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, May 22, 2025
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**
Luma Hotel, Room 2105, **120 West 41st Street, New York, NY 10036, 212-730-0099**

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 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 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/meetings-events 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.

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 Board are customarily limited to two minutes per speaker. The Board Chair may increase or decrease the time allotted to each speaker.

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

1. Approval of Comprehensive Legal Services Agreement with Keyes and Fox LLP in the Amount of $351,000 for the Term of May 22, 2025 Through May 22, 2026

2. Approval of an Annual Amendment to the Agreement with Darren Goode to Provide Media Relations Services Through May 31, 2026 and to Increase the Contract Amount by $102,000 for a Total Not-to-Exceed Amount of $758,000

3. Approval of Minutes from the April 24, 2025 Board of Directors Meeting

REGULAR AGENDA

4. Chair Report (Discussion)

5. CEO Report (Discussion)

6. Community Advisory Committee Report (Discussion)

7. Approval of Appointments to the Executive Committee and the Audit and Finance Committee (Action)

8. Approval of a Resolution Delegating Authority to the Chief Executive Officer to Execute an Energy Storage Services Agreement for the Wright Battery Energy Storage System with Stellar Wright BESS LLC with a Delivery Term of Twenty (20) Years and a Guaranteed Commercial Operation Date of June 1, 2026, in an Amount Not-to-Exceed

$332 Million (Action)

9. Approval of a Main Services Agreement (MSA) and Two Sub-Contracts ("Scopes") with Lunar Energy for a Distributed Energy Resource Management System (DERMS) with a Term of Five (5) Years in an Amount Not-to-Exceed $3.1 Million

10. Discussion of Peninsula Clean Energy's 2026-2030 Strategic Planning Elements and Process (Discussion)

11. Board Members' Reports (Discussion)

CLOSED SESSION

The Board will adjourn to closed session to consider the following items at the end of the agenda, or at any time during the meeting as time permits. At the conclusion of closed session, the Board will reconvene in open session to report on any actions taken for which a report is required by law.

12. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
    Title: Chief Executive Officer

13. CONFERENCE WITH LABOR NEGOTIATORS
    Agency Designated Representatives: Chair Donna Colson and General Counsel;
    Unrepresented Employee: Chief Executive Officer

14. Reconvene Open Session (If Necessary) To Report Any Action(s) Taken During Closed Session

INFORMATIONAL REPORTS

15. Energy Supply Procurement Quarterly Report

16. Regulatory Policy Team Quarterly Report

17. Legislative Update

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

19. Social Media FAQ's

20. 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

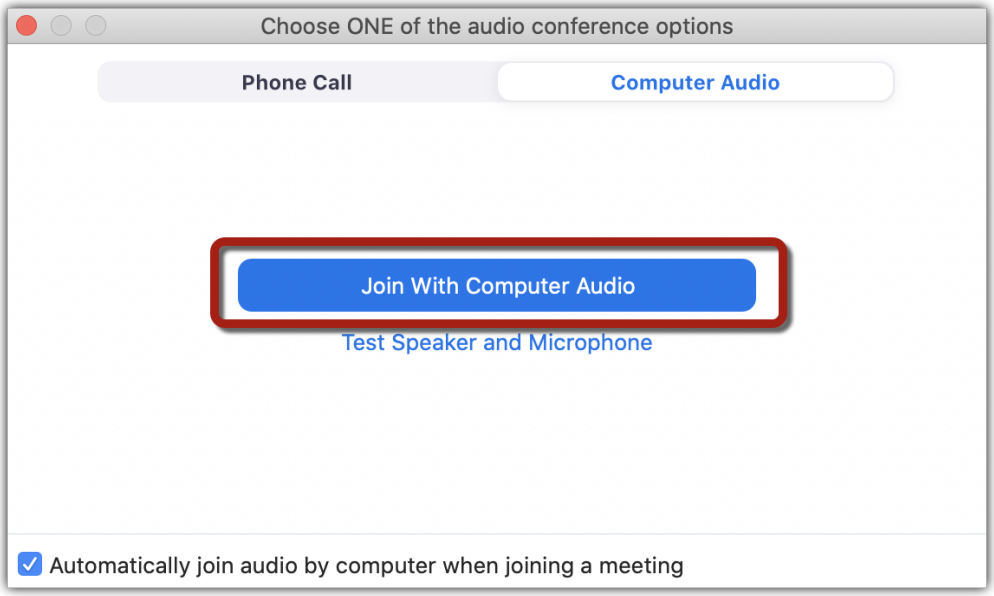
Videoconference Options:

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.

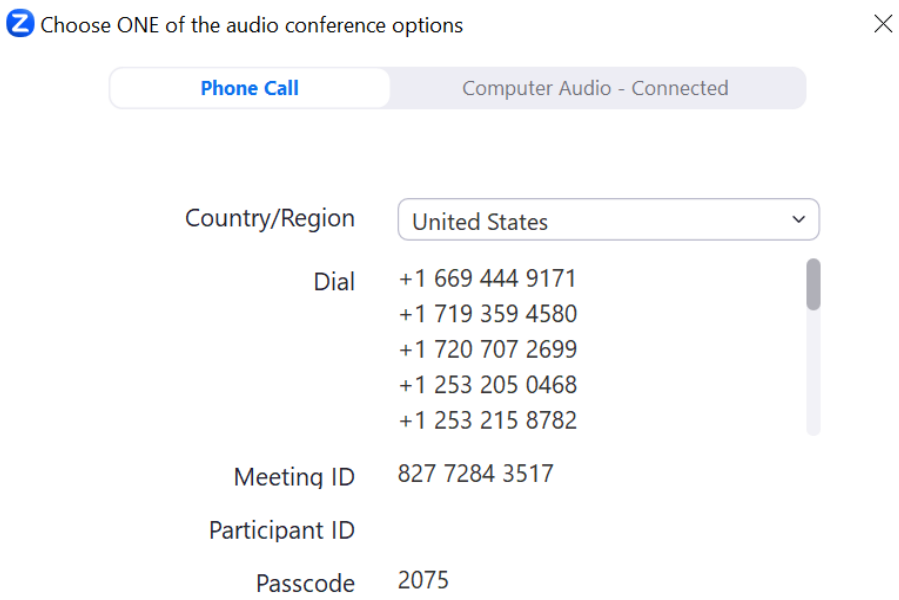


- Click the blue, "Join with Computer Audio" button.
- In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

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

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 16, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: TBD

SUBJECT: Approval of Comprehensive Legal Services Agreement with Keyes and Fox LLP in the Amount of $351,000 for the Term of May 22, 2025 Through May 22, 2026

RECOMMENDATION

Approval of a comprehensive legal services agreement with the law firm Keyes & Fox LLP (Keyes & Fox) in an amount not-to-exceed (NTE) $351,000 with a term of May 22, 2025 through May 22, 2026.

BACKGROUND

Since 2016, PCE has worked with Keyes & Fox, a Bay Area law firm that specializes in energy-related matters and has experience in the CCA and utility industry. Keyes & Fox currently provides PCE with legal support for the Regulatory, Programs, and Innovation Strategy teams, each governed by its own agreement. PCE's Regulatory agreement covers legal support for regulatory proceedings and policy support with an NTE amount of $95,000. PCE holds a second agreement with Keyes & Fox for Energy Programs team support on the Local Government Solar Initiative with an NTE amount of $165,000. The third agreement is related to the Innovation Strategy team's DERMS work in an amount not-to-exceed $60,000.

This proposed Comprehensive Legal Services Agreement combines and streamlines the three agreements for ease in management of budget and facilitation of legal spend. Under the proposed Comprehensive Legal Services Agreement, Keyes & Fox will continue to provide essential legal support regarding PCE's participation in various regulatory proceedings before the California Public Utilities Commission (CPUC), the local Government Solar Initiative (also called GovPV), and finally, PCE's demand response (DR) and distributed energy resource (DER) initiatives. General Counsel and Staff propose to combine and replace the standalone legal services agreements with a Comprehensive Legal Services Agreement with Keyes & Fox LLP in the amount of $351,000 for ongoing legal services. Included in this NTE is approximately $25,587 of rollover funds from the existing three agreements.

DISCUSSION

As previewed at the March 2025 Board of Directors meeting, the Comprehensive Legal Services Agreement with Keyes & Fox LLP will streamline and centralize the provision of

external legal support for PCE's specialized energy and regulatory needs for the next year. In 2026, staff will launch a new RFP for regulatory and energy program legal services.

The proposed comprehensive legal services agreement currently covers three task authorizations that mirror PCE's areas of external legal need:

(1) Regulatory Matters (Task 1)

Over the last seven years, Keyes & Fox has provided PCE with broad support with its litigation of complicated regulatory proceedings before the California Public Utilities Commission (CPUC) on topics ranging from PG&E annual Power Charge Indifference Adjustment (PCIA) rate adjustments to PG&E's general rate cases to the Commission's exploration of transportation electrification policy. Keyes & Fox continues to provide PCE with significant assistance in numerous dockets at the California Public Utilities Commission, the California Energy Commission, the California Air Resources Board and with certain legislative activities. We have been very satisfied with the assistance this firm has provided to date and anticipate $60,000 of legal spend in the next year. All remaining amounts under that agreement (approximately $6,000) will rollover to the proposed Comprehensive Legal Services Agreement.

(2) GovPV/Local Government Solar, Storage & Electrification (Task 2)

Peninsula Clean Energy anticipates continued legal support from Keyes & Fox, with up to $195,000 allocated for advice on its growing residential and nonresidential (GovPV) solar+storage programs. This includes ongoing implementation support and contract amendments for existing GovPV1 and GovPV2 projects, particularly as PCE integrates battery storage and EV charging at those sites. Additional needs include contract development and negotiations for the forthcoming GovPV3 portfolio, as well as foundational legal work to launch a residential solar+storage offering, likely in coordination with additional firms. While PCE staff directly manage most commercial negotiations, Keyes and Fox provides targeted legal expertise—particularly on public agency PPAs and complex regulatory matters—that aids successful execution of contracts. All remaining amounts under that agreement (approximately $5,000) will rollover to the proposed Comprehensive Legal Services Agreement.

(3) Advanced Energy Initiatives (Task 3)

Innovation Strategy staff require specialized legal support in the amount of $96,000 from Keyes & Fox to support PCE's negotiation of agreements pertaining to the implementation of advanced energy initiatives. Specific tasks include regulatory support, and drafting and negotiation of agreements pertaining to the implementation of advanced energy initiatives under PCE's Innovation Strategy department as well as potential regulatory support on developing community microgrids. This Board approved an agreement with Keyes & Fox LLP in March 2025 for $60,000 to facilitate commercial contract negotiations with the DERMS vendor selected pursuant to the Request for Proposals (RFP) issued by PCE in September 2024. All remaining amounts under that agreement (approximately $14,587) will rollover to the proposed Comprehensive Legal Services Agreement.

Staff and General Counsel recommend streamlining the three currently active agreements with Keyes and Fox into the proposed Comprehensive Legal Services Agreement in order to more readily facilitate legal services management and provide clarity regarding specific

categories of external legal spend. All remaining unused funds (approximately $25,587) in the three existing agreements will roll over to the proposed Comprehensive Legal Services Agreement.

FISCAL IMPACT

Approximately $351,000 including $25,587 of previously authorized roll-over funds from existing agreements with Keyes & Fox.

ATTACHMENTS:
KF-PCE Comprehensive Legal Services Agreement - Engagement Letter final.pdf

RESOLUTION NO. _____

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

APPROVAL OF COMPREHENSIVE LEGAL SERVICES AGREEMENT WITH KEYES AND FOX LLP IN THE AMOUNT OF $351,000 FOR THE TERM OF MAY 22, 2025 THROUGH MAY 22, 2026

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, and the City of Los Banos, State of California ("Peninsula Clean Energy" or "PCE"), that

WHEREAS, PCE's Regulatory, Programs, and Innovation Strategy teams require specialized legal assistance from Keyes and Fox LLP; and

WHEREAS, PCE has three active agreements with Keyes and Fox LLP for regulatory support, the Local Government Solar Initiative (GovPV), and Distributed Energy Resource Management System (DERMS), respectively; and

WHEREAS, through the proposed Comprehensive Legal Services Agreement PCE will combine and superseded existing agreements with PCE; and

WHEREAS, staff, in consultation with the General Counsel, have determined that streamlining external legal services into one Comprehensive Legal Services Agreement with Keyes and Fox LLP will more readily facilitate legal services management and provide clarity and transparency regarding specific categories of external legal spend; and

WHEREAS, the total not to exceed amount for the proposed Comprehensive Legal Services Agreement is $351,000 for the term May 22, 2025 to May 22, 2026; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates to the Chief Executive Officer authority to enter into a Comprehensive Legal Services Agreement with Keyes and Fox, LLP for specialized legal services in a form approved by the General Counsel in an amount not to exceed $351,000 for the term of May 22, 2025 to May 22, 2026.

KEYES&FOX LLP

May 22, 2025

Shawn Marshall
Chief Executive Officer
Peninsula Clean Energy Authority
2075 Woodside Rd.
Redwood City, California 94061

Re: Keyes & Fox - Peninsula Clean Energy Authority Umbrella Engagement Letter

Dear Ms. Marshall,

We are pleased Peninsula Clean Energy Authority ("PCE") has decided to continue to retain Keyes & Fox LLP ("Keyes & Fox") to represent PCE (a) in regulatory proceedings at the California Public Utilities Commission (the "Regulatory Matters"), (b) transactional matters (the "Transactional Matters"), each of which such known scope of work ("Task Assignment") is described in Attachment A hereto, and (c) other legal issues we both mutually agree to undertake ((a), (b) and (c) collectively referred to herein as the "Legal Services"). We thank you for this opportunity to work on your behalf.

This letter replaces in their entirety all prior engagement letters between PCE and Keyes & Fox, including that certain engagement letter covering Regulatory Matters dated November 21, 2023, that certain engagement letter covering the scope described Task Authorization 2 as described in Attachment A hereto dated November 21, 2023 and amended as of May 8, 2024, and that certain engagement letter covering the scope described in Task Authorization 3 as described in Attachment A hereto dated May 22, 2025.

This letter describes the basis of the attorney-client relationship between Keyes & Fox and PCE, along with an explanation of how Keyes & Fox will bill for its Legal Services. We believe that it is beneficial to the attorney-client relationship to develop a clear understanding of our billing and engagement policies upfront.

1. Scope of Keyes & Fox's Representation

Pursuant to this engagement letter, Keyes & Fox agrees to represent PCE as its client with regard to the Legal Services described above. Keyes & Fox will do its utmost to serve PCE effectively, provide Legal Services in an efficient manner, and respond promptly to PCE's inquiries.

We have run a conflicts check as it relates to the proposed Legal Services, and we have not found any direct conflicts with undertaking them. If a conflict arises that may impact our ability to provide PCE with effective representation, we will promptly bring that conflict to PCE's attention. If you are concerned about any relationship we might have with particular companies, organizations or individuals, please bring those concerns to our attention.

2. Confidentiality

Generally, it is in PCE's interest to preserve confidentiality of all communications with Keyes & Fox. Keyes & Fox work product related to the Legal Services is not intended for use with third parties. If PCE discloses any of our communications, it jeopardizes the privileged nature of the communications, so we believe it is advisable that PCE take care not to disclose privileged information or Keyes & Fox work product to third parties.

Through this Engagement Letter, PCE authorizes K&F to engage in confidential communications with EQ Research, LLC to obtain administrative support with respect to the Legal Services. K&F understands it is the intent of PCE that all communications and work product that are developed by, or shared with, EQ Research LLC related to the Legal Services shall be confidential and subject to attorney-client privilege.

3. Fees, Expenses and Invoicing

By signing this engagement letter, PCE agrees to pay Keyes & Fox for time and out-of-pocket expenses according to the terms set forth below.

a. Professional fees

Keyes & Fox will keep an hourly total of any time spent on the Legal Services. Work will be performed at hourly rates according to the rates set forth in Attachment A to this engagement letter, which is incorporated by reference herein. Attachment A lists those persons we anticipate may work on the Legal Services. In addition to the K&F attorneys listed in Attachment A, the assistance of other K&F attorneys and/or EQ Research, LLC staff may be enlisted from time to time as determined necessary for the provision of the Legal Services.

It is Keyes & Fox's policy to adjust hourly rates for all attorneys and staff at the beginning of the calendar year. Historically, rate increases have been between 5-8% per year. Rates quoted in Attachment B are 2025 rates. Our firm's practice is to charge for travel time, as discussed in Attachment B.

Tim Lindl will be the lead Keyes & Fox attorney working with PCE in connection with the Regulatory Matters. Mr. Lindl may utilize the services of other Keyes & Fox attorneys and non-attorney professionals in connection with this matter. By agreeing to this engagement letter, PCE consents in writing to Mr. Lindl serving as the lead attorney in this matter and to Mr. Lindl's assignment of work on this matter to any of the other Keyes & Fox team members.

Sheridan Pauker will be the lead Keyes & Fox attorney working with PCE in connection with the Transactional Matters. Ms. Pauker may utilize the services of other Keyes & Fox attorneys and non-attorney professionals in connection with this matter. By agreeing to this engagement letter, PCE consents in writing to Ms. Pauker serving as the lead attorney in this matter and to Ms. Pauker's assignment of work on this matter to any of the other Keyes & Fox team members.

