Additionally, PCE may request, upon five (5) days written notice site visits of up to 10 homes receiving services. Consultant shall participate in project site visits with the designated PCE staff member(s) at a mutually determined date.

4.3.4 Within ten (10) business days of installation, educate customer in successfully operating and maintaining the new measure(s) installed.

4.3.5 Provide customer with equipment technical manuals, equipment warranty documentation, installation warranty documentation that are supplied with the equipment by the manufacturer. PCE may pay for customer's extended warranty terms on select measures, as defined and priced in Exhibit C.

4.3.6 Respond to workmanship warranty calls as needed and assist customer in responding to product warranty issues, according to the warranty obtained by customer. Address all workmanship and product replacement warranty issues to reasonable customer satisfaction.

4.4 Manage Program Funds and Third-Party Rebates

After completing the customer's installation, Consultant will:

4.4.1 Submit application(s) for third-party program(s) the project is eligible for to reduce project costs.

4.4.2 Pay invoices for equipment, labor, and Subcontractor services.

4.4.3 Provide Monthly Expense Reports (Task 2.2) to receive payment for Program services.

4.5 Provide Supporting Documentation for Completed Projects

Proper record-keeping is critical for the success of the Single-Family Service. As such, Consultant must timely and accurately make the following items available for each project in Consultant's CRM in order to receive payment for Services under this Agreement:

4.5.1 Customers' Scope of Work.

4.5.2 Photos, Permits, and Final Inspection Report.

4.5.3 Executed Program Participation Agreement.

4.5.4 Project Installation Data

5 Cost-Share Turnkey Implementation

5.1 Screen, Enroll, and Educate Customers

Consultant will:

5.1.1 Intake customers leads via online interest form hosted on PCE's website. Form will allow customer to specify preferred communication method (phone, text, email).

5.1.2 Screen customer leads based on Program Handbook (Task 1.4).

5.1.3 Respond to customers by their preferred communication channel within three (3) business days to enroll them in the program, which includes collecting eligibility verification documentation, if any, and scheduling a Home Assessment (Task 4.2).

5.1.4 Manage all customer communications in both English and Spanish by project staff. As needed, offer access to interpretation service for other priority languages (e.g., Mandarin and Cantonese, Tagalog).

5.1.5 Provide customer with educational materials on home electrification and on use and maintenance of equipment to be installed in customer's homes.

5.2 Perform Home Assessment, Develop Customer Project Scope of Work, and Execute Program Participation Agreement

After completing Task 5.1 with the customer, Consultant will:

5.2.1 Serve as the customer's principal point of contact for the Program, provide ongoing support, and resolve any customer issues.

5.2.2 Perform an in-person or virtual Home Assessment in eligible customer's homes and update the CRM (Task 1.10)

1. If an electrification plan was previously produced for the customer by PCE or a third-party, the electrification plan may be used as initial guidance for the Home Assessment but should be adapted as conditions and professional evaluation dictate.

5.2.3 Using data gathered from the Home Assessment, develop a proposed Project Scope of Work (Task 1.7 that is consistent with the Technical Design Guidelines (Task 1.5).

1. If within Program budget, whole home electrification scope is to be encouraged with the property owner. Property owner may decline elements but at least one major electrification measure (i.e., water heater or space heating and cooling) is required to receive Program services.

5.2.4 Deliver Project Scope of Work (Task 1.7) to customer which includes pricing of services, and information on all relevant rebates and financing options. Consultant will offer to review the Scope of Work to explain findings, address any questions, and begin planning any installations.

5.2.5 Provide an unsigned version of the Program Participation Agreement (Task 1.8) to customer for their signature.

5.3 Install Measures and Provide Post-Installation Quality Control

Upon receiving the customer's signed Program Participation Agreement, the Consultant will:

5.3.1 Oversee Subcontractor who shall apply for building permits on behalf of the customer.

5.3.2 Oversee installation and manage Subcontractors installing measures outlined in the customer's Project Scope of Work.

1. All equipment must be installed in accordance with all applicable federal, state, and local laws, building codes, manufacturer's specifications and permitting requirements.
2. If electrical service capacity upgrade is required, Subcontractor coordinate with PG&E on service and panel upgrades.
3. Consultant will notify PCE of any delays which may result in an installation start date later than 120 days from the customer's signed Program Participation Agreement

5.3.3 Periodically, as mutually determined with PCE, perform quality control procedures to evaluate subcontractors' performance and implement changes as mutually deemed appropriate.

1. Where an inspection has been provided by the local Authority Having Jurisdiction (AHJ,) provide inspection report, which may be used as a type of quality control for that installation. Consultant shall perform site visits in 5% of homes that didn't have an inspection report and provide reports to PCE on quarterly basis.
2. Additionally, PCE may request site visits of up to 10 homes receiving services. Consultant shall participate in project site visits with the designated PCE staff member(s) at a mutually determined date.

5.3.4 Within ten (10) business days of installation, educate customer in successfully operating and maintaining the new measure(s) installed.

5.3.5 Provide customer with equipment technical manuals, equipment warranty documentation, installation warranty documentation that are supplied with the equipment via the manufacturer. Customer may choose to pay for extended warranty terms on select measures, as defined and priced in Exhibit C.

5.3.6 Respond to workmanship warranty calls as needed and assist customer in responding to product warranty issues, according to the warranty obtained by customer Consultant shall not be responsible for any warranty remedies which are the responsibility of manufacturers

5.4 Manage Program Funds, Third-Party Rebates, and Customer Payments

After completing the customer's installation, the Consultant and/or its Subcontractors will:

5.4.1 Collect customer Cost-share Payments. Cost-Share Turnkey projects shall be paid by the customer and PCE. Customers will have a Cost-share Payment contribution, based on a fixed cost per Eligible Measure after applicable incentives are applied. The Subcontractor performing the work shall be responsible for collecting customer co-payments.

5.4.2 Submit application(s) for third-party program(s) the project is eligible for to reduce project costs. Where feasible, third-party program incentives shall be applied for by Consultant on behalf of the customer to reduce the cost of the customer's co-payment contribution.

5.4.3 Submit documentation to PCE on third-party rebate and incentive sources such as amount captured per month and net PCE cost after third-party rebates.

5.4.4 Pay Subcontractor invoices for equipment incentives provided by PCE upon receiving PCE payments.

5.4.5 Provide Monthly Expense Reports (Task 2.2) to receive payment for Program services.

5.5 Provide Supporting Documentation for Completed Projects

Proper record-keeping is critical for the success of the Single-Family Service. As such, Consultant must timely and accurately make the following items available for each project in Consultant's CRM in order to receive payment for Services under this Agreement:

5.5.1 Customers' Scope of Work;

5.5.2 Photos, Permits, and Final Inspection Report;

5.5.3 Executed Program Participation Agreement;

5.5.4 Project Installation Data

6 Emergency Water Heater Replacement Implementation Tasks

Most water heater replacements are performed after the equipment has failed, and customers expect access to hot water within 1 to 3 days of failure. The Emergency Water Heater Replacement element of the Single-Family Service will be available to both Direct Install and Cost-Share Turnkey participants. When a gas water heater fails, there are three common emergency replacement scenarios:

1. **On-Site Electrification –** This scenario allows for immediate installation of a heat pump water heater on the day of the site visit.
2. **Gas Loaner Electrification -** Electrification is not feasible on the day of the site visit, typically due to the need to coordinate with an electrician. In this scenario, PCE envisions an installation of a temporary gas loaner unit while electrical services are coordinated.
3. **Infeasible -** Electrification is infeasible at the site due to criteria developed in Technical Design Guidelines (e.g., physical constraints, constrained PG&E service line, or other factors).

6.1 Coordinate Emergency Water Heater Replacement Services

Consultant will:

6.1.1 Provide a dedicated phone number (i.e., hotline) with dedicated PCE branded messaging for customers to call and schedule emergency water heater replacements. The hotline will be managed by Consultant and appropriate Subcontractors 5 days a week from 5 AM – 6 PM Pacific Time and on Saturdays from 5 AM to 11 AM Pacific Time. During these times, phone, email and text support will be provided by the Consultant

6.1.1.1 During the hours not supported by the Consultant's hotline, the phone number will roll to the hotline of the Subcontractor that is available 24/7/365 including holidays.

6.1.1.1.1.1 During hours not supported by Consultant's hotline, only phone calls will roll over to the Subcontractor's hotline. Texts and emails received during these hours will be answered by the Consultant during business hours indicated above.

6.1.2 When customers call the hotline, Consultant will promptly perform an over-the-phone initial screening to determine if an emergency replacement is feasible. If feasible, Consultant will schedule site visit.

6.1.3 Perform in-person site visit within 24 hours of customer call to determine the emergency replacement scenario and applicable approaches (Tasks 6.2, 6.3, and 6.4)

6.1.4 Provide and manage gas water heaters for the "loaner" equipment to meet program volume.

6.2 Install Heat Pump Water Heater for On-Site Electrification Scenario

Installation Subcontractors will be responsible for going on site to determine if it is feasible to install a heat pump water heater on the day of the customer site visit. If installation is feasible on the day of the customer site visit Subcontractor will:

6.2.1 Select equipment sizing, model, and configure in accordance with Technical Design Guidelines (Task 1.5)

6.2.2 Perform electric load calculations or other assessments as needed.

6.2.3 Propose a Scope of Work (Task 5.5.1) for the heat pump water heater including pricing services with information on all relevant third-party program rebates and financing options.

6.2.4 Coordinate installation of system within 48 hours of customer call.

6.2.5 Install heat pump water heater in accordance with all applicable federal, state, and local laws, building codes, manufacturer's specifications and permitting requirements.

6.2.6 Apply for building permit and coordinate with the AHJ to obtain final inspections and complete job closure paperwork.

6.2.7 Within ten (10) business days of installation, educate customer in successfully operating and maintaining the new measure(s) installed.

6.2.8 Provide customer with equipment technical manuals, equipment warranty documentation, installation warranty documentation with paper documents in a durable envelope attached to the unit.

6.2.9 Respond to workmanship warranty calls as needed and assist customer in responding to product warranty issues. Address all workmanship and product replacement warranty issues to reasonable customer satisfaction.

6.2.10 Offer Customers the Direct Install or Cost-Share Turnkey Services (Tasks 4 and 5), as applicable.

6.3 Install Loaner Gas Water Heater for Gas Loaner Electrification Scenario

If Subcontractor determines it is feasible to install heat pump water heater after additional upgrades to the home are made, Subcontractor will:

6.3.1 Install a temporary gas water heating "loaner" equipment.

6.3.2 Subcontractor to Invoice Cost-Share Turnkey Customer for emergency loaner deposit. The deposit will be put towards the cost of the heat pump water heater purchase. In the rare event that the heat pump water heater installation does not move forward, the deposit will cover the labor cost of installing loaner. Direct Install customers will not need to pay a deposit.

6.3.3 If heat pump water heater installation does not move forward, Consultant will:

1. Remove gas water heating loaner equipment and return to loaner stock.
2. May provide estimate and coordinate with customer on installation of replacement equipment as a service outside the scope of this Program.

6.3.4 Within 6 weeks of loaner installation, create and provide to customer a Scope of Work (Task 5.5.1) for heat pump water heater installation.

6.3.5 Coordinate heat pump water heater installation as specified in Task 6.2. Remove gas water heating loaner equipment and return to loaner stock.

6.3.6 Offer Customers the Direct Install or Cost-Share Turnkey Services (Tasks 4 and 5), as applicable.

6.4 Referral for Infeasible Scenario

If Subcontractor determines it is infeasible to install a heat pump water heater, Subcontractor will:

6.4.1 Provide information to resident, including reason why installation of heat pump water heater is infeasible.

6.4.2 If there is a local code requirement, complete future, PCE-developed, worksheet recording that site was considered infeasible for electrification and provide to customer as required.

6.4.3 Provide a referral to a qualified installer for a replacement gas unit. If Subcontractor is able to install a replacement gas unit, Subcontractor may offer this service outside the scope of this Program.

7 New Program Measures, Technologies, and Methods

A goal of the Program is to fully decarbonize homes and transportation in PCE service territory while providing exceptional customer experience at the lowest installation cost. To that end, PCE and Consultant may propose new measures, technologies and methods for inclusion in the Program. Any new measures, technologies, or methods adopted shall be incorporated as Eligible Measures into the Program Handbook (Task 1.4) Technical Design Guidelines (Task 1.5), and Exhibit C, Table C-3 Eligible Measures Compensation. In the event that the addition of new measures requires for additional scope and/or budget upon mutual agreement this shall be formalized in a mutually negotiated and executed amendment to this Agreement. Area of interest include at a minimum:

7.1 Energy Efficiency

7.1.1 Develop with PCE, criteria and program delivery methods for deploying low-cost energy efficiency measures such as: air sealing, targeted insulation, duct sealing, sink aerators, LED lights, etc.

7.1.2 Non-electrification, energy efficiency measures should be limited to specific homes and circumstances where they increase effectiveness of electrification equipment, decrease cost of electrification installation, or significantly improve bill savings opportunity.

7.2 EV Charging

7.2.1 Develop methods to ensure homes are capable of accepting an EV charger with at least a 20-amp, 120 volt outlet on a dedicated circuit unless technically infeasible, such as lack of off-street parking.

7.3 Solar and Storage

7.3.1 Develop with PCE, criteria and program delivery methods for deploying solar-only and solar and storage systems where deemed appropriate with the intention of incorporating this element in the second year of the program.

7.3.2 Approaches to program delivery may include directly subcontracting with qualified solar and storage installers and/or recommending that PCE directly contract with such providers.

7.3.3 Solar and storage systems are anticipated to be financed through lease or power-purchase agreements unless customers opt for direct purchase (in the Cost-Share Turnkey service). However, PCE may elect at its discretion to pursue its own financing structures.

7.4 120 Volt Systems and Space + Water Heating Combo Systems

7.4.1 Monitor results of assessments for 120-volt water heater, space heating systems, and induction ranges.

7.4.2 Develop with PCE criteria and program delivery methods for deploying these systems as lower cost alternatives to traditional 240-volt systems under conditions that satisfy resident comfort needs.

7.5 Energy Resilience

7.5.1 Develop with PCE criteria and program delivery methods for deploying low-cost methods relevant across PCE climate zones for addressing heat wave and power outage measures which may include:

1. Heat Wave: Ceiling fans, evaporative cooling, awnings/shading, window tints, etc.
2. Power outages: oversized water heater tanks, battery enabled appliances, portable batteries and uninterruptable power supplies, etc.

7.6 Virtual Power Plant

7.6.1 Develop with PCE criteria and program delivery methods for deploying load shaping technologies such as smart thermostats and water heaters with the intention of incorporating this element on a mutually determined schedule.

7.6.2 Develop with PCE methods for aggregating grid-enabled systems into dispatchable “VPP” groups on a mutually determined schedule.

7.6.3 Incorporate storage systems into the VPP systems.

7.7 Panels and Service Capacity

7.7.1 To keep costs down, PCE seeks an approach that avoids service upgrades where possible. Identify or develop tool or process for National Electrical Code (NEC) 220.83 and/or 220.87 calculations which will assist with upgrading homes without requiring a PG&E service upgrade.

7.7.2 Develop criteria for a) service upgrades or b) panel replacements without service upgrades such as due to safety needs.

7.7.3 Work with PCE to assess scenarios where smart panels, smart breakers, and circuit pausers may be useful and cost-effective.

7.8 Innovations

7.8.1 Pilot technologies as mutually determined to meet program objectives including not only technologies mentioned above but circuit splitters, circuit pausers, smart panels, and other technologies as mutually determined.

7.8.2 Incorporate innovations deemed successful into Technical Design Guidelines and standard practices as mutually determined.

Exhibit B – Schedule

Consultant shall perform the Services by the due date specified below; provided, however that Consultant shall bear no responsibility for any delays outside of its control. The time to complete each task may be increased or decreased by written agreement of PCEA and Consultant as all work is completed within the term of the Agreement.

Task	**Schedule (start to end date, due date, and/or cadence)**
Task 1 – Program Design and Set Up	
1.1 Kickoff and check-in meetings	5 days from signing the Agreement onward
1.2 Provide compliance documentation	90 days from signing the agreement
1.3 Finalize program design and strategy	60 days from signing the Agreement
1.4 Develop Program Handbook	90 days from signing the agreement
1.5 Develop and maintain Technical Design Guidelines	90 days from signing the agreement
1.6 Develop Home Assessment Template	90 days from signing the agreement
1.7 Develop Project Scope of Work Template	90 days from signing the agreement
1.8 Develop Program Participation Agreement	90 days from signing the agreement
1.9 Enroll in State or Local Programs	90 days from signing the agreement
1.10 Set up Customer Relationship Management (CRM) System and Data Exchange	90 days from signing the agreement
Task 2 – Administrative Reporting Tasks	Agreement Effective Date – March 30, 2027
2.1 Develop and provide Program Process Reports	Monthly by the 5th of the Month
2.2 Develop and provide Monthly Expense Reports	Monthly by 5th of the Month
2.3 Manage Prevailing Wage compliance and documentation	At least bi-annually
2.4 Develop Annual Program Report	Annually by January 31st
Task 3 – Marketing and Outreach	Ongoing, once agreement is signed
Task 4 – Direct Install Implementation	90 days from signing of the agreement – March 30, 2027
Task 5 – Cost-share Turnkey Implementation	120 days from signing of the agreement – March, 2027
Task 6 – Emergency Water Heater Replacement Implementation Tasks	120 days from signing of the agreement – March 30, 2027
Task 7 – New Program Measures, Technologies, and Methods	90 days from signing of the agreement – March 30, 2027

Exhibit C – Compensation

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

The compensation to be paid to Consultant for all services described in Exhibit A "Scope of Work" shall not exceed a total of twenty-six million dollars ($26,000,000) for the Term of the Agreement and as set forth in Table C-1 "Budget". Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to PCEA unless previously approved in writing by PCEA.

Table C-1 illustrates not-to-exceed (NTE) amounts for each budget category and invoicing and payment terms. Silicon Valley Clean Energy Authority (SVCE) may implement the services described in Exhibit A and execute its own agreement with Consultant. In the event that SVCE executes an agreement with Consultant for the services described in Exhibit A within three months of this Agreement's Effective Date, the "Not-to-exceed With SVCE ($)" amounts in Table C-1 shall apply. In the event no agreement is executed within three months of this Agreement, the "Not-to-exceed PCE Alone ($)" shall apply. Consultant is responsible for tracking expenditures and ensuring neither the not-to-exceed amounts per budget category, nor the total not-to-exceed total compensation of this Agreement are exceeded. PCEA may approve in writing the transfer of funds between budget categories listed in Table C-1 provided the total compensation for Work does not exceed twenty-six million dollars ($26,000,000) for the Term of the Agreement, as set forth in Section 3 of this Agreement. Consultant agrees to complete all Work within the amounts set forth in Section 3.

PCEA will compensate Consultant based on the hourly rates as set forth in Table C-2 "Consultant Hourly Rates" and Table C-3 "Eligible Measure Compensation" up to the NTE amounts listed in Table C-1 "Budget." PCEA will compensate Consultant the fixed price (the Cost per Unit) per Eligible Measure installed by Consultant and approved by PCEA, up to the NTE amounts listed in Table C-1. Table C-3 includes the following compensation to Consultant:

- The "Compensation for Eligible Measure" set forth in Table C-3 includes all of Consultant's costs to perform installation of Eligible Measures including, without limitation, Consultant's base equipment costs, material costs, labor costs, a standard one (1) year warranty on parts and labor, and all manufacturer warranties transferred to the customer. No additional fees or charges will be required of PCEA or its customers for Consultant to install the Eligible Measures listed in this Agreement.
- The "Potential Compensation for 5-Year Extended Warranty" in Table C-3 describes compensation that participating Cost-share Turnkey Customers or PCEA (on behalf of Direct Install Customers) may pay Consultant if Cost-share Turnkey customers or PCEA (on behalf of Direct Install Customers) elect to purchase one. The terms and conditions of the "5-Year Extended Warranty" are included in this Agreement as Exhibit E.
- The "Potential Compensation for Premium Equipment Upgrade" in Table C-3 describes compensation that Cost-Share Turnkey Customers may pay Consultant for equipment choices (e.g. color, brand, etc.) beyond the base equipment provided with Eligible Measures if they elect to purchase this option.

Consultant understands that Consultant's receipt of compensation for under this Agreement will depend on the number of customers who opt to participate in the Program by executing Program Participation Agreements, and Consultant's satisfactory completion of invoicing activities as described in Exhibit A. PCEA makes no guarantee, express or implied, regarding the number of customers who will participate in programs covered by this Agreement.

Consultant will subcontract with Vistar Energy Inc. to develop XeroHome™, a software platform, to perform Task 1 "Program Design and Set Up" as described in Exhibit A "Scope of Work". Table C-1 illustrates the NTE and payment terms for the development of XeroHome. PCEA will reimburse Consultant for the development of XeroHome as set forth in Exhibit D "XeroHome Scope of Work and Pricing".

PCEA shall pay all invoices within thirty (30) days of invoice date. PCEA shall have the right to dispute in good faith the amount of any invoice or a portion thereof, provided that PCEA raise the dispute within five (5) business days of receiving the invoice. PCEA will withhold the disputed amounts and inform Consultant of such withholding in writing specifying the reasons for disputing the withheld amounts. Such withheld amounts will be promptly release upon resolution of the disputed amounts.

Cost-share Turnkey Customer Cost Allocation

Cost-share Turnkey customers will pay Consultant a "Cost-share Payment", which is based on the fixed Compensation per Eligible Measure listed in Table C-3 after applicable incentives are applied. Cost-share Turnkey customers will pay Consultant the 5-Year Extended Warranty and Premium Equipment Upgrade for Eligible Measures listed in Table C-3 if they elect to purchase these.

PCEA bears no responsibility for any of Consultant's cost and/or compensation to Consultant associated with Customer Cost-share Payments, 5-Year Extended Warranty, or Premium Equipment Upgrade for any Cost-share Turnkey customers. All such compensation will remain the sole responsibility of Cost-share Turnkey customers who may elect to participate in the Program.

All Cost-share Turnkey Customer Cost-share Payment amounts, 5-Year Extended Warranty compensation, and Premium Equipment Upgrade compensation, if applicable, will be included and clearly disclosed in each customer's Project Scope of Work and Program Participation Agreement.

Updates to Table C-3 Eligible Measures Compensation Thirty (30) days before the start of each calendar year, Consultant will provide PCEA proposed compensation for Eligible Measures listed in Table C-3 for the subsequent year, including the percent change in compensation for each Eligible Measures from the previous year, if any. In the event that the proposed compensation adjustment exceeds the Eligible Measure Compensation by more than 5% from the previous year, Consultant shall provide a detailed breakdown of costs including all relevant supporting documentation such as prevailing wage labor costs and material costs and must receive PCE approval in writing. Upon receipt of this documentation, PCEA shall review the provided information within 10 business days. PCEA may, at its discretion, approve or deny the proposed Eligible Measure Compensation exceeding 5% from the previous year. If PCEA

approves the higher cost, Consultant shall incorporate the updates into Table C-3. If PCEA denies the higher cost, the existing Eligible Measure Compensation will remain in effect until both parties mutually agree.

PCEA and Consultant may propose new Eligible Measures throughout the Term of this Agreement. New Eligible Measures and their compensation shall be incorporated into the Program Handbook (Task 1.4), Technical Design Guidelines (Task 1.5), and Table C-3. In the event that the addition of new Eligible Measures require additional scope or budget, this shall be formalized in a mutually negotiated and executed amendment to this Agreement.

Table C-1 – Budget

Budget Category	Not-To-Exceed with SVCE ($)	Not-To-Exceed PCE Only ($)	Invoicing and Payment Terms
Income-Qualified Projects	$21,050,000	$20,720,000	Monthly - invoiced based on number of homes completed in that month and Eligible Measures in Table C-3, as invoiced by Subcontractors
Market-Rate Projects	$1,300,000	$1,300,000	Monthly - invoiced based on number of homes completed in that month and Eligible Measures in Table C-3, as invoiced by Subcontractors
Emergency Water Heater Replacement Projects	$400,000	$400,000	Monthly - invoiced based on number of homes completed in that month and Eligible Measures in Table C-3, as invoiced by Subcontractors
Program Design and Set Up (Task 1)	$148,000	$241,000	Monthly - invoiced based on time & hourly rates in Table C-2
Admin Reporting (Task 2)	$108,000	$120,100	Monthly - invoiced based on time & hourly rates in Table C-2
Marketing & Outreach (Task 3)	$164,100	$219,000	Monthly - invoiced based on time & hourly rates in Table C-2
Income-Qualified Turnkey Implementation (Task 4)	$1,520,000	$1,667,000	Monthly - invoiced based on time & hourly rates and assessment rates in Table C-2
Market-Rate Turnkey Implementation (Task 5)	$490,000	$495,000	Monthly - invoiced based on time & hourly rates and assessment rates in Table C-2

Emergency Water Heater Replacement Implementation (Task 6)	$224,000	$242,000	Monthly - invoiced based on time & hourly rates and assessment rates in Table C-2
XeroHome	$595,900	$595,900	Invoiced based on payment terms in Exhibit D
Total Maximum Not-to-Exceed	$26,000,000	$26,000,000	

Table C-2 – Consultant Hourly and Assessment Rates

	2024 Rate	2025 Rate	2026 Rate	2027 Rate
Position Titles				
Program Administrator, Project Manager	$162.25	$167.00	$172.00	$177.25
Regional Director	$195.75	$201.50	$207.50	$213.75
Operations Project Manager	$173.00	$178.25	$183.50	$189.00
Program Manager	$162.25	$167.00	$172.00	$177.25
Energy Advisor II	$108.25	$111.50	$114.75	$118.25
Energy Advisor III	$123.50	$127.25	$131.00	$135.00
Project Coordinator	$84.50	$87.00	$89.50	$92.25
Database Specialist	$134.00	$138.00	$142.25	$146.50
Assessments				
Franklin Home Assessment	$232.50/assessment	$244	$256	$269

Table C-3 Eligible Measures Compensation

Eligible Measure	**Compensation for Installed Measure**	**Unit of Measure**	**Potential Compensation for 5-Year Warranty[6]**	**Potential Compensation for Premium Equipment Upgrade[7]**
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Electrification Measures				
Heat pump water heater (80 gallon, 240V)	$7,050.00	Per Unit	$675.00	N/A

[6] Compensation to Consultant for 5-Year Warranty is not guaranteed because it is solely dependent on PCEA's or participating customer's voluntary decision on whether to purchase a 5-Year Warranty, the terms and conditions for which will be included in the Program Participation Agreement if applicable.
[7] Compensation to Consultant for Premium Equipment Upgrade is not guaranteed because it is solely dependent on participating customer's voluntary decision on whether to purchase the premium upgrade.

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Heat pump water heater (65 gallon, 240V)	$6,350.00	Per Unit	$675.00	N/A
Heat pump water heater (50 gallon, 240V)	$5,850.00	Per Unit	$675.00	N/A
Heat pump water heater (80 gallon, 120V)	$7,050.00	Per Unit	$675.00	N/A
Heat pump water heater (65 gallon, 120V)	$6,350.00	Per Unit	$675.00	N/A
Emergency loaner cost	$400.00	Per Unit	N/A	N/A
Heat pump HVAC, (ducted, inverter-driven) 2 Ton	$10,900.00	Per Unit	$750.00	$2,000.00
Heat pump HVAC, (ducted, inverter-driven) 3 Ton	$12,300.00	Per Unit	$750.00	$2,250.00
Heat pump HVAC, (ducted, inverter-driven) 4 Ton	$14,200.00	Per Unit	$750.00	$2,500.00
Base Electrification Measures				
Heat pump HVAC, (ducted, inverter-driven) 5 Ton	$17,300.00	Per Unit	$750.00	$2,750.00
Heat pump mini-split system (Ductless, inverter-driven,) one zone	$5,750.00	Per Unit	$400.00	$2,000.00
Heat pump mini-split system (Ductless, inverter-driven,) two zone	$9,800.00	Per Unit	$500.00	$2,250.00
Heat pump mini-split system (Ductless, inverter-driven,) three zone	$13,400.00	Per Unit	$600.00	$2,500.00

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Heat pump mini-split system (Ductless, inverter-driven,) four zone	$18,435.00	Per Unit	$700.00	$2,750.00
Electric induction range	$2,450.00	Per Unit	$500.00	$1,000.00
Electric induction cooktop	$3,050.00	Per Unit	$400.00	$1,000.00
High efficiency electric clothes dryer	$2,000.00	Per Unit	$500.00	$1,000.00
Condensing combo washer-dryer	$1,000.00	Per Unit	$500.00	$1,000.00
Electrical Services Measures				
Electric panel replacement - *Minor**	$4,850.00	Per Unit	N/A	N/A
Electric panel replacement - *Moderate**	$6,850.00	Per Unit	N/A	N/A
Electric panel replacement -*Major**	$9,450.00	Per Unit	N/A	N/A
Service upgrade	$800.00	Per Unit	N/A	N/A
Sub-panel replacement / installation	$1,600.00	Per Unit	N/A	N/A
Electrical Repair Minor	$800.00	Per Unit	N/A	N/A
Electrical Repair Moderate	$1,600.00	Per Unit	N/A	N/A
Electrical Repair Major	$2,400.00	Per Unit	N/A	N/A
Add 230 Volt Circuit (Homerun) Minor	$1,200.00	Per Unit	N/A	N/A
Add 230 Volt Circuit (Homerun) Moderate	$1,600.00	Per Unit	N/A	N/A
Add 230 Volt Circuit (Homerun) Major	$2,000.00	Per Unit	N/A	N/A
Add 120 Volt Circuit (Homerun) Minor	$800.00	Per Unit	N/A	N/A
Add 120 Volt Circuit (Homerun) Moderate	$1,200.00	Per Unit	N/A	N/A

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Add 120 Volt Circuit (Homerun) Major	$1,600.00	Per Unit	N/A	N/A
Rare Breaker Adder Minor	$50.00	Per Unit	N/A	N/A
Rare Breaker Adder Moderate	$75.00	Per Unit	N/A	N/A
Rare Breaker Adder Major	$100.00	Per Unit	N/A	N/A
Circuit sharing device	$3,000.00	Per Unit	N/A	N/A
Circuit throttling/pausing device	$3,300.00	Per Unit	N/A	N/A
Smart panel	$9,050.00	Per Unit	N/A	N/A
Tandem breaker	$200.00	Per Unit	N/A	N/A
Efficiency Measures				
Attic Insulation Final R 38-44	$2.50	Per Sq Ft	N/A	N/A
Subfloor or Platform Duct Sealing & Return Sizing Corrections	$1,500.00	Per Home	N/A	N/A
Deeply Buried Ducts	$3.60	Per Sq Ft	N/A	N/A
High Performance Installation Verification (HPIV)	$900.00	Per System	N/A	N/A
HPIV Additional System	$300.00	Per System	N/A	N/A
Health and Safety Measures				
CO Detector 10 year	$50.00	Per Home	N/A	N/A
Smoke Detector Minor	$50.00	Per Home	N/A	N/A
Smoke Detector Hardwire Minor	$150.00	Per Home	N/A	N/A
Smoke Detector Hardwire Moderate	$250.00	Per Home	N/A	N/A
Smoke Detector Hardwire Major	$400.00	Per Home	N/A	N/A
ERV Minor	$2,000.00	Per Home	N/A	N/A
ERV Moderate	$2,850.00	Per Home	N/A	N/A
ERV Major	$3,600.00	Per Home	N/A	N/A

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Add 2" Filter HVAC Minor	$40.00	Per Home	N/A	N/A
Add 2" Filter HVAC Moderate	$80.00	Per Home	N/A	N/A
Add 2" Filter HVAC Major	$120.00	Per Home	N/A	N/A
Add 2" Filter BOX Minor	$300.00	Per Home	N/A	N/A
Add 2" Filter BOX Moderate	$500.00	Per Home	N/A	N/A
Add 2" Filter BOX Major	$750.00	Per Home	N/A	N/A
Fix Water Leak (exterior cladding) Minor	$600.00	Per Home	N/A	N/A
Fix Water Leak (exterior cladding) Moderate	$1,000.00	Per Home	N/A	N/A
Fix Water Leak (exterior cladding) Major	$1,500.00	Per Home	N/A	N/A
Fix Water Leak (interior plumbing) Minor	$250.00	Per Home	N/A	N/A
Fix Water Leak (interior plumbing) Moderate	$600.00	Per Home	N/A	N/A
Fix Water Leak (interior plumbing) Major	$1,000.00	Per Home	N/A	N/A
Fix Drainage Gutters & Downspouts Minor	$500.00	Per Home	N/A	N/A
Fix Drainage Gutters & Downspouts Moderate	$1,000.00	Per Home	N/A	N/A
Fix Drainage Gutters & Downspouts Major	$1,500.00	Per Home	N/A	N/A
Pest Infestation Remediation Minor	$500.00	Per Home	N/A	N/A
Pest Infestation Remediation Moderate	$1,500.00	Per Home	N/A	N/A

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Pest Infestation Remediation Major	$3,000.00	Per Home	N/A	N/A
Asbestos Abatement Minor	$4,000.00	Per Home	N/A	N/A
Asbestos Abatement Moderate	$8,000.00	Per Home	N/A	N/A
Asbestos Abatement Major	$12,000.00	Per Home	N/A	N/A
Mold Remediation Minor	$500.00	Per Home	N/A	N/A
Mold Remediation Moderate	$1,500.00	Per Home	N/A	N/A
Mold Remediation Major	$3,000.00	Per Home	N/A	N/A
Remove Knob and Tube wiring	$350	Per Junction	N/A	N/A
Debris Removal Minor	$400.00	Per Home	N/A	N/A
Debris Removal Moderate	$800.00	Per Home	N/A	N/A
Debris Removal Major	$1,500.00	Per Home	N/A	N/A
Moving Person Items Minor	$400.00	Per Home	N/A	N/A
Moving Person Items Moderate	$800.00	Per Home	N/A	N/A
Moving Person Items Major	$1,200.00	Per Home	N/A	N/A
Structural Remediation Measures				
Roofing Repair Minor	$800.00	Per Home	N/A	N/A
Roofing Repair Moderate	$2,000.00	Per Home	N/A	N/A
Roofing Repair Major	$4,000.00	Per Home	N/A	N/A
Exterior Door Replacement Minor	$1,500.00	Per Home	N/A	N/A
Exterior Door Replacement Moderate	$2,500.00	Per Home	N/A	N/A
Exterior Door Replacement Major	$3,000.00	Per Home	N/A	N/A

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Whole House Weather Stripping Minor	$500.00	Per Home	N/A	N/A
Whole House Weather Stripping Moderate	$750.00	Per Home	N/A	N/A
Whole House Weather Stripping Major	$1,000.00	Per Home	N/A	N/A
Window Replacement Minor	$1,250.00	Per Home	N/A	N/A
Window Replacement Moderate	$1,600.00	Per Home	N/A	N/A
Window Replacement Major	$2,000.00	Per Home	N/A	N/A
Drywall Repair Minor	$400.00	Per Home	N/A	N/A
Drywall Repair Moderate	$800.00	Per Home	N/A	N/A
Drywall Repair Major	$1,200.00	Per Home	N/A	N/A
Plaster Repair Minor	$600.00	Per Home	N/A	N/A
Plaster Repair Moderate	$1,200.00	Per Home	N/A	N/A
Plaster Repair Major	$1,800.00	Per Home	N/A	N/A
Air Quality Remediation Measures				
Media Filter Upgrade Minor	$150.00	Per Home	N/A	N/A
Media Filter Upgrade Moderate	$200.00	Per Home	N/A	N/A
Media Filter Upgrade Major	$300.00	Per Home	N/A	N/A
Kitchen Vent Hood Replace Minor	$200.00	Per Home	N/A	N/A
Kitchen Vent Hood Replace Moderate	$300.00	Per Home	N/A	N/A
Kitchen Vent Hood Replace Major	$400.00	Per Home	N/A	N/A
Kitchen Vent Hood New Minor	$600.00	Per Home	N/A	N/A
Kitchen Vent Hood New Moderate	$800.00	Per Home	N/A	N/A
Kitchen Vent Hood New Major	$1,000.00	Per Home	N/A	N/A

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Bathroom Fan Replacement Minor	$400.00	Per Home	N/A	N/A
Bathroom Fan Replacement Moderate	$600.00	Per Home	N/A	N/A
Bathroom Fan Replacement Major	$800.00	Per Home	N/A	N/A
Bathroom Fan New / Nonexisting Minor	$700.00	Per Home	N/A	N/A
Bathroom Fan New / Nonexisting Moderate	$900.00	Per Home	N/A	N/A
Bathroom Fan New / Nonexisting Major	$1,100.00	Per Home	N/A	N/A
Exterior Vent Installation Minor	$700.00	Per Home	N/A	N/A
Exterior Vent Installation Moderate	$900.00	Per Home	N/A	N/A
Exterior Vent Installation Major	$1,100.00	Per Home	N/A	N/A
HVAC Optimization Measures				
Ductwork Repair Minor	$300.00	Per Home	N/A	N/A
Ductwork Repair Moderate	$600.00	Per Home	N/A	N/A
Ductwork Repair Major	$900.00	Per Home	N/A	N/A
Ductwork Replacement	$500.00	Per Home	N/A	N/A
New / Replacement Line Set Minor	$400.00	Per Home	N/A	N/A
New / Replacement Line Set Moderate	$650.00	Per Home	N/A	N/A
New / Replacement Line Set Major	$900.00	Per Home	N/A	N/A
Sheet Metal Fabrication Minor	$400.00	Per Home	N/A	N/A
Sheet Metal Fabrication Moderate	$650.00	Per Home	N/A	N/A
Sheet Metal Fabrication Major	$900.00	Per Home	N/A	N/A

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Low Resistance Register Grilles Minor	$400.00	Per Home	N/A	N/A
Low Resistance Register Grilles Moderate	$650.00	Per Home	N/A	N/A
Low Resistance Register Grilles Major	$900.00	Per Home	N/A	N/A
New Register Cut In (per each)	$275.00	Per Home	N/A	N/A
Attic Infrastructure (bringing up to code) Minor	$900.00	Per Home	N/A	N/A
Attic Infrastructure (bringing up to code) Moderate	$1,600.00	Per Home	N/A	N/A
Attic Infrastructure (bringing up to code) Major	$2,800.00	Per Home	N/A	N/A
Attic Hatch Retrofit Minor	$450.00	Per Home	N/A	N/A
Attic Hatch Retrofit Moderate	$600.00	Per Home	N/A	N/A
Attic Hatch Retrofit Major	$750.00	Per Home	N/A	N/A
Heat Pump Water Heater Optimization Measures				
Water Heater Duct In Minor	$600.00	Per Home	N/A	N/A
Water Heater Duct In Moderate	$750.00	Per Home	N/A	N/A
Water Heater Duct In Major	$900.00	Per Home	N/A	N/A
Water Heater Enclosure Minor	$400.00	Per Home	N/A	N/A
Water Heater Enclosure Moderate	$500.00	Per Home	N/A	N/A
Water Heater Enclosure Major	$600.00	Per Home	N/A	N/A
Water Heater Relocation Minor	$900.00	Per Home	N/A	N/A

Eligible Measure	Compensation for Installed Measure	Unit of Measure	Potential Compensation for 5-Year Warranty[6]	Potential Compensation for Premium Equipment Upgrade[7]
Prices in this worksheet	**are specific to San**	**Mateo, Santa**	**Clara Counties &**	**Los Banos.**
Water Heater Relocation Moderate	$1,600.00	Per Home	N/A	N/A
Water Heater Relocation Major	$2,800.00	Per Home	N/A	N/A
Permitting Fees (w/ HERS verification included)				
1st Unit	$750.00	Per Home	N/A	N/A
Additional Unit(s)	$300.00	Per Home	N/A	N/A
Market Rate Contractor Site Visit Consultation				
2-hour Virtual	$247.000	Per Home	N/A	N/A
4-hour On-Site	$494.00	Per Home	N/A	N/A
8-hour On-Site	$988.00	Per Home	N/A	N/A

Exhibit D – XeroHome Scope of Work and Pricing

Vistar Energy Inc. (hereon referred to as 'Subcontractor') proposes to perform the work described in this section ('Scope of Work') for Franklin Energy (hereon referred to as 'Contractor') who is performing work under contract for Peninsula Clean Energy Authority (hereon referred to as 'PCE' or 'Client').
The work is to provide the Contractor's Team access to XeroHome's energy analysis of individual existing single-family homes in PCE's service territory, San Mateo County and the City of Los Banos (hereon referred to as 'Analysis Region'). The Analysis Region includes approximately 190k single-family homes. The analysis will be designed and presented to Contractor to aid in their outreach and canvasing of homes for program participation, and to show utility bill impacts of specific electrification and energy efficiency upgrades for individual homes. Based on this, Contractor's team will be able to identify energy efficiency and electrification upgrades for individual homes that will lower the home's utility bills and quantify those savings.

About XeroHome™

XeroHome™ is a software platform developed by Subcontractor, that can build individual home energy models at the unprecedented scale of entire cities or regions, and provide personalized upgrade recommendations, based on each home's unique conditions. Unique to XeroHome™ is its ability to use publicly available data, such as home size, year of construction, building permits, and GIS data, to build a custom (EnergyPlus™) energy simulation model for a home. It then runs multiple iterations of the energy model, to provide recommendations on which energy upgrades are most suited to a home based on utility bill impacts and/or cost-effectiveness. XeroHome's proprietary analysis method significantly speeds up complex building energy simulation calculations using advanced data analytics to provide recommendations for a home in seconds.
Built within the tool is the unique ability to improve the accuracy of each home's simulation model, by adding home energy audit information, which makes the recommendations more reliable. This progression of improvement in accuracy is represented as badges associated with each home's analysis. An energy model built using data accessible prior to an on-site assessment is referred to as a 'White Badge Model' and the analysis from this model is referred to as 'White Badge Analysis'. When data is collected on-site (such as after an energy assessment), inputs to the energy model are refined based on this data, and the resulting model is referred to as a 'Green Badge Model' and the analysis from this model is referred to as 'Green Badge Analysis'.

XeroHome Insights Package™ Dashboard

Analysis from XeroHome's energy models is provided over a web-based interactive dashboard called the XeroHome Insights Package™ Dashboard (hereon referred to as 'Dashboard').
The Dashboard will be accessible to the Contractor and Client through most modern web-browsers over desktop and laptop computers. Using the Dashboard, Contractor shall be able to evaluate individual homes in the analysis region for utility bill impacts of energy efficiency and electrification upgrade packages.

- The Contractor shall be able to visualize data from XeroHome's White Badge Analysis of existing single-family homes in the analysis region via the Dashboard. The data will be visualized over a map of the analysis region along with charts, and data tables.

- The Dashboard shall have interactive features that will allow its users to review region-level aggregate data, as well as home-level details of individual homes. On a region-level, users will be able to apply filters to identify specific groups of homes for targeted outreach and canvassing. On a home-level, users will be able to review parameters that make up an individual home's energy model, and the results of energy analysis such as utility bill impacts for various energy upgrades.
- The Dashboard shall allow users to integrate data collected from on-site assessments (via Contractor's digital data collection tool – Clipboard). The resulting update to XeroHome's energy models from White to Green Badge and change in analysis shall be reflected on the data displayed on the Dashboard.
- The Dashboard shall provide the ability to create a custom package of upgrades for individual homes by selecting individual energy upgrades. The Contractor shall be able to review the combined impact of selected measures on the home's baseline calculation of utility bill and carbon emissions. Contractor shall use the findings from the Dashboard to inform the home's proposed scope of work. Contractor shall have the ability to export the Dashboard's findings in a format best suited for their workflow.

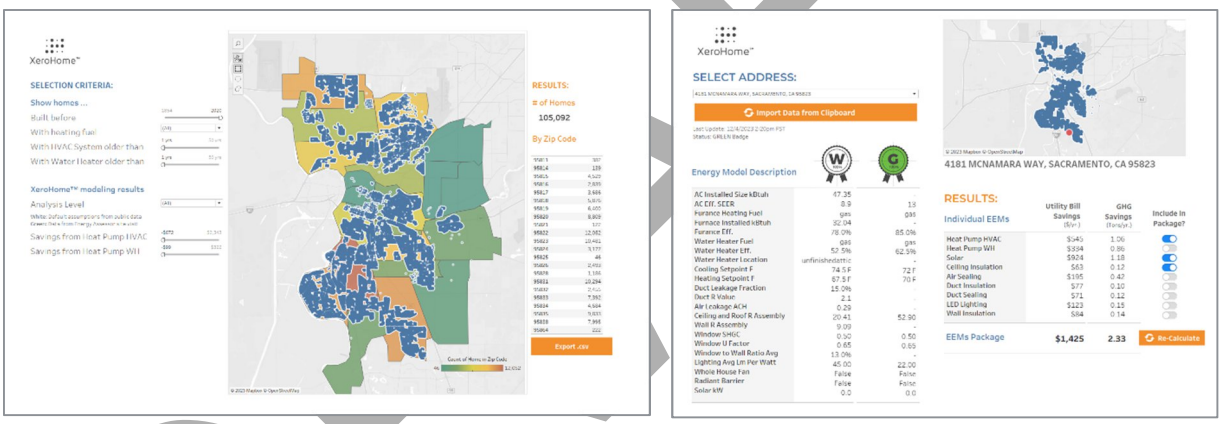


Figure 1: Example screens of XeroHome Insights Package™ Dashboard for an analysis region.

Note about Not-to-Exceed Budget

Subcontractor's not-to-exceed budgets for each task in this document are based on the assumption that there will be synergies in delivering a similar set of services for a separate contract that the Contractor will enter with Silicon Valley Clean Energy Authority (hereon referred to as 'SVCE'). The Subcontractor reserves the right to request a modified budget amounts noted in this document in the event that a contract with SVCE is not executed by the Contractor. Modification to the budget must be mutually agreed upon by Subcontractor and PCE, and will require an amendment to the PCE and Contractor Agreement.

1.1 Task 1: Project Initiation and Reporting

The Subcontractor shall conduct a Project Initiation meeting with Contractor and Client to confirm project tasks, requirements, and the timetable for deliverables. The project initiation meeting may also include other stakeholders such as city representatives, and community

stakeholders as identified by the Client. The Subcontractor shall report on the progress of various tasks (monthly or on a frequency suggested by the Contractor) to keep them informed on accomplishments, outstanding issues, and next steps.

1.1.1.1 Task 1 Deliverable(s)

- Project initiation meeting notes
- Progress updates to Contractor

1.1.1.2 Task 1 Not-to-Exceed Amount

- **Total: $1,030**

1.1.1.3 Task 1 Time Frame

- Project Initiation Meeting to be held within 2 weeks of PCE and Contractor Agreement signing.

1.2 Task 2: XeroHome Insights Package™ - Dashboard

This task consists of four distinct activities marked by four milestones where the Subcontractor shall provide deliverables as noted below.

Milestone 1 (M1): Data Acquisition

The Subcontractor shall work with various data vendors and access publicly available data sources to acquire data needed for energy modeling and analysis of homes in the Analysis Region. These datasets are noted below:

- Property tax assessment data
- Building permits data
- ZTRAX (Zillow) data to fill data gaps (available from PCE)
- GIS shape files for home geometry
- TMY and AMY weather files
- Utility rate information

1.2.1.1 Task 2 – M1 Deliverable(s):

- Complete acquisition of datasets listed above.
- Merge datasets into single database including each residential customer.

1.2.1.2 Task 2 – M1 Time Frame

- Within 2 months of Project Initiation.

Milestone 2 (M2): 50% Energy Model Development and Dashboard Access

The Subcontractor shall use the XeroHome™ software platform to develop energy models (White Badge Models) for 50% of all existing single-family homes in the Analysis Region. Subcontractor shall provide Contractor and PCE access to these models over the XeroHome Insights Package™ Dashboard for the purpose of evaluating the Dashboard's functionality and iterate on identifying needed Dashboard customizations (see Task 3).

1.2.1.3 Task 2 – M2 Deliverable(s):

- Access to energy models for 50% of homes in Analysis Territory over the XeroHome Insights Package™ Dashboard.

1.2.1.4 Task 2 – M2 Time Frame:

- Within 3 months of Project Initiation.

Milestone 3: 100% Energy Model Development and Dashboard Access

The Subcontractor shall complete development of the energy models for 100% of existing single-family homes in the Analysis Region (White Badge Models) and provide Contractor access to these models over the XeroHome Insights Package™ Dashboard.

1.2.1.5 Task 2 – M3 Deliverable(s):

- Access to energy models for 100% of homes in Analysis Territory over the XeroHome Insights Package™ Dashboard.

1.2.1.6 Task 2 – M3 Time Frame:

- Within 4 months of Project Initiation.

Milestone 4: Data load, API integration and Dashboard Release

The Subcontractor shall perform a portfolio-scale comparison of modeled energy use to historic electricity use and gas use data use of homes from PCE. If PCE cannot provide historical electricity or gas data for a particular home, NREL's ResStock modeling of residential buildings for PCE's region can be utilized. Based on findings, Subcontractor may update the XeroHome energy models by adjusting their modeling assumptions to improve their modeling accuracy. The Subcontractor shall provide Contractor and PCE access to the updated models over the XeroHome Insights Package™ Dashboard.
Subcontractor shall work with Contractor to identify data points for on-site data collection, and on API integration of Contractor's digital data collection tool (Clipboard) into XeroHome™.

The Subcontractor shall perform a User Acceptance Testing (UAT) as part of the release process of the Dashboard with the Contractor's and PCE's users to ensure usability and feature completion. Feature issues shall be identified, and Subcontractor shall work with the Contractor and PCE to prioritize fixes to those issues to ensure smooth release of the dashboard.
The Subcontractor shall provide a maximum of 20 user accounts to individuals in the Contractor and Client's teams to access the dashboard. Each account shall be password protected and uniquely assigned to individual users. The accounts shall be transferable to other individuals upon request. Access to the Dashboard for an account will be limited to the service territory identified with the Contractor and the Client. The Subcontractor shall work with Client to facilitate exporting data from the Dashboard in a .csv file format.

1.2.1.7 Task 2 – M4 Deliverable(s):

- Presentation of portfolio-scale comparison of modeled energy use to energy use data.
- API Integration of XeroHome Insights Package™ Dashboard with Contractor's on-site data collection tool (Clipboard)
- Completion of User Acceptance Testing (UAT) for release of dashboard for use by Contractor.
- Release of XeroHome Insights Dashboard™ - up to 20 user accounts.
- CSV file outputs related to individual homes or groups of homes by PCE staff.

1.2.1.8 Task 2 – M4 Time Frame:

- Within 5 months of Project Initiation.

Task 2 Not-to-Exceed Amount

- **Total: $260,304**
  i. Milestone 1: $65,076 – Due after completion of all deliverables in Task 2 – M1.
  ii. Milestone 2: $65,076 – Due after completion of all deliverables in Task 2 – M2.
  iii. Milestone 3: $65,076 – Due after completion of all deliverables in Task 2 – M3.
  iv. Milestone 4: $65,076 – Due after completion of all deliverables in Task 2 – M4.

1.3 Task 3: XeroHome Insights Package™ - Dashboard Customization

The Subcontractor shall work with Contractor and PCE to identify customizations needed in the XeroHome Insights Package™ Dashboard to suit the needs of PCE's Single Family Service Program in a requirements document. Subcontractor shall perform the Dashboard customization which shall include but not be limited to

- Updating any additional data fields that need to be visualized.
- Refining data field mapping between XeroHome and the data collected by Contractor's team during site assessments.

- Changing how the data fields and the outputs from the analysis are visualized on the Dashboard for better integration with Contractor's workflow.

Task 3 Deliverables

- Requirements document outlining all requested customizations for Contractor and Client approval.
- Release of XeroHome Insights Package™ Dashboard with customizations.

Task 3 Not-to-Exceed Amount

- **Total $25,000** – Please note that this task will be invoiced as Time and Materials (T&M). Assumption for labor hours of Subcontractor's team is detailed below.

Staffing Direct Labor (Vistar Energy)	Hourly Rate	Estimated Hours (Task 3)
Principal/Chief Executive Officer	$ 250	8
Chief Technology Officer	$ 250	12
Director	$ 230	16
Engineer Level 2	$ 220	0
Engineer Level 1	$ 205	80
Administration Staff	$ 125	0
Task 3 Budget (T&M)	$25,000	

Figure 2: Task 3 Budget – Hourly Rates and Hours Estimation

Task 3 Time Frame

- Requirements document: within 3 months of Project Initiation
- Customized dashboard: within 6 months of Project Initiation.

1.4 Task 4: XeroHome Insights Package™ - Subscription and Annual Updates

The Subcontractor shall provide continuous access to XeroHome™ analysis engine via the Dashboard outside of scheduled maintenance windows. This service will be available for the period of the project, starting with the release of Customized Dashboard to Contractor and PCE (end of Task 3). The associated cost will be billed as a quarterly subscription fee.
The Subcontractor shall make quarterly updates to keep the White Badge analysis current with updates to building permits data and changes to rates and carbon emissions estimates information. The updates shall be tested and deployed by Subcontractor at the end of each quarter and will be automatically reflected on the live XeroHome Insights Package™ Dashboard.

Task 4 Deliverables

- Access to XeroHome™ Analysis Engine via the XeroHome Insights Package™ Dashboard.
- Quarterly updated to XeroHome Insights Package™ Dashboard.

Task 4 Not-to-Exceed Amount

- **Total: $225,126**

  b. **$19,000 per quarter** for subscription to the XeroHome™ Analysis Engine.

  $**6,014 per quarter** for updates to keep White Badge analysis current.

Task 4 Time Frame

- Every quarter after initial deployment – 6 months after Project Initiation till end of contract.

1.5 Task 5: XeroHome Insights Package™ - API Access

The Subcontractor shall maintain a secure API service connecting XeroHome Insights Package™ Dashboard with Contractor's on-site data collection tool, Clipboard to provide data transfer capability from site energy assessments.

Task 5 Deliverables

- Secure API service between XeroHome Insights Dashboard with Contractor's Clipboard tool.

Task 5 Not-To-Exceed Amount

- **Total: $84,348**
- **$3,124 per month**, billed after the initial deployment of XeroHome Insights Package™ – 6 months after contract signing Dashboard. Billed monthly until end of contract.

Task 5 Time Frame

- Every month after initial deployment – 6 months after Project Initiation, till end of contract.

Exhibit D - 5-Year Extended Warrant

PREMIUM PROTECTION PLAN: SERVICE CONTRACT

This is Your Extended Service Contract. Please place this Contract in a safe place. You will need it in the event that service is required. This contract is fully insured as noted under the Coverage section.

Obligor: The Service Agreement Provider/Obligor under this Service Agreement is Dealers Alliance Corporation located at 240 N. Fifth Street, Suite 350, Columbus, OH, 43215. In Florida - the Obligor is Dealers Assurance Company located at 240 N. Fifth Street, Suite 350, Columbus, OH 43215, 800-282- 8913 (Florida License # 02977).

Administrator: The Service Agreement Administrator is: Fortress Extended Warranty Administration, LP, Located at 2221 Justin Road, Suite 119, PMB-153, Flower Mound, TX 75028, (833) 339-2366.

For claims or information about this Contract, call Your Dealer. When calling Your Dealer for service please refer to the Contract number listed above in the left corner of this contact.

Your Dealer is the service agent for this Contract. You should contact Your Dealer for questions, transfers, renewals and purchase of additional Contracts. Your Dealer provides service repairs for this Contract during Your Dealer's normal working hours.

Shipping, handling, and refrigerant disposal fees are not covered and are the responsibility of the owner. Proper maintenance is required by owner and proof of such may be requested to validate coverage.

TERMS AND CONDITIONS

1. **Service Agreement Provider (Obligor) Provider or Obligor:** The Service Agreement Provider/Obligor under this Service Agreement is Dealers Alliance Corporation located at 240 N. Fifth Street, Suite 350, Columbus, OH 43215. In Florida - the Obligor is Dealers Assurance Company located at 240 N. Fifth Street, Suite 350, Columbus, OH 43215 (Florida License # 02977).
2. **Definitions:** "We", "Us" and "Our" shall mean the obligor. In Florida "We", "Us" and "Our" shall mean Dealers Assurance Company "You" or "Your" shall mean the consumer or purchaser of the product(s) covered by this Service Agreement. "Service Agreement" ("Agreement") shall mean this document together with Your original purchase receipt. "Administrator" shall mean Fortress Extended Warranty Administration, LP Located at 2221 Justin Road, Suite 119, PMB-153, Flower Mound, TX 75028.

   For claims or information about this Agreement please call the Program Administrator (833) 339-2366.

   There is no deductible under this Service Agreement.
3. **WHAT IS COVERED:**

   In consideration of payment of the Service Agreement price, this Service Agreement provides for either the repair or replacement of the covered product(s) as described subject to the terms and conditions below. This Agreement does not cover repair or replacement of the product for any of the causes or provide coverage for any losses set forth in the section below entitled WHAT IS NOT COVERED. The covered product (or products) under this Service Agreement are set forth on page 1 of this Service Agreement. In the event of any conflict between this Section 3 and the description on page 1, the description on page 1 shall control.

   - **Repair Protection:** If Your product is eligible for repair protection this Agreement provides, at our discretion, for the repair or replacement of Your product to its standard operating condition provided the product, during normal usage, fails to perform its intended functions due to normal wear and tear; mechanical or electrical failure; or a defect in either materials or workmanship. Parts used to repair or replace the covered product may be new, used, refurbished or non-original manufacturer's parts that perform to factory specifications of the product;
   - **No Lemon Guarantee:** This Agreement provides that following the expiration of the manufacturer's warranty term and after three service repairs have been completed for the same problem, on an individual product that requires a fourth repair, as determined by Us, We reserve the right to replace the product with one of like kind and quality not to exceed the original purchase price of the product. This clause will be exercised at our sole discretion;
   - **GENERATOR(S):** All internally installed parts supplied by the manufacturer;
   - **CONDENSING UNIT(S):** All internally installed parts supplied by the manufacturer. Evaporator coils, condenser coils, and metering devices are covered against leaks as received from the manufacturer. The Agreement will not pay for changeover from CFC to non-CFC refrigerant or oil changes on commercial compressors;
   - **EVAPORATOR COIL:** A new evaporator coil is covered when sold as a part of a complete system;
   - **COMPRESSOR:** All internal functioning parts supplied by the manufacturer;
   - **ELECTRIC FURNACES AND AIR HANDLERS:** All internal functioning parts including heat modules and controls supplied by the manufacturer;
   - **GAS FURNACE:** All internal functioning parts supplied by the manufacturer;
   - **WATER HEATER:** All internal functioning parts supplied by the manufacturer. Excludes any repair due to calcium build-up;
   - **BOILER(S):** Coverage applies to internal parts as installed by the original manufacturer, additional external pumps excluded;
   - **HEAT PUMP:** Coverage applies to internal parts as installed by the original manufacturer, excludes exterior components (i.e. drain lines, disconnect breakers, external pumps) or any failure, leakage, or design problem associated with closed loop application or open discharge piping;

PREMIUM PROTECTION PLAN: SERVICE CONTRACT

- **REFRIGERANT LEAKS:** Covers repair of the leak and replacement refrigerant charge as a result of leaks internal of the unit. Refrigerant is covered only when a leak has been permanently repaired and/or a compressor or coil replaced;

4. **MAINTENANCE REQUIREMENT:** You must maintain the equipment in accordance with the service requirements set forth by the manufacturer to keep Your Service Agreement in force. Evidence of proper service, when required by Administrator, must be submitted in the event of a claim. Failure to maintain the product in accordance with the manufacturers instructions may result in denial of coverage under this Agreement.
5. **CLAIM SUBMISSION:** Upon inspection and diagnosis, if it is determined that the failure is covered by this Agreement, the service agent should repair the failure and proceed per the program guidelines and submit the claim along with proper documentation. You must sign all service invoices upon completion of the repair.
6. **HOURS OF SERVICE:** Repair service and service calls will be made during normal working hours of the service dealer. We do not cover overtime rates.
7. **TERMS:** This Service Agreement shall commence upon the date of Agreement purchase. The product manufacturer has primary responsibility for replacement or repair of the covered product during the manufacturer's warranty period. Claims will not be accepted before the standard waiting period expires. See Service Agreement for "Coverage Start Date"
8. **LIMIT OF LIABILITY:** The total amount that We will pay for repairs made in connection with all claims that You make pursuant to this Service Agreement shall not exceed the purchase price of the product, less taxes or our limit of liability table [Attachment: Limit of Liability], whichever is less. In the event that We make payments for repairs, which in the aggregate, are equal to the product Purchase Price or We replace the product with a new, rebuilt or refurbished product of equal or similar features and functionality, We will have no further obligations under this Service Agreement. For more details on Limit of Liability, please visit https://jbwarranties.com/lol.
9. **TO OBTAIN SERVICE:** If the covered product requires service, call the service contractor noted on the front page of Your Service Agreement. You must provide the Agreement number and explain the problem. They will attempt to resolve the problem you are experiencing over the telephone. If the service agent cannot resolve the problem, they will schedule a service call with you. We reserve the right to inspect the product from time to time. Service will be provided during normal business hours and in the USA only.
10. **PURCHASER RECORDS:** You may be required to provide proof of purchase as a condition for receiving service under the Agreement. Your Original Purchase Receipt and this Agreement should be kept in a safe place.
11. **WHAT IS NOT COVERED:**

- Any equipment located outside the United States of America;
- Equipment sold without a manufacturer's warranty;
- Refurbished products;
- Repair or replacement necessitated by loss or damage resulting from any cause other than normal use and operation of the product in accordance with the manufacturer's specifications and owner's manual. This includes, but is not limited to, theft, operator negligence, misuse, abuse, improper electrical/power supply, spikes and surges, incorrect wiring, non-connected/loose wires, Field installed wiring, exposure to natural disasters (such as tornados, hurricanes, floods, earthquakes);
- Unauthorized repairs, repairs due to improper installation and/or improper application, leaks caused from non-factory welds;
- Cosmetic damage to case or cabinetry or other non-operating parts or components, including corrosion or oxidation;
- Lack of manufacturer specified maintenance, improper equipment modifications, vandalism, animal or insect infestation, rust, dust, corrosion, defective batteries, battery leakage, acts of nature, or any other peril originating from outside the product;
- Any and all pre-existing conditions that occur prior to the effective date of this Agreement;
- Service necessary because of improper storage, improper ventilation, reconfiguration of equipment, use or improper movement of the equipment, including the failure to place the equipment in an area that complies with the manufacturer's published space or environmental requirements;
- Any utilization of equipment that is inconsistent with either the design of the equipment or the way the manufacturer intended the equipment to be used;
- Failures of products caused by any installation that prevents normal service;
- Any and all cases in which the manufacturer of the equipment would not honor any warranty regarding the equipment;
- Failure to use reasonable means to protect Your product from further damage after a failure occurs;
- Product(s) with removed or altered serial number;
- Service recommended (for convenience) by a repair facility not necessitated by mechanical or electrical breakdown even when components are operating outside manufacturers specifications but still providing proper heating and cooling;
- Any repair that is a result of in-warranty parts not provided or shipped by the manufacturer; damage or equipment failure which is covered by manufacturer's warranty, manufacturer's recall, or factory bulletins (regardless of whether or not the manufacturer is doing business as an ongoing enterprise);
- Systems or component(s) that are covered by a manufacturer's warranty, insurance or another service contract;
- Consequential damages or delay in rendering service under this Agreement or loss of use during the period that the product is at the repair center or otherwise awaiting parts;

PREMIUM PROTECTION PLAN: SERVICE CONTRACT

- Service required as a result of any alteration of the equipment or repairs made by anyone other than the authorized service provider, its agents, distributors, contractors or licensees or the use of supplies other than those recommended by the manufacturer;
- Charges related to "No problem found" diagnosis or preventative maintenance performed without mechanical breakdown or electrical failure. Non failure problems, including but not limited to; noises, squeaks, unbalanced fan blades, tightening of fittings, resetting switches, etc. Intermittent issues are not product failures;
- Standard Programmable and digital thermostats are covered with a complete split or package system if listed on the first page of this Contract. Additional coverage required for thermostats when OEM coverage is less than the term of the system agreement and when the thermostat cost is > $125 wholesale cost. Humidistats, Combination, Zone controllers, and variable speed motor (ECM) controllers for zone or humidity control are not covered with a system, and require additional separate agreement purchase;
- Services made mandatory by changes in Federal, State or Local regulations.
- Clogged drain line, electrodes, nozzles or gaskets, are considered maintenance and are not covered. Exterior disconnect box and high voltage wiring.
- Thermostat calibration and/or software updates, incorrect wiring and dead batteries.
- Appearance features, aesthetics, paint and cabinet parts, knobs and buttons, routine maintenance, periodic cleaning, and customer education;.
- Consequential damage caused by rust, oxidation corrosion, water, freezing, fire, lightning, general environmental conditions, insect or rodent infestation, vandalism, or other acts of Nature;
- Special tooling, blocks, tackle, dollies, and scaffolding.
- Filters, duct work, vents, external fuses, external line sets, belts, connectors, piping, high or low voltage lines external of the equipment;
- Premium service cost over normal service charges. Items located outside the installed unit's cabinet;
- Shipping, handling, and refrigerant disposal fees are not covered and are the responsibility of the owner;
- Failures due to incorrect refrigerants, improperly matched condensing units and evaporator coils, or metering devices;
- Dirty Sock Syndrome or odors;
- Automatic transfer switches above 400 amps and/or 3 phase, are excluded from coverage;
- Portable generators are excluded from coverage. Repairs performed by unauthorized Service Agents. Generators used as rental or trailer mounted applications;
- Generators used for prime power where utility power does or does not normally exist. Cost of normal maintenance (i.e. tune-ups and associated parts), adjustments, loose/leaking clamps, installation and start-up;
- Steel enclosures that are rusting due to improper installation, and/or location in a harsh or saltwater environment or scratched where integrity of paint applied is compromised;
- Failures resulting from exposure to corrosive environments, unless seacoast coverage is purchased. Corrosion caused by atmospheric environments contaminated by aerosols;
- Failures caused by any contaminated fuels, oils, coolants or lack of proper fluid amounts;
- Batteries, fuses, belts, spark plugs and all engine fluids;
- Transportation deemed abnormal;
- Equipment that has been moved from original address such as mobile homes, etc;
- Field installed accessories including but not limited to: float switch, secondary drain pan, baffle, drip eliminator, start kit, surge protector, condensate pump, wireless accessories, etc.;
- Refrigerant used during diagnostic, leak checks, or for temporary cooling/heating;

12. **RENEWAL:** This Service Agreement may at Our discretion be renewed at the expiration of its term. When We offer to renew the Service Agreement, the renewal price quoted will reflect the age of the product and the prevailing service cost at the time of the renewal.
13. **TRANSFERABILITY** This Agreement may be assigned or transferred at no charge to subsequent owners if the maintenance required has been performed. This can be done only if the original Service Agreement holder send s notice to the dealer and calls the Program Administrator toll-free at 833-339-2366 within one hundred and eighty (180) days of a change in ownership, the name and address of the new purchaser along with a copy of the original Service Agreement. In the event of a transfer of registered equipment, due to manufacturer/dealer replacement, the original start-up date will remain in effect for the duration of the Agreement.
14. **CANCELLATION:** You may cancel this Agreement at any time. To arrange for cancellation of this Agreement, call Administrator toll-free at 833-339-2366. If You cancel within the first thirty (30) days after purchasing this Agreement You will receive a full refund, less any claims paid or pending.