Of Counsel attorneys identified in the Rates for Attorneys provided in Attachment B are neither partners nor associates of Keyes & Fox. A portion of any legal fees billed by Keyes & Fox may be divided and paid to them. By agreeing to this engagement letter, you consent in writing to a division of fees with the firm's Of Counsel attorneys.

This letter authorizes payment of fees of up to three hundred and fifty one thousand dollars ($351,000) in total (the "Total DNE") in connection with the Legal Services between May 22, 2025 and May 22, 2026 (the "Term"). Unless otherwise agreed to in writing (including, for the avoidance of doubt, via electronic mail), PCE will not be obligated for fees in excess of the Total DNE during the Term.

This letter authorizes payment of fees of up to the "Do Not Exceed Amount" specified for each Task Assignment in Attachment A. Unless otherwise agreed to in writing (including, for the avoidance of doubt, via electronic mail), PCE will not be obligated for fees in excess of a Do Not Exceed Amount set forth on Attachment A for an individual Task Assignment. PCE and K&F will review these not-to-exceed amounts upon the occurrence of a request from either PCE or K&F for such a review.

b. Expenses

Expenses may be incurred in performing legal services as part of your engagement. You agree that PCE shall be responsible for payment of all costs, disbursements, and expenses paid by Keyes & Fox, in addition to our hourly fees. Costs and expenses include messenger and other delivery fees, copying and reproduction costs, costs for travel including mileage and parking, computerized legal research, and other similar expenses. Expenses will be billed at actual cost.

c. Invoices and payments

We invoice our clients monthly. Our invoices are due and payable within 30 days, unless other arrangements have been agreed to in writing in advance. Typically, invoices will list the matter worked on and provide information on the dates of service, time involved, Keyes & Fox team member responsible and activity undertaken. We will use our best efforts to respond to requests for special invoice formats. Any unpaid amounts after sixty (60) days will accrue interest at a rate of five percent (5%) per annum, provided that Keyes & Fox shall give PCE notice of Keyes & Fox's intent to charge such interest thirty (30) days before any accrual begins.

4. Termination of Keyes & Fox's Representation

Either PCE or Keyes & Fox may terminate Keyes & Fox's representation of PCE at any time and for any reason. At the time Keyes & Fox's representation of PCE concludes, all unpaid fees and costs for Keyes & Fox's Legal Services become due and payable. If at that time, PCE does not request the return of its file, Keyes & Fox will retain PCE's file for a period of three (3) years, after which Keyes & Fox may have the file destroyed.

5. Miscellaneous

This letter is the entire agreement between PCE and Keyes & Fox concerning the provision of Legal Services. This agreement and the scope of Legal Services provided under it may be amended from time to time by mutual agreement. California law will govern this agreement and any subsequent amendments.

Nothing in this agreement should be construed as a promise or guarantee about the outcome of any matter which Keyes & Fox is handling on PCE's behalf. Our comments about the outcome of PCE's matters are expressions of opinion only. If Keyes & Fox should provide PCE with an estimate of the fees and costs which may be incurred in connection with our representation of PCE, it is important that PCE understand and acknowledge that any such estimate is merely an estimate based on numerous assumptions, which may or may not prove to be correct and that any estimate is not a guarantee or agreement of what the maximum amount of fees and/or costs will be.

Generally, Keyes & Fox does not update our clients about changed circumstances or changes in the law after our work on a matter is completed. Please let Mr. Lindl know if PCE wants Keyes & Fox to assume this responsibility so that appropriate arrangements can be made.

6. Conclusion

If the terms of Keyes & Fox's representation of PCE as explained in this letter are satisfactory, please execute a copy of this letter as indicated and return it to me. Please feel free to contact me if you have any questions or concerns.

We look forward to working with you.

Sincerely,

Tim Lindl, Partner
Keyes & Fox LLP

Sheridan Pauker, Partner
Keyes & Fox LLP

KEYES&FOX LLP

PCE hereby authorizes K&F to represent its interests with respect to the Legal Services. PCE acknowledges, by signing this letter, that it has had the opportunity to consult with other counsel about the consequences of this engagement and that K&F recommends that you do so. By signing this letter, PCE affirms that it understands and agrees to the terms set forth in this letter. This agreement will not take effect, and Keyes & Fox will have no obligation to provide Legal Services, until PCE returns a signed copy of this letter.

I have read the foregoing letter, understand it and agree to it on behalf of PCE.

By:_____

Shawn Marshall, Chief Executive Officer
Peninsula Clean Energy Authority

Date: _____

Attachment A
Task Assignments

TASK AUTHORIZATION 1 – Regulatory Matters

Description: K&F will provide legal representation of PCE in regulatory proceedings at the California Public Utilities Commission that we both mutually agree to undertake, including but not limited to review of an Order Instituting Rulemaking or application; review of the scoping ruling(s); collaboration with PCE and other community choice aggregators or their trade associations, as applicable, to identify potential issues; issuance of discovery requests; preparation of pleadings such as comments, testimony, briefing, and motions practice; preparation for and participation in any prehearing and status conferences; preparation for and participation in evidentiary hearings; preparation for and participation in *ex parte* meetings and meetings with Commission staff; analysis of a final decision; and consideration of the potential for appeal.

Do Not Exceed Amount: This Task Authorization 1 includes a total budgeted not-to-exceed amount of $60,000 for the Term.

TASK AUTHORIZATION 2 – GovPV/Local Government Solar, Storage & Electrification

Description: legal advice, drafting and negotiation of agreements pertaining to PCE's development of photovoltaic, battery energy storage systems and electrification infrastructure on PCE customer property, including project structuring, engineering, procurement and construction (EPC) agreement, power purchase and other customer agreements and other analyses, approvals and agreements.

Do Not Exceed Amount: This Task Authorization 2 includes a total budgeted not-to-exceed amount of $195,000 for the Term.

TASK AUTHORIZATION 3 – Advanced Energy Initiatives

Description: legal advice, regulatory support, and drafting and negotiation of agreements pertaining to the implementation of advanced energy initiatives under PCE's Innovation Strategy department. Examples include the development of a contract for a Distributed Energy Resource Management System (DERMS) and potential regulatory support on developing community microgrids.

Do Not Exceed Amount: This Task Authorization 3 includes a total budgeted not-to-exceed amount of $96,000 for the Term.

KEYES&FOX LLP

Attachment B
Keyes & Fox LLP 2025 Hourly Rate Sheet

Attorneys

Kevin Fox, Partner	640
Sheridan Pauker, Partner	475/505+
Tim Lindl, Partner	490
Jason Keyes, Partner	430
Mark Valentine, Partner	425
Jake Schlesinger, Partner	440
Scott Dunbar, Partner	400
Beren Argetsinger, Partner	385
Nikhil Vijaykar, Partner	425
Julia Kantor, Partner	410
Alexandra Haggarty, Senior Associate	400
Theresa Cho, Of Counsel	615
Grant Snyder, Associate	320
Alissa Greenwald, Associate	310
Travis Murray, Associate	310

Non-Attorneys (EQ Research, LLC)

Miriam Makhyoun	260/290*
Justin Barnes	240/290*
Jason Hoyle	190/220*
Riana Ackley	150
Heather DePouw	150
Alicia Zaloga	140
Corey Cochran	120
Rob Campbell	120

+ Rates with a plus sign are transactional/compliance rates
* Rates with an asterisk are expert witness rates

Travel Policy: Unless special arrangements are made, travel time is billed at the full hourly rate. Every effort will made to work productively on PCE matters during travel. If work is performed for another client during travel, PCE will not be billed for that time. All reasonable travel expenses are billable – hotel, airfare, car rental, meals, taxi, public transit, etc.

Work Policy: Reasonable time for filing and service is billed at regular billable rates.

Miscellaneous Expenses Policy: Expenses for postage, photocopying, printing, faxing and other minor expenses directly related to a matter are billable at cost to PCE.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 8, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Gwendolyn Rose, Director of Marketing & Community Relations

SUBJECT: Approval of an Annual Amendment to the Agreement with Darren Goode to Provide Media Relations Services Through May 31, 2026 and to Increase the Contract Amount by $102,000 for a Total Not-to-Exceed Amount of $758,000

RECOMMENDATION

Approve an annual amendment to the Agreement with Darren Goode to provide media relations services through May 31, 2026 and to increase the contract amount by $102,000 for a total not-to-exceed amount of $758,000.

BACKGROUND

Peninsula Clean Energy has ongoing needs for media relations strategy and implementation to support marketing and community relations objectives that seek to elevate PCE's brand reputation as a trusted leader in the community and the industry. Media relations work helps ensure that Peninsula Clean Energy is known and trusted in our communities, and that the Agency effectively communicates important information with key stakeholders, policymakers and members of the public.

To meet our continued media relations needs, PCE seeks to extend its existing contract with Darren Goode through May 2026 while also preparing to conduct a competitive Request for Proposals (RFP) process in 2026. This approach will ensure continuity of service for the next year, while also giving PCE adequate time to evaluate media relations needs going forward, update the scope of work, and complete the RFP and contracting processes.

DISCUSSION

Mr. Goode has played a key role in advancing Peninsula Clean Energy's communications and media outreach strategies. He has led the drafting and distribution of press releases and media advisories, while securing earned media coverage to build public awareness of PCE's programs, policy leadership, and organizational milestones. His efforts have supported the successful launch of major initiatives and elevated PCE's thought leadership on building and transportation electrification, as reflected in PCE's news archive: peninsulacleanenergy.com/news. Mr. Goode also researches industry conferences where

PCE thought-leadership and expertise can be showcased, which helps ensure that PCE has a consistent industry presence at key events. With a background in both journalism and environmental communications, Mr. Goode brings a unique skill set that has been instrumental in shaping and amplifying PCE's narrative across regional and industry media channels.

In December 2019, Peninsula Clean Energy (PCE) entered into an agreement with Darren Goode to provide media relations strategy and implementation services. Since that time, the agreement has been extended multiple times with increasing scopes and funding, as follows:

- Initial Agreement: $90,000 for the term December 4, 2019 – June 3, 2020
- Amendment 1 (April 2020): Extended to May 31, 2021; not to exceed $245,000
- Amendment 2 (May 2021): Extended to May 31, 2022; not to exceed $330,000
- Amendment 3 (April 2022): Extended to May 31, 2023; not to exceed $442,000
- Amendment 4 (April 2023): Extended to May 31, 2024; not to exceed $554,000
- Amendment 5 (May 2024): Extended to May 31, 2025; not to exceed $656,000

It is now requested that the agreement be amended to add an additional $102,000 for the year, bringing the total not-to-exceed amount to $758,000, with no change to the term end date of May 31, 2026.

As part of its commitment to transparency and public sector best practices, PCE will evaluate its scope of work for media relations services and conduct a competitive Request for Proposals (RFP) process for these services in Q1 2026.

FISCAL IMPACT

The fiscal impact of this amendment is $102,000 for the period June 1, 2025- May 31, 2026, bringing the total not-to-exceed amount of the agreement with Darren Goode to $758,000 since its inception in 2019.

STRATEGIC PLAN

Objective A of the Marketing, Community Outreach & Customer Care section of the Strategic Plan 2020-2025 reads "Brand Reputation: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry." Key tactics to support this objective include:

1. Position leadership as experts on CCAs and the industry
2. Cultivate relationships with industry media and influencers
3. Tell the story of Peninsula Clean Energy through diverse channels

The scope of work for this contract addresses all three of these tactics in support of Objective A.

ATTACHMENTS:
Darren_Goode_2025_Contract_Amendment_6_clean.pdf

RESOLUTION NO. _____

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

APPROVAL OF AN ANNUAL AMENDMENT TO THE AGREEMENT WITH DARREN GOODE TO PROVIDE MEDIA RELATIONS SERVICES THROUGH MAY 31, 2026 AND TO INCREASE THE CONTRACT AMOUNT BY $102,000 FOR A TOTAL NOT-TO-EXCEED AMOUNT OF $758,000

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

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

WHEREAS, in December 2019, PCE and Darren Goode ("Contractor") executed an agreement for media relations strategy and execution in an initial amount of $90,000; and

WHEREAS, in April 2020, PCE and Contractor executed an amendment to the agreement which extended the term to May 31, 2021 and not to exceed to $245,000, and

WHEREAS, in May 2021, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2022 and not to exceed to $330,000, and

WHEREAS, in April 2022, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2023 and not to exceed to $442,000, and

WHEREAS, in April 2023, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2024 and not to exceed to $554,000, and

WHEREAS, in April 2024, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2025 and not to exceed to $656,000, and

WHEREAS, staff is presenting to the Board for its review an amendment to the agreement with Contractor to increase the amount by $102,000 for a total not to exceed amount of $758,000 and to extend the term through May 31, 2026; and

WHEREAS, reference should be made to the amendment to the agreement accompanying this resolution for further particulars; and

WHEREAS, Contractor has unique capabilities to provide media relations support to PCE;

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the aforementioned amendment to the Agreement with Darren Goode in an amount not to

exceed $102,000.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves execution of an amendment in the amount of $102,000 to the agreement with Darren Goode for Media Relations Strategy for a total not to exceed amount of $758,000 and to extend the term through May 31, 2026.

AMENDMENT NO. 6 TO AGREEMENT BETWEEN PENINSULA CLEAN ENERGY AUTHORITY AND DARREN GOODE

THIS SIXTH AMENDMENT TO THE AGREEMENT, entered into this 22 day of May, 2025 by and between PENINSULA CLEAN ENERGY AUTHORITY, a California joint powers authority, hereinafter called "PCE," and Darren Goode, hereinafter called "Contractor";

W I T N E S S E T H:

WHEREAS, the parties entered into an Agreement on December 19, 2019, for the purpose of Contractor's media relations strategy and execution services ("Agreement"); and

WHEREAS, PCE continues to have a need for such services, and

WHEREAS, in April 2020, PCE and Contractor executed an amendment to the agreement which extended the term to May 31, 2021 and not to exceed to $245,000, and

WHEREAS, in May 2021, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2022 and not to exceed to $330,000

WHEREAS, in April 2022, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2023 and not to exceed to $442,000

WHEREAS, in April 2023, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2024 and not to exceed to $554,000

WHEREAS, in April 2024, PCE and Contractor executed an amendment to that agreement which extended the term to May 31, 2025 and not to exceed to $656,000, and

WHEREAS, the parties now wish to further amend the Agreement to increase the maximum amount by $102,000 to an amount not to exceed $758,000.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. **The text of Section 2 shall be amended to replace**
   "In no event shall PCEA's total fiscal obligation under this amendment exceed $656,000."

with the following:

"In no event shall PCEA's total fiscal obligation under this amendment exceed $758,000."

2. **The text of Section 3 shall be amended to replace**

   "Subject to compliance with all terms and conditions, the term of this agreement shall be from December 4, 2019 through May 31, 2025."

   with the following:

   "Subject to compliance with all terms and conditions, the term of this agreement shall be from December 4, 2019 through May 31, 2026."

3. **Except as expressly amended herein, all other provisions of the Agreement shall remain in full force and effect.**

4. **This Amendment No. 6 shall take effect upon the date of execution by both parties.**

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as set forth below.

Peninsula Clean Energy Authority

By: _____
Shawn E. Marshall, CEO

Dated: _____

By: _____

Name: _____

Title:_____

Dated: _____

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 16, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Nelly Wogberg, Board Clerk

SUBJECT: Approval of Minutes from the April 24, 2025 Board of Directors Meeting

RECOMMENDATION

Approval of Minutes from the April 24, 2025 Board of Directors Meeting

BACKGROUND

Approval of Minutes from the April 24, 2025 Board of Directors Meeting

ATTACHMENTS:
04-24-2025 BOD Draft Minutes.pdf

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

Thursday, April 24, 2025
6:30 p.m.
Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:35 p.m. in virtual teleconference, in the Peninsula Clean Energy Authority lobby, in the Los Banos City Hall conference room A, and the Hyatt Regency Sacramento.

ROLL CALL

Participating:

Lisa Gauthier, San Mateo County
Jackie Speier, San Mateo County, *participating remotely via AB 2449, just cause*
Rick DeGolia, Atherton
Tom McCune, Belmont
Coleen Mackin, Brisbane
Donna Colson, Burlingame, *Chair*
Ken Gonzalez, Colma
Roderick Daus-Magbual, Daly City
Carlos Romero, East Palo Alto
Stacy Jimenez, Foster City
Patrick Jonsson, Half Moon Bay, *participating remotely via AB 2449, just cause*
Leslie Ragsdale, Hillsborough
Michael Amabile, Los Banos, *participating remotely in Los Banos*
Betsy Nash, Menlo Park
Anders Fung, Millbrae
Christine Boles, Pacifica
Craig Taylor, Portola Valley
Elmer Martinez Saballos, Redwood City
Marty Medina, San Bruno, *Vice Chair*
Adam Loraine, San Mateo, *participating remotely in Sacramento*
Hassan Aburish, Woodside

Absent:

John Dugan, San Carlos
James Coleman, South San Francisco

A quorum was established.