    If You cancel after thirty (30) days following Your purchase of this Agreement, You will receive a pro rata refund based on the time remaining on Your Agreement, less any claims paid or pending, subject to an administrative fee of $10.00 or 10% of the Agreement purchase price, whichever is less.

Administrator or We may only cancel this Agreement for the following reasons: nonpayment of the Agreement price, fraud or material misrepresentation. If We cancel this Agreement, Administrator will provide You with written notice of cancellation listing the reason for such cancellation not later than fifteen (15) days before the effective date of termination, and will refund Your payment in full, less any claims paid or pending.

15. **INSURED AGREEMENT:** This is not an insurance policy. However, We have obtained an insurance policy to insure Our performance under this Service Agreement. In the event We cease to operate, become bankrupt, or fail to pay any claim or fail to replace the Product covered under this Service Agreement within sixty (60) days after Product has been returned or, in the event that You cancel this Service Agreement, and We fail to refund the unearned portion of the Service Agreement price, You are entitled to make a direct claim against the insurer, Dealers Assurance Company, 240 N. Fifth Street, Suite 350, Columbus, OH 43215, 800-282-8913.
16. **SUBROGATION:** In the event that coverage is provided under this agreement, We shall be subrogated to all the rights You have to recover against any person or organization arising out of any defect which is the subject of a voluntary or mandatory recall campaign, as well as out of any order, judgment, consent decree, or other settlement, and You shall execute and deliver instruments and papers and do whatever is necessary to secure such rights. You shall do nothing to prejudice those rights. Further, all amounts recovered by You for which You have received benefits under this Agreement shall belong to, and be paid to JB Warranties, up to the amount of benefits paid under this Agreement. We shall recover only the excess after You are fully compensated for Your loss.

ENTIRE CONTRACT:

This Service Agreement together with your Purchase Receipt sets forth the entire contract between the parties and no representation, promise or condition not contained herein shall modify.

SPECIAL STATE DISCLOSURES

Regulation of service plans may vary widely from state to state. Any provision within this service agreement plan ("Service Agreement") which conflicts with the laws of the state where You live shall automatically be considered to be modified in conformity with applicable state laws and regulations as set forth below. The following state specific requirements apply if Your Service Agreement was purchased in one of the following states and supersede any other provision of Your Service Agreement terms and conditions to the contrary.

ALABAMA only:

The Service Agreement Provider is Dealer Alliance Corporation. You may return this Service Agreement within twenty (20) days of the date the Service Agreement was provided to You or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void and the full purchase price will be refunded to You. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. These provisions apply only to the original purchaser of the Service Agreement.

If You cancel this Service Agreement after the first (twenty) 20 days, you will receive the unearned portion of the full purchase price of the Service Agreement, less an administrative fee of up to twenty-five dollars ($25.00).

ARIZONA only:

Definitions: A "consumer" means a contract holder, inclusive of a buyer of the covered product (other than for re-sale), any person to whom the product is transferred during duration of the contract coverage period, or any person entitled to receive performance on the part of the obligor under applicable law; "service Dealer" is any person or entity that performs or arranges to perform services pursuant to a service contract which the person issues; "service contract administrator" means an entity which agrees to provide contract forms, process claims and procure insurance for and on behalf of a dealer in performance of the obligations pursuant to a service contract, but which may not itself perform actual repairs. Dealers Alliance Corporation is the provider and the obligor for this Service Agreement in Arizona.

Cancellation: No claim incurred or paid shall be deducted from the amount of any refund. The cancellation provision shall not contain both a cancellation fee and a cancellation penalty. Administrator or We may only cancel this Agreement for the following reasons: nonpayment of the Agreement price by You, fraud or material misrepresentation by You.

ARKANSAS only:

You may return this Service Agreement within twenty (20) days of the date the Service Agreement was mailed to You or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void, and the full purchase price will be refunded to You. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. These provisions apply only to the original purchaser of the Service Agreement.

CALIFORNIA only:

PREMIUM PROTECTION PLAN: SERVICE CONTRACT

This Service Agreement may be cancelled by the Agreement holder for any reason, including, but not limited to, the Product covered under this contract being sold, lost, stolen or destroyed. If You decide to cancel Your Service Agreement, and cancellation notice is received by the selling retailer within 30 days of the date you received the Service Agreement, and you have made no claims against the Service Agreement, you will be refunded the full Service Agreement price, less any claims; or if Your Service Agreement is cancelled by written notice after 30 days from the date you received this Service Agreement, you will be refunded a pro-rated amount of the Service Agreement price, less any claims paid or less an administrative fee of 10% of the Service Agreement price or $25, whichever is less, unless otherwise precluded by law. To arrange for cancellation of this Plan, please contact Your selling retailer.

COLORADO only:

Action under this Service Agreement may be covered by the provisions of the "Colorado Consumer Protection Act" or the ""Unfair Practices Act", articles 1 and 2 of title 6, C.R.S. A party to this Service Agreement may have a right of civil action under the laws, including obtaining the recourse or penalties specified in such laws.

CONNECTICUT only:

Section 14. Insured Agreement - is deleted and replaced with the following: This is not an insurance policy. However, We have obtained an insurance policy to insure our performance under this Service Agreement. In the event We cease to operate, become bankrupt, or fail to pay any claim or fail to replace the Product covered under this Service Agreement within sixty (60) days after the Product has been returned or, in the event that You cancel this Service Agreement, and We fail to refund the unearned portion of the Service Agreement price, You are entitled to make a direct claim against the insurer, Dealers Assurance Company, 240 N. Fifth Street, Suite 350, Columbus, OH 43215. Please call the insurer at 800-282-8913 to make a direct claim. The term of Your Service Agreement is automatically extended by the length of time in which the covered Product is in the Obligor's custody for repair under the Service Agreement. You may cancel Your Service Agreement if the covered product is lost, stolen, or destroyed. This Service Agreement provides in-home service. In the event You are unable to resolve a dispute with the Administrator, you may contact the State of Connecticut Insurance Department: P.O. Box 816, Hartford, CT 06142-0816, Attn: Consumer Affairs. The written complaint must contain a description of the dispute, the purchase or lease price of the Product, the cost of repair of the Product, and a copy of the Service Agreement.

FLORIDA only:

The obligor and administrator under this Service Agreement is Dealers Assurance Company (License No. 02977). If you cancel this Service Agreement, you will receive a refund equal to 90% of the unearned pro rata purchase price of the Service Agreement, less any claims that have been paid. If we cancel this Service Agreement, you will receive one hundred percent (100%) of the unearned pro rata purchase price of the Service Agreement. The rates charged to You for this Service Agreement are not subject to regulation by the Florida Office of Insurance Regulation.

GEORGIA only:

You may cancel this Service Agreement at any time by notifying the selling retailer in writing or by surrendering the Service Agreement to the selling retailer, whereupon the selling retailer will refund the unearned pro rata purchase price based on the time remaining on the request for cancellation, less an administrative fee of $10 or 10% of the pro-rata refund amount, whichever is less. To arrange for cancellation of this Plan, please contact Your selling retailer. The Obligor is also entitled to cancel this Service Agreement at any time based upon fraud, misrepresentation, nonpayment of fees by you. The following exclusion: ANY AND ALL PRE-EXISTING CONDITIONS THAT OCCUR PRIOR TO THE EFFECTIVE DATE OF THIS CONTRACT is hereby amended with respect to Georgia contract holders as follows:

WHAT IS NOT COVERED:

ANY AND ALL PRE-EXISTING CONDITIONS KNOWN TO YOU OR REASONABLY SHOULD HAVE BEEN KNOWN TO YOU THAT OCCUR PRIOR TO THE EFFECTIVE DATE OF THIS CONTRACT. Procedures for cancellation of this Service Agreement will comply with section 33-24-44 of the Georgia code. Administrator may cancel this Service Agreement upon thirty (30) days written notice to you. No claim incurred or paid shall be deducted from the amount of any refund.

HAWAII only:

The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. This provision applies only to the original purchaser of the Service Agreement.

ILLINOIS only:

The Administrator will pay the cost of covered parts and labor necessary to restore the Product(s) to normal operating condition as a result of covered or mechanical component failure due to normal wear and tear. You may cancel this Service Agreement at any time. If You cancel this Service Agreement within the first thirty (30) days of purchase and if no service has been provided to You, You shall

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receive a full refund of the purchase price less a cancellation fee equal to the lesser of ten percent (10%) of the purchase price or fifty dollars ($50.00). If You cancel this Service Agreement at any other time or if You cancel after service has been provided to You, You shall receive a refund equal to the pro rata purchase price less the value of any service received and less a cancellation fee equal to the lesser of ten percent (10%) of the purchase price or fifty dollars ($50.00).

INDIANA only:

Your proof of payment to the issuing dealer for this Service Agreement shall be considered proof of payment to the insurance company who guarantees Our obligation to You. This Service Agreement is not insurance and is not subject to Indiana insurance law.

MASSACHUSETTS only:

You may return this Service Agreement within twenty (20) days of the date the Service Agreement was mailed to You or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void, and the full purchase price will be refunded to You. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. These provisions apply only to the original purchaser of the Service Agreement.

MAINE only:

You may return this Service Agreement within twenty (20) days of the date the Service Agreement was mailed to You or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void and the full purchase price will be refunded to You. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. These provisions apply only to the original purchaser of the Service Agreement.

MARYLAND only:

You may return this Service Agreement within twenty (20) days of the date the Service Agreement was mailed to You or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void, and the full purchase price will be refunded to You. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. These provisions apply only to the original purchaser of the Service Agreement.

MINNESOTA only:

You may return this Service Agreement within twenty (20) days of the date the Service Agreement was mailed to You or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void, and the full purchase price will be refunded to You. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. These provisions apply only to the original purchaser of the Service Agreement.

MISSOURI only:

You may return this Service Agreement within twenty (20) days of the date the Service Agreement was mailed to You or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void, and the full purchase price will be refunded to You. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. These provisions apply only to the original purchaser of the Service Agreement. In the event of cancellation, no cancellation fee shall apply. In no event will claims paid be deducted from any refund.

NEVADA only:

This Service Agreement is not an insurance policy. This Service Agreement does not provide replacement or service coverage for failures or breakdowns arising from pre-existing conditions or for any form of consequential damages. The cancellation provision in Your Service Agreement is hereby deleted and replaced with the following:

"This Service Agreement is void and We will refund to You the purchase price of this Service Agreement, if no service or replacement claim has been made and You return the Agreement to Us: Within 20 days after the date this Service Agreement was mailed or otherwise sent to You; or Within 10 days after You have received a copy of the Service Agreement if We have furnished You with a copy of this Agreement at the time when this Agreement was purchased. To arrange for cancellation of this Agreement, please contact Your selling retailer. We will refund to You the purchase price of this Agreement within 45 days after it has been returned to Us. If We do not refund the purchase price within 45 days, We will pay the You a penalty of 10 percent of the purchase price for each 30-day period that the refund remains unpaid. You may also cancel this Service Agreement at any other time and receive a refund equal to the pro rata

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purchase price. These provisions apply only to the original purchaser of the Service Agreement. We may not cancel this Agreement once it has been in effect for at least seventy (70) days, except for the following conditions: Failure to pay the service Agreement purchase price; The Agreement holder being convicted of a crime which results in an increase in the service required under this Agreement; Discovery of fraud or material misrepresentation perpetrated by You in purchasing this Agreement or obtaining service; The discovery of an act or omission, or a violation of any condition of this Agreement by You which substantially and materially increases the service requested under the Service Agreement; or A material change in the nature or extent of the service required under the Service Agreement, which occurs after the purchase of this Agreement, and substantially and materially increases the service required beyond that contemplated at the time of purchase. If We cancel this Service Agreement for any of the above reasons, You will receive a refund equal to the pro rata purchase price. With respect to each Product covered under this Service Agreement, the Administrator and/or Obligor liability is limited to the original retail purchase price You paid for such Product. We may not cancel this Service Agreement until at least fifteen (15) days after the notice of cancellation has been mailed to You.

THIS SERVICE AGREEMENT IS SUBJECT TO A WAITING PERIOD AND PROVIDES NO COVERAGE PRIOR TO EXPIRATION OF THE WAITING PERIOD.

Repair Protection:

1. **Emergency Repair – Service Within 24 Hours:** For goods that are essential to the health and safety of the holder, such as loss of heating, cooling, plumbing or substantial electrical service, and such loss of service renders the home otherwise uninhabitable, will commence within 24 hours after the claim is reported.
2. **Emergency Repair – Status Report:**

   In an emergency situation, if the repairs cannot be completed within three (3) calendar days after the report of the claim the Administrator, will provide a status report to the holder that will include the following:

   - A list of the required repairs or services,
   - The primary reason causing the required repairs or services to extend beyond the 3-day period, including the status of any parts required for the repairs or services,
   - The current estimated time to complete the repairs or services, and
   - Contact information for the holder to make additional inquiries concerning any aspect of the claim and a commitment by you to respond to such inquiries not later than one (1) business day after such an inquiry is made.

NEW HAMPSHIRE only:

In the event You do not receive satisfaction under this Service Agreement, You may contact the New Hampshire Insurance Department at 21 South Fruit Street, Suite 14, Concord, NH 03301, 1 (800) 852-3416.

NEW JERSEY only:

The Agreement Provider/Obligor is Dealers Administrative Services Corporation. The Administrator will pay a penalty of 10% per month on a refund that is not paid or credited within forty-five (45) days after return of the service contract to the Administrator. This provision applies only to the original purchaser of the Service Agreement.

NEW MEXICO only:

Final Service Agreement price to be determine prior to presentation to Service Agreement holder for signature. You may return this Service Agreement within twenty (20) days of the date this Service Agreement was provided to You. If You made no claim, the contract is void, and the full purchase price will be refunded to You. The Administrator will pay a penalty of ten (10%) percent per month on a refund that is not made within sixty (60) days of the return of the Service Agreement. These provisions apply only to the original purchase of the Service Agreement. The Administrator may not cancel this Service Agreement once it has been in effect for seventy (70) days except for the following conditions: failure to pay an amount when due; the conviction of You in a crime that results in an increase in the service required under the Service Agreement; fraud or material misrepresentation by you in purchasing the Service Agreement or in obtaining service; or the discovery of an act or omission, or a violation of any condition of the Service Agreement by You which substantially and materially increases the service required under the Service Agreement. If Administrator cancels this Service Agreement, We will mail a written notice to You at Your last known address at least fifteen (15) days prior to cancellation with the reason for cancellation. The Administrator is not required to mail You written notice if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation, or a substantial breach of duties by You relating to the covered property or its use. This service contract is insured by Dealers Assurance Company. If the service contract provider fails to pay you or otherwise provide you with the covered service within 60 days of your submission of a valid claim, you may submit your claim to Dealers Assurance Company at 240 N. Fifth Street, Suite 350, Columbus, OH, 800-282-8913. If you have any concerns regarding the handling of your claim, you may contact the Office of Superintendent of Insurance at 855-427-5674.

NEW YORK only:

PREMIUM PROTECTION PLAN: SERVICE CONTRACT

The Service Agreement Provider/Obligor under this Service Agreement is Dealers Administrative Services. You may return this Service Agreement within twenty (20) days of the date this Service Agreement was provided to You, or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void and the full purchase price will be refunded to You. The Administrator will pay a penalty of ten (10) percent per month on a refund that is not made within thirty (30) days of return of the Service Agreement to the Administrator. These provisions apply only to the original purchaser of the Service Agreement. In the event we cancel this Service Agreement, We will mail a written notice to You at your last known address at least fifteen (15) days prior to cancellation with the reason for cancellation. Administrator is not required to mail You written notice if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation, or a substantial breach of duties by You relating to the covered property or its use.

NORTH CAROLINA only:

The purchase of a Service Agreement is not required in order to obtain financing. The Administrator may not cancel this Service Agreement except for nonpayment by You, or in violation of any of the terms and conditions of this Service Agreement. If You cancel Your Service Agreement, You will receive a pro-rata refund, less the cost of any claims paid and less a cancellation fee of ten percent (10%) of the amount of the refund.

OKLAHOMA only:

Dealers Alliance Corporation Service Warranty License No. # 44197929. This is not an insurance contract. Coverage afforded under this Service Agreement is not guaranteed by the Oklahoma Insurance Guaranty Association. In the event You cancel this Service Agreement, You shall receive a refund equal to ninety percent (90%) of the unearned pro-rata purchase price. To arrange for cancellation of this Plan, please contact Your selling retailer. In the event We cancel this Service Agreement, You shall receive a refund equal to one hundred percent (100%) of the unearned pro-rata purchase price, less the cost of any service received.

OREGON only:

If in an emergency situation and Administrator cannot be reached, You can proceed with repairs. The Administrator will reimburse You or the repairing facility in accordance with the Service Agreement provisions.

SOUTH CAROLINA only:

In order to prevent damage to the covered Product, please refer to the owner's manual. This Service Agreement does not provide coverage for pre-existing conditions. This Service Agreement does not cover repair and replacement necessitated by loss or damage resulting from 1) any cause other than normal use and operation of the Product in accordance with manufacturer's specifications and/or owner's manual or 2) failure to use reasonable means to protect Your Product from further damage after a breakdown or performance failure occurs. You may return this Service Agreement within twenty (20) days of the date this Service Agreement was provided to You, or within ten (10) days, if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void and the full purchase price will be refunded to You. To arrange for cancellation of this Agreement, please contact Your selling retailer. The Administrator will pay a penalty of ten percent (10%) per month on a refund that is not made within forty-five (45) days of return of the Service Agreement to the Administrator. These provisions apply only to the original purchaser of the Service Agreement. In the event the Administrator cancels this Service Agreement, the Administrator will mail a written notice to You at Your last known address at least fifteen (15) days prior to cancellation with the reason for cancellation. The Administrator is not required to mail You written notice if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation, or a substantial breach of duties by You relating to the covered property or its use. In the event You have a question or complaint, You may contact the South Carolina Department of Insurance, P.O. Box 100105, Columbia, South Carolina, 29202-3105, Telephone (803) 737-6134.

TEXAS only:

Fortress Extended Warranty Administration, LP, Administrator license #270. The Administrator will pay a penalty of ten (10) percent of the amount outstanding per month on a refund that is not made within forty-five (45) days. The provisions apply only to the original purchaser of the Service Agreement. In the event We cancel the Service Agreement, We will mail a written notice to You at Your last known address at least five (5) days prior to cancellation, which shall state the effective date of cancellation and the reason for cancellation. However, prior notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by You relating to the covered property or its use, or a substantial breach of Your duties relating to the covered product or its use. You may apply directly to the insurer if a refund or credit is not paid before the 46th day after the date on which the Service Agreement is canceled. Unresolved complaints concerning a provider or questions concerning the registration of a service contract provider may be addressed to the Texas Department of Licensing and Regulations, PO Box 12157, Austin TX 78711, telephone number 1-800-803-9202.

UTAH only:

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We may cancel this Service Agreement by providing You with (30) days' written notice for the following reasons only: fraud, material misrepresentation, substantial change in the risk assumed, unless We should reasonably have foreseen the change or contemplated the risk when entering into the contract. We may cancel this Service Agreement by providing You with ten (10) days written notice if the reason for cancellation is non-payment by You. This Service Agreement does not provide coverage for pre-existing conditions or any product that is subject to neglect, abuse or damage prior to issuance of the Service Agreement. If in an emergency situation and Administrator cannot be reached, You can proceed with repairs. The Administrator will reimburse You or the repairing facility in accordance with the Service Agreement provisions. This Service Agreement may be paid in full at the time of purchase or financed. Coverage afforded under this Service Agreement is not guaranteed by the Property and Casualty Guaranty Association. This Service Agreement is subject to limited regulation by the Utah Insurance Department. To file a complaint, contact the Utah Insurance Department. TERMS AND CONDITIONS ITEM 8 – TO OBTAIN SERVICE, is deleted and replaced with the following: 8. To Obtain Service: If the covered product requires service, contact the Selling Dealer noted on the front page of Your Service Agreement. You must provide the Agreement number and explain the problem. They will attempt to resolve the problem you are experiencing over the telephone. If the service agent cannot resolve the problem they will schedule a service call with You. In the event You are unable to contact the Selling Dealer, please contact the Administrator at 833-339-2366 to obtain service. We reserve the right to inspect the product from time to time. Service will be provided during normal business hours and in the USA only.

VERMONT only:

You may return this Service Agreement within twenty (20) days of receipt and, if no claim for service has been made, receive a full refund of the Agreement purchase price.

WASHINGTON only:

You may return this Service Agreement within twenty (20) days of the date this Service Agreement was provided to You, or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void and the full purchase price will be refunded to You. The Administrator will pay a penalty of ten (10) percent per month on a refund that is not paid or credited within thirty (30) days after the return of the Service Agreement to the Administrator. These provisions apply only to the original purchaser of the Service Agreement. In the event the Administrator cancels the Service Agreement, the Administrator will mail a written notice to You at Your last known address at least twenty-one (21) days prior to cancellation, which shall state the effective date of cancellation and the reason for cancellation. You may make a claim directly with Dealers Assurance Company at any time, at 240 N. Fifth Street, Suite 350, Columbus, OH 43215, 800-282-8913. The state of Washington is the jurisdiction for any civil action in connection with this Service Agreement.

WISCONSIN only:

THIS WARRANTY IS SUBJECT TO LIMITED REGULATION BY THE OFFICE OF THE COMMISSIONER OF INSURANCE. This Service Agreement may be cancelled by the purchaser within fifteen (15) days of the date of purchase for a full refund less actual administrative costs associated with issuance and cancellation. To arrange for cancellation of this Plan, please contact your selling retailer. The selling retailer shall return one hundred percent (100%) of the purchase price, less an administrative fee of ten percent (10%) of the Service Agreement price up to twenty-five dollars ($25.00). We may only cancel this Service Agreement for material misrepresentation by You, non-payment by You, or a substantial breach of duties by You relating to the covered product or its use. If We cancel this Service Agreement, We will mail written notice to You at Your last known address at least ten (10) days prior to cancellation. The notice shall state the effective date and reason for cancellation.

Lack of pre-authorization shall not be the sole grounds for a claim denial; however, unauthorized repairs may not be covered if evaluated to have been an unreasonable expense. Our obligations under this Service Agreement are insured under a contractual liability insurance policy. Should We fail to pay a covered claim under this Service Agreement within sixty (60) days after You provide proof of loss or, in the event You cancel this Service Agreement and We fail to refund the unearned portion of the Service Agreement purchase price or, if We becomes insolvent or otherwise financially impaired, You are entitled to make a direct claim against the insurer, Dealers Assurance Company, at 1-800-282-8913 or 240 N. Fifth Street, Suite 350, Columbus, OH 43215 for reimbursement.

Terms & Conditions, Item 7. Limit of Liability, is deleted and replaced with the following: The total amount that We will pay for repairs made in connection with all claims that You make pursuant to this Service Agreement shall not exceed the purchase price of the product less taxes, or our limit of liability table [Attachment: Limit of Liability], whichever is less. In the event that We make payments for repairs, which in the aggregate, are equal to the product Purchase Price, or We replace the product with a new, rebuilt or refurbished product of equal or similar features and functionality, We will have no further obligations under this Service Agreement. For more details on Limit of Liability, please visit https://jbwarranties.com/lol.

WYOMING only:

You may return this Service Agreement within twenty (20) days of the date this Service Agreement was provided to You, or within ten (10) days if the Service Agreement was delivered to You at the time of sale. If You made no claim, the Service Agreement is void and the full purchase price will be refunded to You. The Administrator will pay a penalty of ten (10) percent on a refund that is not paid or

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credited within forty-five (45) days after return of the Service Agreement to the Administrator. These provisions apply only to the original purchaser of the Service Agreement. In the event Administrator cancels the Service Agreement, Administrator will mail a written notice to You at Your last known address, at least, ten (10) days prior to cancellation which shall state the effective date of cancellation and the reason for cancellation. However, prior notice is not required if the reason for cancellation is nonpayment of the provider fee, a material misrepresentation by You relating to the covered property or its use, or a substantial breach of Your duties relating to the covered product or its use.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Roy Xu, Director of Power Resources

SUBJECT: Study Session on Project Ownership (Discussion)

BACKGROUND

Staff will be making a study session presentation for this item. There are no written materials.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jeremy Waen, Senior Director of Regulatory Policy
Doug Karpa, Managing Counsel of Regulatory Policy
Matthew Rutherford, Manager of Regulatory Policy
Zsuzsanna Klara, Regulatory Compliance Analyst
Jenna Sharp, Regulatory Analyst

SUBJECT: Regulatory Policy Team Quarterly Report

BACKGROUND

Peninsula Clean Energy's regulatory policy department continues to cover a wide range of policy advocacy and compliance matters, which are all important to the agency's ongoing success. Due to the department's small size (relative to the volume of policy substance that it manages), the team continues to operate in a manner where each team member has their own domains of expertise:

Jeremy Waen continues to direct the team and oversee the department along with key proceedings relating to the Power Charge Indifference Adjustment (PCIA) and annual rate adjustments.

Doug Karpa has been heavily focused on Resource Adequacy (RA) and Integrated Resources Planning (IRP) at the California Public Utilities Commission (CPUC). He has also engaged with the California Independent System Operator (CAISO) on issues of Resources Adequacy, Transmission Planning, Interconnection, and Deliverability.

Matthew Rutherford has continued his work in supporting PCE's programmatic efforts through Transportation Electrification, Building Decarbonization, Resiliency, Supplier Diversity, Demand Flexibility, Demand Response, and DAC-Green Tariff matters.

Jenna Sharp joined PCE in September 2023 and has been initially supporting regulatory compliance requirements. She is also serving as the Regulatory Team's primary liaison with the Account Services and Marketing and Communications teams to further support interdepartmental coordination. She is also helping support the team on various near-term tasks like drafting the Load Modification Standard compliance plan and helping the department prepare for its annual Meet and Greets with state commissioners.

DISCUSSION

Regulatory Compliance

Jenna Sharp has helped coordinate with the Power Resources and Programs teams on compliance-related data requests and filings to ensure timely submission. Doug Karpa has continued PCE's interdepartmental work on developing protocols around internal data breach prevention and response plans.

Listed below are the compliance filings and data requests the Regulatory Team assisted with since November.

- 2024 Slice-of-Day Year-Ahead Resource Adequacy (YARA) Filings – 12/17/23
- Integrated Resourced Plan (IRP) Midterm Reliability Compliance Filing – 12/18/23
- Disadvantaged Community - Green Tariff (DAC-GT) Quarterly / Community Solar Green Tariff (CSGT) Semiannual Report – 1/30/24

California Public Utilities Commission (CPUC)

Integrated Resource Planning (IRP)

The CPUC has issued a proposed decision (expected to be adopted shortly) that establishes a plan for generation procurement through 2035. This plan is based on the aggregated IRPs of the state's Load Serving Entities (LSEs) (rather than creating a new plan from scratch) and adopts the 25 Million Metric Tons of carbon dioxide (MMT CO_2) target for 2035 and 8MMT CO_2 target for 2045.

This portfolio will also be transmitted to the CAISO, alongside a sensitivity case examining how to retire 15 GW of fossil gas generation in the state. This last element is a critical component to address some severe environmental justice concerns since many of these plants are in disadvantaged communities. This decision also creates a new pathway to extend the online date for "long lead-time" resources, due in 2028, provided the LSE requesting the extension backfills with an equivalent amount of generic RA Capacity by 2028.

The next phase will be to develop a mechanism to ensure all LSEs are procuring their appropriate share of resources after 2028. Although the staff proposal has not been released, the Proposed Decision described above has suggested that the CPUC is sympathetic to the need to not penalize LSEs which move faster than the CPUC's targets. PCE staff will work diligently to protect CCA procurement autonomy and prevent cost shifting from the CPUC procurement.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Resource Adequacy (RA)

In RA, the 2024 compliance year is the last year that will use the existing Effective Load Carrying Capacity (ELCC) approach as we shift to the hourly Slice-of-Day methodology for 2025. Recent reports from the CPUC suggest that while the RA system as a whole is barely sufficient to cover system need, inflexibility in the Commission-adopted Slice-of-Day construct

is making it difficult for individual LSEs to meet every hour as required.