PUBLIC COMMENT

None

ACTION TO SET THE AGENDA AND APPROVE REMAINING CONSENT AGENDA ITEMS

YouTube Home

Public Comment: None

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

1. Approval of Revised Load Management Standard (LMS) Plan for Submission to California Energy Commission (CEC).

2. Approval of the Minutes for the March 27, 2025 Board of Directors Meeting.

MOTION PASSED: 21-0 (Absent: San Carlos, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Gauthier	X			
San Mateo County	Director Speier	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 Jimenez	X			
Half Moon Bay	Director Jonsson	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Amabile	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Boles	X			
Portola Valley	Director Taylor	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 Aburish	X			
	Total	21			2

REGULAR AGENDA

3. Chair Report YouTube Home

Chair Colson provided a report that included the following updates:

- The Ad-hoc Evaluation Committee, composed of Directors Colson, Medina, Mackin, Ragsdale, and Taylor
- The Ad-hoc CEO Annual Review Committee, composed of Directors Colson, Medina, and DeGolia
- Interim appointments to the Executive Committee and the Audit and Finance Committee, as listed below, and that formal appointments would happen in May.

  Executive Committee Interim Appointments:
  Director Gauthier
  Director Ragsdale
  Director Loraine

  Audit and Finance Committee Interim Appointments:
  Director Martinez Saballos

4. CEO Report YouTube Home

   Shawn Marshall, Chief Executive Officer, provided a report that included the creation of a new Innovation Strategy Department, a legislative update presented by Marc Hershman, Director of Legislative Affairs, and a regulatory engagement update presented by Shalini Swaroop, Chief Operating Officer. She also announced the launch of the Renewable America Dos Palos Solar Project, an update on the Self Generation Incentive Program (SGIP), an update on the Wright Battery Energy Storage System (BESS), a new RFP for EV Ready Program Technical Assistance, and the inclusion of a Social Media FAQ at the end of every Board Agenda.

5. Community Advisory Committee Report YouTube Home

   Jason Mendelson, Community Advisory Committee (CAC) Chair, gave a report recapping the April 10, 2025 CAC meeting.

6. Briefing on SB 540 (Becker) – Wester Pathways Bill (Discussion) YouTube Home (7:05pm)

   Evelyn Kahl, General Counsel and Chief Policy Office at CalCCA, Loretta Lynch, former California Public Utilities Commission (CPUC) Commissioner and Energy Consultant, gave presentations for and against SB 540 (Becker).

   Public Comment: Ted McKinnon, Jeff Aalfs, Eduardo Pelegri-Llopart, Robert Whitehair

7. Approval of the Program Plan for California Public Utilities Commission (CPUC) FLEXmarket Program (Action) YouTube Home

   Rafael Reyes, Senior Director of Energy Programs, and Shelby Bush, Energy Efficiency Programs Manager, gave a presentation on the program plan for the CPUC FLEXmarket Program.

   Public Comment: None

MOTION: Director Taylor moved, seconded by Director Aburish to Approve the Program Plan for the California Public Utilities Commission (CPUC) FLEXmarket Program.

MOTION PASSED: 21-0 (Absent: San Carlos, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Gauthier	X			
San Mateo County	Director Speier	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 Jimenez	X			
Half Moon Bay	Director Jonsson	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Amabile	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Boles	X			
Portola Valley	Director Taylor	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 Aburish	X			
	Total	21			2

8. Discussion of the Distributed Energy Resources Framework 2025-2030 (Discussion) YouTube Home

Rafael Reyes, Senior Director of Energy Programs, Jana Kopyciok-Lande, Associate Director of Innovation Strategy, and Peter Levitt, Senior Programs Manager of Distributed Energy Resources (DER), gave a presentation on the DER framework for 2025-2030.

Public Comment: Sara Delisle, Kaloramas Strategies

9. Approval of the Budget Billing Program for Peninsula Clean Energy Customers (Action) YouTube Home

Justin Pine, Senior Manager of Strategic Accounts, gave a presentation on the Budget Billing Program.

Public Comment: None

MOTION: Director Taylor moved, seconded by Director Mackin to approve implementation of the proposed Budget Billing Program.

MOTION PASSED: 21-0 (Absent: San Carlos, South San Francisco)

JURISDICTION	BOARD MEMBER	YES	NO	ABSTAIN	ABSENT
San Mateo County	Director Gauthier	X			
San Mateo County	Director Speier	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 Jimenez	X			
Half Moon Bay	Director Jonsson	X			
Hillsborough	Director Ragsdale	X			
Los Banos	Director Amabile	X			
Menlo Park	Director Nash	X			
Millbrae	Director Fung	X			
Pacifica	Director Boles	X			
Portola Valley	Director Taylor	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 Aburish	X			
	Total	21			2

10. Board Members' Reports YouTube Home

Chair Colson noted that Burlingame city fees are being reviewed and shared that there will be fee waivers for anything related to electrification.

ADJOURNMENT

Meeting was adjourned at 8:58 p.m.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 16, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

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, CEO Shawn Marshall will provide an update on a variety of PCE topics, including but not limited to: FY 25-26 budget process and other finance related announcements, CA legislative report, Federal administration update, PCE Call Center stats, program and regulatory developments, and upcoming events of interest.

PCE Training Platform - Introducing Blue Ocean Brain
In April 2025, the HR team successfully launched Blue Ocean Brain, an online learning platform available to all PCE staff and soon, Board members. Blue Ocean Brain offers a robust library of over 1,300 micro-learning lessons covering a wide range of topics, including DEAI, effective communication, leadership development, and change management. To encourage staff engagement, we've developed a weekly lesson calendar specifically aligned with our internal professional development objectives. The Blue Ocean platform provides easily accessible training to support employee development and also aligns with our DEAI training commitment. Starting in late May, we're delighted to provide access to the Blue Ocean Brain platform to all Board members. Be on the lookout for an email with access code from our HR team.

PCE Thought Leadership (Late April - May)

- Shawn Marshall spoke at the California Energy Transition Conference on May 6
- Phillip Kobernick, spoke at the SF Climate week panel in April on electrifying multi family homes
- Leilani Johnson spoke to the graduating class at Pacific Union College on May 15

PCE In the Community (May/June)

5/22	Wax Museum, Los Banos

5/23	Wax Museum, Los Banos
6/5	Bayshore Community Center Presentation - Daly City
6/12	Senior Community Resource & Health Fair - East Palo Alto
6/17	SMCOE Community Partners Day, Redwood City

PCE Staffing Update

Recent Promotions!

- Moya Enright, promoted to Senior Manager, Power Market Operations
- Masha Doubrovskaia**,** promoted to Senior Analyst, Account Services

Welcome to our 3 summer interns, who are all local to our area. They will start work on June 2, 2025.

- Serena Meghani, Northeastern University, Voice of the Customer Project, Marketing Intern
- Daniel Lin, University of Illinois Urbana-Champaign, Data Analyst, Account Services Intern
- Nathan Lee, University of California Davis, Municipal Buildings, Programs Intern

Open Positions:
Power Resources Specialist/Analyst
Senior Analyst, Innovation Strategy

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 9, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Donna Colson, Chair of the Board
Marty Medina, Vice Chair of the Board

SUBJECT: Approval of Appointments to the Executive Committee and the Audit and Finance Committee (Action)

RECOMMENDATION

Approve appointments to the Executive Committee and the Audit and Finance Committee.

DISCUSSION

Honorable Colleagues,

Peninsula Clean Energy Policy 16, "Selection of the Chair and Vice Chair and Appointment to the Executive Committee and other Standing Board Committees" provides guidance on the process to appoint members to the Executive Committee and Audit and Finance Committee as follows:

"The Board will be asked to cast a vote either for or against the entire slate at the March [May this year due to delay in Chair/Vice Chair appointments] Board meeting. In the event the Board does not approve the slate, any Board members may nominate individual members to the Executive Committee or the Board may direct the Chair to return at the [April] Board meeting with a new slate."

Vice Chair Medina and I spoke with many Board members across our service territory about their potential participation and we're thrilled to share that numerous highly qualified individuals have expressed their interest in serving, which is crucial for maintaining the Board's continuity and safeguarding institutional knowledge while developing future leadership talent. We extend our gratitude to everyone who has shown interest and participated in our discussions. We urge you all to keep exploring PCE's endeavors and mission. After these conversations, we are pleased to make the following appointments:

To the Executive Committee:
1. Lisa Gauthier, County of San Mateo
2. Rick DeGolia, Atherton

3. Coleen Mackin, Brisbane
4. Donna Colson, Burlingame
5. Leslie Ragsdale, Hillsborough
6. Betsy Nash, Menlo Park
7. Anders Fung, Millbrae
8. Marty Medina, San Bruno
9. Adam Loraine, San Mateo

To the Audit and Finance Committee:

1. Tom McCune, Belmont
2. Donna Colson, Burlingame
3. Carlos Romero, East Palo Alto
4. Michael Amabile, Los Banos
5. Elmer Martinez Saballos, Redwood City

Sincerely,

Donna Colson, Chair
Marty Medina, Vice Chair

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: March 11, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Executive Officer; Roy Xu, Senior Director of Power Resources; and Sara Maatta, Senior Manager of Power Resources

SUBJECT: Approval of a Resolution Delegating Authority to the Chief Executive Officer to Execute an Energy Storage Services Agreement for the Wright Battery Energy Storage System with Stellar Wright BESS LLC with a Delivery Term of Twenty (20) Years and a Guaranteed Commercial Operation Date of June 1, 2026, in an Amount Not-to-Exceed $332 Million (Action)

RECOMMENDATION

Approve Resolution Delegating Authority to Chief Executive Officer to Execute an Energy Storage Services Agreement for the Wright Battery Energy Storage System with Stellar Wright BESS LLC, with a Delivery Term of Twenty (20) Years and a Commercial Operation Date of June 1, 2026, in an Amount Not-to-Exceed $332 Million (Action).

BACKGROUND

PCE's Board has set a long-term goal to procure 100% of its energy supply from renewable energy sources by 2030 through strategic and cost-effective procurement of resources that maximize 24/7 hourly matching of renewable energy and load. One important set of technologies that will help Peninsula Clean Energy meet its goal is energy storage. Energy storage can 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, which smooths/lowers peak energy spikes.

Staff has analyzed Peninsula Clean Energy's current resource fleet and finds that there will be significant benefit in adding the Wright Battery Energy Storage System (BESS) to Peninsula Clean Energy's existing flagship solar project, Wright Solar, located in Merced County just outside the City of Los Banos. If approved, Wright BESS would become the third combined solar plus storage system in Peninsula Clean Energy's portfolio. Adding Wright BESS to Wright Solar would create many benefits for our customers including: minimizing curtailment of solar production at Wright Solar which creates more Renewable Energy Credits; improving ability to harness and manage energy market volatility at the Wright Solar location; increasing reliability by adding new dispatchable capacity to the grid; and meeting critical compliance requirements.

Pricing, Market Comparisons, and Developer Background

The Wright BESS project is co-located at the site of the Wright Solar Project due to common upstream project ownership and a shared point of interconnection. The Wright Solar Project contemplated the addition of a battery energy storage system from the inception of the project in 2017. Its Conditional Use Permit from the County of Merced and interconnection agreement with the California Independent System Operator (CAISO) are already compatible with adding a battery system. As such, the Wright BESS project is considered an addition to the existing Wright Solar project with shared site, shared permit, shared interconnection and shared ownership, rendering this contract opportunity a sole-source procurement. Moreover, since Peninsula Clean Energy is the only off-taker of the Wright Solar Project, it also makes Peninsula Clean Energy the only feasible Buyer for the Wright BESS project.

Wright BESS is being developed by Stellar Renewable Power LLC (Stellar). Stellar is a subsidiary of The Global Atlantic Financial Group (GAFG), which is owned entirely by the investment firm KKR. KKR has deployed more than $5 billion in Asset-Based Finance investments globally since 2016. GAFG offers retirement, life insurance, and reinsurance products. As a means to offset insurance liabilities, GAFG is a long-term investor in high-yielding renewable energy assets to support its retirement and insurance product offerings. Stellar is a subsidiary of GAFG, and is the primary KKR renewable energy development platform that originates, develops, and operates utility-scale solar plants and storage facilities. Stellar has developed, operated, and/or owned 5 GW of renewables and storage across the U.S, and is developing an additional 17.3 GW, including Wright BESS. Stellar recently took over operational management of the Wright Solar Project and because of the shared interconnection and site, Stellar is currently the only developer who can build Wright BESS.

Peninsula Clean Energy conducted a market comparison analysis to ensure a fair price for the Wright BESS project. Staff compared the offered price to prices of similar projects in Peninsula Clean Energy's current portfolio, as well as project offers received in the 2024 Request for Offers for long-term renewable and storage projects. Staff also compared the Wright BESS pricing and terms to ongoing bilateral engagements with other storage developers. Given the technology, size, term, and especially the expected commercial operation date of June 2026, the negotiated price and terms for the Wright BESS project is competitive with the current market. Wright BESS is expected to come online in June 2026, which is much earlier than most projects available in the market and will be highly valuable to Peninsula Clean Energy in meeting its 2026 Mid-Term Reliability requirements.

Overview of the Project

Project Name	Wright Battery Energy Storage System
Technology	Lithium-Ion Standalone Storage Lithium Iron Phosphate (LFP) Chemistry Stationary Containerized Enclosures
Capacity	80 MW / 320 MWh (4-hour)
Commercial Operation Date	June 1, 2026
Project Owner	Stellar Wright BESS LLC
Developer	Stellar Renewable Power, LLC
Location	Merced County, CA

The Wright BESS project is a new 80 MW, 4-hr storage project that will be paired with

Peninsula Clean Energy's existing 200 MW Wright Solar Project, located outside of the City of Los Banos in Merced County. Peninsula Clean Energy will be the scheduling coordinator for Wright BESS.

The expected Commercial Operation Date is June 1, 2026. The project will have Full Capacity Deliverability Status (FCDS), which will allow the project to provide resource adequacy attributes to Peninsula Clean Energy. The project will share Wright Solar's interconnection on a direct tap to the PG&E 230 kV Q779 Switching Station bus connection to the Los Banos – Panoche #1 230 kV Transmission Line. The project is expected to start construction by December 2025.

Under the contract, Peninsula Clean Energy will pay for 80 MW of storage capacity at a fixed-price rate per kw-month with no escalation for the full term of the contract (20 years). Under the contract, Peninsula Clean Energy is entitled to all products 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 Mid-Term Reliability (MTR) requirements and may serve as a bridge resource to allow extensions for long-lead-time resources ordered under the MTR (more details on MTR requirements are provided below).

Given current uncertainties with import tariffs and tax credits, Peninsula Clean Energy and Stellar have negotiated a risk sharing approach if certain tariffs materialize or if there are significant changes to tax credit implementation. The estimated cost of the project over 20 years is approximately $311 million with a Not-To-Exceed amount of $332 million. Due to the shared project site and interconnection, minor amendments are needed to the existing Wright Solar Power Purchase Agreement to facilitate the addition of the battery. The major terms of the existing Wright Solar PPA will remain unchanged[1].

Workforce Requirements and Community Benefits
Stellar 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. The construction and installation phase of the Wright BESS project will generate between 60 to 90 jobs. During the post-construction phase there will be 5 to 10 full-time and part-time staff on site managing the operations of Wright BESS. The project has also agreed to additional funding under an existing Wright Solar Community Benefit Agreement, increasing the total contribution to $30,000 per year.

Environmental Review
The Wright BESS project will be located entirely within the Wright Solar Plant site, which is already developed with a solar plant and other electric infrastructure. Since the project does not require any new transmission infrastructure, there is no new environmental impact anticipated from interconnection and transmission. From a permitting perspective, the site will require only minor modifications to the existing Conditional Use Permit to accommodate the battery.

Safety
The project developer and owner, Stellar Wright BESS LLC, has prioritized the highest safety standards in the development plan for Wright BESS. The battery will be built in accordance with a BESS-specific safety plan set by the most current safety standards and in compliance

with the National Fire Protection Agency Standard 855 (NFPA 855). The project safety plan will be approved by the Merced County Fire Department, and the batteries will be installed in stationary modular containers specifically designed to house batteries, which is the current industry standard for safety and fire suppression. The battery chemistry will use Lithium Iron Phosphate (LFP) which is the current industry standard for utility-scale lithium batteries and is known for its safety and resistance to thermal runaway.

California Public Utilities Commissions Mid-Term Reliability Procurement Mandate
On June 24, 2021, the California Public Utilities Commission (CPUC) adopted Decision 21-06-035 (D.21-06-035) and further adopted Decision 23-02-040 (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) including Peninsula Clean Energy to collectively procure 15,500 MW^2 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 be considered eligible renewable resources under the California Renewable Portfolio Standard (RPS). The generic requirement for new capacity may be met by standalone energy storage.

Peninsula Clean Energy's total MTR Procurement requirement is 310.4 MW of total capacity. The Wright BESS project will qualify as 61 MW of this obligation, which is the amount of net qualifying capacity (NQC) that an 80 MW storage project such as this one qualifies for under the MTR Procurement Mandates.

DISCUSSION

Priority 1 of Peninsula Clean Energy's Strategic Plan is to: Deliver 100% renewable energy on an annual basis by 2030 through strategic and cost-effective procurement of resources that maximize Peninsula Clean Energy's 24/7 hourly matching of renewable energy and load.

Pairing energy storage with solar is critical to meeting Peninsula Clean Energy's goals by shifting excess solar generation in the middle of the day to later hours when the energy is needed to meet demand.