Our efforts are currently focusing on bringing forward proposals to address that inflexibility, to change the import rules to make California more attractive to Resource Adequacy suppliers from out of state, and to create a waiver process when compliance is essentially impossible. These measures should help to bring the costs of RA compliance down and promoting greater affordability of electricity rates.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Distributed Energy Resource Policy (DER)

In the DER space, Doug Karpa is leading efforts on a cluster of dockets to plan for more transparent and improved distribution planning and the creation of more meaningful mechanisms to monetize the benefits DER provide to the grid to foster beneficial DER. In particular, the CPUC has launched a new proceeding to establish timelines and requirements for PG&E energization of new customers or customers with expanded needs. CalCCA is taking steps to directly represent the interests of its members in these cases as well.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Transportation Electrification Policy and Infrastructure (TEPI)

Matthew Rutherford continues to lead PCE's engagement on Transportation Electrification (TE) matters. And in December, the Commission issued a new Order Instituting Rulemaking Regarding Transportation Electrification Policy and Infrastructure (TEPI). This new, wide-ranging TE docket rulemaking proceeding addresses several issues such as: (1) timely energization of EV charging sites; (2) grid planning to support TE; (3) rate affordability, equity, and BTM infrastructure deployment; (4) Vehicle Grid Integration that is oriented to evolving business models, market strategies, and vehicle support of grid needs; and (5) other TE policy development and collaboration that may be required.

The CCAs engaged in prior TE matters have committed to jointly engaging in this proceeding as well. A fundamental difference is that unlike the prior TE docket, there is no prompt from the Commission to discuss the potential for CCAs to receive distribution ratepayer funding to administer their own TE programs. But while that topic is unlikely to arise within the TEPI, the Joint CCAs will monitor as the scope develops to identify any key areas where we may want to engage. We anticipate that the final scoping memo that will define what issues the Commission plans to address will be issued by May 1, 2024.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Demand Flexibility Though Rates

As included in the Board Memo for May 2023, there is an ongoing proceeding before the Commission to enable widespread demand flexibility for all customer classes through the development and implementation of innovative dynamic rate designs. These new rates are meant to address several key concerns, such as enhancing grid reliability, bill affordability,

and enable widespread electrification. CalCCA is representing all the CCAs in this proceeding and has convened a tiger team of CCA representatives to inform their advocacy.

On January 25, 2024, the Commission recently adopted a Final Decision authorizing an expanded use of the existing AgFIT, or Flexible Irrigation Technology, dynamic rate pilot jointly administered by Valley Clean Energy and PG&E. The AgFIT as originally designed enables agricultural customers with large irrigation pumping loads to automate those pumps using technology incentives offered through the program and software to better manage the associated costs of that demand. It also provides participating customers with forecasted energy prices up to a week in advance to allow them to plan their pumping needs in response to market prices and to reduce their energy costs.

The Decision proposes to implement this expansion through two separate pilots: Expanded Ag Pilot would focus strictly on agricultural customers and Expanded Pilot 2 would be available to commercial and industrial customers, as well as certain limited residential customers. The Decision directs PG&E to make these two Pilots available throughout the IOU's service territory, makes them available to CCA customers if their CCA chooses to participate, allows uncapped enrollment, and establishes an implementation period from June 2024 through December 2027. And while PG&E is directed to implement both Expanded Pilots by June 2024, the CCAs have been granted more time to consider. CCAs must file a Tier 1 advice letter by March 1, 2025, if they wish to participate in the Expanded Ag Pilot, or June 1, 2025, if they wish to participate in Expanded Pilot 2.

The CCAs and PG&E have been in regular communication about the potential of joint pilots for some time and PCE is having active discussions on whether we will partner with PG&E to offer these expanded pilots to our customers. These Pilots would likely contribute to PCE's compliance with the CEC's Load Management Standard.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT)

Matthew Rutherford continues to lead PCE's engagement in policy matters related to PCE's DAC-GT and CSGT programs with support from Jenna. PCE continues to collaborate with the 10 CCAs who administer their own DAC-GT and CSGT programs to engage on these policy matters. In the proceeding at hand, the CPUC is assessing whether a suite of customer renewable subscription programs should be modified or discontinued, and whether the CPUC should adopt a new community renewable energy program. The four existing programs that are up for review in this proceeding are DAC-GT, CSGT, Enhanced Community Renewables (ECR), and Green Tariff Shared Renewables (GTSR). The latter two programs are only offered by the IOUs.

The CCAs expect to receive a proposed decision on the future of the existing programs by the end of March 2024. If a new community renewable energy program is adopted, it could come from a separate proposed decision that is expected by the end of June 2024.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2, and Key Tactic 3)

California Independent System Operator (CAISO)

The California Independent System Operator continues to implement stakeholder processes that are likely to have critical impacts on Peninsula Clean Energy's operations. Doug is actively participating in these areas. Timely updates from these processes include:

1. **Interconnection:** CAISO has developed a proposal with greater requirements to participate in the interconnection cluster study process, while limiting what projects get studied based on scoring criteria. Doug Karpa has been part of the team that succeeded in getting a significant weight on the interests and needs of Load Serving Entities. The final tariff changes should be complete by mid-2024.
2. **Resource Adequacy Enhancements:** CAISO is working on a proposal that currently would use a single evening net peak value from the slice of day methodology used by the CPUC, so that a Load Serving Entity that is compliant with the CPUC's RA obligations would be likely to also have adequate Resource Adequacy showings at CAISO.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

California Energy Commission

Load Management Standard (LMS)

Leslie Brown, Doug Karpa, and Jenna Sharp are leading the staff working group to develop PCE's Load Management Standard compliance plan. This plan will include evaluation of marginal cost based real time rates based on cost effectiveness, technical feasibility, equity, and benefits to the grid and customers. If the plan does not conclude that such rates are cost effective, feasible, equitable, or beneficial, the plan will recommend marginal cost-based programs instead. This plan is to come before the PCE Board no later than May 30, 2024.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Power Source Disclosure (PSD)

Doug Karpa is leading PCE's engagement with the California Energy Commission's proposed new regulations for the Power Content Label (PCL), which will transition the power content label to a 24-hour basis as required by SB 1158 (Becker). The proposed regulation changes may also improve the accuracy of the currently used annual accounting by no longer allowing Load Serving Entities to move fossil gas emissions out of their calculations by buying excess renewable energy among other changes.

(Public Policy Objective A, Key Tactic 1, and Key Tactic 2; Public Policy Objective C, Key Tactic 3)

Stakeholder Outreach

Doug Karpa hosted Peninsula Clean Energy's regular monthly call with environmental justice and environmental advocates and other CCA staff on December 13, 2023 on the regulatory and legal barriers to achieving a fully decarbonization 24/7 renewable portfolio.

Doug Karpa is also a member of the steering committee for a new CCA stakeholder forum to discuss key affordability issues in the electricity sector with rate payer and equity advocates across the state. This group is hosting select conversations with key advocates starting this month.

(Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.

STRATEGIC PLAN

Cited throughout.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Marc Hershman

SUBJECT: Update on Legislative Activities

DISCUSSION

SACRAMENTO SUMMARY

The current state legislative session convened on January 3, 2024. There were a number of two-year bills from 2023 that had not yet been voted out of their house of origin. These bills were on a tight timeframe and had to be moved to the second house by the end of January. Although PCE was monitoring several bills in this category, none of the bills moved forward.

The deadline for the introduction of new bills is February 16. Many bills of interest have been introduced in 2024. PCE is tracking bills of interest through a matrix addendum to the monthly legislative update. Staff would appreciate any feedback you would like to share regarding the matrix and this new approach.

Noteworthy Changes in the Legislature

On February 5 the Senate leadership gavel passed from Pro Tem Toni Atkins to Senator Mike McGuire. Pro Tem McGuire represents coastal California from Marin through Sonoma to the Oregon border. His district includes 3 CCAs.

Shortly after he became Pro Tem, Senator McGuire announced some important changes to Senate leadership and committee organization.

Senate Democratic Leadership

- Senator Lena A. Gonzalez (D-Long Beach), Majority Leader
- Senator Angelique V. Ashby (D-Sacramento), Assistant Majority Leader
- Senator Aisha Wahab (D-Hayward), Assistant Majority Leader
- Senator Monique Limón (D-Santa Barbara), Democratic Caucus Chair
- Senator Dave Cortese (D- San Jose), Majority Whip
- Senator María Elena Durazo (D-Los Angeles), Assistant Majority Whip
- Senator Steve Padilla (D-San Diego), Assistant Majority Whip

Senator Anna Caballero (D-Los Banos) is now the chair of the powerful Senate Committee on Appropriations.

Senator Scott Wiener (D-Daly City/Colma) is chair of the Senate Committee on Budget and Fiscal Review. As noted in last month's legislative update, the state's multi-billion dollar budget deficit situation will have a significant impact on legislative initiatives.

Senator Josh Becker (D-Menlo Park) will remain as chair of the Senate Budget Subcommittee #2 on Resources, Environmental Protection and Energy.

Senator Steven Bradford (D-Gardena) retains his post as Chair of the Senate Committee on Energy, Utilities and Communications. That committee membership is now as follows:

- Senator Steven Bradford (D-Gardena), Chair
- Senator Brian Dahle (R-Bieber), *Vice-Chair*
- Senator Angelique V. Ashby (D-Sacramento)
- Senator Josh Becker (D-Menlo Park)
- Senator Anna M. Caballero (D-Merced)
- Senator Bill Dodd (D-Napa)
- Senator María Elena Durazo (D-Los Angeles)
- Senator Susan Talamantes Eggman (D-Stockton)
- Senator Lena A. Gonzalez (D-Long Beach)
- Senator Shannon Grove (R-Bakersfield)
- Senator Monique Limón (D-Santa Barbara)
- Senator Dave Min (D-Irvine)
- Senator Josh Newman (D-Fullerton)
- Senator Susan Rubio (D-Baldwin Park)
- Senator Kelly Seyarto (R-Murrieta)
- Senator Nancy Skinner (D-Berkeley)
- Senator Henry I. Stern (D-Los Angeles)
- Senator Scott Wilk (R-Santa Clarita)

(Public Policy Objective B, Key Tactic 1)

ATTACHMENTS:

2.12.24 Bill Matrix.docx

Status of 2024 Legislative Session Bills
As of February 12, 2024
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
AB 1550 (Bennett) Green Hydrogen Standard	Would define green hydrogen as hydrogen produced utilizing non biogas/biomass renewable electricity to electrolyze water into hydrogen. Also defines renewable hydrogen as hydrogen produced utilizing renewable electricity, except for dairy biogas, to electrolyze water into hydrogen The bill would require all hydrogen used in transportation and energy sectors to be green or renewable by 2045.	Dead 2-year bill that failed to pass the Assembly by 1/31 deadline	None	None	
AB 1567 (Garcia) Climate Bond	Proposes a $15.9 billion climate resilience bond to fund programs responding to drought/flood, wildfire, sea-level rise, etc. The bond proposes $2 billion for energy resilience programs such as zero-emission vehicle infrastructure and clean energy transmission projects.	2-year bill currently pending in Senate Committee on Natural Resources & Water	None	None	Bond measures must be signed by the Governor by June 27 for placement on the November 5 ballot.
AB 1852 (Pacheco) Clean Power Alliance	Current law makes certain information presented to the joint powers agency in closed session confidential, and authorizes a member of the legislative body of a local agency member to disclose certain information obtained in a closed session to legal counsel of that member local agency or to other members of the	Referred to Assembly Committee on Local Government	None	None	This bill is sponsored by the Clean Power Alliance

	legislative body of that local agency in a closed session. Current law further authorizes the Clean Power Alliance of Southern California to authorize a designated alternate member of its legislative body who is not a member of the legislative body of a local agency member to attend its closed sessions and to make similar disclosures described above. Current law repeals these provisions relating to the Clean Power Alliance of Southern California on January 1, 2025. This bill would extend that repeal date to January 1, 2030.				
AB 1912 (Pacheco)	Would require, before holding a committee hearing on a bill that proposes a new or modifies an existing requirement imposed on an IOU or proposes a new or modifies an existing program that would be paid for by IOU ratepayers, that a request be made to the University of California, Berkeley, to prepare a written analysis of the bill assessing impacts to rates, other potential funding sources, etc.	Referred to Assembly Committee on Utilities & Energy	None	None	
AB 1921 (Papan) Linear Generators	This bill would expand the definition of "renewable electrical generation facility", for purposes of compliance with the Renewable Portfolio Standard, to include a facility that uses linear generators using renewable fuels and meets those other specified requirements.	Referred to Assembly Committee on Utilities & Energy and Assembly	None	None	This bill is sponsored by Mainspring, a company located in Menlo Park

		Committee on Natural Resources			
AB 1999 (Irwin) Fixed Charges	The bill would permit the PUC to authorize fixed charges that, as of January 1, 2015, do not exceed $5 per residential customer account per month for low-income customers enrolled in the California Alternate Rates for Energy (CARE) program and that do not exceed $10 per residential customer account per month for customers not enrolled in the CARE program. The bill would authorize these maximum allowable fixed charges to be adjusted by no more than the annual percentage increase in the Consumer Price Index for the prior calendar year, beginning January 1, 2016.	Referred to Assembly Committee on Utilities & Energy	None	None	This bill is in response to the Income Graduated Fixed Charge proceeding at the CPUC as authorized by AB 205 (2022)
SB 382 (Becker) Property Disclosures: Electrical Systems	This bill would, on or after January 1, 2026, require a seller of a single-family residential property to deliver a specified disclosure statement to the prospective buyer regarding the electrical systems of the property.	2-year bill. Awaiting policy committee referral in the Assembly	None	None	
SB 867 (Allen) Climate Bond	Proposes a $15.5 billion climate resilience bond to fund programs responding to drought/flood, wildfire, sea-level rise, etc. The bond proposes $2 billion for energy resilience programs such as zero-emission vehicle infrastructure and clean energy transmission projects.	2-year bill currently pending in Assembly Committee on Natural Resources	None	None	Bond measures must be signed by the Governor by June 27 for placement on

					the November 5 ballot.
SB 908 (Cortese)	Would prohibit an elected or appointed official or employee of a public agency from creating or sending a public record using a nonofficial electronic messaging system unless the official or employee sends a copy of the public record to an official electronic messaging system, as specified. By imposing additional duties on local agencies, the bill would create a state-mandated local program.	Awaiting policy committee referral in the Senate	None	None	
SB 938 (Min) Utility Accountability Act	Would prohibit, except as provided, an electrical or gas corporation from recording various expenses associated with political influence activities or with advertising to accounts that contain expenses that the electrical or gas corporation recovers from ratepayers. The bill would require an electrical or gas corporation to provide the Public Utilities Commission with all information deemed necessary to monitor compliance with that prohibition. The bill also would require an electrical or gas corporation, for each business unit of the corporation that performs work associated with political influence activities or advertising, to annually file with the commission a report containing specified information. The bill would require the	Referred to Senate Committee on Energy, Utilities and Communications	None	None	This bill is co-sponsored by TURN and Earthjustice.

	commission to make the report publicly available.				

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Roy Xu, Director of Power Resources

SUBJECT: Energy Supply Procurement Quarterly Report

BACKGROUND

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 (CEO) 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. CEO 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.

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.

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 31st 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 31st 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 31st of the prior year	Up to 12 months

2. Medium-Term Agreements:
CEO, 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:
CEO, 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.

DISCUSSION

This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in November 2023. This summary is provided to the Board for information purposes only.

Execution Month	Purpose	Counterparty	Term
October *	Purchase of Resource Adequacy	Merced Irrigation District	3 Months
November	Sale of Resource Adequacy	NRG Business Marketing LLC	1 Month
November	Purchase of PCC1 Energy	Sonoma Clean Power Authority	1.5 Months
November	Sale of Resource Adequacy	Pilot Power Group, LLC	1 Month
November	Sale of GHG-Free Energy	San Diego Community Power	1 Month
November	Sale of PCC1 Energy	3PR Trading, Inc.	13 Months

December	Purchase of Resource Adequacy	Shell Energy North America (US), L.P.	4 Months
December	Sale of PCC1 Energy	Calpine Energy Services, L.P.	13 Months
December	Purchase of Resource Adequacy	Ava Community Energy Authority	2 Months
December	Sale of Resource Adequacy	Ava Community Energy Authority	2 Months
December	Purchase of of Energy Hedge	TransAlta Energy Marketing (U.S.) Inc.	3 Months
December	Purchase of of Energy Hedge	Morgan Stanley Capital Group Inc.	3 Months
December	Purchase of Resource Adequacy	Shell Energy North America (US), L.P.	1 Month
December	Purchase of of Energy Hedge	Calpine Energy Services, L.P.	2 Months
December	Sale of GHG-Free Energy	Northern California Power Agency	13 Days
December	Purchase of Resource Adequacy	City of Vernon	19 Months
December	Sale of Resource Adequacy	City of Vernon	19 Months
December	PCIA Allocation of GHG-Free Energy	Pacific Gas and Electric Company	12 Months
February	Purchase of Resource Adequacy	Pacific Gas and Electric Company	1 Month

* The deal was executed in November 2023 but dated as of October 2023.

STRATEGIC PLAN

The above contracts executed in October, November, and December of 2023, and February 2024, support the Power Resources Objective 2 for Procurement: Procure power resources to meet regulatory mandates and internal priorities at affordable cost.

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: February 22, 2024
MEETING DATE: February 22, 2024
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Executive Officer, and Roy Xu, Director of Power Resources

SUBJECT: Informational Update on the Energy Storage Tolling Agreement for the Wallace Energy Storage Project with ESCA-PLD-LONGBEACH2, LLC

BACKGROUND

On January 25, 2024, the Board approved a Resolution delegating authority to the Chief Executive Officer to execute an Energy Storage Tolling Agreement for the Wallace Energy Storage Project with ESCA-PLD-LONGBEACH2, LLC, and any necessary ancillary documents with a delivery term of twenty (20) years starting at the commercial operation date on or about June 1, 2026, in an amount not-to-exceed $211 Million. **The contract was executed on February 14, 2024, and is presented as an attachment to this memo. All terms are consistent with the terms approved by the Board in January 2024.**

2/16/24 Note: The information below is the same as the original January 2024 staff memo and resolution.

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025 on a 99% time-coincident basis by 2027. One set of technologies that will help Peninsula Clean Energy to meet this goal is energy storage that is intended to shift grid energy from times when there is over-supply, which generally correlates to daytime solar production hours, to times when there is high demand for energy on the grid. With the current resource fleet in Peninsula Clean Energy's portfolio, staff has determined that additional storage capacity is needed to optimize our overall portfolio and to serve customers' load more economically. The Wallace project will be the fourth standalone storage resource to be added to Peninsula Clean Energy's portfolio. Peninsula Clean Energy has executed a contract with one long-duration (i.e., 8-hours or longer) storage project, two four-hour duration storage projects, and two solar resources paired with storage, all of which are under development.

CPUC MTR Procurement Mandate

On June 24, 2021, the California Public Utilities Commission (CPUC) adopted D.21-06-035,

and further adopted D.23-02-040 on February 23, 2023. These decisions are commonly known as the mid-term reliability (MTR) procurement mandates. They direct load serving entities (LSEs) to collectively procure 15,500 MW[1] of new resources between 2023 to 2028 to meet mid-term grid reliability needs. The decisions require that contracts have a term of at least ten (10) years and that resources be zero-emission or eligible under the California renewable portfolio standard (RPS). The generic requirement for new capacity may include standalone energy storage.

State-Wide MTR Procurement Requirements (MW NQC)

Procurement Category	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**Total**
New Generic Capacity	2,000	6,000	1,500	2,000	2,000	-	13,500
Zero-emissions generation, generation paired with storage, or demand response resources[2]	-	-	*2,500*	-	-	-	*2,500*
New firm zero-emitting resources	-	-	-	-	-	1,000	1,000
New long-duration storage resources	-	-	-	-	-	1,000	1,000
Total Annual Net Qualifying Capacity (NQC) Requirements	**2,000**	**6,000**	**1,500**	**2,000**	**2,000**	**2,000**	**15,500**

Peninsula Clean Energy's MTR Procurement Requirements (MW NQC)

Procurement Category	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**Total**
New Generic Capacity	38	113	51.4	35	35	-	272.4

Zero-emissions generation, generation paired with storage, or demand response resources[3]	-	-	*47*	-	-	-	*47*
New firm zero-emitting resources						19	19
New long-duration storage resources						19	19
Total Annual Net Qualifying Capacity (NQC) Requirements	**38**	**113**	**51.4**	**35**	**35**	**38**	**310.4**

The requirements were allocated to each LSE based on load share. Under the decision, Peninsula Clean Energy was allocated a requirement to bring online a total of 287 MW of new capacity by 2028. Peninsula Clean Energy filed an advice letter to the CPUC to count two of our resources that were already online towards the 2023 generic requirement, which added 23.4 MW of generic capacity needs to our 2025 requirement, resulting in a total of 310.4 MW of total capacity required. Peninsula Clean Energy is planning for the Wallace project to satisfy about 42 MW of this total obligation, which is the amount of net qualifying capacity (NQC) that a 55 MW storage project such as Wallace qualifies for under the MTR.

2023 Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in late 2022 targeting procurement of renewable energy and stand-alone energy storage resources to satisfy both internal goals and compliance requirements.

Peninsula Clean Energy received a robust response to the RFO from twenty-eight (28) participants for fifty-eight (58) different projects. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy, and environmental impact.

Staff conducted extensive analysis to identify the top projects to shortlist. The Wallace project was determined to be in the top tier of standalone energy storage projects that would provide the most value to Peninsula Clean Energy.

Staff reviewed the project with the CEO and then entered into exclusive negotiations with the project. Since early 2023, Peninsula Clean Energy has worked with the project developer on

negotiating the Energy Storage Tolling Agreement.

Overview of Project

Project Name	Wallace Energy Storage Project
Technology	Lithium-ion Standalone Storage
Capacity	55 MW/220 MWh (4-hour)
Commercial Operation Date	6/1/2026
Project Owner	ESCA-PLD-LONGBEACH2, LLC
Developer	Prologis Inc.
Location	Los Angeles County, CA

The Wallace Energy Storage Project is a new standalone storage project with a total discharge capacity of 55 MW and a four (4) hour duration, located within the City of Long Beach in Los Angeles County, California. Wallace will not require any new transmission infrastructure, rather, it will be interconnected at the distribution level. Peninsula Clean Energy will retain the scheduling coordination rights for the standalone storage project.

The expected Commercial Operation Date is June 1, 2026. The project has received its Phase I study and anticipates to receive a Full Capacity Deliverability Status (FCDS) allocation from the CAISO in May 2024, which would allow the project to provide resource adequacy attributes to Peninsula Clean Energy. The project will interconnect directly to SCE's Long Beach – Stinson 66 kV line. The project is expected to start construction by January 2026.

Under the contract, Peninsula Clean Energy will pay for 55 MW of storage capacity at a fixed-price rate per kW-month with no escalation for the full term of the contract (20 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including storage capacity (charging and discharging energy), ancillary services, and resource adequacy. The project will also help to meet Peninsula Clean Energy's generic 2026 MTR requirements, and may serve as a bridge resource to allow extensions for long-lead-time resources ordered under the MTR.

If the Wallace project has an executed Energy Storage Tolling Agreement in place by February 14, 2024, the project will be prioritized in CAISO's deliverability allocation, thus improving the project's chances of being able to provide resource adequacy benefits to Peninsula Clean Energy. In order to support Wallace's high-priority status in the deliverability process, staff is recommending that the Board authorize the CEO to execute this agreement pending resolution of remaining terms by February 14, 2024, in a form approved by the General Counsel. Staff will provide an informational report in the February 2024 Board package to update the Board on the status of execution of this agreement, including the final agreement terms, which will be consistent with the information presented in this memo and at the January 2024 Board Meeting.

Developer

ESCA-PLD-LONGBEACH2, LLC is being developed by Prologis Energy LLC, a subsidiary of Prologis Inc. Prologis Inc. (NYSE: PLD) is a publicly traded real estate investment trust and the world's largest owner and operator of logistics real-estate with over 1 billion square feet of warehouse space under management across 19 countries. Prologis has a market capitalization of $110 billion and an S&P credit rating of A. Prologis is actively developing renewable energy and battery energy storage systems (BESS) at its properties and has

deployed over 530 MW of generating capacity across 19 countries. The Prologis portfolio includes over 7,500 MW of large-scale storage and 250 MW of rooftop solar under development across the United States, including standalone battery storage projects and community solar for multiple California CCAs.

Environmental Review
Peninsula Clean Energy staff worked with several environmental non-profits to develop a system for evaluating the environmental impact of projects. Specifically, staff asked each bidder to provide a geospatial footprint of their project. During the evaluation period, staff studied the geospatial footprint of the project to evaluate whether the project is located in a restricted or high conflict area for renewable energy or storage development. These areas include but are not limited to:

- Protected areas at the federal, state, regional, local level (e.g., County-designated conservation areas, BLM Areas of Critical Environmental Concern, critical habitat for listed species, national, state, county parks, etc.).
- Identified and mapped important habitat and habitat linkages, especially for threatened and endangered species (either state or federally listed).

Further, projects that are located in areas designated for renewable energy development or in areas that are not suitable for other developmental activities, such as EPA re-power sites, receive positive environmental scores.

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database[4] (PAD-US). Since this project doesn't require new transmission there is no environmental impact anticipated from interconnection and transmission.

The project development occurs within Long Beach city limits on a project site of no more than five acres that is substantially surrounded by urban uses. The current use of the project site is an existing 2-acre paved parking lot, zoned for industrial use, and has no value as habitat for endangered, rare, or threatened species.

Workforce Requirements
Prologis has agreed that the construction of the project will be conducted using a project labor agreement or other similar agreement providing for terms and conditions of employment with applicable labor organizations.

DISCUSSION

Priority 1 of Peninsula Clean Energy's Strategic Plan is to Deliver 100% renewable energy annually by 2025, and on a 99% time-coincident basis by 2027. Energy storage will play a key role in meeting Peninsula Clean Energy's renewable energy goals by shifting an oversupply of generation in the middle of the day to later hours when the energy is needed to meet demand.

The Wallace project will provide 55 MW of energy storage capacity which means it will not directly produce generation to serve Peninsula Clean Energy's load, but it will help shift generation from the grid to serve its customers' load when it is most needed.

The Wallace project will contribute to Peninsula Clean Energy meeting its regulatory requirements under the Mid-Term Reliability orders issued by CPUC, as well as provide resource adequacy benefits to our portfolio.

FISCAL IMPACT

The fiscal impact of the Wallace project will not exceed $211 million over the 20-year term of the Agreement.

STRATEGIC PLAN

The Wallace project supports the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Deliver 100% renewable energy annually by 2025, and on a 99% time-coincident basis by 2027
- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

1 Requirement measured as net qualifying capacity (NQC) rather than nameplate capacity. The CPUC issued a report identifying what percent of a technology's nameplate capacity would count toward this requirement. This means that each LSE's required nameplate capacity is higher than the requirement identified in the decision.
2 Zero-emissions resources required to replace Diablo Canyon must be procured by 2025 and are a subset of New Capacity Required and may occur in any of the years 2023-2025; therefore, this row is not additive with the other rows.
3 ibid.
4 USGS PAD-US:
https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas

ATTACHMENTS:

PCE - ESCA-PLD Final Execution Version_Redacted.pdf

RESOLUTION NO. _____

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

INFORMATIONAL UPDATE ON THE ENERGY STORAGE TOLLING AGREEMENT FOR THE WALLACE ENERGY STORAGE PROJECT WITH ESCA-PLD-LONGBEACH2, LLC

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, 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 conducted a request for offers for renewable energy and storage resources including standalone storage and engaged in negotiations for the Wallace project; and

WHEREAS, Peninsula Clean Energy seeks to execute an Energy Storage Tolling Agreement (ESTA) to procure 55 MW of 4-hour standalone storage capacity and related products from the Wallace project, based on project's desirable attributes, pricing, and terms; and

WHEREAS, the Wallace project will contribute toward the regulatory requirements set by the California Public Utilities Commission to procure new capacity by 2028 to ensure better reliability for the California grid; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the Agreement and any other ancillary documents required for said purchase of storage capacity and related products from ESCA-PLD-LONGBEACH2, LLC; and

WHEREAS, the Board's decision to delegate to the Chief Executive Officer the authority to execute the Agreement is contingent on ESCA-PLD-LONGBEACH2, LLC approving the Agreement's terms consistent with those presented to the Board.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to: Execute the Agreement and any ancillary documents with ESCA-PLD-LONGBEACH2, LLC with terms consistent with those presented, in a form approved by the General Counsel; and for a delivery term of up to twenty years, in an amount not to exceed $211 million.

ENERGY STORAGE AND SERVICES AGREEMENT

COVER SHEET

Seller: ESCA-PLD-LONGBEACH2, LLC, a Delaware limited liability company

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

Description of Facility: A 55 MW AC energy storage facility with at least four (4) hours of continuous discharging at the maximum rate of discharge, located in Los Angeles County, California (as further defined herein, the "**Facility**").

Guaranteed Construction Start Date: January 1, 2026

Guaranteed Commercial Operation Date: June 1, 2026

Milestones:

Milestone	Expected Completion Date
Site Control	**September 1, 2023**
Use Permit Modification or Conditional Use Permit	**April 1, 2025**
Phase II Interconnection Study Results	**January 31, 2024**
Executed Interconnection Agreement	**October 1, 2024**
Obtain Full Capacity Deliverability Status Allocation	**May 31, 2024**
Procure Major Equipment	[redacted]
Financial Close	**October 1, 2025**
Construction Start	**October 15, 2025**
Initial Synchronization	**March 1, 2026**
Deliverability Network Upgrades completed	**March 15, 2026**
CAISO Commercial Operation	**April 1, 2026**

Milestone	Expected Completion Date
Expected Commercial Operation Date	**June 1, 2026**

Delivery Term: Twenty (20) Contract Years

Guaranteed Storage Capacity: 55 MW AC at four (4) hours of continuous discharging at the maximum rate of discharge (220 MWh), as may be adjusted pursuant to Exhibit B.

Guaranteed Interconnection Capacity: 55 MW

Guaranteed Round-Trip Efficiency: The value set forth in the table below for each Contract Year.

Contract Year	Guaranteed Round-Trip Efficiency
1	[redacted]
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

The "**Storage Rate**" for all Contract Years shall be the rate specified below without escalation; provided, however, that the Storage Rate shall be reduced during the period and in the amounts specified in Sections 2.1(b)(iii), 3.3(b) and 3.6(a) herein.

Contract Years	Storage Rate ($/kW-month)
All	[redacted]

Product:

x Discharging Energy
x Capacity Attributes
x Storage Capacity
x Ancillary Services

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security: Five million five hundred thousand dollars ($5,500,000.00)

Performance Security: [redacted]

Damage Payment: Five million five hundred thousand dollars ($5,500,000.00)

[Signatures on following page.]

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

SELLER ESCA-PLD-LONGBEACH2, LLC	BUYER Peninsula Clean Energy Authority
By: _____	By: _____ PCE Executive Officer
Name: _____	
Title: _____	

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Exhibits:

ENERGY STORAGE AND SERVICES AGREEMENT

This Energy Storage and Services Agreement ("**Agreement**") is entered into as of February 14, 2024 (the "**Effective Date**"), between Seller and Buyer (each also referred to as a "**Party**" and collectively as the "**Parties**").

RECITALS

WHEREAS, Seller intends to develop, design, construct, own or otherwise have control over, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement all 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 the following:

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 3.8(c).

"**ADS**" has the meaning set forth in the CAISO Tariff.

"**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.

"**AGC**" has the meaning set forth in the CAISO Tariff.

"**Agreement**" has the meaning set forth in the Preamble and includes the Cover Sheet and all Exhibits and any schedules and written amendments hereto.

"**Ancillary Services**" means ancillary services as defined in the CAISO Tariff that are associated with the Facility and that the Facility is capable of providing consistent with the Operating Restrictions, which as of the Effective Date are: Spinning Reserve, Non-Spinning Reserve, Regulation Up and Regulation Down (as each is defined in the CAISO Tariff).

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

"**Availability Notice**" means Seller's availability forecasts issued pursuant to Section 4.4 with respect to the Available Storage Capacity and Available Storage Capability

"**Available Storage Capability**" has the meaning defined in Exhibit M.

"**Available Storage Capacity**" has the meaning defined in Exhibit M.