The Wright BESS project will help reduce curtailment and congestion at the Wright Solar project, providing financial benefits to Peninsula Clean Energy and its customers while also allowing the solar facility to produce more renewable energy to the grid. In addition, the project will allow Peninsula Clean Energy to convert market volatility at the Wright Solar interconnection point to arbitrage values that would reduce overall energy costs. The project will improve reliability on the grid by creating new dispatchable capacity that will support peak loads on the grid. Lastly, the Wright BESS project will contribute to Peninsula Clean Energy meeting its regulatory requirements under the CPUC Mid-Term Reliability Procurement Mandate, as well as provide much-needed resource adequacy capacities to the portfolio.

FISCAL IMPACT

The fiscal impact of the Wright BESS project will not exceed $332 million over the 20-year term of the Agreement commencing in June 2026.

STRATEGIC PLAN

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

- Priority 1: Deliver 100% renewable energy on an annual basis by 2030 through strategic and cost-effective procurement of resources that maximize 24/7 hourly matching of renewable energy and load.
- 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 Peninsula Clean Energy Policy 23, Energy Risk Policy, defines the major terms in an Amendment to a Power Purchase Agreement as price, volume, project size, counterparty security, or other amendments that impact the evaluation criteria upon which a project was approved.
2 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 requirement nameplate capacity is higher than the requirement identified in the decision.

ATTACHMENTS:
PCEA - Wright ESA Executable Version 5_19_25_Redacted.pdf

RESOLUTION NO. _____

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

APPROVAL OF A RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN ENERGY STORAGE SERVICES AGREEMENT FOR THE WRIGHT BATTERY ENERGY STORAGE SYSTEM WITH STELLAR WRIGHT BESS LLC WITH A DELIVERY TERM OF TWENTY (20) YEARS AND A GUARANTEED COMMERCIAL OPERATION DATE OF JUNE 1, 2026, IN AN AMOUNT NOT-TO-EXCEED $332 MILLION (ACTION)

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 has engaged in negotiations for the Wright Battery Energy Storage System (BESS) project, to be located on the same site as the existing Wright Solar Plant; and

WHEREAS, Peninsula Clean Energy seeks to execute an Energy Storage Services Agreement (ESSA) to procure 80 MW of 4-hour standalone storage capacity and related products from the Wright BESS project, based on project's desirable attributes, pricing, and terms; and

WHERAS, the Wright BESS project will contribute toward the regulatory requirements set by the California Public Utilities Commission to procure new capacity by 2026 to ensure better reliability for the California grid; and

WHEREAS, the Board delegates authority to the Chief Executive Officer to execute an Agreement in an amount not to exceed $332 million to purchase storage capacity and related products from Stellar Wright BESS LLC; and

WHEREAS, the Board's authorization to the Chief Executive Officer to execute the Agreement is contingent on Stellar Wright BESS LLC Agreement to 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 with Stellar Wright BESS LLC inclusive of 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 $332 million.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY

JPA Board Correspondence

DATE: March 11, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shawn Marshall, Chief Executive Officer; Roy Xu, Senior Director of Power Resources; and Sara Maatta, Senior Manager of Power Resources

SUBJECT: Approval of a Resolution Delegating Authority to the Chief Executive Officer to Execute an Energy Storage Services Agreement for the Wright Battery Energy Storage System with Stellar Wright BESS LLC with a Delivery Term of Twenty (20) Years and a Guaranteed Commercial Operation Date of June 1, 2026, in an Amount Not-to-Exceed $332 Million (Action)

Attached, please find the redacted copy of the Energy Storage Services Agreement for the Wright Battery Energy Storage System with Stellar Wright BESS LLC.

ENERGY STORAGE AND SERVICES AGREEMENT

COVER SHEET

Seller: Stellar Wright BESS LLC, a limited liability company

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

Description of Facility: A 80 MW AC energy storage facility with at least four (4) hours of continuous discharging at the maximum rate of discharge, located in Merced County, California (as further defined herein, the **"Facility"**).

Guaranteed Construction Start Date: **December 31, 2025**

Guaranteed Commercial Operation Date: **June 1, 2026**

Milestones:

Milestone	Expected Completion Date
Site Control	[redacted]
Execute PPA Amendment	[redacted]
Conditional Use Permit	6/30/2025
Executed Interconnection Agreement	8/1/2025
Obtain Full Capacity Deliverability Status Allocation	3/1/2026
Procure Major Equipment	6/15/2025
Financial Close	7/31/2025
Construction Start	10/1/2025
Initial Synchronization	1/30/2026
Deliverability Network Upgrades completed	11/1/2025
CAISO Commercial Operation	3/1/2026
Commercial Operation Date	3/31/2026

Delivery Term: twenty (20) Contract Years

Guaranteed Storage Capacity: 80 MW AC at four (4) hours of continuous discharging at the maximum rate of discharge (320 MWh).

Guaranteed Interconnection Capacity: 80 MW

Guaranteed Round-Trip Efficiency:

Contract Year	Guaranteed Round-Trip Efficiency
All	[redacted]

Storage Rate:

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

Guaranteed Storage Availability: [redacted] Monthly

Product:

- x Discharging Energy
- x Capacity Attributes
- x Ancillary Services

Scheduling Coordinator: Seller prior to Commercial Operation; Buyer or Buyer's Agent after Commercial Operation.

Development Security: $105/kW of Guaranteed Storage Capacity.

Performance Security: $105/kW of Guaranteed Storage Capacity until the Installed Capacity is final (if such determination is made later than the Commercial Operation Date), and then multiplied by the amount of Installed Storage Capacity thereafter.

[Signatures on following page.]

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

SELLER	BUYER
Stellar Wright BESS LLC	Peninsula Clean Energy Authority
By: _____	By: _____
	PCE Executive Officer
Name: _____	
Title: _____	

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ENERGY STORAGE AND SERVICES AGREEMENT

This Energy Storage and Services Agreement ("**Agreement**") is entered into as of **[_____]** (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 any exhibits, schedules and any written supplements 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, including Spinning Reserve, Non-Spinning Reserve, Regulation Up, and Regulation Down (as each is defined in the CAISO Tariff).

[redacted]

"**Assignment Agreement**" has the meaning set forth in Section 14.4.

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

"**Availability Notice**" means the lower of (a) Seller's availability forecasts issued and updated pursuant to Section 4.4 with respect to the Available Storage Capacity and Available Storage Capability, and (b) availability information reported to CAISO through OMS.

"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.

"**Buyer Assignee**" has the meaning set forth in Section 14.4.

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

"**CAISO Certification**" means the certification and testing requirements for a storage facility such as the Facility, as 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 facility, that are applicable to the Facility.

"**CAISO Commercial Operation**" has the meaning of "Commercial Operation" set forth in the CAISO Tariff.

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

"**CAISO Metered Entity**" has the meaning set forth in the CAISO Tariff.

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

"**CAISO No Pay**" has the meaning for the term "No Pay" as set forth in 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, sold, traded or used for a Person's legal or regulatory compliance under CPUC or CAISO market rules, including Resource Adequacy Benefits and MTR Attributes. Capacity Attributes shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff) and reactive power.

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

"**Change of Control**", in the case of Seller, means any circumstance in which Seller's Ultimate Parent ceases to be the Ultimate Parent or to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; *provided*, 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) shall be excluded from the total outstanding equity interests in Seller.

"**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*, any such operating instruction shall be in accordance with Section 4.6, the CAISO Tariff, other applicable Laws, Facility availability, and the Operating Restrictions.

"**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) ninety (90).

"**Commercial Operation Storage Capacity Test**" means the Storage Capacity Test conducted in connection with Commercial Operation of the Facility, including any additional Storage Capacity Test for additional Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

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

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

"**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 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.

"**Costs**" means, with respect to the Non-Defaulting Party, 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 the Resource Adequacy Rulings.

"**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 Facility charging or discharging;

(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 either Party from receiving or delivering Energy to or from 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.

If Buyer or Buyer's Scheduling Coordinator submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced by or delivered from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order.

"**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.

"**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 Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, 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*, 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.

"**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.

"**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.

"**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.

"**Forced Facility Outage**" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from providing Product and that is not the result of a Force Majeure Event.

"**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*, "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 a Development Cure Period, if applicable.

"**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 Round-Trip Efficiency**" means the minimum guaranteed Efficiency Rate of the Facility required during each month during the Delivery Term, as set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth on the Cover Sheet.

"**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, including Uninstructed Imbalance Energy (as defined in the CAISO Tariff).



"**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, as measured in MW 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; *provided*, Seller may install storage capacity in excess of the Guaranteed Storage Capacity, in which case the Installed Storage Capacity shall be deemed to be an amount equal to the Guaranteed Storage Capacity.

"**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 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 ITC.

"**ITC**" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"**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 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 U.S. branch or a foreign bank, 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 and acceptable to Buyer.

"**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.

"**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.

"**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 Attributes**" has the meaning set forth in Section 3.9(a).

"**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).

"**Operating Restrictions**" means the requirements and limitations set forth on Exhibit O.

"**Other Facility(ies)**" means the electric generating or energy storage facility(ies), other than the Facility, utilizing any facilities shared with the Facility to enable delivery of energy from each such other generating or storage facility to the Delivery Point, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at each such other generating or storage facility, but (i) with respect to the Shared Facilities,

excluding Seller's interests therein and (ii) excluding the real property on which each such other generating or storage facility is, or will be located, land rights and interests in land.

"**Partial Capacity Deliverability Status**" or "**PCDS**" has the meaning set forth in the CAISO Tariff.

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

"**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.

"**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.

"**PPA**" means that certain Amended and Restated Power Purchase and Sale Agreement between Buyer and Wright Solar Park LLC, a Delaware limited liability company (an Affiliate of Seller) dated as of September 23, 2017, and as amended by that Amendment No. 1 to the PPA dated as of March 7, 2019, and by that Amendment No. 2 to the PPA dated as of June 1, 2022 and as may be further amended from time to time.

"**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) (i) has a Tangible Net Worth of one hundred fifty million dollars ($150,000,000) or (ii) has (A) a Tangible Net Worth of fifty million dollars ($50,000,000) and (B) a Credit Rating of [redacted] or higher by Moody's or [redacted] or higher by S&P, if rated by only one such entity, or a Credit Rating of [redacted] or higher by Moody's and [redacted] or higher by S&P, if rated by both such entities, and, in any case, (b) is not a public utility regulated by the CPUC or an Affiliate thereof, and (c) 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 Installed Storage Capacity.

"**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 with respect to Buyer's monthly or annual Resource Adequacy showings to the CAISO and CPUC.

"**RA Shortfall**" means, for a given Showing Month, the difference, expressed in kW, of (a) the Facility's Qualifying Capacity minus (b) the sum of (i) the portion (in kW) of the Net Qualifying Capacity 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 *plus* (ii) Replacement RA provided by Seller with respect to an expected shortfall in Resource Adequacy Benefits of the Facility for such Showing Month, if applicable(as determined fifteen (15) Business Days prior to the Showing Deadline for such Showing Month). The RA Shortfall shall be determined on the later of (x) the date that is fifteen (15) Business Days prior to the Showing Deadline, and (y) if applicable, the date (after the date that is fifteen (15) Business Days prior to the Showing Deadline) on which Buyer purchases Replacement RA.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.6(b), any month shown on an RA Plan, commencing with the RA Plan for the Showing Month that includes the RA Guarantee Date (including any month during the period between the RA Guarantee Date and the first day of the first Showing Month for Buyer which actually includes the Facility's Resource Adequacy Benefits or any Replacement RA, if applicable), for which there is an RA Shortfall.

"**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 Costs**" means costs incurred by Buyer in connection with Station Use for which Seller is liable under this Agreement for such month, if any.

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

"**Replacement RA**" means Resource Adequacy Benefits (including satisfying the same Slice-of-Day operations profile and related characteristics) 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) be from a resource located in the same Transmission Access Charge Area (as described in the CAISO Tariff) as the Facility and, (c) 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, and (d) provides Resource Adequacy Benefits in the same hourly periods as the Facility or acceptable to Buyer in its sole discretion. 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 any Resource Adequacy ruling, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits, SOD benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 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, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-028, 20-06-031, 20-12-006, 21-06-029, 21-07-014, 22-03-034, 22-06-050, 22-12-028, 22-08-039, 23-04-010 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

"**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.

"**RTD Instructed Imbalance Energy**" has the meaning set forth in the CAISO Tariff.

"**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.

"**SCADA**" means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer's SC.

"**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.

"**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.

"**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.

"**SOC**" or "**State of Charge**" means (a) the Stored Energy Level relative to (b) the Storage Capacity multiplied by four (4) hours, expressed as a percentage. The "SOC" shall represent the range of Stored Energy Level reserved exclusively for Buyer's use; *provided*, Seller may represent such range anywhere within the actual available capability of the Facility.

"**SOD**" or "**Slice-of-Day**" has the meaning set forth in the Resource Adequacy Rulings.

"**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 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 (including the Commercial Operation Storage Capacity Test); *provided*, the Storage Capacity shall not at any time exceed the lesser of (a) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test), 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) (with respect to any other Storage Capacity Test).

"**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, (ii) Discharging Energy and (iii) Energy from the grid that serves Station Use. 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.

"**Storage Rate**" has the meaning set forth on the Cover Sheet, [redacted] *provided*, if Seller is entitled to receive the domestic content 10% ITC bonus tax credits and/or the energy community 10% ITC bonus tax credits with respect to any Contract Year, then, for each 10% bonus that Seller is entitled to receive, the Storage Rate shall be reduced by $0.69/kW-mo. commencing in the Contract Year in which Seller first monetizes, or realizes a gain from, such tax credits.

"**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 Capacity Test Protocol**" has the meaning set forth in Exhibit N.

"**Supply Chain Code**" has the meaning in Exhibit S.

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

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

"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).

"**Tested RTE**" has the meaning set forth in Part II.D(8) of Exhibit N.

"**Transformer Failure**" means a failure of all or part of the Main Power Transformer that results in the Facility being unable receive Charging Energy or to deliver Facility Energy during such failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practices.

"**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, as of the Effective Date, Stellar Renewable Power, LLC, or any subsequent successor entity that Controls, directly or indirectly, Seller and that is not Controlled by any other entity.

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

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

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

(j) references to any amount of money shall mean a reference to the amount in United States Dollars, and references to a LMP shall mean the LMP 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 obtain the FCDS allocation from the CAISO for the Facility through the Material Modification Assessment (as defined in the CAISO Tariff) to the Interconnection Agreement on or before the expected Milestone date set forth on the Cover Sheet to obtain Full Capacity Deliverability Status allocation (the "**FCDS Allocation Deadline**"), and

shall provide Notice to Buyer that it has obtained the FCDS allocation by such FCDS Allocation Deadline.

(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 to Buyer's reasonable satisfaction each of the following conditions, which Buyer shall, if submitted by Seller within five (5) Business Days of the expected Commercial Operation Date, review and either accept or provide Notice stating in reasonably detail the basis for Buyer's rejection thereof within five (5) Business Days of receipt thereof:

(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 (with the Facility configured as a CAISO Metered Entity) 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 Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by the Commercial Operation Date.

(g) The Facility has achieved CAISO Commercial Operation.

(h) Buyer, or its designee, is the Scheduling Coordinator for the Facility; *provided*, 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 (i.e. EIRs), studies (i.e. EISs) or assessments (i.e. EIAs) 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 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 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) The Facility is providing Resource Adequacy Benefits to Buyer for the month in which Delivery Term commences; *provided*, Seller may elect, by providing Notice to Buyer no less than ninety (90) days prior to the Expected Commercial Operation Date, that Seller will not be required to provide Resource Adequacy Benefits to Buyer for the month in which Delivery Term commences, in which case the Storage Rate shall be reduced by fifty percent (50%) for such month, and Seller shall be subject to an RA Shortfall beginning in the first month following Commercial Operation.

(m) Seller has delivered the Performance Security to Buyer;

(n) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any;

(o) Seller has delivered to Buyer a plan that is reasonably acceptable to Buyer for the proper recycling and disposal of all project components, equipment, and materials at the end of the useful life of the Facility;

(p) The parties to the PPA have executed a third amendment to the PPA substantially in the form attached hereto as Exhibit U; and

(q) Seller has demonstrated compliance with Section 7.1, including installation of the Storage Facility Meter, Station Use Meter, and CLAP Meters, in accordance with this Agreement.

2.3 **Development; Construction; Progress Reports; Safety Plan**.

(a) Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (b) 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.

(b) Seller shall ensure that all materials, products and components used in constructing, installing and operating the Facility throughout the Term shall be in compliance with the Supply Chain Code. Seller shall comprehensively implement due diligence procedures for its

and its Affiliate's suppliers, subcontractors and other participants in its supply chains, to comply with the Supply Chain Code. Seller shall notify Buyer as soon as it becomes aware of any breach, or potential breach, of its obligations under this Section 2.3(b).

(c) Buyer shall have the right, at Buyer's sole expense, to retain an independent auditor to audit Seller's compliance with the requirements of Section 2.3(b).

(d) On or before the Construction Start Date, Seller shall provide to Buyer a copy of Seller's written plan for the safe construction, operations and maintenance of the Facility in accordance with Prudent Operating Practices and applicable Law.