"**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.

"**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.

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

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy delivered by the Facility to the Delivery Point adjusted for or net of Electrical Losses and Station Use, in accordance with the CAISO Tariff.

"**CAISO Certification**" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services that the Facility can provide, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

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

"**CAISO Commercial Operation**" has the same meaning as "Commercial Operation" as defined in the CAISO Tariff.

"**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-Penalized Shortfall**" has the meaning set forth in Section 3.6(b)(ii).

"**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.

"**Capacity Attribute**" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of Energy that the Facility can charge from, store or deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits, and any and all attributes that can be used to meet the MTR Requirements. Capacity Attributes shall also include all rights to provide, and all benefits related to the provision of, Ancillary Services and any and all other products and services that the Facility may be able to provide but [redacted]

"**Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

"**Change of Control**" means, in the case of Seller, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which the Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) 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 fifty percent (50%) 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 directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownerships interests of Seller or its Affiliates) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a change in the Control of Seller resulting from the exercise by Lender of its remedies under its financing agreements for the Facility with Seller or an Affiliate of Seller shall not be a Change of Control hereunder; provided that the entity that is the Seller after such Lender's exercise of its remedies under such financing agreements is a Permitted Transferee (as defined in the Collateral Assignment Agreement) and Buyer is given Notice of such change of Control within five (5) Business Days of its occurrence.

"**Charging Energy**" means all Energy delivered to the Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO, directing the Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with Section 4.6, the CAISO Tariff, other applicable Laws, Facility availability, and the Operating Restrictions.

"**CLAP Meters**" has the meaning set forth in Section 7.1.

"**Collateral Assignment Agreement**" has the meaning set forth in Section 15.2.

"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Commercial Operation Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [redacted]

"**Compliance Actions**" has the meaning set forth in Section 3.8(a).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.8(a).

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

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

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

"**Contract Year**" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation 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 fifty percent (50%) 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 fifty percent (50%) 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 the Agreement.

"**Cover Sheet**" means the cover sheet to this Agreement.

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

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

"**CPUC-Penalized Shortfall**" has the meaning set forth in Section 3.6(b)(i).

"**CPUC System RA Penalty**" means the penalties for "System Procurement Deficiency" adopted by the CPUC in its Decisions 10-06-036, 11-06-022, 14-06-050, 19-02-022, 20-06-031, and 21-06-029, as may be updated or supplemented from time to time.

"**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.

"**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 Energy deliveries;

(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 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.

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

"**Customer Load Aggregation Point**" or "**CLAP**" has the meaning set forth in the CAISO Tariff.

"**Daily Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"**Damage Payment**" means a liquidated damages payment to be paid by the Seller as the Defaulting Party to the Buyer as the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date due to a Seller Event of Default, in a dollar amount set forth in Section 11.3(a).

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

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

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

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

"**Delivery Point**" means the Pnode designated by the CAISO for the Facility.

"**Delivery Term**" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"**Development Cure Period**" has the meaning set forth in Exhibit B.

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

"**Discharging Energy**" means all Energy delivered to the Delivery Point from the Facility, net of Station Use and Electrical Losses, as measured by the Storage Facility Meter.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO to Seller, directing the Facility to discharge Discharging Energy at a specific MWh rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with Section 4.6, the CAISO Tariff, other applicable Laws, Facility availability, and the Operating Restrictions.

"**Diverse Business Enterprises**" means a women, minority, disabled veteran, lesbian, gay, bisexual and /or transgender business enterprise, as more particularly set forth in CPUC General Order 156.

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

"**Effective Date**" has the meaning set forth on the Preamble.

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

"**EMS**" has the meaning set forth in the CAISO Tariff.

"**Energy**" means electrical energy in MWh metered by the Storage Facility Meter.

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

"**Estimated Placed-In-Service Date**" has the meaning set forth in Section 2.1(b).

[redacted]

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

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment and Seller's rights and interests in Shared Facilities required to deliver the Product, but excluding any portions of Shared Facilities other than Seller's rights and interests thereto.

"**Facility Deviations**" has the meaning set forth in Section 3.3(a).

"**FCDS Deficiency Notice**" has the meaning set forth in Section 2.1(b).

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

"**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(a).

[redacted]

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility that prevents Seller from providing Product and that is not the result of a Force Majeure Event.

"**Forced Labor**" has the meaning set forth in Section 13.4.

"**Forecasted Product**" has the meaning set forth in Section 4.4.

"**Full Capacity Deliverability Status**" or "**FCDS**" has the meaning set forth in the CAISO Tariff.

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

"**Future Environmental Attributes**" shall mean any and all emissions, air quality or other environmental attributes under any and all 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, after the Effective Date, to 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 Capacity Attributes.

"**GHG Regulations**" means Title 17, Division 3 (Air Resources), Chapter 1 (Air Resources Board), Subchapter 10 (Climate Change), Article 5 (Emissions Cap), Sections 95800 to 96023 of the California Code of Regulations, as amended or supplemented from time to time.

"**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 and NERC; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party.

"**Greenhouse Gas**" or "**GHG**" has the meaning set forth in the GHG Regulations or in any other applicable Laws.

"**Guaranteed Commercial Operation Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period [redacted]

"**Guaranteed Construction Start Date**" has the meaning set forth on the Cover Sheet, as such date may be extended by the Development Cure Period.

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

"**Guaranteed RA Amount**" means, at any time on or after the RA Guarantee Date, the greater of (a) the Facility's Net Qualifying Capacity (in MW), and (b) the maximum Net Qualifying Capacity (in MWs) for which a storage facility with a storage capacity and PMAX equal to the Guaranteed Storage Capacity with four (4)-hour discharge at the Delivery Point, having achieved Full Capacity Deliverability Status and operating at the Guaranteed Storage Availability, would qualify for counting toward meeting a load-serving entity's resource adequacy

obligations in the then current Showing Month pursuant to the then current Law, including the CAISO Tariff and decisions and rulings of the CPUC.

"**Guaranteed Round-Trip Efficiency**" means the minimum guaranteed Round-Trip Efficiency of the Facility required during each month throughout the Delivery Term, as set forth for each Contract Year on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.9(a).

"**Guaranteed Storage Capacity**" has the meaning set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B.

"**Imbalance Energy**" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Charging Energy or Discharging Energy deviates from the amount of Scheduled 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; and (c) any other form of incentive relating in any way to the Facility that is not a Future Environmental Attribute.

"**Incremental Station Use**" means any Station Use for which Seller was not charged as retail power pursuant to the retail service schedule for the Facility that is not captured in subpart (a) of the definition of Reimbursable Station Use.

"**Incremental Station Use Amount**" is an amount equal to 1.7 MWh per day for each day of the Delivery Term, as may be adjusted from time to time under Section 7.3.

"**Incremental Station Use Tolerance Band**" has the meaning set forth in Section 7.3.

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

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

"**Initial Synchronization**" means the initial delivery of Energy to the Facility from the interconnection point or from the Facility to the interconnection point, as specified in the Interconnection Agreement.

"**Installed Storage Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy for four (4) consecutive hours at the maximum discharge rate, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit G-2 hereto provided by Seller to Buyer.

"**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.

"**Interconnection Agreement Extension**" has the meaning set forth in Section 2.1(b)(ii).

[redacted]

"**Interconnection Delay Notice**" has the meaning set forth in Section 2.1(b).

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System (or PTO's distribution system, as applicable) in accordance with the Interconnection Agreement.

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

"**Internal Revenue Service Requirements**" means those requirements set forth in Section 48 of the Internal Revenue Code and associated regulations promulgated by the Internal Revenue Service that pertain to the eligibility of energy property to qualify for the federal investment tax credit.

"**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.

"**kW**" means kilowatts in alternating current, unless expressly stated in terms of direct current.

"**kWh**" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**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, and includes the CAISO Tariff.

"**Lender**" means, collectively, (A) in the case of Seller, any Person (i) providing senior or subordinated construction, interim or long-term debt, equity or tax equity or tax credit 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, and (B) in the case of Buyer, any Person (i) providing senior or subordinated short-term or long-term debt or equity financing or refinancing for or in connection with the business or operations of Buyer, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form, and any trustee or agent acting on their behalf, and/or (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations.

"**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 I.

"**Licensed Professional Engineer**" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, as their "independent engineer" for the purpose of financing the Facility, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

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

"**Local Capacity Area Resource**" 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.

"**Local Capacity Premium**" means the amount set forth for the same Local Capacity Area as the Facility is in in the CPUC Local Capacity Requirement Reduction Compensation Mechanism report most recently available at the time such Local Capacity Premium is determined.

"**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., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Capacity Attributes, and

[redacted]

[redacted].

"**Main Power Transformer**" means the Facility's main step-up transformer as depicted on the one-line diagram set forth in Exhibit A.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth in the Cover Sheet.

"**Monthly Storage Availability**" has the meaning set forth in Exhibit M.

"**Moody's**" means Moody's Investors Service, Inc., or its successor.

"**MTR Requirements**" has the meaning set forth in Section 3.9.

"**MW**" means megawatts measured in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**NERC**" means North American Electric Reliability Corporation, or its successor.

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

"**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).

[redacted]

"**Operating Restrictions**" means the requirements and limitations set forth on Exhibit O.

[redacted]

"**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 Southern California Edison Company.

"**Party**" has the meaning set forth in the Preamble.

"**Performance Security**" means (i) cash, or (ii) a Letter of Credit, in the amount specified for the Performance Security on the Cover Sheet, deposited with Buyer in conformance with Section 8.8.

"**Performance Security End Date**" has the meaning set forth in Section 8.8.

"**Permitted Scheduled Maintenance**" has the meaning set forth in Section 6.1(a).

"**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.

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Facility.

"**PMIN**" means the applicable CAISO-certified minimum operating level of the Facility.

"**Pnode**" has the meaning set forth in the CAISO Tariff.

"**Product**" has the meaning set forth on the Cover Sheet.

"**Progress Report**" means a progress report including the items set forth in Exhibit E.

"**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.

"**Qualified Transferee**" means an entity that (a) has or is majority owned by an entity that has a Tangible Net Worth of [redacted]) or (b) has or is majority owned by an entity that has (i) a Tangible Net Worth of fifty million dollars ($50,000,000) and (ii) a Credit Rating of A2 or higher by Moody's or A- or higher by S&P, if rated by only one such entity, or a Credit Rating of A2 or higher by Moody's and A- or higher by S&P, if rated by both such entities, and, in any case, (c) is not a public utility regulated by the CPUC or an Affiliate thereof, and (d) has, or retains to operate the Facility a Person that has, at least three (3) years of experience operating at least two (2) or more storage facilities of the same technology and with at least as much Installed Storage Capacity as the Facility.

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

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.6(b).

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

"**RA Plan**" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.

"**RA Shortfall**" means the difference, expressed in kW, of (i) the Guaranteed RA Amount minus (ii) the Resource Adequacy Benefits of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy Benefits minus (iii) the Replacement RA delivered by Seller pursuant to Section 3.5(f) for such month.

"**RA Shortfall Month**" means any month in which there is an RA Shortfall for purposes of calculating an RA Deficiency Amount under Section 3.6(b).

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

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

"**Reimbursable Station Use**" means, for each month during the Delivery Term, the aggregate of the following, without duplication, (a) the amount of metered energy registered in such month at the CLAP Meters, as set forth in the CAISO settlement statement for the Resource ID associated with the CLAP Meters, and (b) an additional amount of energy equal to the Incremental Station Use which shall apply to each day of such month.

"**Reimbursable Station Use Payment**" means, for each month during the Delivery Term, the sum of (a) the actual costs and charges set forth in the CAISO settlement statement for the Resource ID associated with the CLAP Meters for such month, plus (b) the product of (i) the Incremental Station Use Amount multiplied by the number of days in the month, expressed in kWh, multiplied by (ii) the average monthly LMP for such month, expressed in dollars per kWh ($/kWh).

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

[redacted]

"**Replacement RA**" means Resource Adequacy Benefits that are equivalent to those that would have been provided by the Facility with respect to the applicable month for which the Replacement RA is being provided. Replacement RA shall (a) include, if applicable, Flexible Resource Adequacy Benefits that are of the same system or local designation, Flexible Capacity Category, and Resource Category as the Facility; (b) to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, be located in the same Local Capacity Area as the Facility, except as otherwise provided in Section 3.5(f), and (c) provide Resource Adequacy Benefits in all of the same hourly periods as the Facility. 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, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including

CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Category**" means the maximum cumulative capacity and resource categories (commonly known as "MCC buckets") for system and local resource adequacy as well as categories of must-offer for flexible resource adequacy 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.

"**Round-Trip Efficiency**" has the meaning set forth in Exhibit Q.

"**Round-Trip Efficiency Factor**" has the meaning set forth in Exhibit Q.

"**RTE Shortfall Payment**" has the meaning set forth in Exhibit Q.

"**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 Energy**" means the Energy reflected in a final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time.

"**Scheduled Maintenance**" has the meaning set forth in Section 6.1(a).

"**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.

"**Secondary Unavailability**" has the meaning set forth in Exhibit M.

"**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.

[redacted]

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. 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.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy to the Delivery Point, including the Interconnection Facilities and the Interconnection Agreement itself, if applicable, that are used in common with third parties or by Seller for electric generation or storage facilities owned by Seller other than the Facility.

"**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, as of the Effective Date, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

"**Showing Month**" means the calendar month of the Delivery Term that is the subject of the RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

"**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 Construction Start Date Certificate to Buyer, in substantially the form of the Form of Construction Start Date Certificate in Exhibit H. An updated Exhibit H provided by Seller pursuant to this definition shall be automatically incorporated as the new Exhibit H upon its receipt by Buyer.

"**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.

"**SP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

"**Station Use**" means all electric energy that is used within the Facility to power lights, motors, control systems, thermal regulation equipment and other electrical loads.

"**Station Use Audit Calculations**" has the meaning set forth in Section 7.3.

"**Station Use Meter**" has the meaning set forth in Section 7.1.

"**Storage Availability Adjustment**" has the meaning set forth in Exhibit M.

"**Storage Capacity**" means the maximum dependable operating capability of the Facility (expressed in MW AC) to discharge electric energy at the maximum discharge rate that can be sustained for four (4) consecutive hours, as the same is to be established as of the Commercial Operation Date and adjusted from time to time pursuant to Exhibit N to reflect the results of the most recently performed Storage Capacity Test; provided that the Storage Capacity shall not at

any time exceed the lesser of (a) the Guaranteed Storage Capacity, and (b) the Facility's then current PMAX in the Facility's CAISO's Master Data File and Resource Data Template (or successor data systems).

"**Storage Capacity Payment**" has the meaning set forth in Section 3.2.

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

"**Storage Facility Meter**" means the CAISO Approved Meter (with a 0.3 accuracy class), sufficient for monitoring, recording and reporting, in real time, the amount of (i) Charging Energy, and (ii) Discharging Energy. For clarity, the Facility may include 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. All Storage Facility Meters will be consistent with the Metering Diagram set forth in Exhibit P.

"**Storage Rate**" has the meaning set forth on the Cover Sheet as may be adjusted by Sections 2.1(b)(iii), 3.3(b) and 3.6(a), as applicable.

"**Stored Energy**" means the electric energy in the Facility available to be discharged as Discharging Energy.

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

"**Subsequent Purchasers**" means the purchaser or recipient of Product from Buyer in any conveyance, re-sale or remarketing of Product by Buyer.

"**Supplementary Storage Capacity Test Protocol**" has the meaning set forth in Exhibit N.

"**Supply Plan**" has the meaning set forth in the CAISO Tariff.

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

"**System Resource Adequacy Benefits**" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"**Tangible Net Worth**" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

"**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**" has the meaning set forth in Section 11.2.

"**Termination Payment**" has the meaning set forth in Section 11.3(b).

"**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.

"**Ultimate Parent**" means Prologis Inc.

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

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 terms "include" and "including" mean "include without limitation" or "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 at 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) Seller shall provide Notice to Buyer within ten (10) Business Days of Seller's receipt of (x) an executed Interconnection Agreement for the Facility (which Notice shall include a copy of such executed Interconnection Agreement), including any executed Interconnection Agreement that includes an estimated placed-in-service date ("**Estimated Placed-In-Service Date**") for Seller's interconnection facilities that is later than the date of Initial Synchronization as set forth in the Milestone schedule on the Cover Sheet ("**Interconnection Delay Notice**"), or (y) any notice from the CAISO of the results of any Generator Interconnection and Deliverability Allocation Process (as defined in the CAISO Tariff) in 2024 informing Seller

of the results of Seller's application for Full Capacity Deliverability Status that awards Seller FCDS for less than one hundred percent (100%) of the Guaranteed Storage Capacity ("**FCDS Deficiency Notice**").

(i) Notwithstanding any provision in this Agreement to the contrary, Buyer shall have the right to terminate this Agreement [redacted]

(iv) If, despite Seller's commercially reasonable efforts to obtain FCDS for one hundred percent (100%) of the Guaranteed Storage Capacity, Seller receives FCDS for less than one hundred percent (100%) of the Guaranteed Storage Capacity, then, subject to Buyer's right to terminate this Agreement under Section 2.1(b)(v), the Parties shall negotiate in good faith to reduce the Guaranteed Storage Capacity in a way that maximizes the amount of Resource Adequacy Benefits the Facility is qualified to provide, with no liability or cost to Seller (including no Capacity Damages and no RA Deficiency Amounts related to such failure to obtain FCDS for one hundred percent (100%) of the original Guaranteed Storage Capacity).

(v) If, despite Seller's commercially reasonable efforts to obtain FCDS for one hundred percent (100%) of the Guaranteed Storage Capacity, Seller receives FCDS for less than ninety percent (90%) of the Guaranteed Storage Capacity, then Buyer shall have the right

to terminate this Agreement by providing Notice to Seller within ninety (90) days after Buyer's receipt of the FCDS Deficiency Notice, and Buyer shall retain [redacted]) of the Development Security as liquidated damages. For the avoidance of doubt, Buyer shall have the right to terminate this Agreement and retain [redacted] of the Development Security as liquidated damages under the circumstances specified in this Section 2.1(b)(v) rather than exercising its termination right under Section 2.1(b)(i).

(c) 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 three (3) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent**. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have installed and commissioned storage equipment with a capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity;

(b) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of Exhibits G-1 and G-2;

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

(d) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;

(e) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Commercial Operation Date;

(f) The PTO has provided documentation supporting full unrestricted release for Commercial Operation by the Commercial Operation Date;

(g) Seller has obtained CAISO Certification for the Facility;

(h) Buyer, or its designee, is the Scheduling Coordinator for the Facility; provided that if this requirement is not met because of Buyer's (or its designee's) actions or failure to take actions, and this is the only requirement for Commercial Operation that has not been met, Seller shall be entitled to a day for day extension of the Guaranteed Commercial Operation Date for such Buyer (or its designee) actions or failure to act;

(i) Seller shall have delivered to Buyer a copy of all environmental impact reports, studies or assessments prepared by or obtained by Seller or its Affiliates, the conditional use permit or other principal land use approval for the Facility, and a certificate signed by an

authorized representative of Seller stating that Seller is in material compliance with the requirements of the conditional use permit or other principal land use approval;

(j) Seller shall have caused the Facility to be included in the Full Network Model and has ability to offer Bids (as defined in the CAISO Tariff) into CAISO Day-Ahead Markets and Real-Time Markets;

(k) Seller shall have completed all necessary steps to provide Ancillary Services from the Facility, including completing the certification and testing requirements in Section 8 and Appendix K of the CAISO Tariff;

(l) Seller has delivered the Performance Security to Buyer;

(m) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any; and

(n) Seller has demonstrated compliance with Section 7.1, including installation of the Storage Facility Meter, Station Use Meter, and CLAP Meters, in accordance with the terms set forth therein.

2.3 **Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the 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 reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan**. If Seller misses (a) any two (2) or more Milestones, or (b) any one (1) Milestone by more than thirty (30) days, then Seller shall submit to Buyer, within ten (10) Business Days of (i) the second missed Milestone completion date if subpart (a) above applies, or (ii) the thirtieth (30^{th}) day after the missed Milestone completion date if subpart (b) above applies, as applicable, a remedial action plan ("**Remedial Action Plan**"), that describes 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 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 Commercial Operation by the Guaranteed Commercial Operation Date (including any extension thereof) in accordance with the terms of this Agreement. If the missed Milestone(s) is not the Guaranteed Construction Start Date or the Guaranteed 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).

ARTICLE 3
PURCHASE AND SALE

3.1 **Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller all of the Product. 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.

3.2 **Compensation**. Buyer shall compensate Seller for the Product in accordance with this Section 3.2. For each month of the Delivery Term, Buyer shall pay Seller an amount equal to [(A x B x C) – D – E – F], (such amount, the "**Storage Capacity Payment**"), where:

A = the Storage Rate

B = the current Storage Capacity (in kW)

C = the applicable Storage Availability Adjustment determined in accordance with Exhibit M

D = the applicable RTE Shortfall Payment determined in accordance with Exhibit Q (if applicable)

E = the applicable Reimbursable Station Use Payment for such month

F = the amounts owed by Seller to Buyer under any other provision in this Agreement, including Sections 3.3(a) and 3.3(b), if any

Additionally, the first monthly billing statement issued after any amount is determined to be owed by either Party under Section 7.3 with respect to the establishment of a new Incremental Station Use Amount shall include such amount as a credit or charge to Buyer, as applicable in accordance with Section 7.3. The Storage Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Product.

3.3 **Accuracy and Imbalances**.

(a) Facility Deviations. To the extent the Facility (i) charges or discharges other than in compliance with a Charging Notice or Discharging Notice, (ii) fails to charge or discharge in compliance with a Charging Notice or Discharging Notice, (iii) fails to charge or discharge in compliance with any CAISO dispatch instruction, dispatch operating target, or operating instruction, including as may be received via ADS, AGC, EMS, or verbal instruction, but excluding any of the foregoing relating to a failure to comply with a Curtailment Order, which is addressed separately in subpart (v) below; (iv) experiences any outage or derate that Seller has not provided timely notice of as required pursuant to Section 4.4(c), or, if timely notice was provided, that necessitates a change in the bidding or scheduling of the Facility in the CAISO's fifteen minute, five minute, or other market as compared with Buyer's bidding or scheduling of the Facility in the Day-Ahead Market, or (v) fails to comply with a Curtailment Order in accordance with Section 4.5(a) (all of the foregoing in subparts (i) through (v) collectively, but

excluding any of subparts (i) through (iii) only which are caused by Operating Deviations, are "**Facility Deviations**"), then (1) any CAISO costs, charges, and penalties assessed as a result of such Facility Deviations, including Imbalance Energy costs, uninstructed imbalance energy charges, instructed imbalance energy charges incurred under the circumstances in subpart (iv) above, Ancillary Service charges, and penalties associated with any failure to comply with a Curtailment Order over any month billing period shall be solely for the account of and shall be owed and paid by Seller to Buyer without netting or offset, and (2) Buyer shall retain any and all revenues and credits associated with Facility Deviations over such monthly billing period.

(b) Ancillary Services. In addition to the amounts owed under Section 3.3(a), if a Facility Deviation (i) causes Buyer to suffer rescission of any payment from the CAISO for an Ancillary Service, including through "no pay" charge codes, or (ii) causes Buyer to incur any cost or charge associated with an Ancillary Service bid from the Facility, including for Mileage in relation to Regulation Up and Regulation Down (as such terms are defined in the CAISO Tariff), then Seller shall reimburse Buyer for such rescinded payments, refunds, costs, and charges. Notwithstanding anything to the contrary in this Agreement, if the Facility is decertified for an Ancillary Service due to Facility Deviations or other instance of non-performance by the Facility in relation to delivery of Ancillary Services, then the Storage Rate shall be reduced to eighty percent (80%) of the then-current Storage Rate, effective as of the date of such decertification and continuing until such time as the Facility again qualifies to provide Ancillary Services.

(c) Buyer Bidding and Scheduling. Any CAISO costs or penalties and all CAISO revenues or credits assessed as a result of a change in the bidding or scheduling of the Facility in the CAISO's fifteen minute or real-time markets as compared with bidding or scheduling of the Facility in the CAISO's Day-Ahead Market, provided they are not caused by a Facility Deviation, shall be solely for the account of and shall be paid and retained by Buyer.

3.4 **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 without any adjustment to the Storage Rate paid by Buyer under this Agreement. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, 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, subject to the requirements and limitations in Section 3.8.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.4(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 incremental expenses incurred by Seller (not including Seller's overhead costs for administrative tasks) associated with providing such Future Environmental Attributes; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement, including the terms of Section 3.8.

3.5 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in connection with the 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) Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term.

(b) Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) 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 the amount of the Guaranteed Interconnection Capacity.

(e) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Buyer shall notify Seller within three (3) Business Days after becoming aware of an obligation by Seller to provide RA Substitute Capacity. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for all out-of-pocket costs, including broker and outside counsel costs, associated with such RA Substitute Capacity. If Seller declines to provide RA Substitute Capacity and notifies Buyer to that effect no less than five (5) Business Days before the applicable Showing Deadline, then Buyer will not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan for the Facility and Seller's sole liability will be payment of the RA Deficiency Amount for such RA Shortfall pursuant to Section 3.6.

(f) If Seller anticipates it will have an RA Shortfall in any month of the Delivery Term, Seller may provide Replacement RA up to the anticipated RA Shortfall, provided (i) Seller provides Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit K at least sixty (60) days before the applicable Showing Month, and (ii) Replacement RA shall not exceed thirty percent (30%) of the Resource Adequacy Benefits provided during any Contract Year. Notwithstanding the clause (c) of the definition of "Replacement RA", to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, Seller may deliver Replacement RA is not located in the same Local Capacity Area as the Facility provided that Seller will be obligated to pay to Buyer an amount

equal to the Local Capacity Premium multiplied the amount of Replacement RA Seller provides to Buyer that is not located in the same Local Capacity Area as the Facility..

3.6 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 4.3 or anything to the contrary herein, the Parties acknowledge and agree that if Seller has failed to obtain Full Capacity Deliverability Status for the Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) and such failure results in an RA Shortfall, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer. Notwithstanding the foregoing, in lieu of any RA Deficiency Amount payable to Buyer, for the first and second month of the Delivery Term only, to the extent that Seller fails or is unable to provide Resource Adequacy Benefits (or Replacement RA in lieu thereof) solely due to the CAISO and/or CPUC registration process for new resources, the Storage Rate during such months for such RA Shortfall shall be fifty percent (50%) of the otherwise applicable Storage Rate. Seller shall ensure that the Facility is providing Resource Adequacy Benefits to Buyer commencing not later than sixty (60) days after the start of the Delivery Term. Seller shall pay the RA Deficiency Amount for any RA Shortfall that occurs on or after such deadline.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, except as otherwise provided in Section 3.6(a), Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the sum of:

(i) For any portion of the RA Shortfall for which Buyer incurs a CPUC System RA Penalty ("**CPUC-Penalized Shortfall**"), Seller's pro rata share of the amount of such CPUC System RA Penalty for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus,

(ii) For any portion of the RA Shortfall for which Buyer incurs CAISO costs, charges or penalties associated with such shortfall ("**CAISO-Penalized Shortfall**") Seller's pro rata share of the amount of such CAISO costs, charges or penalties associated with the RA Shortfall for such month actually incurred by Buyer (which shall be zero (0) if Buyer does not incur any CAISO costs, charges or penalties associated with the RA Shortfall), plus

(iii) For any RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, the prevailing market value of replacement Resource Adequacy Benefits in the amount of such RA Shortfall, as reasonably determined and substantiated by Buyer based on at least three (3) price quotes from brokers or marketers not affiliated with either Party; [redacted].

3.7 **Buyer's Re-Sale of Product**. Subject to the last sentence of Section 5.2, Buyer shall have the exclusive right in its sole discretion to convey, use, market, or sell the Product, or any part of the Product, to any Subsequent Purchaser; and Buyer shall have the right to all revenues generated from the conveyance, use, re-sale or remarketing of the Product, or any part of the

Product. If the CAISO or CPUC develops a centralized capacity market, Buyer shall have the exclusive right to offer, bid, or otherwise submit the Capacity Attributes for re-sale into such market, provided that Seller is not required to incur any additional costs in excess of the Compliance Expenditure Cap to qualify the Product for participation in such centralized capacity market, or follow such direction from Buyer for which Buyer refuses to provide reimbursement, and Buyer shall retain and receive all revenues from such re-sale. Seller shall take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow Subsequent Purchasers to use such resold Product, but without increasing Seller's obligations or liabilities under this Agreement. If Buyer incurs any liability to a Subsequent Purchaser due to the failure of Seller to comply with this Section 3.7, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

3.8 **Compliance Expenditure Cap**.

(a) If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Capacity Attributes, then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Installed Storage Capacity ("**Compliance Expenditure Cap**"). 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**." Compliance Actions shall not include any action to increase the Storage Capacity beyond the Guaranteed Storage Capacity.

(b) 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.

(c) 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 or some portion 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 3.8(c) 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, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

(d) 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 documentation of such costs from Seller.

(e) Any failure by Seller to operate the Facility in accordance with Prudent Operating Practice, or to meet metrics or requirements for availability or operations established by the CAISO or the CPUC (including as part of a change of Law) that do not require modifications to the Facility and are not in violation of the Operating Restrictions or the installation of additional capacity, shall not be treated as a Compliance Action subject to the Compliance Expenditure Cap for any purposes of this Agreement.

3.9 **CPUC Mid-Term Reliability Requirements**. The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision ("**D**.") 21-06-035, D.23-02-040, and related CPUC orders and decisions ("**MTR Requirements**"). Seller represents and warrants to Buyer that:

(a) During the Delivery Term, the Product includes the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and other MTR Requirements;

(b) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 and other MTR Requirements to any other person or entity during the Delivery Term; and

(c) Seller will provide to Buyer additional information and documentation reasonably available to Seller on a commercially reasonable basis if necessary to enable Buyer to demonstrate that the Product meets the procurement mandates set forth in the MTR Requirements.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall make available, and Buyer shall accept at the Delivery Point all Product. Seller retains all rights to the Facility and to use and dispose of Product after the Delivery Term. If the Facility is capable of achieving the Commercial Operation Date before the Milestone date, then Seller shall have the option, in its sole discretion, to establish the Commercial Operation Date and the start of the Delivery Term on such earlier date, and if exercised, Buyer will accept such earlier Commercial Operation Date but Seller shall not sell or deliver any Product, including Capacity Attributes, to or for the benefit of any third party if Seller does not elect to establish an early Commercial Operation Date. Each Party shall perform all obligations under this Agreement, including all generation, scheduling, and transmission services in compliance with (a) the CAISO Tariff, (b) WECC scheduling practices, and (c) Prudent Operating Practice.

4.2 **Title and Risk of Loss**. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Charging Energy, if any, shall pass and transfer from Buyer to Seller at the Delivery Point.

4.3 **Scheduling Coordinator Responsibilities**.

(a) Buyer as Scheduling Coordinator for the Facility. Upon initial synchronization of the Facility to the CAISO Grid, 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. At least thirty (30) days prior to the planned initial synchronization of the 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 the Facility's Scheduling Coordinator effective as of the initial synchronization of the 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 Facility effective as of the initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility'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 the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules (including Schedules for the Facility CLAP) to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product or load, as applicable, on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility'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 Section 3.3, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, fees, costs or revenues, and other charges, except as otherwise provided in this Agreement, including Section 3.3) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, 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 or fees resulting from any failure by Seller to abide by any Charging Notices, any Discharging Notices, the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). 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 (unless caused by operations

required by the Operating Restrictions), the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility'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 Section 3.3. 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 the Facility'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 and to transition to the Facility's new Scheduling Coordinator.

(g) Master Data File and Resource Data Template. Seller shall provide the data to Buyer, or directly to the CAISO if required under the CAISO Tariff, that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement and Buyer, in its role as the Scheduling Coordinator, must provide such data to CAISO. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.

(h) NERC Reliability Standards. Buyer (as the Facility's 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 the Facility's Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as the Facility's Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

4.4 **Forecasting**.

Seller shall provide the forecasts described below. Seller's (i) Available Storage Capacity and (ii) Available Storage Capability forecasts (items (i) and (ii) collectively referred to as the "**Forecasted Product**") shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Forecasted Product accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Monthly Forecast of Available Storage Capacity and Capability. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter 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 Forecasted Product for each day of the following month in the form attached hereto as Exhibit L-1 and L-2, or as reasonably requested by Buyer.

(b) Daily Forecast. 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 Forecasted Product 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 Storage Capacity and Available Storage Capability.

(c) Real-Time Forecast. During the Delivery Term, Seller shall notify Buyer of any changes in Forecasted Product of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but to the extent then known to Seller, no later than one (1) hour prior to the applicable deadline under the CAISO Tariff for Buyer to submit Schedules to the CAISO for the Facility in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product 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 Storage Capacity or Available Storage Capability, as applicable, the expected end date and time of such event, the expected Available Storage Capacity in MW or the expected Available Storage Capability in MWh, 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 are reasonably likely to 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 Storage Capacity and Available Storage Capability 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(c), then Seller shall send such communications by telephone and e-mail to Buyer.

4.5 **Curtailment**.

(a) General. Seller agrees to reduce its consumption of Charging Energy and its delivery of Discharging Energy by the amount and for the period set forth in any Curtailment Order.

(b) Failure to Comply. If Seller fails to comply with a Curtailment Order as provided above, then Seller shall pay Buyer the amounts owed under Section 3.3(a), including any penalties associated with any failure to comply with a Curtailment Order which, as specified in Section 3.3(a), shall not be offset in the calculation of amounts owed due to Facility Deviations, and Seller shall separately owe Buyer the full amount of any penalties associated with any failure to comply with a Curtailment Order.

(c) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment as are required under the CAISO Tariff, and implement such protocols and practices, as necessary to respond to and follow operating instructions from the CAISO and Buyer's SC, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer from time to time in accordance with this Agreement and/or a Governmental Authority, including to implement a Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility and required by CAISO or which Buyer reasonably determines are necessary to comply with this Agreement (provided, that in the event of any conflicts between the CAISO's requirements and the Buyer's requirements, Seller shall comply with the CAISO's requirements), Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall promptly repair and replace as necessary such facilities, communication links or other equipment, and shall notify Buyer as soon as Seller discovers any defect. If Buyer notifies Seller of the need for maintenance, repair, or replacement of any such facilities, communication links or other equipment, Seller shall repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to do so, then Seller shall make such repair or replacement as soon as reasonably practical. Seller shall be liable pursuant to Section 4.5(b) for failure to comply with a Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. A Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Charging and Discharging Energy**.

(a) Buyer will be the Scheduling Coordinator for the Facility and will have sole and exclusive rights to direct Seller to charge and discharge the Facility, and to bid and schedule the Facility in CAISO markets, subject to the terms of this Agreement, including compliance with the Operating Restrictions.

(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

accept the Charging Energy at the Facility in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Charging Notice. Buyer shall have exclusive rights to all Charging Energy which shall be discharged only in accordance with this Agreement. 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.

(c) Buyer will have the right to direct Seller to charge the 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 compliance with the Operating Restrictions and the CAISO Tariff. 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 Facility during the Contract Term other than pursuant to a valid Charging Notice or in connection with a Storage Capacity Test (for which Seller may 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 Facility other than as provided for in a Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Facility in violation of the first or second sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs where applicable under Section 3.3 and other amounts specified in Section 4.3(c), and without limiting any of Buyer's other rights under this Agreement:

(i) Seller shall be responsible for all Energy costs associated with such charging of the Facility; and

(ii) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy).

(e) Subject to compliance with the CAISO Tariff, other applicable Laws and the Operating Restrictions, Buyer will have the right to direct Seller to discharge the Facility 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 Facility during the Delivery Term other than pursuant to a valid Discharging Notice or in connection with a Storage Capacity Test (for which Seller may request a Discharging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. Discharging for Station Use may occur only as specified in Section 6.4. In the case of a Storage Capacity Test, Buyer shall pay for costs associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice; *provided*, (i) Seller shall pay the costs

associated with the Charging Energy and may retain any revenue from the discharge of such Energy (adjusted for efficiency losses), and (ii) the Facility shall be deemed unavailable for purposes of calculating the Monthly Storage Availability pursuant to Exhibit M, if (A) Seller initiates the tests in accordance with Exhibit N, or (B) a Buyer-initiated test indicates that the Storage Capacity is two percent (2%) or more lower than the then-current Storage Capacity. If, during the Contract Term, Seller (1) discharges the Facility other than as provided for in a Discharging Notice (except as permitted in the first sentence of this Section 4.6(f)), or (2) discharges the Facility in violation of the third sentence of Section 4.6(f), then, in addition to any other costs and charges for which Seller is responsible, including amounts specified in Section 3.3, and without limiting any of Buyer's other rights under this Agreement:

(i) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge; and

(ii) Seller shall be responsible for and reimburse Buyer for all Energy costs associated with charging the Facility to the Stored Energy Level specified by Buyer before the discharge.

(g) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Scheduled Maintenance previously agreed to between Buyer and Seller, System Emergencies and Force Majeure Events affecting the Facility applicable to such Settlement Interval shall have priority over any Discharging Notices or Charging Notices applicable to such Settlement Interval (but not over Charging Notices or Discharging Notices which are consistent with such Curtailment Orders, Scheduled Maintenance previously agreed to between Buyer and Seller, System Emergencies and Force Majeure Events affecting the Facility applicable to such Settlement Interval), 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, Scheduled Maintenance previously agreed to between Buyer and Seller, System Emergencies and Force Majeure Events affecting the Facility or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Curtailment Order, Scheduled Maintenance previously agreed to between Buyer and Seller, System Emergencies and Force Majeure Events affecting the Facility consistent with the Operating Restrictions and the Curtailment Order, Scheduled Maintenance previously agreed to between Buyer and Seller, System Emergencies and Force Majeure Events affecting the Facility.

(h) Prior to CAISO Commercial Operation, (i) Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, (ii) Seller shall have exclusive rights to charge and discharge the Storage Facility (provided, Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility), (iii) Buyer and Buyer's SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Discharging Energy during the period prior to the CAISO Commercial Operation), and (iv) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Storage Facility testing shall be for Seller's account. Upon CAISO Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices and all CAISO costs, revenues, penalties and

other amounts owing to or paid by CAISO in respect of the Storage Facility operations shall be for Buyer's account. For the period from CAISO Commercial Operation until the Commercial Operation Date, Buyer shall pay to Seller fifty percent (50%) of the Storage Capacity Payment, pro-rated on a daily basis.

(i) Buyer will not issue Dispatch Notices inconsistent with any Scheduled Maintenance previously agreed to between Buyer and Seller or any known Forced Facility Outage, Force Majeure Event affecting the Facility, Curtailment Order or System Emergencies.

4.7 **Financial Statements**. Seller shall provide to Buyer, within sixty (60) days of the end of Ultimate Parent's first, second, and third fiscal quarters, and within one hundred twenty (120) days of the end of the Ultimate Parent's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of the Ultimate Parent (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. To the extent such financial statements are publicly available on Ultimate Parent's public website, Seller will be deemed to have complied with the obligation set forth in this Section 4.7.

4.8 **Access to Data**.

(a) Commencing on the Commercial Operation Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer and consistent with Prudent Operating Practice, the data set forth below on a real-time basis; provided that 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, which changes Buyer reasonably determines are necessary in order for Buyer to forecast output from the Facility, and comply with Law:

(i) real time, read-only access to transformer availability, any other facility availability information;

(ii) real time, read-only access to Charging Energy, Discharging Energy, Facility state-of-charge, and battery rack and inverter status (online or offline) information 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 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;

(iii) read-only access to the Storage Facility Meter and all Facility meter data at the Site; and

(iv) full, real-time access to the Facility's Scheduling and Logging for the CAISO (OMS) client application, or its successor system.

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 Facility's monthly actual Available Storage 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 4.8, which shall be available on a minimum time interval of one hour basis or an hourly average 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 a secure communication link in order to provide Buyer with access to the data required in Section 4.8(a) of this Agreement.

(ii) Seller shall maintain the 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 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 telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) Business Days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) Business 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 amounts incurred under Section 3.3 during this additional period for repair or replacement but shall be relieved from liability for any amounts incurred under Section 3.3 for the earlier to occur of (A) the completion of the repair or replacement required pursuant to Buyer's notice, and (B) the fifth (5^{th}) Business Day after receipt of Buyer's notice.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide the quality of data required hereunder 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, 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 the Facility, including from the Participating Transmission Owner. 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.

4.9 **Storage Availability and Efficiency.** The provisions of this Section 4.9 shall apply during the Delivery Term.

(a) Storage Availability. During the Delivery Term, the Facility shall maintain a Monthly Storage Availability (calculated in accordance with Exhibit M) during each month of no less than ninety-eight percent (98%) [redacted] the "**Guaranteed Storage Availability**"). If, in any month after the Commercial Operation Date, the Monthly Storage Availability is less than the applicable Guaranteed Storage Availability, then, except as provided in Section 11.1(b)(iii), Buyer's sole and exclusive remedy for such shortfall shall be the application of the Storage Availability Adjustment to reduce the Storage Capacity Payment due for the Product as provided in Section 3.2.

(b) Round-Trip Efficiency. During the Delivery Term, the Facility shall maintain a Round-Trip Efficiency (calculated in accordance with Exhibit Q) during each month of no less than the applicable Guaranteed Round-Trip Efficiency. If, in any month during the Delivery Term, the Round-Trip Efficiency is less than the applicable Guaranteed Round-Trip Efficiency, then, except as provided in Section 11.1(b)(iv), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the RTE Shortfall Payment calculated in accordance with Exhibit Q.

4.10 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit N. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with Exhibit N.

(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. For all Buyer representatives that are present at the Site, Buyer shall require such representatives to (i) comply with all reasonable health and safety policies and procedures and instructions required by Seller and communicated to Buyer, and (ii) conduct themselves in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that its representatives will be escorted at all times by a Seller representative while visiting the Site.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit N. If the actual capacity determined pursuant to a Storage Capacity Test deviates from the then current Storage Capacity, then the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity) shall become the new Storage Capacity, effective as of the first day of the month following the completion of the Storage Capacity Test, for all purposes under this Agreement, including compensation under Section 3.2 until the next such Storage Capacity Test.

(d) It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for

all purposes of this Agreement the amount of Installed Storage Capacity and Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) (A) Buyer shall have no rights to instruct Seller to (i) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the lesser of the Guaranteed Storage Capacity, the Installed Storage Capacity or the Storage Capacity or (ii) charge the Facility to a level (in MWh) in excess of the lesser of the Guaranteed Storage Capacity, the Installed Storage Capacity or Storage Capacity times four (4) hours, (B) Buyer shall have no obligation to dispatch such excess capacity on behalf of Seller, or to make payment to Seller for such excess capacity, and (C) for purposes of calculating the Monthly Storage Availability of the Facility, the unavailability of such excess capacity will not be considered in such calculations.

4.11 **Facility Modifications**. Seller shall not modify or supplement all or any part of the Facility without Buyer's prior written consent, which consent shall be not be unreasonably withheld, conditioned or delayed; provided that Seller may, without Buyer's consent, perform routine maintenance and undertake augmentation, improvement or modification of the Facility, including repairs and replacements of all or portions thereof with newer technology, if such work is done in accordance with Prudent Operating Practice and does not change the Facility's ability to meet the availability and performance specifications of this Agreement or the Operating Restrictions and does not have any material adverse impact on Buyer's ability to receive Product from the Facility or charge or discharge the Facility in the manner provided for in this Agreement; provided, further that (a) Seller shall provide Buyer with prior Notice before undertaking any of the foregoing that either (i) involves augmentation of the battery components of the Facility or replacement of such battery components with different technology, or (ii) would result in any reduction in the availability of the Facility, or any change in the Installed Storage Capacity, the Storage Capacity, or the Round-Trip Efficiency, or that otherwise could affect operation of the Facility, and (b) all outages and derates associated with the foregoing shall count toward the maximum Scheduled Maintenance hours specified in Section 6.1(a).

4.12 **Ancillary Services**. Buyer shall have the exclusive rights to all Ancillary Services that the Facility is capable of providing consistent with the Operating Restrictions, with characteristics and quantities determined in accordance with the CAISO Tariff. Seller shall operate and maintain the Facility throughout the Contract Term so as to be able to provide such Ancillary Services in accordance with the specifications set forth in the Facility's initial CAISO Certification associated with the Installed Storage Capacity (subject to any changes required by Law or CAISO requirements). Upon Buyer's reasonable request, Seller shall submit the Facility for additional CAISO Certification so that the Facility may provide additional Ancillary Services that the Facility is, at the relevant time, actually physically capable of providing consistent with the definition of Ancillary Services herein and without modification of the Facility, provided that Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

4.13 **Workforce Agreement**. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall cause work performed in connection with construction of the Facility to be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with

applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall provide documentation reasonably satisfactory to Buyer demonstrating Seller's compliance with the requirements of this Section 4.13.

4.14 **Diverse Business Enterprises**. During the Delivery Term, no later than twenty (20) days after each semi-annual period ending on June 30th or December 31st, Seller shall provide to Buyer a report listing all Diverse Business Enterprises that supplied goods or services to Seller during such period, including any certifications or other documentation of such Diverse Business Enterprises status as such and the aggregate amount paid to Diverse Business Enterprises during such period.

(a) Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 4.14.

(b) Seller shall make reasonable efforts to accommodate requests by the CPUC (or by Buyer in response to a request by the CPUC) to audit Seller in order to verify data provided by Seller pursuant to this Section 4.14.

4.15 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities may be subject to shared facilities and/or co-tenancy agreements entered into among Seller, the PTO, Seller's Affiliates, and/or third parties. If applicable, Seller agrees that any agreements regarding Shared Facilities (i) shall permit Seller to perform or satisfy, and shall not purport to limit, Seller's obligations hereunder, (ii) shall provide for separate metering of the Facility that accurately accounts for losses attributable to the Shared Facilities and other projects; (iii) shall not limit Buyer's ability to provide Charging Notices or Discharging Notices for the Facility; (iv) shall provide that any other generating or energy storage facilities not included in the Facility but using Shared Facilities shall not be included within the Facility's CAISO Resource ID; and (v) shall provide that any curtailment or restriction of Shared Facility capacity not attributable to a specific project or projects shall be allocated to all generating or storage facilities utilizing the Shared Facilities based on their pro rata allocation of the Shared Facility capacity prior to such curtailment or reduction. Seller shall not, and shall not permit any Affiliate of Seller to, allocate to other Persons a share of the total interconnection capacity under the Interconnection Agreements in excess of an amount equal to the total interconnection capacity under the Interconnection Agreements, minus the Guaranteed Interconnection Capacity.

4.16 **Recycling Plan**. No later than twelve (12) months prior to the expected expiration of the Contract Term, Seller will deliver to Buyer a plan for the proper recycling and disposal of all Facility components, equipment, and materials at the end of the useful life of the Facility. Seller will provide written notice to Buyer of any material updates thereto during the remainder of the Contract Term.

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

Discharging 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) and on Charging Energy prior to delivery to the Delivery Point. Seller shall be solely responsible for all taxes, charges or fees imposed on the Facility or Seller by a Governmental Authority for Greenhouse Gas emitted by or attributable to the Facility during the Contract Term, but expressly excluding any taxes, charges or fees related to Greenhouse Gases imposed on Charging Energy or Discharging Energy. 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 Party 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 and Ancillary Services delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy and Ancillary Services.

5.3 **Ownership**. Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all tax benefits associated with the Facility, including any such tax credits or tax benefits under the Internal Revenue Code of 1986, as amended and all Incentives. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986, as amended.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. 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.

(a) Seller shall provide to Buyer no later than ninety (90) days prior to the Commercial Operation Date for the period from the Commercial Operation Date through the end of the then-current calendar year, and no later than September 1 of each calendar year thereafter for the following calendar year, a schedule of all planned outages or derates of the Facility for

maintenance purposes ("**Scheduled Maintenance**"). Seller may perform no more than [redacted] hours of Scheduled Maintenance that involves a reduction in the Available Storage Capacity per Contract Year. Scheduled Maintenance conducted in accordance with all the requirements and limits in this Agreement is "**Permitted Scheduled Maintenance**". Seller shall not conduct any Scheduled Maintenance between June 1 and October 31 of each year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance. Seller may modify its schedule of Permitted Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4 and this Section 6.1.

(b) Seller shall use commercially reasonable efforts to perform during periods of Permitted Scheduled Maintenance all maintenance that will reduce the Facility's output or availability. Seller shall arrange for any necessary non-emergency maintenance that is not Permitted Scheduled Maintenance and that reduces the Available Storage Capacity of the Facility by more than ten percent (10%) to occur only between November 1 and May 31 of each year, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties or in accordance with Prudent Operating Practice and cannot be scheduled outside the months of June through October, or (iii) the Parties agree otherwise in writing.

(c) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with Permitted Scheduled Maintenance (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 to Buyer, provided that Seller shall not be required to consolidate preventative maintenance activities into a single month where such consolidation is inconsistent with vendor-recommended maintenance schedules.

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 R Notice 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.

6.3 **Permits and Approvals**. As between Buyer and Seller, Seller shall obtain any required permits and approvals in connection with the development, construction, and operation of the Facility (except for any approvals required of Buyer as SC for the Facility), including without limitation, environmental clearance under the California Environmental Quality Act or other environmental law, from the local jurisdiction where the Facility will be constructed.

6.4 **Energy to Serve Station Use**. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (a) Seller is responsible for providing all energy to serve Station Use (including paying the cost of any Energy used to serve Station Use and the cost of energy provided by third parties used to serve Station Use); and (b) Seller may utilize Energy to

serve Station Use to the extent permissible in accordance with the CAISO Tariff and subject to the following requirements and restrictions:

(i) Seller shall not bill Buyer and Buyer will not pay Seller for any Energy that serves Station Use, and Seller shall bear all costs associated with Energy that serves Station Use, including during periods when the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice, as applicable (when such service is permissible in accordance with the CAISO Tariff), as set forth in the definition of Reimbursable Station Use Payment;

(ii) Seller shall separately meter all Station Use to ensure that records and invoices to Buyer are accurate and do not improperly bill Buyer for Energy that serves Station Use and to enable Buyer to invoice Seller for Reimbursable Station Power Payments;

(iii) Seller shall ensure that any use of Energy to serve Station Use complies with and does not interfere with or impair Buyer's or the CAISO's dispatch of or schedule for the Facility, and if Seller fails to comply with such requirements, then, without prejudice to Buyer's other rights and remedies hereunder, Seller shall reimburse Buyer for (A) any charges, costs, and penalties imposed by the CAISO for the Facility's failure to comply with dispatch instructions, the CAISO schedule, or any CAISO requirements (including Imbalance Energy costs and other amounts addressed in Section 3.3); and (B) any loss of revenue if the CAISO adjusts dispatch instructions due to the use of Energy discharged from the Facility to serve Station Use, in each case only to the extent imposed or incurred as a direct result of Seller's use of Energy discharged from the Facility to serve Station Use;

(iv) Any use of Energy for Station Use shall not (A) reduce Seller's obligations to achieve the Guaranteed Round-Trip Efficiency, or (B) count toward limits (including daily and or annual cycle limits) specified in the Operating Restrictions;

(v) Seller shall not use Stored Energy to serve Station Use; *provided*, Seller may use Energy stored in storage capacity installed in excess of the Installed Storage Capacity to serve Station Use; and

(vi) Seller shall provide to Buyer upon Buyer's request all records and data, including detailed meter, charging, discharging, and state of charge data, that may be necessary or useful for Buyer to verify that service of Station Use occurred in compliance with this Section 6.4, and to calculate and verify the accuracy of invoices and amounts required to be reimbursed hereunder.

ARTICLE 7
METERING

7.1 **Metering**. The Facility shall have its own CAISO Resource ID. Seller shall measure the Charging Energy and Discharging Energy using the Storage Facility Meter and CAISO approved methodologies. Seller shall (a) measure Station Use using a separate revenue quality meter that meets the requirements of the applicable electric utility serving retail load at the Facility and Site ("**Station Use Meter**") and Seller shall be solely responsible for paying such utility directly for such Station Use, and (b) establish a Custom Load Aggregation Point under an

independent Resource ID with the CAISO, to measure electricity usage at the Facility by all load that is not measured by the Station Use Meter, including load for cooling purposes and other operational purposes, and shall install and maintain meters to measure such usage ("**CLAP Meters**"). The Storage Facility Meter, Station Use Meter, and CLAP Meters shall be installed and maintained at Seller's cost. Metering will be consistent with the Metering Diagram set forth in Exhibit P. The meter(s) 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 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 at the Facility.

7.2 **Meter Verification**. If Buyer or Seller has reason to believe there may be a meter malfunction, Seller shall 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 so long as such adjustments are accepted by CAISO; *provided*, such period may not exceed twelve (12) months.

7.3 **Annual Station Use Audit**. At the end of each Contract Year during the Delivery Term, Seller shall cooperate with Buyer and its Scheduling Coordinator to audit electricity usage at the Facility to determine the quantities used for any Station Use purpose that was not captured by the Station Use Meter or the CLAP Meters, which may be based on CAISO settlement data and calculations, meter data, and other measurements agreed to by the Parties ("**Station Use Audit Calculations**"). The Parties will work in good faith to agree upon the Station Use Audit Calculations to be used for purposes of this Section 7.3 no later than one hundred eighty (180) days prior to the Commercial Operation Date, which shall be incorporated into this Agreement as Exhibit U. An updated Exhibit U agreed upon by the Parties pursuant to this Section 7.3 shall be automatically incorporated as the new Exhibit U once agreed upon in writing by the Parties. Seller shall provide such data and information reasonably available to Seller regarding Facility operations as Buyer and its Scheduling Coordinator may reasonably request to facilitate and support such Station Use Audit Calculations. If the Incremental Station Use (stated on a per day basis) as reasonably determined by Buyer and Seller using the Station Use Audit Calculations for a Contract Year differs by more than positive or negative ten percent (10%) ("**Incremental Station Use Tolerance Band**") from the total Incremental Station Use Amount that applied in the calculation of Reimbursable Station Use and the Reimbursable Station Use Payments for such Contract Year, then: (a) the Parties shall calculate the difference between (i) the amount paid by Seller for Incremental Station Use Amount in the Reimbursable Station Use Payments for such Contract Year, minus (ii) the amount owed by Seller for Incremental Station Use in the Reimbursable Station Use Payment for such Contract Year using the Incremental Station Use calculated for such

Contract Year under the Station Use Audit Calculations as the Incremental Station Use Amount, and, (1) if the result is a negative number, then the next monthly invoice to Buyer shall include a credit to Buyer equal to the absolute value of such result, and (2) if the result is a positive number, then the next monthly invoice to Buyer shall include a charge owed by Buyer equal to such result; and (b) such calculated Incremental Station Use shall be the Incremental Station Use Amount starting with the next monthly billing period after such determination and continuing until the next audit conducted under this Section 7.3 demonstrates a calculated Incremental Station Use that is outside the applicable Incremental Station Use Tolerance Band. If during the Delivery Term, either Party identifies reasonable grounds for modifying the Station Use Audit Calculations, the Parties shall work in good faith to agree upon modified Station Use Audit Calculations within sixty (60) days after Notice from either Party requesting such modifications. An updated Exhibit U agreed upon by the Parties pursuant to the foregoing sentence shall be automatically incorporated as the new Exhibit U once agreed upon in writing by the Parties.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall deliver an invoice to Buyer for Product no later than ten (10) days 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 to the extent available and other data sufficient to document and verify the amount of Charging Energy, Discharging Energy, Station Use, and Reimbursable Station Use for any Settlement Period during the preceding month, (b) the amount of Product and Replacement RA, if any, delivered to Buyer during the preceding month, and the Storage Rate applicable to such Product and Replacement RA, 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, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The Parties will work in good faith to agree upon a sample invoice calculating the amounts owed to Buyer pursuant to the provisions of this Agreement no later than one hundred eighty (180) days prior to the Commercial Operation Date. An updated Exhibit T agreed upon by the Parties pursuant to this Section 8.1 shall be automatically incorporated as the new Exhibit T upon once agreed upon in writing by the Parties.

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. Buyer shall pay undisputed invoice amounts within [redacted] days 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 two percent (2%) (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 two (2) years 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. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds Ten Thousand Dollars ($10,000).

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 due to the CAISO having provided updated data, 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 8.1, 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 or due to the CAISO having provided updated data, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months 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 twelve (12) months 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 twelve (12) months 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 twelve-month period. If an invoice is not rendered within twelve (12) months 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 under this Agreement 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 Exhibit B, 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's Development Security**. To secure Seller's obligations under this Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer in the amount set forth in the Cover Sheet within [redacted] Business Days after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment; [redacted] Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer in the amount set forth in the Cover Sheet on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect and Seller shall replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement within [redacted] Business Days after such draw, other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("**Performance Security End Date**"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, and indemnification payments or other damages, in each case of a determined amount, are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.

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, 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 Development Security, Performance Security, 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 and continuation 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 Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, 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 Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (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 (and Seller shall remain liable for any amounts still owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

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 in Exhibit R 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 United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) 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; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and either (i) the receiving Party sends a written acknowledgment of receipt, or (ii) 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 (d) 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 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 commercially 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 commercially 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 [redacted] landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or 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 (i) economic conditions that render a Party's performance of this Agreement at the Storage Rate unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product at a lower price or Seller's ability to sell Product at a higher price); (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 an event that would otherwise meet the definition of a Force Majeure Event (and for purposes of the definition of Force Majeure Event as if the third party that failed to issue such permit or approval were a Party); (iii) the inability of a Party to make payments when due under this Agreement except to the extent caused by an event that would otherwise meet the definition of a Force Majeure Event and 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 that would otherwise meet the definition of a Force Majeure Event (and for purposes of the definition of Force Majeure Event as if the third party that caused such Curtailment Period were a Party); (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 that would otherwise meet the definition of a Force Majeure Event (and for purposes of the definition of Force Majeure Event as if the third party causing such inability were a Party); (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 to the extent such equipment failure is caused by an event that would otherwise meet the definition of a Force

Majeure Event (and for purposes of the definition of Force Majeure Event as if the third party that caused such equipment failure were a Party); (viii) variations in weather, including wind, rain and insolation, within one in fifty (1 in 50) year occurrence; or (ix) failure to complete the Interconnection Facilities or network upgrades required to connect the Facility and to deliver Product to the Delivery Point by the Guaranteed Commercial Operation Date except to the extent such inability is caused by an event that would otherwise meet the definition of a Force Majeure Event (and for purposes of the definition of Force Majeure Event as if the third party that fails to complete the Interconnection Facilities or network upgrades were a Party); or (x) Seller's inability to achieve Construction Start of the Facility by the Guaranteed Construction Start Date or achieve Commercial Operation by the Guaranteed Commercial Operation Date, it being understood and agreed that the occurrence of a Force Majeure Event may give rise to a Development Cure Period [redacted] in accordance with the terms hereof.

10.2 **No Liability If a Force Majeure Event Occurs**. Except as set forth in Section 10.4(a), 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 a Force Majeure Event. 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*, 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**.

(a) **Prior to Commercial Operation.**

[redacted]

[redacted]

(iii) For the avoidance of doubt, nothing in this Section 10.4(a) shall limit or affect Buyer's rights to collect Daily Delay Damages and Commercial Operation Delay Damages, declare an Event of Default, and exercise all available remedies in accordance with Exhibit B and Article 11 with respect to delays in achieving the Construction Start (beyond the Guaranteed Construction Start Date) or delays in achieving Commercial Operation (beyond the Guaranteed Commercial Operation Date) that are not caused by a Force Majeure Event, including any such delays that persist after a Force Majeure Event has concluded and all extensions allowed hereunder for such Force Majeure Event have been applied.

(b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. 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), and Buyer shall promptly return to Seller any Performance Security then held by Buyer.

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, [redacted];

(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, [redacted]

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Sections 14.1, 14.2 or 14.3, as applicable; or

(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.

(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 Product that was not produced by the Facility, except with respect to Replacement RA provided in accordance with this Agreement;

(ii) the failure by Seller to achieve the Construction Start Date within one hundred twenty (120) days after the Guaranteed Construction Start Date, or the failure by Seller to achieve Commercial Operation within [redacted] days after the Guaranteed Commercial Operation Date, unless due solely to a Force Majeure Event that allows Buyer to terminate this Agreement under Section 10.4(a);

(iii) if, in the first Contract Year during the Delivery Term, the average Monthly Storage Availability (which, solely for purposes of this Section 11.1(b)(iii), shall be calculated such that "Monthly Unavailable Calculation Intervals" will exclude Secondary Unavailability Calculation Intervals) multiplied by the Storage Capacity is not at least fifty percent (50%) multiplied by the Installed Storage Capacity, or for any Contract Year thereafter, the average Monthly Storage Availability multiplied by the Storage Capacity is not at least seventy percent (70%) multiplied by the Installed Storage Capacity; *provided*, it will not be an Event of Default under this Section 11.1(b)(iii) if (A) the failure to meet the respective standard results from a failure of the Facility's Main Power Transformer, (B) during the [redacted] day period following the date of such Main Power Transformer failure Seller diligently pursues a cure to such Main Power Transformer failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Main Power Transformer failure that cure can be made within such [redacted] day period, and (C) Seller completes the cure of such Main Power Transformer failure within such [redacted] day period; *provided, further,* that (1) the extended cure period allowed in this Section 11.1(b)(iii) for a failure of the Facility's Main Power Transformer shall apply only one (1) time during the Contract Term, and (2) during any cure period allowed under this Section 11.1(b)(iii) until Seller completes the cure in accordance with this Section 11.1(b)(iii), the value of the current Storage Capacity (in kW) used to calculate the Storage Capacity Payment in Section 3.2 shall be zero (0);

(iv) if, for any two (2) consecutive Contract Years, the annual average Round-Trip Efficiency is not at least [redacted];

(v) if Seller fails to maintain a Storage Capacity determined pursuant to a Storage Capacity Test equal to at least seventy-five percent (75%) of the Guaranteed Storage Capacity for longer than three hundred sixty (360) days; provided, it will not be an Event of Default under this Section 11.1(b)(v) if (A) the failure to meet such standard results from a failure of the Facility's Main Power Transformer, (B) during the [redacted] day period following the date of such Main Power Transformer failure Seller diligently pursues a cure to such Main Power Transformer failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Main Power Transformer failure that cure can be made within such [redacted] day period, and (C) Seller completes the cure of such Main Power Transformer failure within such [redacted] day period; *provided, further,* that (1) the extended cure period allowed in this Section 11.1(b)(v) for a failure of the Facility's Main Power Transformer shall apply only one (1) time during the Contract Term, and (2) during any cure period allowed under this Section 11.1(b)(v) until Seller

completes the cure in accordance with this Section 11.1(b)(v), the value of the current Storage Capacity (in kW) used to calculate the Storage Capacity Payment in Section 3.2 shall be zero (0);

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within five (5) Business Days after Notice thereof;

(vii) if at any time Seller owns, operates or manages any equipment, facility, property or other asset, other than the Facility or engages in any business or activity other than the development, financing, ownership or operation of the Facility;

(viii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer 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 [redacted] Business Days after Seller 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) Seller 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.

11.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to 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 pursuant to this Section 11.2(a) (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and (i) for any Event of Default of Seller prior to the Commercial Operation Date, to collect as liquidated damages the applicable Damage Payment specified in Section 11.3(a), or (ii) any Event of Default of Seller after the Commercial Operation Date [redacted] the Termination Payment specified in Section 11.3(b), each in accordance with Section 11.3;

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; and/or

(e) 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 Damage Payment or Termination Payment, as applicable, 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.

11.3 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date due to a Seller Event of Default, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus the amount of any Daily Delay Damages and the amount of any Commercial Operation Delay Damages paid or owed by Seller; [redacted]. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon if the Development Security is posted as cash, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a) are a reasonable approximation of Buyer's harm or loss.