2.4 **Remedial Action Plan**. If Seller misses two (2) or more Milestones, or misses any one (1) by more than thirty (30) days, Seller shall submit to Buyer, within ten (10) Business Days of such second missed Milestone completion date (or the thirtieth (30th) day after the missed Milestone completion date, as applicable), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date 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 during the Delivery Term, Buyer shall pay Seller an amount equal to [(A x B x C) – D], (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)

The Storage Capacity Payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

3.3 **Imbalance Energy**. To the extent Facility charges or discharges other than in compliance with a Charging Notice or Discharging Notice or fails to charge or discharge in compliance with a Charging Notice or Discharging Notice, as applicable, any CAISO costs or penalties assessed as a result of such deviations, including Imbalance Energy costs, shall be solely for the account of Seller, and all CAISO revenues or credits, including Imbalance Energy revenues, shall be solely for the account of Buyer. CAISO costs and revenues in connection with RTD Instructed Imbalance Energy shall be for Buyer's account except to the extent such RTD Instructed Imbalance Energy was the result of a change in the Forecasted Product after the deadline for submitting Schedules in the Day-Ahead Market, in which case the CAISO costs shall be for Seller's account, and all CAISO revenue associated with such deviations shall be solely for the account of 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. Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.4(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*, the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

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) Seller shall provide Notice to Buyer not less than fifteen (15) Business Days prior to each Showing Deadline confirming the Net Qualifying Capacity of the Facility and/or any Replacement Capacity that is able to be shown on Buyer's monthly or annual RA Plan, as applicable. Seller shall provide RA Substitute Capacity in accordance with applicable CAISO requirements in connection with Seller's Facility outages. 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. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; *provided*, 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, then Buyer shall not include the Facility (or, if applicable, the portion of the Facility) in its Supply Plan and such failure shall be deemed an "RA Shortfall" and Seller's sole liability to Buyer for such failure to provide the RA Substitute Capacity 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 seventy-five (75) days before the applicable Showing Month, and (ii) Replacement RA shall not exceed twenty-five percent (25%) of the Resource Adequacy Benefits provided during any Contract Year.

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 indicated that the Facility will have Full Capacity Deliverability Status on the Cover Sheet, but 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 hereunder, 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.

(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, and for which Buyer purchased replacement Resource Adequacy Benefits, the amount of Buyer's cost of such replacement Resource Adequacy Benefits, plus

(iv) For any RA Shortfall which is not CPUC-Penalized Shortfall and/or CAISO-Penalized Shortfall, and for which Buyer did not purchase replacement Resource Adequacy Benefits, the greater of (A) the product of (x) such portion of the RA Shortfall multiplied by (y) the CPM Soft Offer Cap, and (B) the prevailing market value of such RA Shortfall, as reasonably determined by Buyer.

3.7 **Buyer's Re-Sale of Product**. 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, 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**. To the extent any change in Law occurs or is occurring after the Effective Date [redacted] and increases 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 (not including any RA Deficiency Amounts), 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 in connection with all such changes in Law shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Installed Storage Capacity ("**Compliance Expenditure Cap**").

(a) 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**".

(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) The Compliance Expenditure Cap shall apply to any change of Law that lowers the Facility's Qualifying Capacity (including a change of Law that modifies the methodology for calculating the Qualifying Capacity), and no RA Deficiency Amount shall be owed to Buyer in the event Seller's actions to address such change in Law are either (i) impossible or (ii) would cost more than the Compliance Expenditure Cap for Compliance Actions and Buyer does not agree to fund such excess. Any failure by Seller to operate the Facility in accordance with Prudent Operating Practice, or to meet availability or other operational metrics or requirements established by CAISO or the CPUC (including as part of a change of Law) that apply generally to the Facility and facilities similar to the Facility, shall not be treated as a Compliance Action subject to the Compliance Expenditure Cap for all 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 ("**MTR Attributes**");

(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.

3.10 **Buyer's Re-Sale of Product**. 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, 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 3.10, Seller shall be liable to Buyer for the amounts Seller would have owed Buyer under this Agreement if Buyer had not resold the Product.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept at the Delivery Point all Product. Each Party shall perform all obligations under this Agreement, including all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) 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) Scheduling Coordinator for the Facility. Prior to Commercial Operation, Seller 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. Upon Commercial Operation, 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 anticipated date of Commercial Operation, (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 Commercial Operation, 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 Commercial Operation. On and after Commercial Operation, 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 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. Following Commercial Operation, 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. Following Commercial Operation and 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, and other charges, except as otherwise provided in this Agreement) 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 (including costs associated with Imbalance Energy, as set forth in Section 3.4, and CAISO No Pays) resulting from any failure by Seller to abide by any Charging Notices, 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 following Commercial Operation). 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 (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility following Commercial Operation). In addition, if after Commercial Operation, 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 that are not in compliance with this Agreement, 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 after Commercial Operation. 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, which shall be offset with any charges or penalties for which Buyer is responsible. 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 following Commercial Operation. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld. With respect to the round-trip efficiency of the Facility as reported in the Master Data File and Resource Data Template, the Parties shall use the Tested RTE from the most recent Storage Capacity Test unless a different calculation methodology for determining such amount is required pursuant to the CAISO Tariff or the Parties otherwise agree in writing.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

4.4 **Forecasting**. 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 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 MWh or more, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the 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, then (i) for each MWh of Charging Energy that is consumed by Seller in contradiction to the Curtailment Order, Seller shall pay Buyer for each MWh an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of LMPs, if any, for the Settlement Intervals during the Curtailment Period, times the applicable amount of MWh of Energy consumed by Seller

in contradiction to the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order; and (ii) for each MWh of Discharging Energy that is delivered to the Delivery Point in contradiction to the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is an amount equal to the absolute value of any negative LMPs, if any, for the Settlement Intervals during the Curtailment Period, times the applicable amount of MWh of Energy delivered to the Delivery Point during such Settlement Intervals with negative LMPs in contradiction to the Curtailment Order, and (B) is any penalties or other charges resulting from Seller's failure to comply with the Curtailment Order.

(c) Seller Equipment Required for Operating Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, 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 as required by CAISO or reasonably determined by Buyer to be applicable consistent with Prudent Operating Practices, 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*, 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) Commencing on the Commercial Operation Date, 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 the Operating Restrictions.

(b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement, the CAISO Tariff, applicable Laws and Facility availability. 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. 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*, Buyer's right to issue Charging Notices is subject to compliance with the CAISO Tariff, applicable Laws, Facility availability which has been timely communicated in advance to Buyer, and the requirements and limitations set forth in this Agreement, including the Operating Restrictions. 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 and other amounts specified in Section 3.3(c), and without limiting any of Buyer's other rights under this Agreement, Seller shall be responsible for all Energy costs associated with such charging of the Facility.

(e) Subject to compliance with the CAISO Tariff, Facility availability which has been timely communicated in advance to Buyer, 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 (iii) 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 (iv) discharges the Facility in violation of the third sentence of Section 4.6(b), then, in addition to any

other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(c), 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 back to the Stored Energy Level specified by Buyer before the non-permitted discharge.

(g) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders 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), 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 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 consistent with the Operating Restrictions and the Curtailment Order.

(h) Prior to 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 Facility (*provided*, (A) Seller shall only charge and discharge the Facility in connection with installation, commissioning and testing of the Facility, and (B) commencing upon CAISO Commercial Operation, Seller's operation of the Facility shall be subject to the Operating Restrictions), and (iii) all CAISO costs, revenues, penalties and other amounts owing to or paid by CAISO in respect of the Facility testing shall be for Seller's account. Upon Commercial Operation, Buyer shall have exclusive rights to issue or cause to be issued Charging Notices or Discharging Notices.

4.7 **[Intentionally Omitted]**

4.8 **Financial Statements**. Seller shall provide to Buyer, within 60 days of the end of Ultimate Parent's first, second, and third fiscal quarters, and within 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.

4.9 **Access to Data**.

(a) Commencing on Commercial Operation and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; *provided*, Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, during the Delivery

Term, which changes Buyer determines are necessary 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 EMS data, including Charging Energy, Discharging Energy, Facility state-of-charge, and battery rack and inverter status (online or offline) information collected by the SCADA system for the Facility; *provided*, 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 Facility Meter and all Facility meter data at the Site;

(iv) meteorological data, including ambient air temperature, barometric pressure, and relative humidity; and

(v) 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 4.9, 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 4.9(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) days of receipt of such Notice; *provided*, if

Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; *provided further*, Seller shall not be relieved from liability for any Imbalance Energy costs incurred under Section 3.3 during this additional period for repair or replacement.

(iv) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, 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 Operator. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the Participating Transmission Operator information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.

4.10 **Storage Availability and Efficiency**.

(a) Storage Availability. During the Delivery Term, the Facility shall maintain a Monthly Storage Availability (calculated in accordance with Exhibit M) of no less than the Guaranteed Storage Availability. If, in any month after CAISO Commercial Operation, the Monthly Storage Availability is less than the 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 each month of the Delivery Term, the Facility shall maintain a Round-Trip Efficiency of no less than the Guaranteed Round-Trip Efficiency. If, in any month during the Delivery Term, the Round-Trip Efficiency is less than the 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.

4.11 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation 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.

(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.

4.12 **Facility Modifications**. Unless required to comply with any Laws or change in Law, Seller shall not materially modify or supplement all or any major part of the Facility without Buyer's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

4.13 **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. If the Facility fails or is unable to provide Ancillary Services for any reason (including by reason of failing an Ancillary Services certification test) that is not excused hereunder, then as exclusive remedies the Available Storage Capacity for any applicable Calculation Interval shall be deemed reduced for purposes of calculating the Monthly Storage Capacity Availability by an amount equal to the product of (a) the Available Storage Capacity *multiplied by* (b) thirty percent (30%), and Seller shall also reimburse Buyer for any CAISO charges or penalties arising from the failure to provide such Ancillary Services. 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*, Buyer has agreed to reimburse Seller for any costs Seller incurs in connection with conducting such additional CAISO Certification.

4.14 **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 ensure that work performed in connection with construction of the Facility will 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 4.14. Seller shall provide to Buyer copies of any reasonably requested reports, certifications or similar communications with the IRS regarding labor information applicable to Seller, its Affiliates or suppliers and vendors in connection with any obtaining or substantiating tax incentives pursuant to the Internal Revenue Service Requirements.

4.15 **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 (i) any certifications or other documentation of such Diverse Business Enterprises status as such, (ii) the business address and other contact information of such Diverse Business Enterprises, (iii) the aggregate amount paid to Diverse Business Enterprises during such period, and (iv) any other information Buyer reasonably determines is necessary to meet its related reporting obligations.

(a) Buyer has the right to disclose to the CPUC all such information provided by Seller pursuant to this Section 4.15.

(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 4.15.

4.16 **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 Transmission Provider, 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; (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 (iv) 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.

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 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*, 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. 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 shall not conduct Scheduled Maintenance between June 1 and September 30 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 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 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 Scheduled Maintenance and that reduces the Available Storage Capacity of the Facility by more than ten

percent (10%) to occur only between October 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 September, or (iii) the Parties agree otherwise in writing.

(c) Seller shall use commercially reasonable efforts to schedule all maintenance outages, including those associated with 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*, 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, 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);

(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 Use Costs;

(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 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. The Facility shall be configured as a CAISO Metered Entity. Seller shall measure the Charging Energy and Discharging Energy using the Storage Facility Meter and CAISO approved methodologies. Seller shall measure Station Use using a separate revenue-grade meter ("**Station Use Meter**"). The Storage Facility Meter and Station Use Meter 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 all 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 meters. 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.

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 sufficient to document and verify the amount of Charging Energy, Discharging Energy, Station Use and Reimbursable Station Use Costs, if any, 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.

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 forty-five (45) 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.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter

inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within 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 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 within five (5) 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 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 within seven (7) Business Days after such draw, other than to satisfy a Damage Payment. 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 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 seven (7) 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, indemnification payments or other damages 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 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 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 (Seller remains liable for any amounts 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 reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; 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, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited exclusively to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (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 a Force Majeure Event; or (x) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following 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.

10.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of 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*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Sections 2.1(b) and 11.6, and Buyer shall promptly return to Seller any Development Security or 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;

(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;

(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;

(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 ninety (90) days after the Guaranteed Commercial Operation Date;

(iii) if the average Monthly Storage Availability for the first Contract Year 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 for such Contract Year multiplied by the Storage Capacity is not at least seventy percent (70%); *provided*, it will not be an Event of Default under this Section 11.1(b)(iii) if, one (1) time during the Delivery Term, (a) the failure to meet the respective standard results from a Transformer Failure, (b) during the one hundred eighty (180)-day period following the date of such Transformer Failure Seller diligently pursues a cure to such Transformer Failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Transformer Failure that cure can be made within such one hundred eighty (180) day period, and (c) Seller completes the cure of such Transformer Failure within such one hundred eighty (180) day period;

(iv) if, for any two (2) consecutive Contract Years, the [redacted] RTE is not at least seventy-five percent (75%);

(v) if, in any Contract Year, Seller fails to maintain average Storage Capacity determined pursuant to one or more Storage Capacity Tests equal to at least seventy-five percent (75%) of the Installed Storage Capacity; *provided*, it will not be an Event of Default under this Section 11.1(b)(viii) if, one (1) time during the Delivery Term, (a) the failure to meet such standard results from a Transformer Failure, (b) during the one hundred eighty (180)-day period following the date of such Transformer Failure Seller diligently pursues a cure to such Transformer Failure and delivers to Buyer a certificate from a Licensed Professional Engineer within thirty (30) days following the date of the Transformer Failure that cure can be made within such one hundred eighty (180)-day period, and (c) Seller completes the cure of such Transformer Failure within such one hundred eighty (180)-day period;

(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 seven (7) 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 or any ancillary activities in connection therewith;

(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 seven (7) 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, 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 (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 to collect as liquidated damages the Damage Payment or the Termination Payment 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, 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, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be a dollar amount that equals the amount of the Development Security plus, if the Development Security is posted as cash, any interest accrued thereon. 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)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be calculated in the same manner as the Termination Payment in Section 11.3(b).

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**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. 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 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) 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 Damage Payment or Termination Payment, as applicable, and whether the Damage Payment or Termination Payment, as applicable, 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 Damage Payment or Termination Payment, as applicable, 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 16.

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 a Buyer Event of Default [redacted], 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, 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 Affiliate provides 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) and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

[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 (including the interconnection queue position of the Facility), so long as the limitations contained in this Section 11.6 apply, 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.

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, 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.

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 UNDER SECTION 11.3(a) AND THE TERMINATION PAYMENT UNDER SECTION 11.3(b), AND AS PROVIDED IN SECTION 3.6, SECTION 4.10, 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 SECTION 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 **[_____]** company, duly organized, validly existing and in good standing under the laws of the State of **[_____]**, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all

covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

13.2 **Buyer's Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election,

referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; or (b) subject to Section 15.1, a Lender as collateral. Any 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, unless such Change of Control is to an Affiliate or to a Qualified Transferee.

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, (a) the assignee (i) has a Credit Rating of Baa2 from Moody's or BBB from S&P, and (ii) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California, and (b) no fewer than fifteen (15) Business Days before such assignment Buyer (i) notifies Seller of such assignment and (ii) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b). Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

14.4 **Buyer Financing Assignment**. Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction ("**Buyer Assignee**") at any time upon not less than fifteen (15) Business Days' notice by delivering Notice of such assignment, which notice must include a proposed assignment agreement in form reasonably acceptable to both Parties (the "**Assignment Agreement**"), *provided*, at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer's Credit Rating at the time of such assignment (if applicable), and (b) Baa2 from Moody's and BBB from S&P. As reasonably requested by Buyer Assignee, Seller shall (i) provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such Assignment Agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Buyer Assignee and Buyer and the requirements of this Section 14.4. [redacted]

ARTICLE 15
LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest**. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall

include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; *provided*, all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement or to reduce its benefits or increase its risks or burdens under this Agreement.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided*, the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender**. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Sections 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16
DISPUTE RESOLUTION

16.1 **Governing Law.** This agreement and the rights and duties of the parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

16.2 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

16.4 **Venue**. The Parties agree that any litigation arising with respect to this Agreement is to be venued in 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, 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*, 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). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(b).

(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*, 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.

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*, this Agreement may not be amended by electronic mail communications.

20.3 **Time is of the Essence**. The Parties agree that time is of the essence with respect each Party's performance of its obligations under the Agreement.

20.4 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.5 **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).

20.6 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.7 **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).

20.8 **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.

20.9 **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.

20.10 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.11 **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.