(b) Termination Payment. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date for a Seller Event of Default [redacted] ("**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. 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 shall be deemed direct damages covered by this Agreement. 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 (i) 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, (ii) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (iii) the 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 or Damage 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 Termination Payment or Damage Payment, as applicable, 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 or Damage 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 or Damage Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Damage Payment or Termination Payment, as applicable, 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 Damage Payment or Termination Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Damage Payment or Termination Payment, as applicable, shall be determined in accordance with Article 15.1.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**. If the Agreement is terminated prior to the Commercial Operation Date for any reason other than pursuant to this Article 11 for a Buyer Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the early termination date ("**Option Period**"), unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) ("**Option**") and Buyer fails to accept such offer within forty-five (45) days of

Buyer's receipt thereof; *provided,* that (a) if this Agreement was terminated under Section 2.1, then the Option applies only if Seller or any of Seller's Affiliates proposes to sell, market or deliver Product associated with or attributable to the Facility to a party other than Buyer for a price that is less than the Storage Rate specified on the Cover Sheet as of the Effective Date and, in such case, the Option shall be offered to Buyer at the price proposed for such other party, and [redacted]

Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site for the purpose of developing and operating a storage or electricity generating facility, not including rooftop solar, at the Site during the Option Period, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer in its reasonable discretion. For the avoidance of doubt, Seller shall be permitted to sell or transfer the land rights or interests in the Site for any other reason without any restriction hereunder.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **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.

11.8 **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.

11.9 [redacted]

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY (INCLUDING IN A LIQUIDATED DAMAGES CALCULATION), THIRD-PARTY CLAIM SUBJECT TO INDEMNIFICATION UNDER AN 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.

[redacted]

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) SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT AND THE TERMINATION PAYMENT UNDER SECTIONS 11.2 AND 11.3, AND AS PROVIDED IN SECTION 3.3, SECTION 3.6, SECTION 4.9, EXHIBIT B, EXHIBIT M, AND EXHIBIT Q, 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, AND (UNLESS EXPRESSLY STATED TO THE CONTRARY) AN EXCLUSIVE REMEDY. 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.

EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS AGREEMENT, INCLUDING PARAGRAPH 19.3, THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

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 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 and affirmatively waives 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.

13.4 **Prohibition Against Forced Labor**. Seller represents and warrants that it has not and will not knowingly utilize equipment or resources for the construction, operation or maintenance of the Facility that rely on work or services exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily ("**Forced Labor**"). Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve Forced Labor. Seller shall certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

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 not otherwise permitted 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; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) if, and only if (i) the assignee is a Qualified Transferee; (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Qualified Transferee; or (c) subject to Article 15, 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, conditioned or delayed.

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 Baa1 or higher by Moody's or BBB or higher by S&P, if rated by only one such entity, or a Credit Rating of Baa2 or higher by Moody's and BBB or higher by S&P, if rated by both such entities, 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, reasonably acceptable to Seller, 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 Collateral Assignment Agreement and other documents previously entered into by Seller as described in Section 15.2. 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.

14.4 **Permitted Limited Assignment by Buyer**. If a change in Law occurs after the Effective Date that allows a tax-exempt load serving entity to include product purchased under an energy storage agreement with a standalone storage facility in a municipal prepayment transaction, then Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has a Credit Rating of Baa1 or higher by Moody's or BBB or higher by S&P, of Buyer's right to receive certain Product and Buyer's obligation to make payments for such Product to the Seller, provided that Buyer will not be relieved of its obligations to make payments for Product to the Seller hereunder, and Seller agrees to provide a written consent to such limited assignment in a form and substance reasonably acceptable to both Parties. Buyer may make such an assignment upon not less than thirty (30) days' advance Notice by delivering to Seller the proposed form of consent to limited assignment agreement. The Parties shall cooperate in good faith to agree upon and execute such consent.

ARTICLE 15
LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest**. Notwithstanding Section 14.2, Section 14.3, or Section 14.4, 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 **Collateral Assignment**. Subject to the provisions of this Section 15.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In

connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to execute a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit S ("**Collateral Assignment Agreement**").

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. Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be a retired judge and shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

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, each Party will bear its own attorneys' fees 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 the Superior Court for the county of San Mateo, 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. Seller shall comply at all times during the Contract Term with the requirements of Exhibit J.

(b) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance in amounts equal to those set forth for Seller in Exhibit J; (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, in amounts equal to those set forth for Seller in Exhibit J. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). Coverage required in Section 18.1(b) shall be primary and provide a waiver of subrogation to the Seller.

(c) Evidence of Insurance. Within ten (10) days after execution of the 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.

(d) 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, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import 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; (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**. The Party receiving Confidential Information shall treat it as confidential and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes and may publicly disclose such information at its own discretion. **Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in**

connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer may, in its discretion, redact certain terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure. Seller further 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 from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, 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 other requested Confidential Information, whether or not advance written notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.

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 or any of its 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 or are otherwise bound by a duty of confidentiality with respect to such Confidential Information.

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.**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" 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).

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 15.1. Notwithstanding the foregoing, (i) 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, and (ii) this Agreement shall remain in full force and effect, subject to any necessary changes, if any, agreed to by the Parties or determined through dispute resolution.

EXHIBIT A

DESCRIPTION OF THE FACILITY

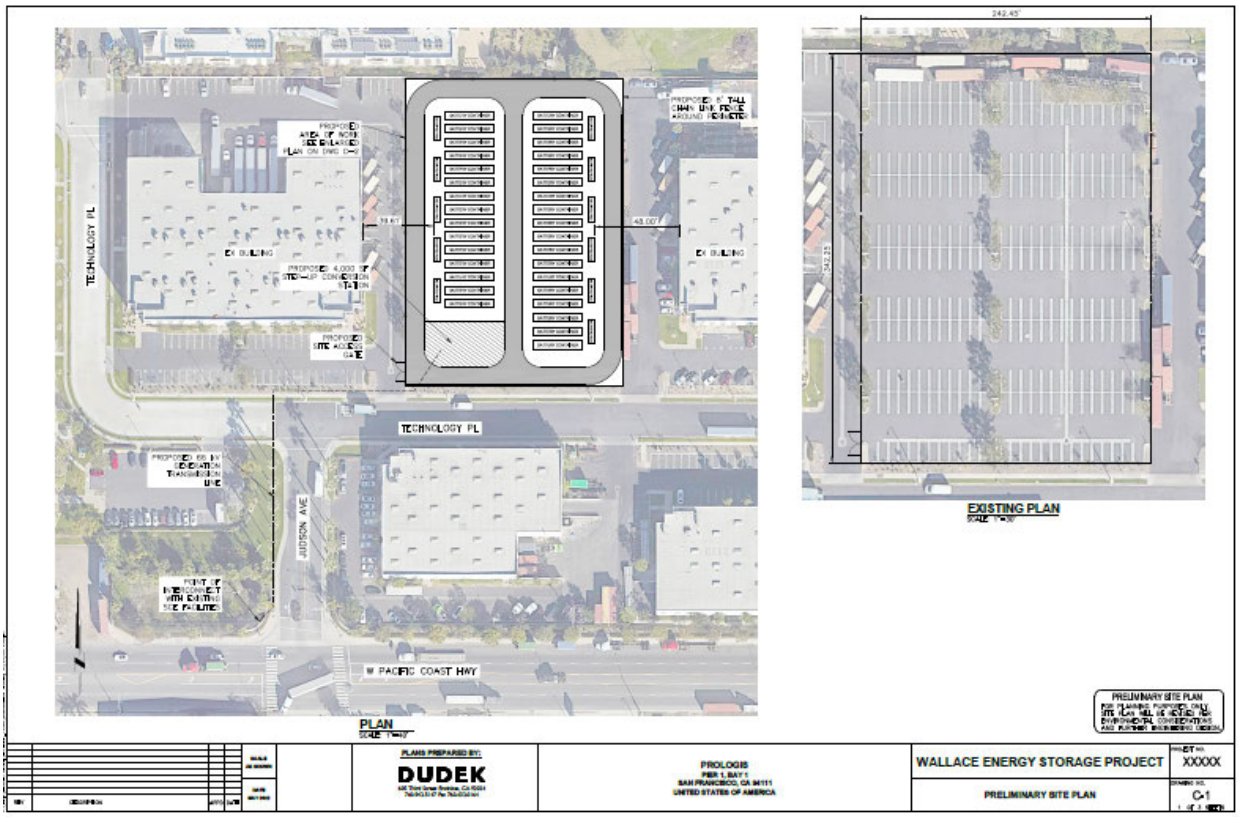
Facility Name: Wallace Energy Storage Project

Site Description: Assessor Parcel Number (APN) 7402-021-044

Site Address: 2131 Technology Place, Long Beach CA 90810

GPS Coordinates: 33.785656°, -118.222254°

Site Map:



County: Los Angeles County

CEQA Lead Agency: City of Long Beach

Storage Technology: Lithium-ion battery

P-node/Delivery Point: The Pnode designated by CAISO for the Facility (to be determined)

Point of Interconnection: Long Beach-Seabright 66 kV Line

Description of Interconnection Facilities and Metering: The Facility will use the following Interconnection Facilities and metering configuration, as depicted in the attached one-line diagram: Refer to Exhibit P

CAISO Queue Number: WDT1754

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

a. Seller shall cause the Construction Start to occur by the Guaranteed Construction Start Date. The "**Construction Start**" shall occur when Seller has demonstrated the start of construction through (i) execution of Seller's engineering, procurement and construction contract, (ii) Seller's issuance of a notice to proceed under such contract, and (iii) mobilization to site by Seller and/or its designees that includes the physical movement of soil at the Site. On the date of the Construction Start (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit H hereto.

b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until the earlier of one hundred twenty (120) days after the Guaranteed Construction Start Date, or the date on which Seller reaches Construction Start of the Facility. On or before the tenth (10^{th}) day of each month, Buyer shall invoice Seller for 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 Daily Delay Damage set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 3(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first one hundred twenty (120) days of the delay in achieving the Construction Start Date on or before the Guaranteed 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 Damage Payment calculated in accordance with Section 11.3(a) upon exercise of Buyer's rights pursuant to Section 11.2.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has provided Notice to Buyer that Commercial Operation has been achieved and specifying the "placed in service" date per Internal Revenue Service Requirements of the Facility. The "**Commercial Operation Date**" shall be the date on which Commercial Operation is achieved.

a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Commercial Operation Date.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Buyer shall retain Daily Delay Damages, as applicable, and Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the earlier of (i) the Commercial Operation Date or [redacted]. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Commercial Operation Delay Damages shall be Buyer's sole and exclusive remedy for the first [redacted] days of delay in achieving the Commercial Operation Date on or before the Guaranteed 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 Damage Payment calculated in accordance with Section 11.3(a) upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Timely Achieve Construction Start or Commercial Operation**. If the Facility has not achieved Construction Start by the Guaranteed Construction Start Date, or Commercial Operation by the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to (a) Sections 11.1(b))(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a), or (b) Section 10.4(a), if applicable.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of each of the following delays:

a. Force Majeure Event occurs; or

b. [redacted]

c. [redacted]

d. Buyer has not made all necessary arrangements to deliver Charging Energy to the Delivery Point, receive the Discharging Energy at the Delivery Point, and become, or cause its designee to become, recognized by CAISO as the Scheduling Coordinator for the Facility by the Guaranteed Commercial Operation Date;

provided, however, that, notwithstanding anything in this Agreement to the contrary:

(i) the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason;

(ii) [redacted]

(iii) [redacted]

(iv) without limiting the provisions of Section 10.3, no extension shall be given to the extent that: (A) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines; (B) Seller failed to provide prompt written notice to Buyer of a delay due to a Force Majeure Event, but in no case more than thirty (30) days after Seller became aware of an actual delay (not including Seller's receipt of generic notices of potential delays due to a Force Majeure Event) affecting the Facility, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Commercial Operation Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay; or (C) Seller failed, upon written request from Buyer, to provide documentation demonstrating to Buyer's reasonable satisfaction that the delay was a result of a Force Majeure Event and did not result from Seller's actions or failure to take commercially reasonable actions; and

(iv) [redacted]

5. **Failure to Reach Guaranteed Storage Capacity**. If, at Commercial Operation, the Installed Storage Capacity is at least ninety-five percent (95%) of the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional storage capacity such that the Installed Storage Capacity is increased, but not to exceed the Guaranteed Storage Capacity. If Seller installs additional storage capacity pursuant to the immediately preceding sentence, Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit G-2 hereto specifying the new Installed Storage Capacity. In the event that the Installed Storage Capacity is still less than the Guaranteed Storage Capacity as of such date, Seller shall pay "**Capacity Damages**" to Buyer, in

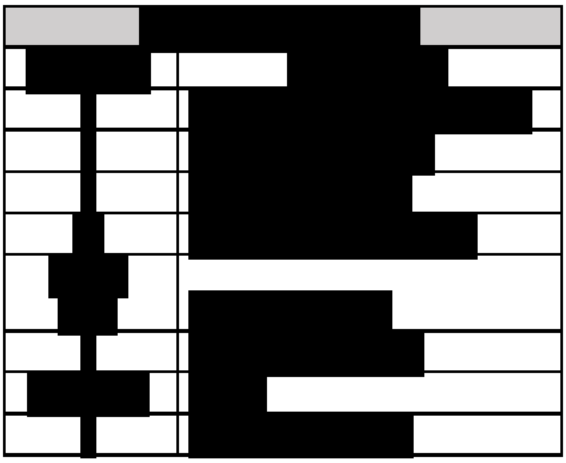
an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity, and the Guaranteed Storage Capacity and other applicable portions of the Agreement shall be reduced based on the ratio of the Installed Storage Capacity as of such date to the original Guaranteed Storage Capacity

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

EXHIBIT C

[redacted]

[redacted]



[redacted]

EXHIBIT D

Reserved.

EXHIBIT E

PROGRESS REPORTING FORM

Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the 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. Facility description.

3. Site plan of the Facility.

4. Description of any planned changes to the Facility or the Site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter or month, as applicable, 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. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

Reserved.

EXHIBIT G-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*Licensed Professional Engineer*] ("**Engineer**") to Peninsula Clean Energy Authority **(**"**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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) Seller has installed and commissioned storage equipment with a capacity of at least ninety-five percent (95%) of the Guaranteed Storage Capacity in accordance with Exhibit N of the Agreement.

(2) The Facility is capable of receiving Charging Energy and delivering Discharging Energy to the Delivery Point and commissioning of equipment at the Facility has been completed in accordance with the manufacturer's specifications.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner, [Name of Participating Transmission Owner as appropriate] on___[DATE]____

(4) The Participating Transmission Owner or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____[DATE]_____.

(5) The CAISO has provided notification supporting the Facility's Commercial Operation, inclusion in the Full Network Model and authorization to provide Ancillary Services, all in accordance with the CAISO tariff on _____[DATE]_____.

(6) Seller has segregated and separately metered Station Use to the extent reasonably possible in accordance with Prudent Operating Practice, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

(7) The inverters installed at the Facility are engineered and designed such that the Facility will not have any capacity derates at temperatures at or below 45°C.

EXECUTED by **[**licensed professional engineer**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT G-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 AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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 Facility performance test under Seller's engineering, procurement and construction contract or primary energy storage system supply agreement for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point ("**Installed Storage Capacity**").

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By:_____

Its:_____

Date:_____

EXHIBIT H

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to PENINSULA CLEAN ENERGY AUTHORITY ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services 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 engineering, procurement and construction contract related to the Facility was executed on _____;

2. the limited notice to proceed with the construction of the Facility was issued on _____ (attached);

3. the Construction Start Date has occurred;

4. the precise Site on which the 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 I

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$**[XXXXXXX]**
Expiry Date:

Beneficiary:

Peninsula Clean Energy Authority

[Address]

Ladies and Gentlemen:

On behalf of **[XXXXXXX]** ("Applicant"), we, **[insert bank name and address]** ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") in favor of Peninsula Clean Energy Authority, Address_____, for an amount not to exceed the aggregate sum of U.S. $**[XXXXXXX]** (United States Dollars **[XXXXXXX]** 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 _____ __, 202_ 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. **[XXXXXXX]** 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)

Exhibit A

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Peninsula Clean Energy Authority, Address_____ as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. **[XXXXXXX]** (the "Letter of Credit") issued by **[insert bank name]** (the "Bank") by order of **[XXXXXXX]** (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of **[XXXXXXX]** (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 Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Peninsula Clean Energy Authority

_____
Name and Title of Authorized Representative

Date_____

EXHIBIT J

INSURANCE

Liability Insurance

To the fullest extent allowable by law, Seller shall purchase and maintain such insurance as will protect it from the claims set forth below which may arise out of or result from Seller's operations under this Agreement whether such operations be by itself or by anyone directly or indirectly employed by them, or by anyone for whose acts any of them may be liable. Limits shall be all the Insurance Coverage and/or limits carried by or available to the Seller, the minimum limits as required herein.

General Conditions

Seller shall maintain completed operations liability insurance for the entire Contract Term plus the period of time Seller may be held legally liable for.

Seller shall maintain policies of insurance in full force and effect, at all times during the performance of the Agreement, plus any statute of repose or statute of limitations applicable to the jurisdiction where any work is performed.

All insurance companies shall have a Best's rating of A-VII or better.

In addition, Seller shall provide Buyer with [redacted] days' notice in case of cancellation or non- renewal, except 10 days for non-payment of premium.

Certificates of Insurance Acord Form 25 and all required Endorsements shall be filed with Buyer within (5) working days of execution of the contract and/or prior to commencement of any work performed.

Acceptance of the certificates or endorsements by the Buyer shall not constitute a waiver of Seller's obligations hereunder.

If Seller fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, Buyer may, in addition to any other rights it may have under this Agreement or at law or in equity, terminate this Agreement or secure such policies or policies of insurance for the account of Seller and charge Seller for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Buyer to Seller. Neither the Buyer's rights to secure such policy or policies nor the securing thereof by Buyer shall constitute an undertaking by Buyer on behalf of or for the benefit of Seller or others to determine or warrant that such policies are in effect.

Seller shall be fully and financially responsible for all deductibles or self-insured retentions.

Coverage Forms & Limits

Seller's Commercial General Liability insurance shall be written on an industry standard Commercial General Liability Occurrence from (CG 00 01, 12/07) or its equivalent and shall include but not be limited to products/completed operations; premises and operations; blanket contractual; advertising/personal injury; independent Buyers.

Coverage shall be on an occurrence form with policy limits of not less than:

- $1,000,000 Each Occurrence Bodily Injury & Property Damage
- $1,000,000 Personal & Advertising Injury
- $2,000,000 General Aggregate to apply on a Per Project basis
- $2,000,000 Products/Completed Operations Aggregate

Business Auto Liability – Coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) form CA 00 01, written on an occurrence basis to apply to "any auto" or at a minimum "all owned, hired and non-owned autos", with policy limits of not less than $1,000,000 per accident for bodily injury and property damage.

If applicable, Broadened Pollution for Covered Autos shall apply. This requirement may also be satisfied by providing proof of separate Pollution Liability that includes coverage for transportation exposures.

Workers' Compensation and (b) employers' liability – Sellers shall provide coverage for industrial injury to their employees (or leased employees as applicable) in strict accordance with the provisions of the State or States in which project work is performed or where jurisdiction is deemed to be applicable. Workers' Compensation shall be provided in a statutory form on either a state or, where applicable, federal (U.S. Longshore & Harbor Workers Act, Maritime- Jones Act, etc.) basis as required in the applicable jurisdiction.

Such insurance shall be in an amount of not less than:

- Workers Compensation: Statutory
- Employers Liability
    - $1,000,000 Bodily Injury by Accident – Each Accident
    - $1,000,000 Bodily Injury by Disease – Total Limit
    - $1,000,000 Bodily Injury by Disease – Each Employee

Commercial Umbrella or Excess Liability Insurance over Seller's primary Commercial General Liability, Business Auto Liability and Employers Liability. All coverage terms required under the Commercial General Liability, Business Auto Liability and Employers Liability above must be included on the Umbrella or Excess Liability Insurance.

Coverage shall be written on an occurrence form with policy limits not less than:

- $5,000,000 Each Occurrence
- $5,000,000 Personal & Advertising Injury
- $5,000,000 Aggregate (where applicable, following the terms of the underlying)

Pollution liability – Seller shall provide evidence prior to the Construction Start Date of Pollution Liability; covering all operations necessary or incidental to the fulfillment of all contract obligations hereunder. Such insurance shall provide coverage for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), clean- up costs and remediation expenses (including costs for investigation, sampling, characterization, and monitoring), legal costs, defense costs, natural resource damage, transportation of pollutants on and off the project site, and non-owned disposal site liability if Seller's scope of work (or Seller's consultants) includes the responsibility of manifesting and disposing of contaminated material or waste from its activities. Coverage shall also extend to pollution conditions arising out of the Seller's operations including coverage for sudden as well as gradual release arising from Seller's operations including operations of any of its Seller's or consultants. Such insurance shall provide coverage for wrongful acts, which may arise from all activities from the first point of Seller engagement and shall continue on a practice basis for not less than 36 months after completion, or the period of time Seller may be held legally liable for its work, whichever is longer. The retro date if any such coverage shall be prior to the commencement of Seller's work.

Such insurance shall be in an amount of not less than $5,000,000 per claim or occurrence and $5,000,000 annual aggregate.

Professional Liability and/or Errors & Omissions – Seller shall provide evidence of Professional Liability insurance covering claims that arise from the actual or alleged errors, omissions or acts of the Seller or any entity for which the Seller is legally responsible, for the provision of all professional services necessary or incidental to the fulfillment of all contract obligations hereunder.

Such insurance shall be in an amount of not less than $2,000,000 each claim / $4,000,000 aggregate.

The policy shall be effective from the date of commencement of all professional services in connection with the fulfillment of all contract obligations hereunder. The retroactive date in the current and future policies shall be prior to the commencement of all professional services. Coverage shall be maintained for a period not less than 36 months or the period of time Seller may be held legally liable for its work, (whichever is longer) following the completion of the work; or an extended reporting period of 36 months following completion of the work shall be purchased.

Coverages shall not include any exclusion or other limitations related to scopes of services or project type or construction type, or delays in project completion and cost overruns.

Additional Insured / Primary-Noncontributory / Waiver of Subrogation Requirements To the fullest extent of coverage allowed under applicable law, Buyer shall be named as additional insured on a primary and non-contributory basis for all required lines of coverage except Statutory Workers Compensation and Professional Liability, arising out of all operations performed by or for the Seller under this Agreement.

Additional Insured status shall be for all limits carried, not limited to the minimum acceptable as required herein. Seller's insurance shall be Primary as respects to Buyer and Owner, and any other

insurance maintained by Buyer and Owner shall be excess and not contributing insurance with Seller's insurance until such time as all limits available under the Seller's insurance policies have been exhausted.

Additional Insured endorsements that contain comparative fault, vicarious liability or sole negligence limitations of the Buyer / Owner or any other party required by the contract, will not be accepted.

In the event that any policy provided in compliance with this Agreement states that the coverage provided to an additional insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this Agreement is intended to restrict or limit the breadth of coverage or limits available.

The additional insured status shall remain in full force and effect for the Contract Term plus the applicable statute of repose, or the amount of time you are legally liable, whichever is longer.

It is further agreed that the additional insured coverage required under this Agreement shall not be subject to any Defense Costs Endorsements such as Form IL 01 23 11 13, allowing for the recovery of defense costs by the insurer if the insurer initially pays defense costs but later determines the claims are not covered.

Buyer reserves the right, in its sole and subjective discretion, to reject any Additional Insured forms that are deemed not equivalent to what is required herein.

Additional Requirements

Property Insurance

Seller shall procure and maintain, at the Seller's own expense, Builder's Risk, property and equipment insurance, including for any property stored off the Site, in transit or any of the Buyer's property in the care, custody or control of Seller. Seller and Seller's insurance carrier(s) hereby waive all rights of subrogation against Buyer for damage including loss of use.

Buyer neither represents nor assumes responsibility for the adequacy of the Builders Risk Insurance to protect the interests of the Seller. It shall be the obligation of the Seller to purchase and maintain any supplementary property insurance that it deems necessary to protect its interest in the Work, including without limitation off site stored materials and materials in transit.

Seller is solely responsible for loss or damage to its personal property.

EXHIBIT K

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by [ ], a [ ] ("**Seller**") to Peninsula Clean Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Energy Storage and Services Agreement dated [_____] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.6(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

Name	
Location	
CAISO Resource ID	
Unit SCID	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	**Unit CAISO NQC (MW)**	**Unit CAISO EFC (MW)**	**Unit Contract Quantity (MW)**	**Unit EFC Contract Quantity (MW)**
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

[SELLER]

By:_____

Its:_____

Date:_____

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"**CPUC RA Filing Guide**" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"**Deliverability Period**" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"**Flexible Capacity Category**" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"**LCR Area (if any)**" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"**Prorated Percentage of Unit Factor**" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"**Prorated Percentage of Unit Flexible Factor**" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"**Resource Category**" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"**Resource Type**" means the type of storage resource.

"**Run Hour Restrictions**" means any restrictions on the ability of the unit to run during any hours of the day.

"**Unit CAISO EFC**" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"**Unit CAISO NQC**" means the NQC (as defined in the CAISO Tariff) for the unit, as determined by CPUC and CAISO.

"**Unit Contract Quantity**" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Installed Storage Capacity.

"**Unit EFC Contract Quantity**" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Installed Storage Capacity.

"**Unit SCID**" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.

EXHIBIT L1

Monthly Expected Available Storage Capacity

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected Available Storage Capacity (MW) per hour – [Insert Month]

	1:00*	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
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Day 26																								
Day 27																								
Day 28																								
Day 29**																								
Day 30**																								
Day 31**																								

*All times are designated as "Hour-Ending [__]".

**Include these rows if needed for each month.

EXHIBIT L2

Monthly Expected Available Storage Capability

The following table is provided for informational purposes only.

Please adjust the table for the appropriate number of days in the month for each month of the year.

Monthly Expected Available Storage Capability (MWh) per hour – [Insert Month]

	1:00*	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
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Day 5																								
[insert additional rows for each day of the month]																								
Day 26																								
Day 27																								
Day 28																								
Day 29**																								
Day 30**																								
Day 31**																								

*All times are designated as "Hour-Ending [__]".

**Include these rows if needed for each month.

EXHIBIT M

MONTHLY STORAGE AVAILABILITY

1. Monthly Storage Availability.

For each monthly period after the Commercial Operation Date, Seller shall calculate the "**Monthly Storage Availability**" using the formula set forth below:

$$\textit{Monthly Storage Availability}\ (\%) =$$

$$1 - \frac{\textit{Monthly Unavailable Calculation Intervals}}{\textit{Total Calculation Intervals}}$$

where:

CALCULATION INTERVAL or "C.I." = each successive five-minute interval, but excluding all such intervals which are Scheduled Maintenance, not to exceed 100 hours in each Contract Year

MONTHLY UNAVAILABLE CALCULATION INTERVALS = the sum of all Unavailable Calculation Intervals for the applicable month

UNAVAILABLE CALCULATION INTERVAL = For each Calculation Interval, the Unavailable Calculation Interval is defined using the formula set forth below. Except as otherwise expressly provided in this Agreement (including Section 4.6(f)), the calculations of Available Storage Capacity and Available Storage Capability for purposes of determining the Unavailable Calculation Intervals shall be based solely on the availability of the Facility to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, as applicable. Any Calculation Interval in which the Storage Facility fails to maintain connectivity to the CAISO such that it cannot receive ADS or AGC signals shall result in an Unavailable Calculation Interval of one (1) for that Calculation Interval.

$$\textit{Unavailable Calculation Interval} = 1 - [redacted]$$

where:

"**A**" is the "**AVAILABLE STORAGE CAPACITY**", which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC, from all system inverters expected to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer's guidelines), provided

that the Available Storage Capacity shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Facility for such Calculation Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.4), and further provided that "A" shall never exceed the Storage Capacity.

"**AVAILABLE STORAGE CAPABILITY**" = the sum of the following (taking into account the SOC at the time of calculation and the Operating Restrictions):

i. The battery capability (in MWh) available to receive Charging Energy from the Delivery Point in the applicable Calculation Interval

ii. The battery capability (in MWh) available to deliver Discharging Energy to the Delivery Point in the applicable Calculation Interval

In calculating Available Storage Capability, the "battery capability available to receive Charging Energy" and "battery capability available to receive Discharging Energy" are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in Wh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer's guidelines), that are able (considering the conditions of the Facility in total) to receive Charging Energy from or deliver Discharging Energy to the Delivery Point, provided that the Available Storage Capability shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Facility for such Calculation Interval, and (ii) Seller's most recent Availability Notice (as updated pursuant to Section 4.4), and further provided that Storage Capability shall never exceed the Storage Capacity x four (4) hours.

"**TOTAL CALCULATION INTERVALS**" = the total number of Calculation Intervals in the applicable month.

2. Storage Availability Adjustment. The "**Storage Availability Adjustment**" shall be calculated as follows and applied to the calculation of the Storage Capacity Payment due for the next month after the end of the monthly period for which the Monthly Storage Availability is calculated.

(a) If the Monthly Storage Availability is greater than or equal to the applicable Guaranteed Storage Availability, then:

Storage Availability Adjustment = 100% (expressed as a decimal)

(b) If the Monthly Storage Availability is less than the applicable Guaranteed Storage Availability but greater than or equal to [redacted] then:

[redacted]

(c) If (i) the Monthly Storage Availability is less than [redacted] then:

[redacted] **(expressed as a decimal)**

where:

Secondary Unavailability = the sum of all Unavailable Calculation Intervals in the applicable month that resulted from either (i) a Force Majeure Event for which Seller is the claiming party, or (ii) a Curtailment Order, divided by the Total Calculation Intervals for the month

EXHIBIT N

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. 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 Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit N and shall establish the initial Storage Capacity hereunder based on the actual capacity of the Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the 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 Facility's PMax 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 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 Capacity has varied materially from the results of the most recent Storage Capacity Test or any other guaranteed operational characteristics are not being met. 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 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 Facility. In accordance with Section 4.10(c) of this Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (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 Capacity, effective as of the first day of the month following completion of the Storage Capacity Test for calculating the payment for the Product 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 N. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit N 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 (MW);
- Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
- Amount of time between the Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the 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 Facility, at ten (10) minute intervals:

(1) Time;

(2) Charging Energy;

(3) Discharging Energy;

(4) Stored Energy Level (MWh);

(5) Station Use.

C. Site Conditions. During each SCT, the following ambient 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 Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Facility:

(1) successfully started;

(2) operated for at least [four (4)] consecutive hours at Maximum Discharging Capacity;

(3) operated for at least [four (4)] consecutive hours at Maximum Charging Capacity;

(4) is able to ramp upward and downward at the contract Ramp Rate; and

(5) 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 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 (A) abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT or (B) average Station Power deviates from the average Station Power by more than five percent (5%) for the same hours on the five (5) days prior to the SCT (except to the extent the Facility did not operate during such hours on such days), either Party 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 to 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 Installed Storage Capacity, or Storage Capacity (as applicable), 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 N 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 N.

I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity 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 Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.10(c) of this Agreement.

J. Following the initial Storage Capacity Test conducted prior to the Commercial Operation Date, upon request of Seller, Buyer shall consider in good faith an

alternate methodology for conducting a Storage Capacity Test by reference to the operational data reflecting the net output of the Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Capacity through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Capacity for all purposes of this Agreement, including compensation under Section 3.2.