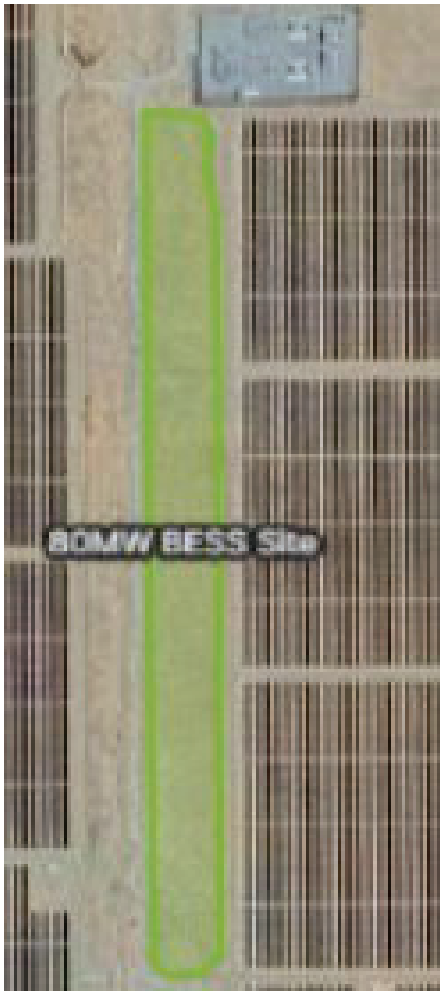
20.12 **Change in Electric Market Design**. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to 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 ninety (90) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (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:	**Wright BESS**
Site Name:	**Wright Solar Park**
Site Description:	***088-020-002***
Site Address:	**17011 Volta Road, Los Banos, CA 93635**
GPS Coordinates:	**37.02367, -120.96670**

Project Map:



Site Map

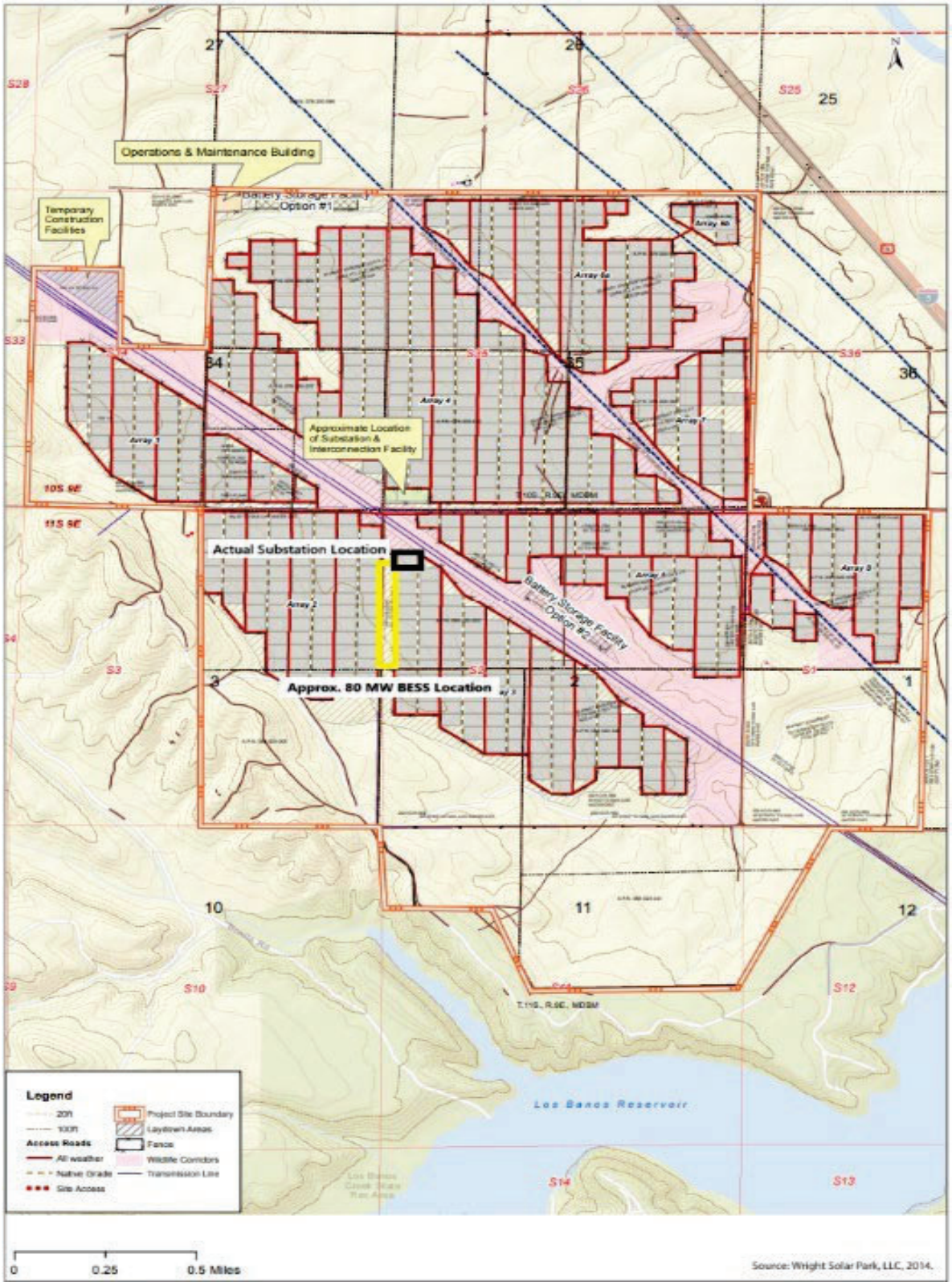


Exhibit A - 2

County: **Merced** County

CEQA Lead Agency: **Merced** County

Storage Technology: **Lithium-ion battery, LFP**

P-node/Delivery Point: The PNode designated by CAISO for the Facility at the **WRIGHT** Substation

Point of Interconnection: PG&E 230 kV Q779 Switching Station bus connection to the Los Banos – Panoche #1 230 kV Transmission Line

Description of Interconnection Facilities and Metering:

The system has rated power of 80 MW and a rated duration of 4 hours. The BESS Yard is connected to the substation through a series of circuit breakers and transformers. The system consists of multiple inverters (INV) that convert stored DC power from the batteries into AC power. These inverters are grouped and connected to medium-voltage (MV) transformers, which step up the voltage for transmission. The MV transformers are linked to the substation through protective breakers, ensuring safe and controlled power flow. The final connection is made to the substations medium voltage (MV) bus, allowing energy to be distributed to the grid.

CAISO Queue Number: **Q0779**

One-Line Diagram:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

a. Seller shall cause construction to begin on the Facility by December 31, 2025, (as such date may be extended by the Development Cure Period, the "**Guaranteed Construction Start Date**"). Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, Seller's issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and includes the physical movement of soil at the Site ("**Construction Start**"). On the date of the beginning of construction (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 (10th) 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 Damages 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 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 later of (x) March 31, 2026 or (y) the date on which Commercial Operation is achieved.

a. Seller shall cause Commercial Operation for the Facility to occur by June 1, 2026 (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all 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 Commercial Operation Date. 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 ninety (90) 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 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 within one hundred twenty (120) days after the Guaranteed Construction Start Date, or Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date (in the case of (a) below) and the Guaranteed Commercial Operation Date (in the case of (a), (b) or (c) below) shall be extended on a day-for-day basis, as applicable, (the "**Development Cure Period**") for the duration of each of the following delays:

a. a Force Majeure Event or Import Restriction Delay occurs; or

b. for the Guaranteed Commercial Operation Date only, 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; or

c. [redacted]

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(b) above) shall not exceed one hundred eighty (180) days, for any reason, and, without limiting the provisions of Section 10.3, no extension shall be given to the extent that (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines; (ii) 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 (iii) 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.

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 Five Hundred Thousand Dollars ($500,000) 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**. Subject to Section 11.9 of the Agreement, if Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security to its full amount within Seven (7) Business Days after such draw.

EXHIBIT C

[Intentionally Omitted]

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 Diverse Business Entity Reporting (if applicable). Format to be provided by Buyer.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

[INTENTIONALLY OMITTED]

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) 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.

(8) The total rated power of the Facility inverters associated with the Installed Storage Capacity as measured to the Delivery Point is at least [__] MW charging and [__] MW discharging at 45°C ambient air temperature.

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 Commercial Operation Storage Capacity Test conducted on [Date] demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.13 and Exhibit N ("**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 _____ __, 201_ 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)

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

3. 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.

4. 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 45 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.

If requested by the Buyer, Seller shall provide a certified and true copy of any or all policies.

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.

If Seller maintains Pollution Liability limits greater than what is required herein, such limits carried become what we require under this contract.

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.

If Seller maintains Professional Liability limits greater than what is required herein, such limits carried become what we require under this Agreement.

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. Buyer shall accept General Liability Additional Insured forms CG 20 10 11/85, CG 20 10 10/01 & CG 20 37 10/01 or their equivalent.

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.

Waiver of Subrogation – Seller shall provide a Waiver of Subrogation Endorsement naming Buyer for all lines of coverage.

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																								
Day 3																								
Day 4																								
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 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																								
Day 2																								
Day 3																								
Day 4																								
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.

(a) For each monthly period after the Commercial Operation Date, Seller shall calculate the "**Monthly Storage Availability**" using the formula set forth below:

$$\textbf{\textit{Monthly Storage Availability}}\ (\%) =$$

$$\mathbf{1} - \frac{\textbf{\textit{Monthly Unavailable Calculation Intervals}}}{\textbf{\textit{Total Calculation Intervals}}}$$

where:

CALCULATION INTERVAL or "C.I." = each successive five-minute interval, but excluding all such intervals which are Scheduled Maintenance, not to exceed 50 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 (excluding for reasons at the high-voltage side of the Delivery Point or beyond). Any Calculation Interval in which the 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.

$$\textbf{\textit{Unavailable Calculation Interval}} = \mathbf{1} - \textit{the lesser of}:$$

$$\left[\begin{array}{c} \left(\frac{A}{Storage\ Capacity}\right) or \\ \left(\frac{Available\ Storage\ Capability}{Storage\ Capacity\ X\ 4\ hrs}\right) or \\ \left(1 - \frac{Failure\ to\ Comply\ Capacity}{Storage\ Capacity} - \frac{AS\ Failure\ to\ Comply\ Capacity}{Storage\ Capacity}\right) \end{array}\right]$$

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*, 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); *provided further*, if the Facility fails, or is unable, to provide Ancillary Services for any reason (including by reason of failing an Ancillary Services certification test) that is not excused hereunder, then in accordance with Section 4.13, the Available Storage Capacity for such Calculation Interval shall be deemed reduced by an amount equal to the product of (a) the Available Storage Capacity *multiplied by* (b) thirty percent (30%); and *provided further*, "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 strings in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system string (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*, 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); *provided further*, Storage Capability shall never exceed the Storage Capacity x four (4) hours.

"**FAILURE TO COMPLY CAPACITY**" = Any portion of the facility, in MW, which failed to comply with a valid Charging Notice or Discharging Notice that complies with this Agreement, including (i) any such failure to charge or discharge at the times, in the quantities, and at the levels specified in such Charging Notice or Discharging Notice; and (ii) any charge or discharge of the Facility other than pursuant to a valid Charging Notice or Discharging Notice that complies with this Agreement, or pursuant to a notice from the CAISO, any PTO, or any other Governmental Authority. Failure to comply capacity will be measured as the absolute value of the difference, in

MW, between the average DOT communicated to the Facility by the CAISO for the Calculation Interval and the average metered energy flow for the Calculation Interval; *provided*, such calculation shall not include any energy related to Ancillary Services to the extent already captured in the calculation of AS Failure to Comply Capacity.

"**AS FAILURE TO COMPLY CAPACITY**" = If any Calculation Interval results in a CAISO No Pay associated with failure to provide Ancillary Services in accordance with the AS Schedule from the CAISO, then the AS Failure to Comply Capacity shall equal the Ancillary Service Capacity that Seller failed to provide, in MW. AS Failure to Comply Capacity will be zero to the extent such Failure to Comply is attributable to any actions or inactions of Buyer, the SC or the CAISO or resulting from Seller's compliance with any Curtailment Order or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence.

"**TOTAL CALCULATION INTERVALS**" = the total number of Calculation Intervals in the applicable month.

(b) If the total rated power of the Facility inverters as measured to the Delivery Point at 45°C ambient air temperature is less than the Installed Storage Capacity, then Buyer shall have the right, in its reasonable discretion, to reduce the Available Storage Capacity by applying an ambient temperature derate to the applicable Calculation Interval.

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 Guaranteed Storage Availability, then:

Storage Availability Adjustment = 100% (expressed as a decimal)

(b) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to [redacted]

[redacted]

[redacted]

Storage Availability Adjustment = 100% - [(Guaranteed Storage Availability - Monthly Storage Availability) x 2] + (Secondary Unavailability x 2) (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 Storage Capacity Test(s). Upon no less than ten (10) Business Days' prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit N and shall establish the Installed Storage Capacity hereunder based on the actual capacity and capabilities of the Facility determined by such Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days' prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior 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 Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Facility. In accordance with Section 4.13(c) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) determined pursuant to such Storage Capacity Test shall become the new Storage Capacity at the beginning of the first day of the month following the completion of the test for calculating the Storage Capacity Payment and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

(1) Each Storage Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions 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 "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

(2) Conditions Prior to Testing.

(1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange Distributed Network Protocol 3 data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the Facility SCADA system should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between Buyer's RTU and Seller's EMS interface and the ability to record SCADA system data.

(3) Commissioning Checklist. Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each CT shall include the following individual test elements. The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT will still be deemed "complete," and any adjustments necessary to the Storage Capacity resulting from such CT, if applicable, will be made in accordance with this Exhibit N.

1. Electrical output at the lesser of the maximum discharging level (MW) and Guaranteed Storage Capacity for four (4) continuous hours; and

2. Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the SOC reaches 100%, not to exceed five (5) hours of total charging time.

3. The dispatch of the Facility during the CT shall only be done through the ADS signal from the CAISO to the Facility. Seller shall not interfere with or alter the Facility's response to the ADS signal during the CT or manually alter any EMS or SCADA data recorded by the Facility.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Facility, at two (2) second intervals:

(1) Time;

(2) The amount of Charging Energy;

(3) The amount of Discharging Energy;

(4) SOC; and

(5) Station Use.

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;

(3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;

(4) Amount of time between the Facility's electrical output going from 0 to the maximum sustained discharging level registered during the CT (for purposes of calculating the ramp rate);

(5) Amount of time between the Facility's electrical input going from 0 to the maximum sustained charging level registered during the CT (for purposes of calculating the ramp rate);

(6) Amount of Charging Energy to go from 0% SOC to 100% SOC;

(7) Amount of Discharging Energy to go from 100% SOC to 0% SOC; and

(8) The calculated round-trip efficiency of the Facility during the CT, equal to the quotient (expressed as a percentage) of (x) the amount of Discharging Energy as set forth in Part II.D(7) of this Exhibit N, divided by (y) the amount of Charging Energy as set forth in Part II.D(6) of this Exhibit N (the "**Tested RTE**").

E. Test Conditions.

(1) General. At all times during a CT, the Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions,

and all operating protocols recommended, required or established by the manufacturer for the Facility.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT, Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.

(3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff. At Buyer's request, Seller shall provide documentation of all equipment calibration and certification.

(4) 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 CT, must be within the range of 8 – 33 degrees Celsius.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Storage Capacity pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated within a reasonable specified time period. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer the completed Installed Capacity Certificate together with a written report of the results of the CT, which report shall include:

(1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

(2) The measured and calculated data for each parameter set forth in Part II.A through D and Part III below, including copies of the raw data taken during the test; and

(3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Seller's CT report and any submitted capacity certificate shall be deemed invalid if not delivered to Buyer within (5) Business Days after the completion of any CT. Within five (5) Business Days after receipt of such report, Buyer shall notify Seller

in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to any CT, Buyer may deliver to Seller 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**"). Any additional Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Seller, shall be deemed an amendment to this Exhibit N.

I. Adjustment to Storage Capacity. The Storage Capacity shall equal the quotient of (a) the total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (A) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (B) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) divided by (b) four (4) hours, expressed in MW AC.

PART III - STORAGE CAPACITY TEST PROTOCOL.

A. **Storage Capacity**

- Procedure:

(1) System Starting State: The Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the Facility SOC.

(3) Command via ADS signal a real power charge that results in an AC power of Facility's maximum charging level, and continue charging until the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Facility commenced charging.

(4) Record and store the Facility SOC after the earlier of (a) the Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.

(5) Record and store the Charging Energy.

(6) Following an agreed-upon rest period, command via ADS signal a real power discharge that results in an AC power output of the lesser of (i) the

Facility's maximum discharging level and (ii) the Guaranteed Storage Capacity, and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the lesser of (i) the maximum discharging level and (ii) the Guaranteed Storage Capacity.

(7) Record and store the Facility SOC after four (4) hours of continuous discharging.

(8) Record and store the Discharging Energy as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.

(9) If the Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Facility until it reaches a 0% SOC. Record and store the additional Discharging Energy, if applicable.

- Test Results

(1) The resulting Effective Storage Capacity measurement is the quotient of (a) the total Discharging Energy at the Storage Facility Meter pursuant to Part III Section A(8) above divided by (b) four (4) hours.

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, Limited to 2 cycles per day
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: 4800 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:	320 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:	80 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:	80 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:	Between 1 and 4800 MW/minute

EXHIBIT P

METERING DIAGRAM

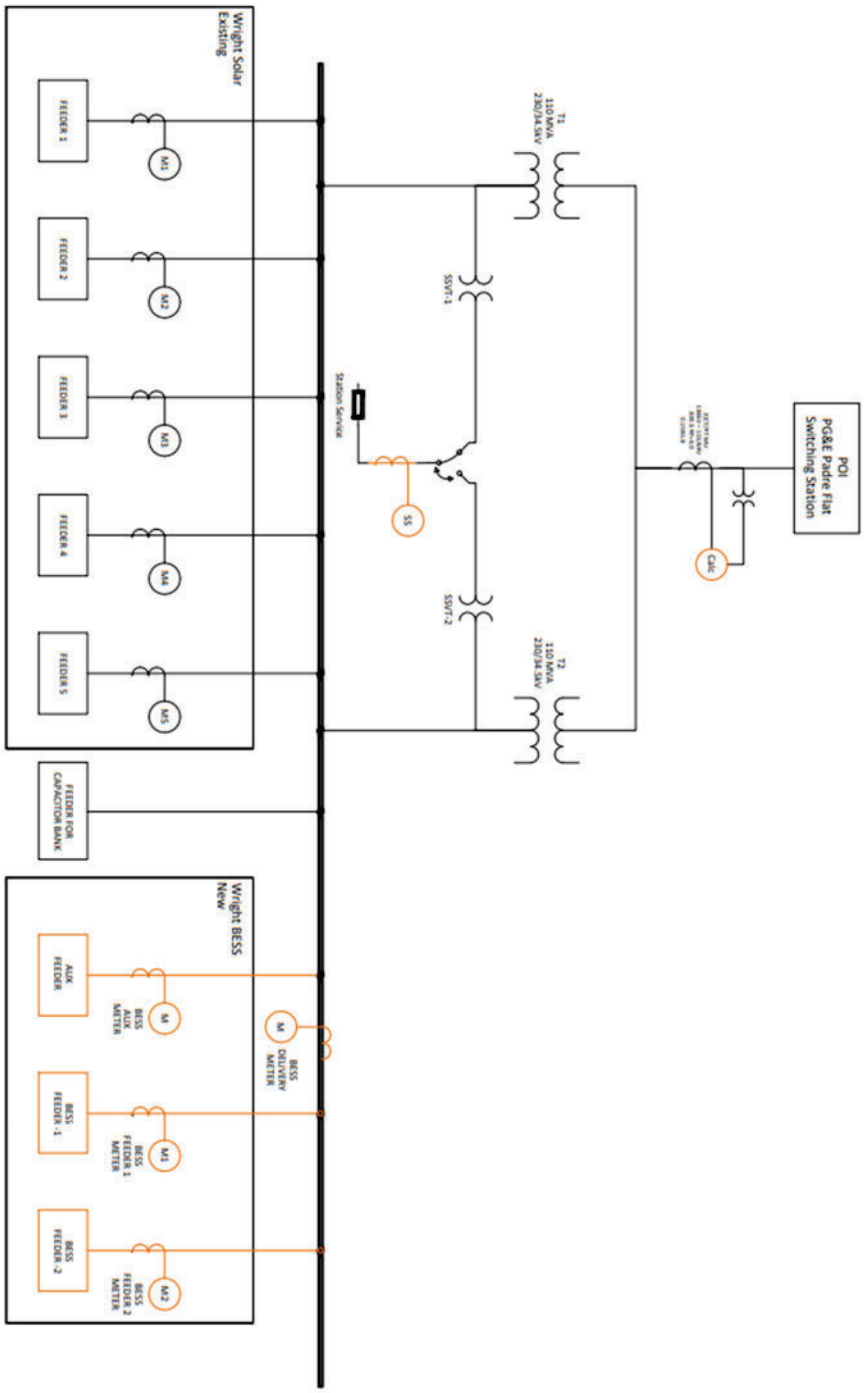


EXHIBIT Q

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:

$$(GRTE - RTE_M) \times \text{Average Monthly T4B5 Price} \times RTEF_M \times TCE_M$$

where:

GRTE = the Guaranteed Round-Trip Efficiency

RTE_M = the "**Round-Trip Efficiency**", as calculated by dividing (a) the total Discharging Energy for the applicable month by (b) the difference of (i) the total Charging Energy for the applicable month, minus (ii) Reimbursable Station Use for the applicable month.

The "**Average Monthly T4B5 Price**" means the average of the four (4) highest hourly average Day-Ahead Market LMPs and the five (5) lowest hourly average Day-Ahead Market LMPs, in each case in the applicable month.

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 $RTE_M \geq$ [redacted]

[redacted]

[redacted]

If $RTE_M <$ [redacted] then $RTEF_M = 1.5$

TCE_M = the total Charging Energy charged to the Facility in the applicable month.

EXHIBIT R

NOTICES

Stellar Renewable Power, LLC ("Seller")	**PENINSULA CLEAN ENERGY, a California joint powers authority** ("Buyer")
All Notices: Origination Street: 14643 Dallas Parkway, Suite 250 City: Dallas Attn: Talon Doucette Phone: [redacted] Email: [redacted]	**All Notices:** Street: 2075 Woodside Road City: Redwood City, CA 94061 Attn: Director of Power Resources Phone: [redacted] Email: contracts@peninsulacleanenergy.com With a copy, which will not constitute notice, to: Peninsula Clean Energy Authority 400 County Center, 6th Floor Attention: [redacted] General Counsel Email: [redacted]
Emergency Contact: O&M Operations Command Center Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Emergency Contact:** Attn: Director of Power Resources Phone: [redacted] E-mail: contracts@peninsulacleanenergy.com
Reference Numbers: Duns: 11-878-3507 Federal Tax ID Number:	**Reference Numbers:** Duns: 08-026-2114 Federal Tax ID Number: 81-2708786
Invoices: Attn: Asset Management Phone: [redacted] Email: [redacted]	**Invoices:** Attn: Settlements Phone: [redacted] E-mail: contracts@peninsulacleanenergy.com
Scheduling: Attn: Asset Management Phone: [redacted] Email: [redacted]	**Scheduling:** Attn: Market Operations Phone: [redacted] Email: contracts@peninsulacleanenergy.com
Confirmations: Attn: Finance Phone: [redacted] Email: [redacted]	**Confirmations:** Attn: Director of Power Resources Phone: [redacted] Email: contracts@peninsulacleanenergy.com
Payments: Attn: Finance Phone: [redacted] Email: [redacted]	**Payments:** Attn: Settlements Phone: [redacted] E-mail: contracts@peninsulacleanenergy.com
Wire Transfer:	**Wire Transfer:**

Stellar Renewable Power, LLC ("Seller")	**PENINSULA CLEAN ENERGY, a California joint powers authority** ("Buyer")
[redacted]	[redacted]

EXHIBIT S

SUPPLY CHAIN CODE OF CONDUCT

Buyer is committed to ensuring that the fundamental human rights of workers are protected, including addressing the potential risks of forced labor, child labor, servitude, human trafficking and slavery across our portfolio.

Our requirements and expectations for Seller's supply chain are detailed below in our Supply Chain Code of Conduct ("**Supply Chain Code**"). Seller must comply with all applicable Laws and this Supply Chain Code, even when this Supply Chain Code exceeds the requirements of applicable Law.

These standards are derived from the United Nations Guiding Principles on Business and Human Rights, the Core Conventions of the International Labour Organization ("**ILO**"), including the ILO Declaration on Fundamental Principles and Rights at Work, the Solar Energy Industries Association Solar Industry Commitment to Environmental & Social Responsibility, and the Responsible Business Alliance Code of Conduct.

1. Freely Chosen Employment

Forced, bonded (including debt bondage) or indentured labor, involuntary or exploitative prison labor, slavery or trafficking of persons is not permitted. This includes transporting, harboring, recruiting, transferring, or receiving persons by means of threat, force, coercion, abduction or fraud for labor or services. There shall be no unreasonable restrictions on workers' freedom of movement in the facility in addition to unreasonable restrictions on entering or exiting company provided facilities including, if applicable, workers' dormitories or living quarters. All work must be voluntary, and workers shall be free to leave work at any time or terminate their employment without penalty if reasonable notice is given as per worker's contract. Employers, agents, and sub-agents' may not hold or otherwise destroy, conceal, or confiscate identity or immigration documents, such as government-issued identification, passports, or work permits. Employers can only hold documentation if such holdings are required by law. In this case, at no time should workers be denied access to their documents. Workers shall not be required to pay employers' agents or sub-agents' recruitment fees or other related fees for their employment. If any such fees are found to have been paid by workers, such fees shall be repaid to the worker.

2. Young Workers

Child labor is not to be used in any stage of manufacturing. The term "child" refers to any person under the age of 15, or under the age for completing compulsory education, or under the minimum age for employment in the country, whichever is greatest. Suppliers shall implement an appropriate mechanism to verify the age of workers. The use of legitimate workplace learning programs, which comply with all laws and regulations, is supported. Workers under the age of 18 shall not perform work that is likely to jeopardize their health or safety, including night shifts and overtime. Suppliers shall ensure proper management of student workers through proper maintenance of student records, rigorous due diligence of educational partners, and protection of students' rights in

accordance with applicable laws and regulations. Suppliers shall provide appropriate support and training to all student workers. In the absence of local law, the wage rate for student workers, interns, and apprentices shall be at least the same wage rate as other entry-level workers performing equal or similar tasks. If child labor is identified, assistance/remediation is provided.

3. Working Hours

Studies of business practices clearly link worker strain to reduced productivity, increased turnover, and increased injury and illness. Working hours are not to exceed the maximum set by local law. Further, a workweek should not be more than 60 hours per week, including overtime, except in emergency or unusual situations. All overtime must be voluntary. Workers shall be allowed at least one day off every seven days.

4. Wages and Benefits

Compensation paid to workers shall comply with all applicable wage laws, including those relating to minimum wages, overtime hours and legally mandated benefits. In compliance with local laws, workers shall be compensated for overtime at pay rates greater than regular hourly rates. Deductions from wages as a disciplinary measure shall not be permitted. For each pay period, workers shall be provided with a timely and understandable wage statement that includes sufficient information to verify accurate compensation for work performed. All use of temporary, dispatch and outsourced labor will be within the limits of the local law.

5. Humane Treatment

There is to be no harsh or inhumane treatment including violence, gender-based violence, sexual harassment, sexual abuse, corporal punishment, mental or physical coercion, bullying, public shaming, or verbal abuse of workers; nor is there to be the threat of any such treatment. Disciplinary policies and procedures in support of these requirements shall be clearly defined and communicated to workers.

6. Non-Discrimination/Non-Harassment

Suppliers should be committed to a workplace free of harassment and unlawful discrimination. Companies shall not engage in discrimination or harassment based on race, color, age, gender, sexual orientation, gender identity and expression, ethnicity or national origin, disability, pregnancy, religion, political affiliation, union membership, covered veteran status, protected genetic information or marital status in hiring and employment practices such as wages, promotions, rewards, and access to training. Workers shall be provided with reasonable accommodation for religious practices. In addition, workers or potential workers should not be subjected to medical tests that could be used in a discriminatory way or otherwise in violation of applicable law. This was drafted in consideration of ILO Discrimination (Employment and Occupation) Convention (No.111).

7. Freedom of Association

In conformance with local law, Suppliers shall respect the right of all workers to form and join trade unions of their own choosing, to bargain collectively, and to engage in peaceful assembly as

well as respect the right of workers to refrain from such activities. Workers and/or their representatives shall be able to openly communicate and share ideas and concerns with management regarding working conditions and management practices without fear of discrimination, reprisal, intimidation, or harassment.

8. Restricted Jurisdictions

Supplier shall not manufacture or produce products in the Xinjiang Uyghur Autonomous Region of China, or knowingly procure goods and services mined, produced or manufactured in the same.

EXHIBIT T

[redacted]

[redacted] [redacted]

[redacted]

[redacted] [redacted]

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[redacted]	[redacted]
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[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

EXHIBIT U

FORM OF PPA AMENDMENT NO. 3

AMENDMENT NO. 3

To The

POWER PURCHASE AND SALE AGREEMENT

Between

PENINSULA CLEAN ENERGY AUTHORITY

And

WRIGHT SOLAR PARK LLC

This Amendment No. 3 ("Amendment No. 3") to the Agreement (as that term is defined below) is entered into between Peninsula Clean Energy Authority, a California joint powers authority ("Buyer"), and Wright Solar Park LLC, a Delaware limited liability company ("Seller"). Buyer and Seller are hereinafter sometimes referred to individually as a "Party" and jointly as the "Parties". Initially-capitalized terms used and not otherwise defined in this Amendment No. 3 shall have the meanings ascribed to such terms in the Agreement.

RECITALS

The Parties enter into this Amendment No. 3 with reference to the following facts:

A. Buyer and Seller entered into that certain Power Purchase and Sale Agreement, dated as of January 26, 2017 (the "Original Agreement") with respect to the sale and purchase of the output of the Facility;

B. Buyer and Seller subsequently entered into that certain Amended and Restated Power Purchase Agreement, dated as of September 23, 2017, which amended, restated, and replaced the Original Agreement, as amended by that certain Amendment No. 1, entered into and effective as of March 7, 2019 and that certain Amendment No. 2 entered into and effective as of June 1, 2022 (the "Agreement").

C. Seller's Affiliate, Stellar Wright Bess LLC ("BESS Affiliate") intends to locate a Storage Facility (as defined herein) on or nearby the Site.

D. Buyer and BESS Affiliate entered into that certain Energy Storage Agreement, dated as of [Date] (the "ESA") with respect to the sale and purchase of the product associate with the Storage Facility. The Parties intend that if the ESA is terminated, this Amendment No. 3 shall automatically

terminate concurrently therewith.

E. The Parties desire to amend the Agreement to reflect the addition of such Storage Facility.

AGREEMENT

SECTION 1 AMENDMENTS

In consideration of the promises, mutual covenants and agreements hereinafter set forth, and for other good and valuable consideration, as set forth herein, the Parties agree to amend the Agreement as follows:

(a) The following new definition are added to Article One in the appropriate alphabetical position:

"**Energy Storage Agreement**" means that certain Energy Storage and Services Agreement, dated on or about [●], 2025, by and between Buyer and Stellar Wright BESS LLC, as amended from time to time.

"**Storage Facility**" means A 80 MW AC energy storage facility with at least four (4) hours of continuous discharging at the maximum rate of discharge, located adjacent to the Site in Merced County, California.

(b) The definition of "Buyer Bid Curtailment" is deleted in its entirety and replaced with the following:

"**Buyer Bid Curtailment**" means the occurrence of both (a) and (b), or (c) occurs:

(e) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Energy from the Facility than is reflected in the VER Forecast for the Facility for a period of time; and

(f) for the same time period as referenced in (a), Buyer or the Scheduling Coordinator for the Facility:

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

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

(iii) submitted a Self-Schedule for less than the full amount of VER Forecast for the Generating Facility (in which case the portion of the VER Forecast for which Buyer did not submit a Self-Schedule); or

(g) during a period when all of the following occur: (i) Buyer submitted a Bid or Self-Schedule for Ancillary Services with respect to the Storage Facility for such Settlement Interval, (ii) is awarded an Ancillary Services Schedule by the CAISO with respect to Storage Facility for such Settlement Interval, (iii) the Facility is instructed by the

CAISO to follow the Dispatch Operating Target (as defined in the CAISO Tariff) other

than due to a Curtailment Order, and (iv) the Facility would have generated Energy in excess of the Dispatch Operating Target but for such instruction from the CAISO;

(h) *provided*, in each of (a) through (c) above, that no other circumstances exist that constitute a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period.

(c) The text of Section 4.10 is deleted in its entirety and replaced with the phrase [Intentionally Omitted]:

(d) Exhibit A of the Agreement is replaced in its entirety with the new Exhibit A attached hereto as Attachment 1.

SECTION 2 MISCELLANEOUS

(a) Reservation of Rights. Each of the Parties expressly reserves all of its respective rights and remedies under the Agreement.

(b) Legal Effect. Except as expressly modified as set forth herein, the Agreement remains unchanged and, as so modified, the Agreement shall remain in full force and effect.

(c) Governing Law. THIS AMENDMENT NO. 3 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 AMENDMENT NO. 3.

(d) Successors and Assigns. This Amendment No. 3 shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

(e) Authorized Signatures; Notices. Each Party represents and warrants that the person who signs below on behalf of that Party has authority to execute this Amendment No. 3 on behalf of such Party and to bind such Party to this Amendment No. 3. Any written notice required to be given under the terms of this Amendment No. 3 shall be given in accordance with the terms of the Agreement.

(f) Effective Date and Termination.

(i) This Amendment No. 3 shall be deemed effective as of the date upon which the last Party executes this Amendment No. 3.

(ii) If the ESA is terminated for any reason, this Amendment No. 3 shall automatically terminate concurrently with the termination of the ESA.

(g) Further Agreements. This Amendment No. 3 shall not be amended, changed, modified, abrogated or superseded by a subsequent agreement unless such subsequent agreement is in the form of a written instrument signed by the Parties.

(h) Counterparts; Electronic Signatures. This Amendment No. 3 may be executed in one or more counterparts, each of which will be deemed to be an original of this Amendment No. 3 and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Amendment No. 3 and of signature pages by facsimile transmission, Portable Document Format (i.e., PDF), or by other electronic means shall constitute effective execution and delivery of this Amendment No. 3 as to the Parties and may be used in lieu of the original Amendment No. 3 for all purposes.

[*Signatures on following page.*]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment No. 3 to be executed by their duly authorized representatives on the dates indicated below their respective signatures.