EXHIBIT O

OPERATING RESTRICTIONS

Maximum Cycle Limits:	Number of times Buyer may fully charge and discharge the Facility. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Facility over the course of a calendar year equals the Maximum Stored Energy Level (as defined in Exhibit A). 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: 365 cycles
Ramp Rates:	Dmin to Dmax: up to 100%/s
	Cmin to Cmax: up to 100%/s
	Dmax to Dmin: up to 100%/s
	Cmax to Cmin: up to 100%/s
	Frequency ramp rate: 100% MW/Hz
	Regulation ramp rate: 55 MW/min
System Response Time:	Idle to Dmax: <1s
	Idle to Cmax: <1s
	Dmax to Cmax: <1s
	Cmax to Dmax: <1s
	Dmin to Cmin: <1s
	Cmin to Dmin: <1s

Maximum Stored Energy Level:	220 MWh, number in MWh representing maximum amount of energy that may be charged to the Facility
Minimum Stored Energy Level:	0 MWh, number in MWh representing the lowest level to which the Facility may be discharged
Maximum Charging Capacity:	55 MW, number in MW representing the highest level to which the Facility may be charged
Minimum Charging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be charged
Maximum Discharging Capacity:	55 MW, number in MW representing the highest level at which the Facility may be discharged
Minimum Discharging Capacity:	0.1 MW, number in MW representing the lowest level at which the Facility may be discharged
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	55 MW/minute

[redacted]

EXHIBIT P

METERING DIAGRAM

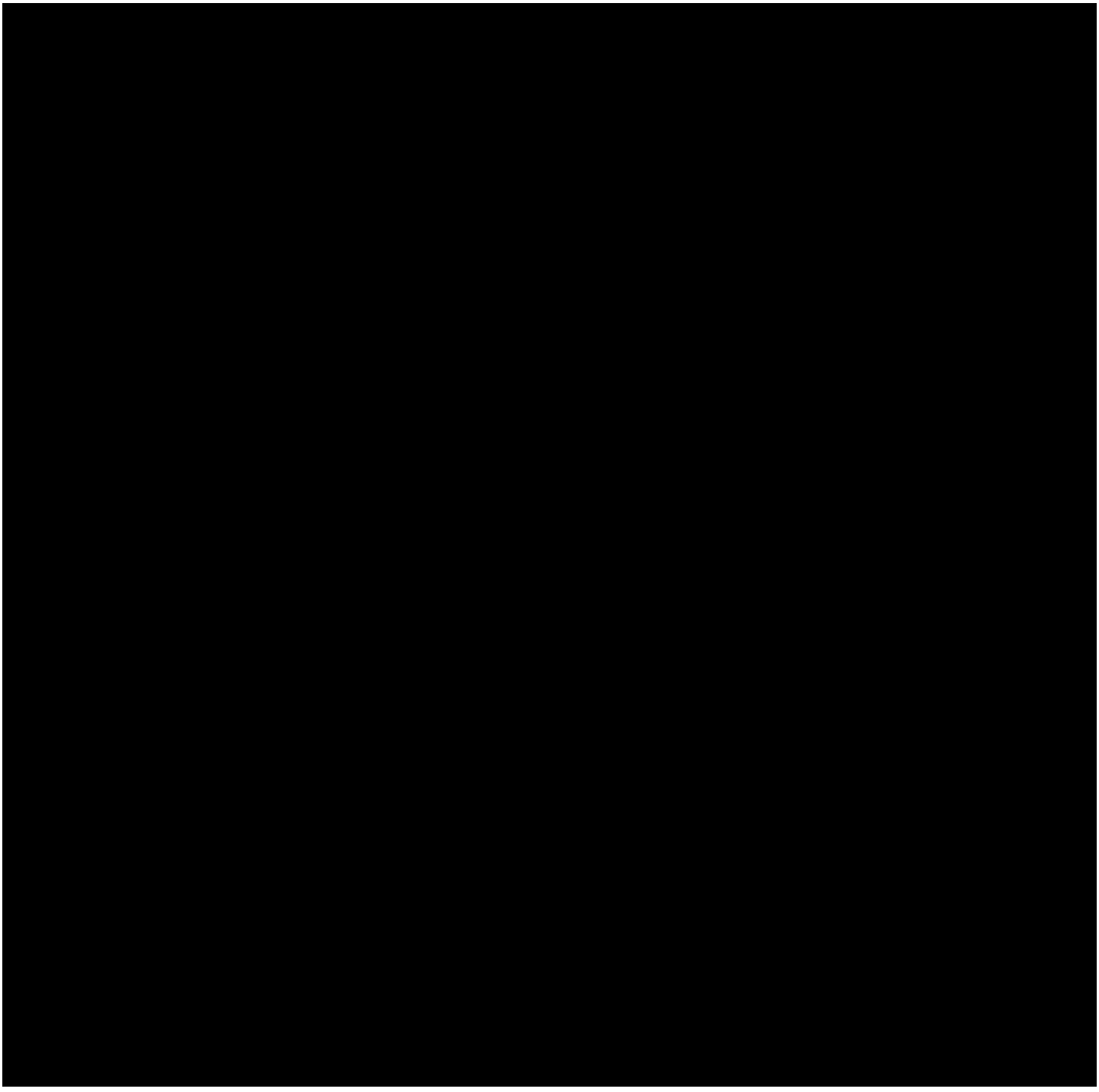

EXHIBIT Q

RTE SHORTFALL PAYMENTS

In the event that the RTE_M is less than the GRTE, the monthly Storage Capacity Payment under Section 3.2 shall be reduced by the "**RTE Shortfall Payment**", calculated as follows:

$$(GRTE - RTE_M) \times [redacted] \times RTEF_M \times TCE_M$$

where:

GRTE = the applicable Guaranteed Round-Trip Efficiency

RTE_M = the "**Round-Trip Efficiency**", calculated as follows:

(a) Except as required in subpart (b) below, RTE_M is calculating by dividing (i) the total Discharging Energy for the month by (ii) the total Charging Energy for the month; and

(b) [redacted]

The [redacted]

The "**Round-Trip Efficiency Factor**" or "$RTEF_M$" for each month is determined as follows:

If $RTE_M \geq$ GRTE, then $RTEF_M = 0$

If $RTE_M <$ GRTE and $RTE_M \geq 70\%$, then $RTEF_M = 1.2$

If $RTE_M < 70\%$, then $RTEF_M = 1.5$

TCE_M = the total Charging Energy charged to the Storage Facility in the applicable month.

EXHIBIT R

NOTICES

ESCA-PLD-LONGBEACH2, LLC, a Delaware limited liability company ("Seller")	**PENINSULA CLEAN ENERGY, a California joint powers authority** ("Buyer")
All Notices: [redacted] Attn: Prologis Asset Management [redacted] with a copy, which will not constitute notice, to: 1800 Wazee St. #500 [redacted] Attn: General Counsel	**All Notices:** Street: 2075 Woodside Road City: Redwood City, CA 94061 Attn: Director of Power Resources Phone: [redacted] with a copy, which will not constitute notice, to: Peninsula Clean Energy Authority 400 County Center, 6th Floor Attention: David Silberman, General Counsel Email: [redacted]
Emergency Contact: Attn: [redacted]	**Emergency Contact:** Attn [redacted]
Reference Numbers: [redacted]	**Reference Numbers:** [redacted]
Invoices: Attn: Accounts Payable [redacted]	**Invoices:** Attn: Settlements [redacted]
Scheduling: [redacted]	**Scheduling** [redacted]
Confirmations: [redacted].com	**Confirmations:** [redacted]
Payments: [redacted]	**Payments:** [redacted]

ESCA-PLD-LONGBEACH2, LLC, a Delaware limited liability company ("Seller")	**PENINSULA CLEAN ENERGY, a California joint powers authority** ("Buyer")
[redacted]	[redacted]

EXHIBIT S

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

[redacted]

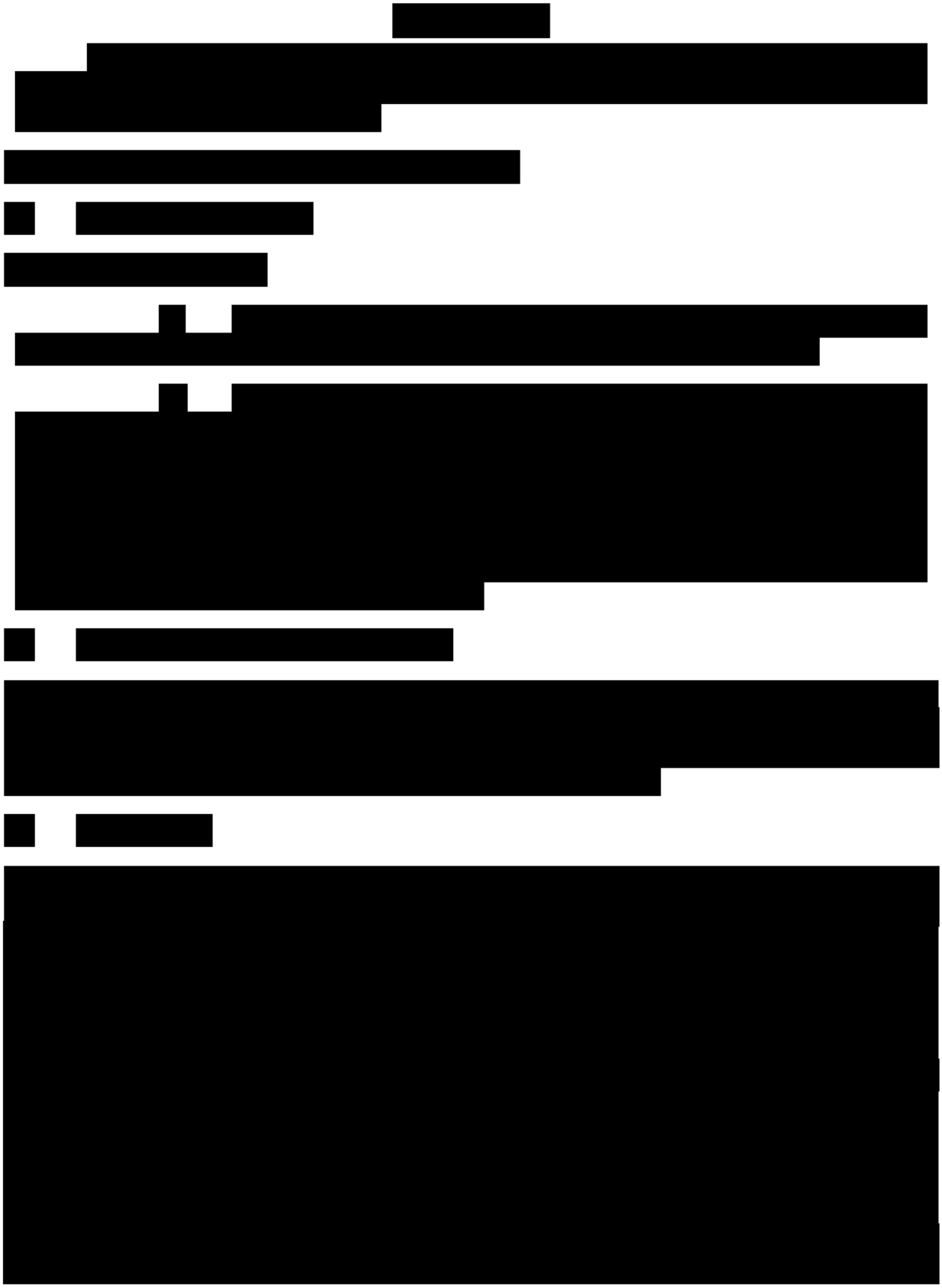

Exhibit S - 2

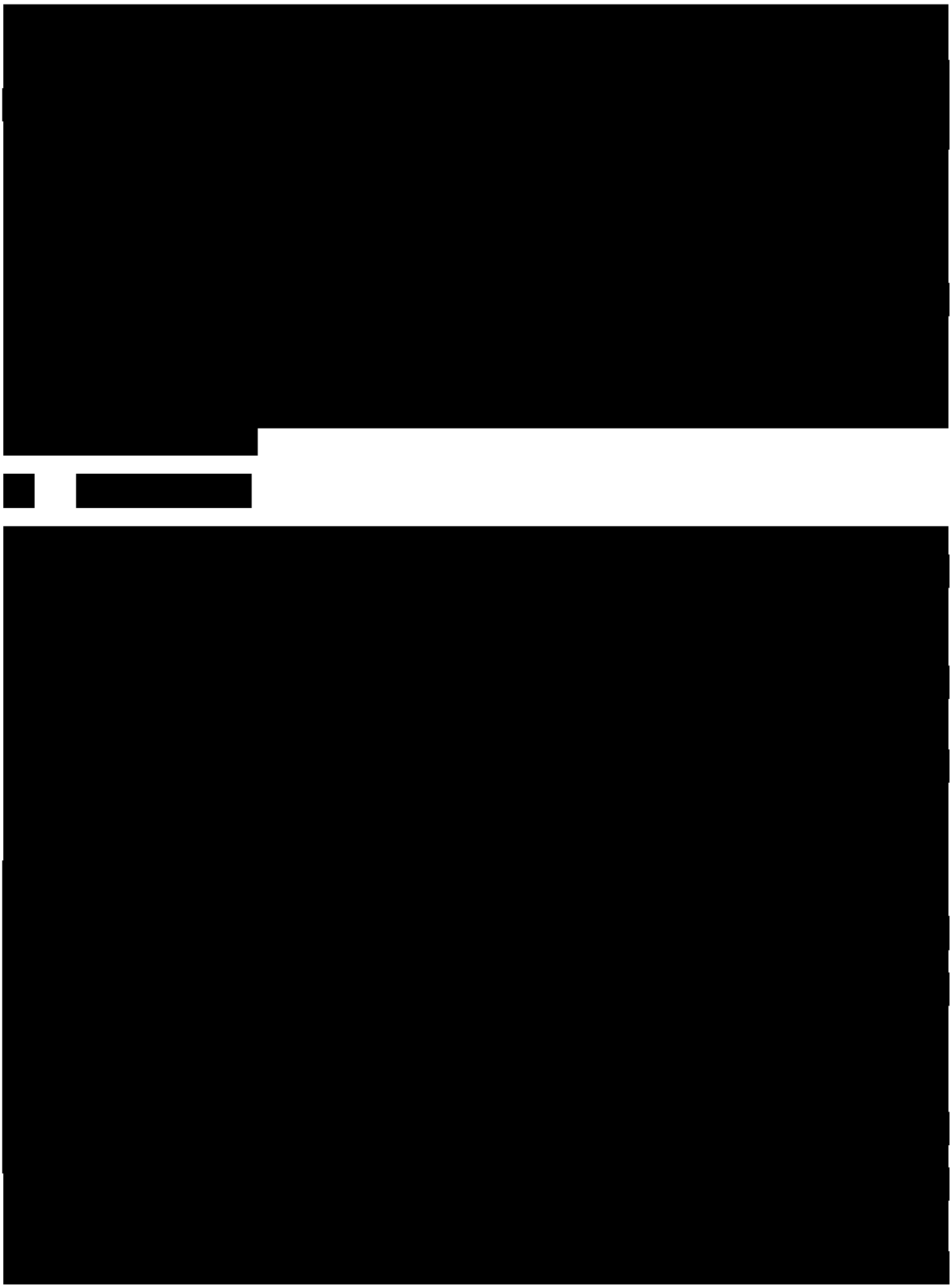

Exhibit S - 3

Exhibit S - 4

[redacted]

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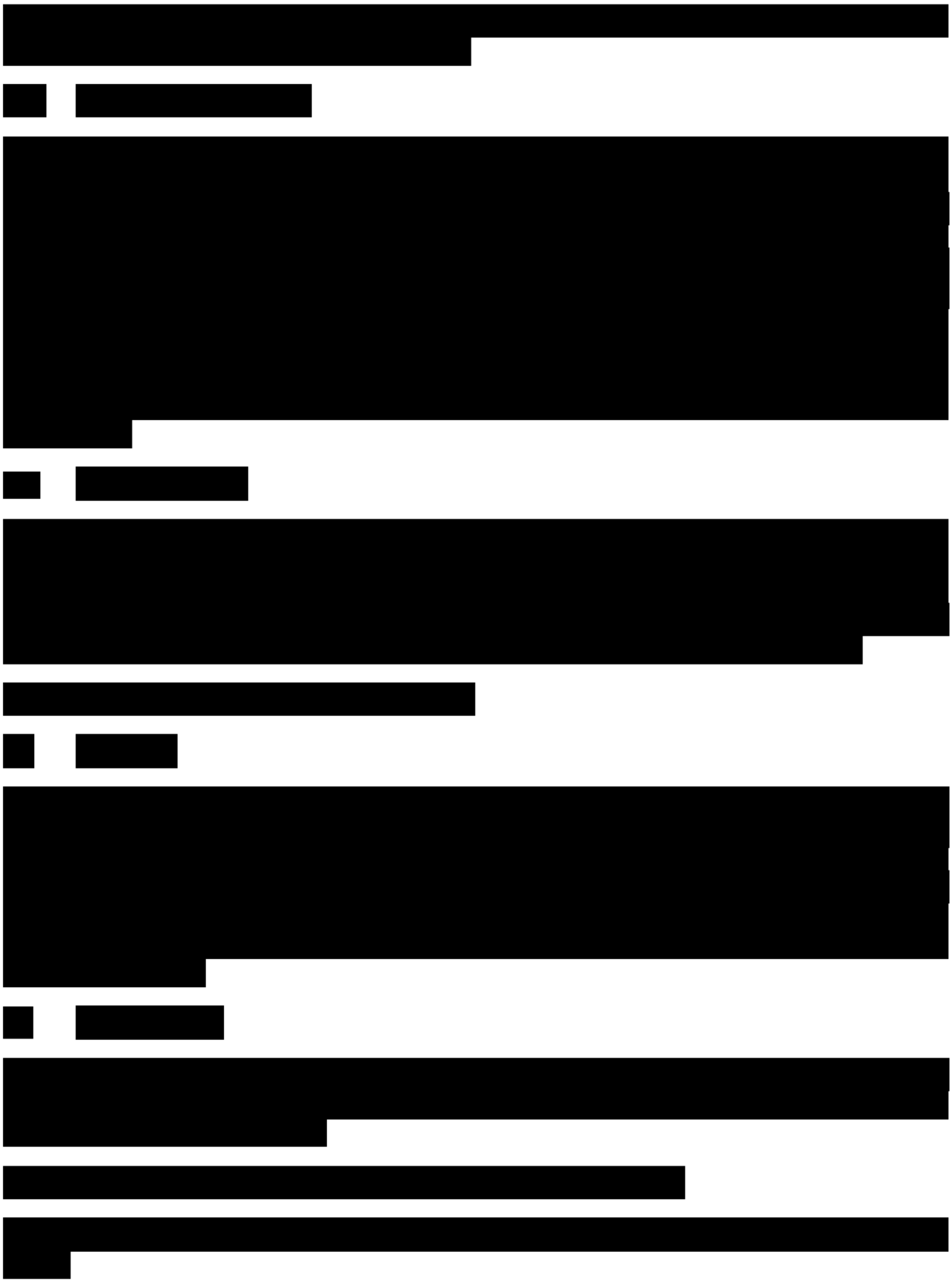

Exhibit S - 6

[redacted] [redacted]

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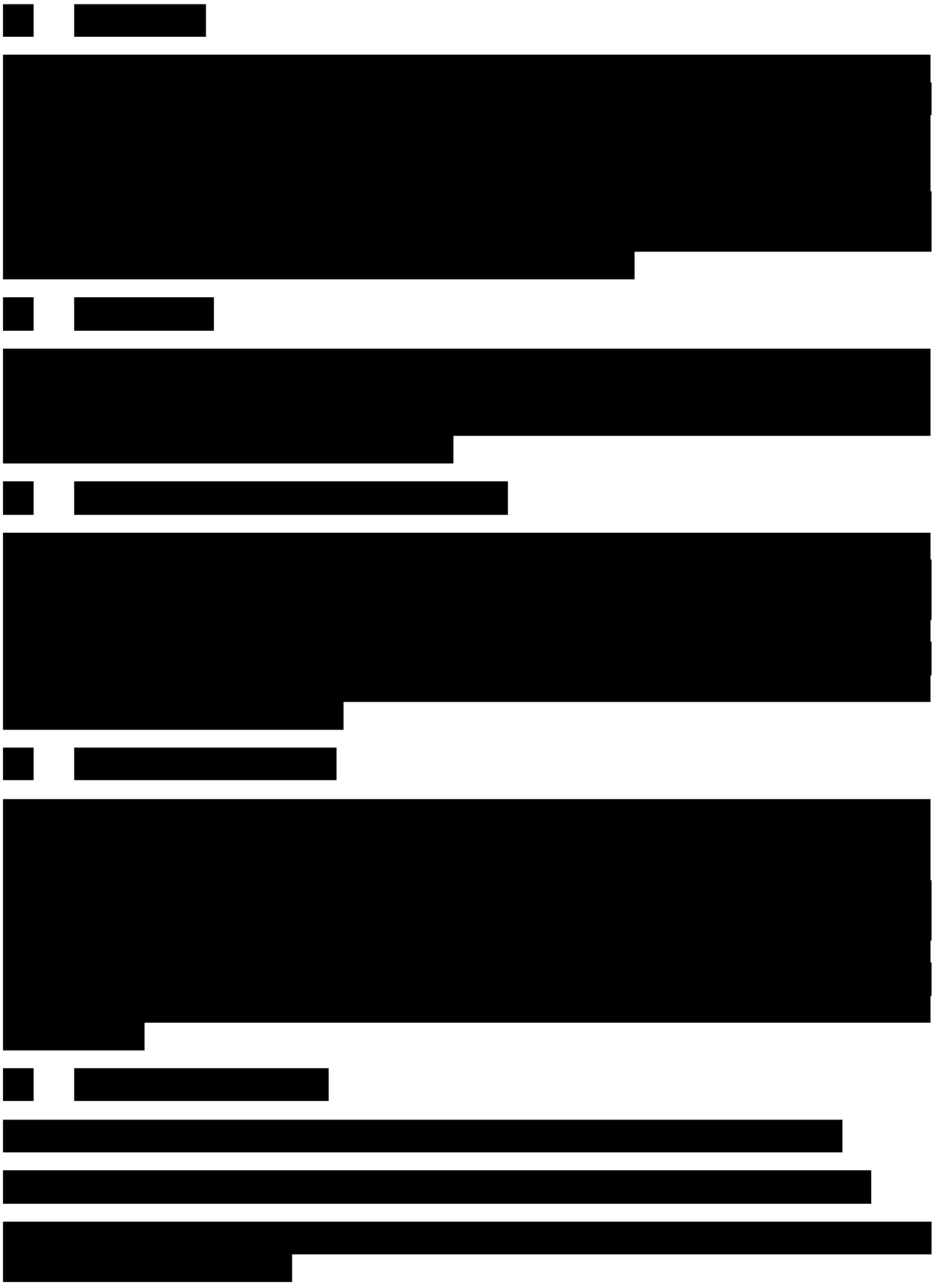
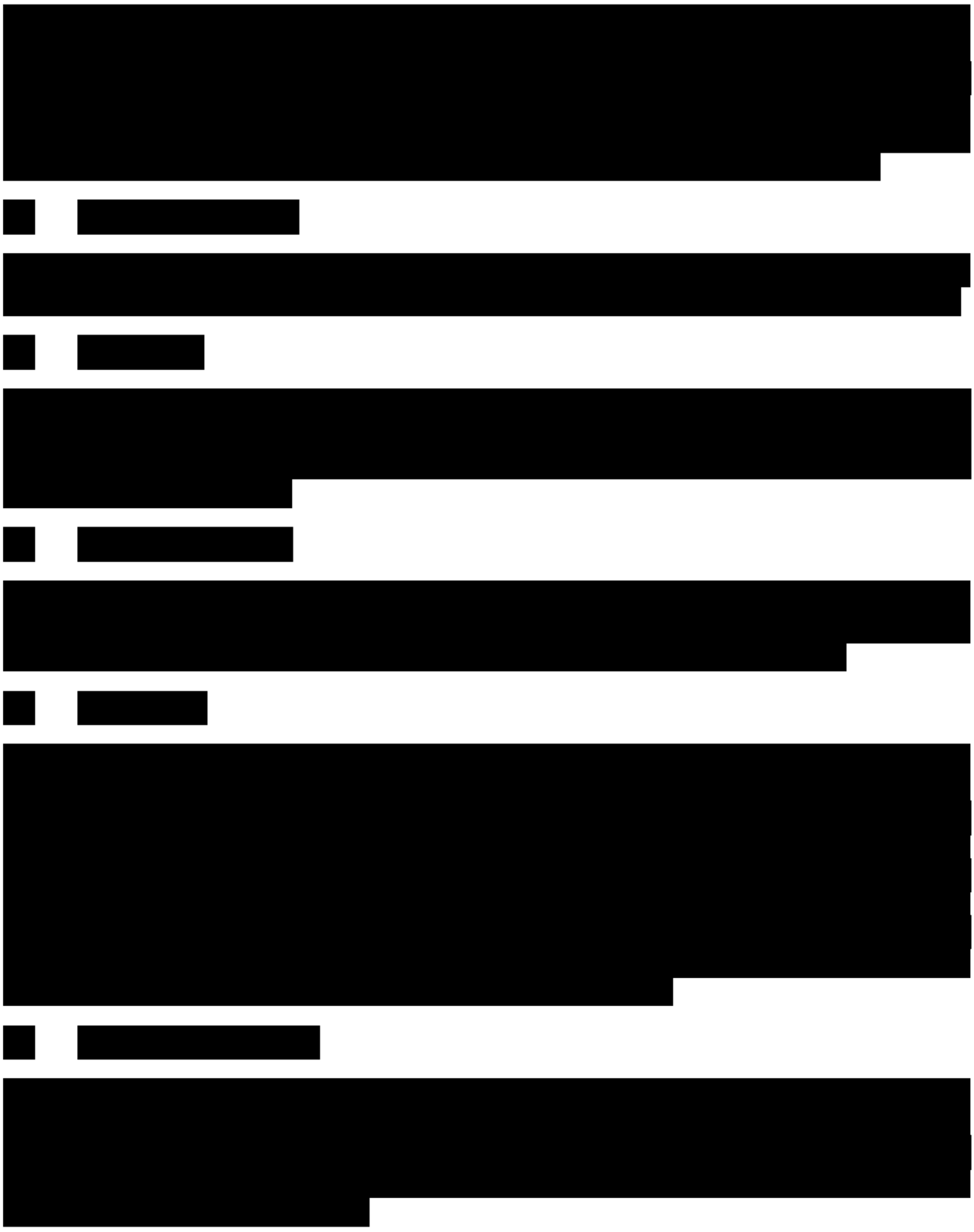


Exhibit S - 9



IN WITNESS WHEREOF, the Parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers on the dates indicated below their respective signatures.

PROJECT COMPANY

[Name of Project Company]

By: _____

Name: _____

Title: _____

PCE

Peninsula Clean Energy Authority

By: _____
PCE Executive Officer

COLLATERAL AGENT

[Name of Collateral Agent]

By: _____

Name: _____

Title: _____

SCHEDULE A

[Describe any disclosures relevant to representations and warranties made in Section 3.4]

EXHIBIT T

SAMPLE INVOICE

[*To be provided pursuant to the provisions of Section 8.1.*]

EXHIBIT U

STATION USE AUDIT CALCULATIONS

[*To be provided pursuant to the provisions of Section 7.3.*]

California Community Power

901 H St, Ste 120 PMB 157, Sacramento, CA 95814 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 1/23/2023
FROM: Alex Morris – General Manager
SUBJECT: **Report on CC Power Regular Board of Directors Meeting – December 17, 2023**

The CC Power Board of Directors held its regularly scheduled meeting on January 17, 2023, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: Meetings and Agendas – ca community power

Highlights of the meeting included the following:

- **Matters subsequent to posting the Agenda.** None.
- **Public Comment.** None.
- **Consent Agenda** - The Board approved the following items:
  - Minutes of the Regular Board Meeting held on December 13, 2023
- **Regular Agenda Voting Items**:
  - The Board adopted Resolution 24-01-01, electing Geof Syphers, CEO of Sonoma Clean Power, as Chair of CC Power, and Lori Mitchell, Director of San Jose Clean Energy, as Vice-Chair of CC Power for 2024
  - The Board adopted Resolution 24-01-02 appointing Mitch Sears, Executive Officer of Valley Clean Energy, as Treasurer, and Rob Shaw, CEO of Central Coast Community Energy, as Board Secretary of CC Power for 2024
  - The Board adopted Resolution 24-01-03, adjusting the dates of the pre-scheduled February, April, and June 2024 CC Power Board Meetings in order to avoid conflicts with Holidays and Cal-CCA events
  - The Board adopted Resolution 24-01-04, *Approval of California Community Power Exploration and Solicitation for Build-Own-Transfer Projects*. This resolution authorizes CC Power to formulate and execute a project, if sufficient members participate to cover costs not to exceed $440,000 in total. Funds will be held in balancing accounts and unused funds can be returned or reapplied. This project authorization follows from discussions about the Inflation Reduction Act and possible CCA benefits available from a Build-Own-Transfer project, for which any willing CC Power members could pursue project ownership and bond issuance through CC Power. This Resolution only authorizes exploration of project bids through a competitive solicitation, yielding a short-list of candidate projects. After a short-list is determined, the Board may consider further actions regarding shortlisted projects.

- **General Manager Report –** the Board heard several updates, including on 2024-2025 strategic planning and next steps. The strategic planning process will involve interviews with members during Q1 2024 to understand priorities and to develop proposed 2024-2025 work-plans and budgets. As part of this, CC Power will consider updates to the multi-year CC Power Strategic Plan.

- **Closed Session –** the Board discussed General Manager performance and 2024 goals.

PENINSULA CLEAN ENERGY

COMMONLY USED ACRONYMS AND KEY TERMS

AB xx – Assembly Bill xx
ALJ – Administrative Law Judge
AMP - Arrears Management Plans
Apple Valley Choice Energy
AQM – Air Quality Management
Ava – Formally East Bay Community Energy
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)
CCCFA – California Community Choice Financing Authority
CC Power – California Community Power
CEC – California Energy Commission
Clean Energy Alliance – CCA in
CPA – Clean Power Alliance
Clean Power SF
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
Customer Centricity - culture, framework and business strategy based on providing a positive customer experience and building long-term relationships
DA – Direct Access
DAC-GT - Disadvantaged Communities Green Tariff
DER – Distributed Energy Resources
Desert Community Energy
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 now known as Ava 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
EPIC – Energy for Palmdale's independent Choice
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
Heavy Duty Vehicle – large vehicles such as busses and long-haul trucks
HPWH – Heat Pump Water Heater
HP HVAC – Heat Pump Heating, Ventilation, and Air Conditioning
HR xx – House of Representatives Bill xx
IDER – Integrated Distributed Energy Resources
IGFC – Income Graduated Fixed Charge
IOU – Investor-Owned Utility (e.g. PG&E, SCE, SDG&E)
IIJA – Infrastructure Investment and Jobs Act
IRA – Inflation Reduction Act
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)
Lancaster Energy
Light Duty Vehicle - passenger vehicles such as cars and small pickup trucks
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
Mid Duty Vehicle – vehicles such as passenger vans
MW – Megawatt (Power) = 1000 kW
MWh – Megawatt-hour (Energy) = 1000 kWh

MTR – Mid-Term Reliability
MUD – Multi-unit Dwelling
NBCs – non-bypassable charges
NBT – Net Billing Tariff
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
OCPA – Orange County Power Authority
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)
PCEA – Peninsula Clean Energy Authority
PCIA – Power Charge Indifference Adjustment
PCL – Power Content Label
Pioneer Community Energy
PLA – Project Labor Agreement
POU – Publicly Owned Utility
Pomona Choice Energy
PPA – Power Purchase Agreement
PPSA – Project Participation Share Agreement (CC Power)
PRIME – Pico Rivera innovative Municipal Energy
PSPS – Public Safety Power Shutoff
PV – Photovoltaics (solar panels)
Rancho Mirage Energy Authority
RA – Resource Adequacy
RE – Renewable Energy
REC – Renewable Energy Credit/Certificate
Redwood Coast Energy Authority
RICAPS - Regionally Integrated Climate Action Planning Suite
RPS – California Renewable Portfolio Standard
S xx – US Senate Bill xx
SB xx – CA Senate Bill xx
Santa Barbara Clean Energy
SBP – Solar Billing Plan
SCP – Sonoma Clean Power
SDCP – San Diego Community Power
SJCE – San Jose Clean Energy
San Jacinto Power
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
TOB – Tariff on Bill

TOU Rates – Time of Use Rates
Valley Clean Energy
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
WWGPI - West-Wide Governance Pathways Initiative