Wright Solar Park LLC, a Delaware limited liability company.		Peninsula Clean Energy Authority, a California joint powers authority.
By:		By:
Name: *Title:*		*Name:* *Title:*

ATTACHMENT 1

New PPA Exhibit A

Site Name: Wright Solar Park

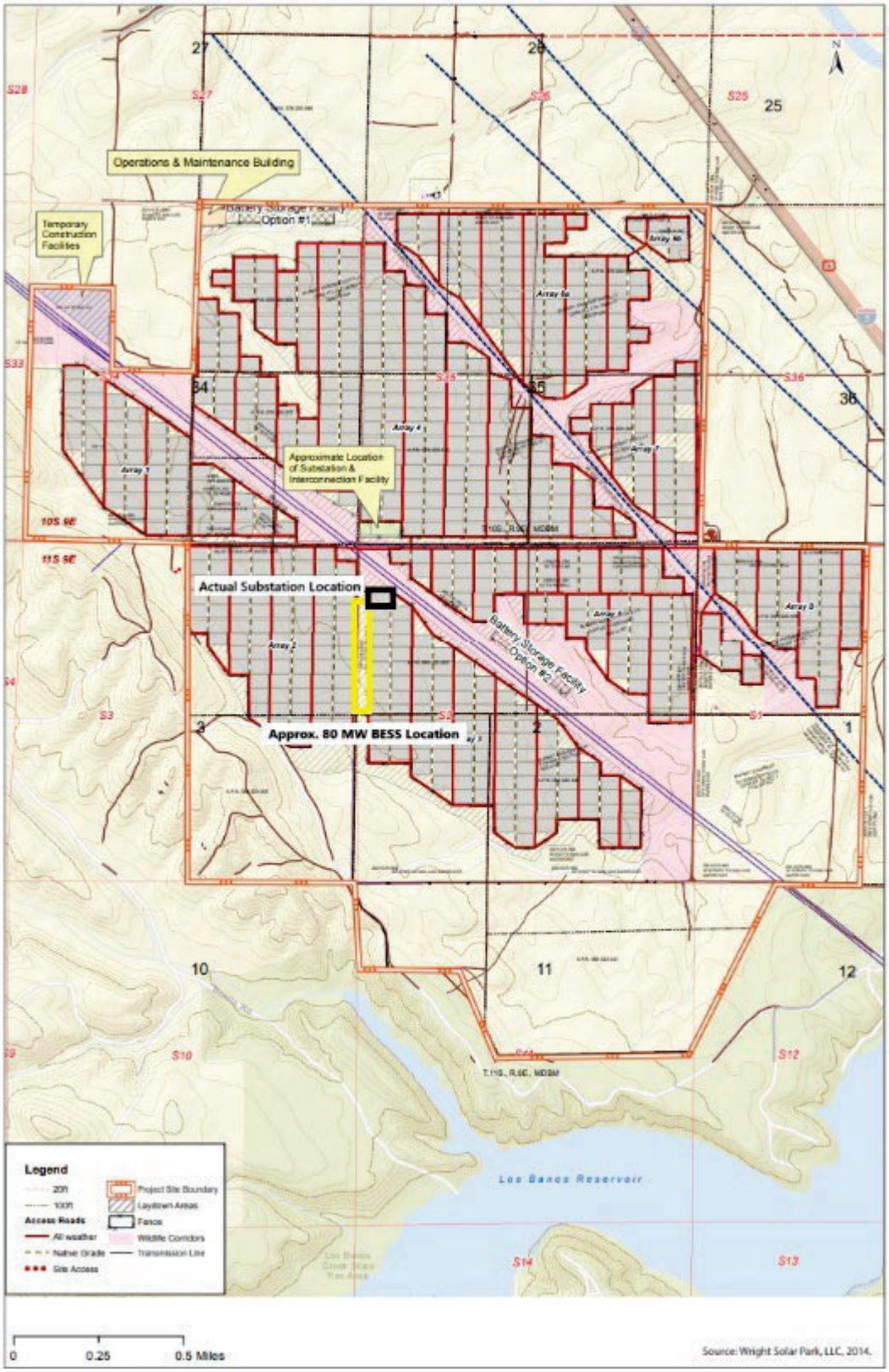
APNs: 088-020-003, 088-020-002, 078-200-081, 078-200-082, 078-200-083, 088-020-038, 078-200-028, 078-200-030, 078-200-027, 088-020-040, 088-020-041, 088-020-027, 078-200-026

County: Merced County

Guaranteed Capacity: 200 MW AC (net, at the Delivery Point)

P-node/Delivery Point: PG&E 230 kV Q779 Switching Station bus connection to the Los Banos – Panoche #1 230 kV Transmission Line

Site Map:


Operations & Maintenance Building
Temporary Construction Facilities
Battery Storage Facility Option #1
Approximate Location of Substation & Interconnection Facility
Actual Substation Location
Battery Storage Facility Option #2
Approx. 80 MW BESS Location
Los Banos Reservoir
Legend
Project Site Boundary
Laydown Areas
Fence
Wildlife Corridors
Transmission Line
Site Access
Access Roads
All weather
Native Grade
0
0.25
0.5 Miles
Source: Wright Solar Park, LLC, 2014.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 13, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: Majority Vote

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Jana Kopyciok-Lande, Associate Director of Innovation Strategy and Peter Levitt, Senior Manager of Distributed Energy Resources

SUBJECT: Approval of a Main Services Agreement (MSA) and Two Sub-Contracts ("Scopes") with Lunar Energy for a Distributed Energy Resource Management System (DERMS) with a Term of Five (5) Years in an Amount Not-to-Exceed $3.1 Million

RECOMMENDATION

Approval of a main services agreement (MSA) and two sub-contracts ("Scopes") with Lunar Energy for a Distributed Energy Resource Management System (DERMS) with a term of 5 years in an amount not to exceed $3.1 million.

BACKGROUND

Peninsula Clean Energy's (PCE) mission is to reduce greenhouse gas (GHG) emissions by expanding access to sustainable and affordable energy solutions. PCE offers several programs to support the decarbonization of homes, businesses, and the grid across three core technology areas: building electrification (BE), distributed energy resources (DERs) and transportation electrification (TE).

As part of its Strategic Planning process, PCE has identified a need to further foster the development of DERs. DERs are defined as follows:

Distributed Energy Resources (DERs) *are assets on the distribution grid, either on the consumer's side of the energy meter (behind-the-meter (BTM)) or in front of the customer meter connected to the distribution grid (front-of-the-meter (FTM)). They can be used individually or in aggregate to provide value to the grid and individual customers. Importantly, PCE will focus on "clean" DERs, which do not emit greenhouse gases (GHGs) in their operations.*

PCE will aggregate BTM DERs under a "**Virtual Power Plant**" (VPP), which is a collection of load flexibility technologies that are located at a customer site that can be aggregated together and flexibly managed to meet grid needs. Load Flexibility Technologies include solar and battery energy storage systems (BESS), electric vehicles (EVs), heat pump water heaters

(HPWHs), smart control thermostats (SCT) and other energy efficiency (EE) measures.

PCE's customers have one of the highest adoption rates of BTM DERs in the United States. There are roughly 40,000 solar systems, 6,500 storage systems[1], 60,000 zero emission vehicles (ZEVs)[2], 440 HPWHs[3] and 1,500 heat pump HVAC systems [4] in PCE's service area. As part of its DER Plan for 2025 – 2030, PCE has proposed the development of a VPP that aggregates 10 MW of customer-sited resources in PCE's service area for the benefit of the customer, PCE, and the grid.[5] The software platform underlying such a VPP is called a "Distributed Energy Resource Management System" (DERMS). A DERMS is defined as follows:

*A **Distributed Energy Resource Management System (DERMS)** is a centralized software system that helps load serving entities (LSEs) monitor, control, and optimize behind-the-meter (BTM) DERs to provide reliable, clean, and cost-effective power.*

PCE launched a request for proposal (RFP) for Customer Demand Flexibility Services in September 2024 to procure a DERMS platform. In the following section, PCE staff provides a summary of the RFP process and recommends approval of a contract with Lunar Energy to provide DERMS services to PCE for the next 5 years. A briefing on the DERMS RFP results was provided to the Board's Program sub-committee on January 7, 2025.

[1] Per California Distributed Generation Statistics at https://www.californiadgstats.ca.gov/downloads/

[2] Per the California Energy Commission's light duty vehicle count at https://www.energy.ca.gov/data-reports/energy-almanac/zero-emission-vehicle-and-infrastructure-statistics-collection/light

[3] The number of HPWH is likely much higher but this is the only publicly available data (via TechCleanCA)

[4] Per the TECH Clean California program at https://techcleanca.com/

[5] The target of 10 MW is based on "dispatchable capacity", i.e. the capacity that PCE intends to shift and modify with its DERMS platform. This is different than a Device's nameplate capacity which refers to the capacity of a Device under certain standard conditions in a testing environment.

DISCUSSION

RFP Process

PCE's RFP for Customer Demand Flexibility Services ("DERMS RFP") launched on September 11, 2024. The RFP sought a service provider to establish a DERMS platform that could manage, control and flexibly dispatch BTM DERs in PCE's service area to the benefit of the customer, PCE, and the grid. The RFP was split in two parts: Under Part 1, PCE is targeting procurement of *existing capacity* in PCE's service area under an "all-in" capacity contract with a third party provider. In Part 2, PCE is seeking to integrate capacity from existing and new customer energy programs under the PCE VPP over the next 5 years. PCE collaborated with Silicon Valley Clean Energy (SVCE) on the RFP.

By October 30, 2024, PCE had received 17 proposals in response to the DERMS RFP. Five proposals were shortlisted and interviews were completed in early December with the shortlisted service providers. Following the interviews, the three leading proposals were evaluated in detail regarding each service provider's experience, proposed solution, fit and creativity, number of integrations with original equipment manufacturers (OEMs), and cost. By

the end of January 2025, PCE identified Lunar Energy as the recommended DERMS service provider for PCE.

Lunar Energy

Lunar Energy is a battery manufacturer and DERMS provider based in Mountain View, CA. Lunar was founded in 2020 and focuses on the deployment of the Gridshare software platform, which allows for end-to-end DER engagement, enrollment, deployment and settlement under a VPP structure. Lunar has deployed its Gridshare platform to over 100,000 DERs globally in markets in North America, Europe and Asia. In California, Lunar is the DERMS provider for Ava Community Energy. Lunar's strongest experience lies with the integration of BESS under a DERMS platform, which is a high priority for PCE. Most of Lunar's proposal was focused on residential customer engagement, but Lunar can also reach commercial and industrial customers (C&I) through partners and subcontractors (e.g. ICF and Cascade Energy). Lunar has shown to be a flexible and motivated partner throughout the RFP process, making it a good fit for growing, learning, and innovating jointly with PCE staff in this new area of work.

Contract Structure

PCE is engaging with Lunar on several different pathways to grow PCE's VPP over the next five years. This broad engagement is reflected in the contract structure. PCE has developed a Main Services Agreement (MSA) with Lunar that describes the overarching terms and conditions for providing the DERMS software services. Under the MSA, various sub-contracts (called "Scopes") are being developed that each reflect the various pathways for integrating capacity from BTM DERs under a DERMS platform. Importantly, PCE staff are bringing only the MSA, Scope 1 and Scope 2 for approval to the PCE Board of Directors at this time. These Scopes must be prioritized to allow for the integration of resources deployed under PCE's Solar + Battery Savings (SBS) Program under the DERMS platform as soon as possible. Resources deployed under the SBS program must meet a requirement to enroll under a Qualified Demand Response (DR) program to be able to access incentives under the Self-Generation Incentive Program (SGIP), which is the main funding source for the PCE SBS program at this time. The DERMS platform is integral for the establishment of the Qualified DR program and therefore, approval of the MSA, Scope 1 and Scope 2 must be prioritized. Scope 3 and 4 are briefly described below but will be further developed over the course of 2025 and brought back to the Board of Directors for approval later this year.

The **MSA** describes the legal terms and conditions between Lunar and PCE in the provision of the software services. **Scope 1 (DERMS Platform)** is an overarching Scope that outlines the technical details and cost structure for establishing a DERMS platform for PCE. It describes the tasks and deliverables provided by the Service Provider in the delivery of the Gridshare platform and outlines the program administration services provided by Lunar. Scope 1 also establishes the fee structure for the software services and sets the not-to-exceed (NTE) budget for the set-up and fixed fees incurred by Lunar. Finally, Scope 1 describes the service level agreements (SLAs) regarding the software services and load shift performance that apply across all Scopes under the MSA. Both the service fees and SLAs are further described below.

PCE is already offering several upfront incentive programs to its customers that support the installation of BTM DERs in PCE's service area. **Scope 2 (CCA Programs)** establishes the

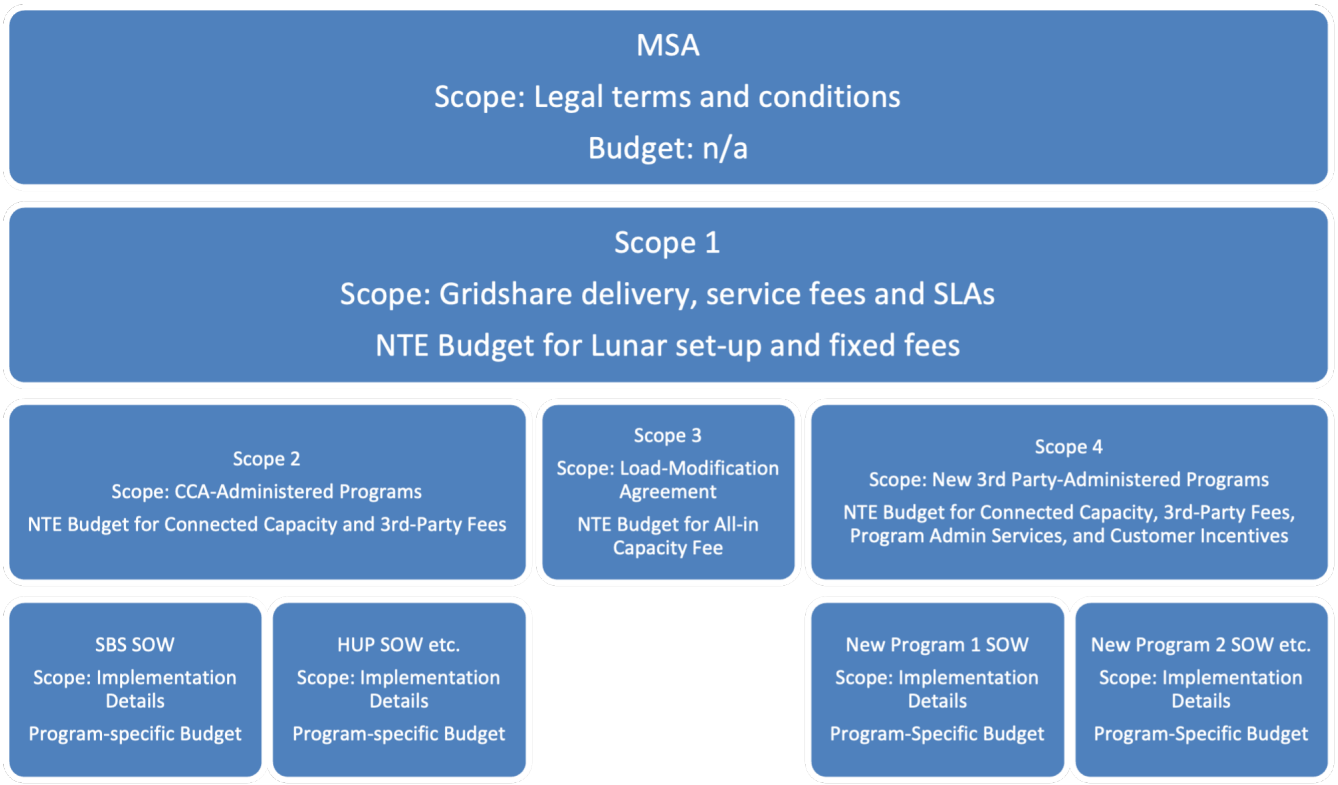
framework to onboard devices deployed under these PCE-administered programs to the DERMS platform. Scope 2 leverages the general tasks, fee structure and SLAs outlined in Scope 1 and provides additional details regarding the roles and responsibilities of each party regarding the integration of PCE-administered programs under the DERMS platform. Programs currently included under Scope 2 are the PCE Solar + Battery Savings (SBS) Program, the Home Upgrade Program (HUP) and two PCE programs focused on municipal entities (i.e., the GovPV and GovBE programs[1]). In the future, additional programs may be added to this list as PCE continues to evolve its customer energy programs offering.[2]

Scope 2 includes a NTE budget for Lunar's Connected Capacity Fee and third-party fees to integrate devices installed under the DERMS platform as further outlined below. This NTE budget is based on the currently existing PCE programs outlined above. For each of these programs, PCE and Lunar will draft a program-specific Statement of Work ("Program SOW") that elaborates on the details of program implementation such as program eligibility requirements, term, participating subcontractors, baselining methodology, measurement and evaluations, data needs, and program-specific SLAs. To allow for efficient integration of new programs and devices under the DERMS platform, these detailed Program SOWs will not go to the Board for approval, as has been customary for PCE energy programs to date. The Board of Directors has oversight of program task, deliverables, and spending via the NTE budgets established in the Scopes, as well as via the annual reporting on objectives and key results (OKRs) in the annual planning process.

Scope 3 (Load Modification Agreement) defines the terms, conditions, fee structure commitments, and penalties for Lunar to sell capacity from *existing BTM devices* that are already installed in PCE's service area under the DERMS platform. Unlike Scope 2, where PCE is driving the installation of new devices through programs, Lunar will be responsible for recruiting and enrolling customers under the DERMS platform under Scope 3 and PCE will pay an "all-in" capacity fee to Lunar for the provision of such services. This all-in capacity fee covers all costs that Lunar incurs in the provision of services offered under Scope 3. This follows the example of the Sunrun contract under which PCE has been procuring load modification capacity since 2022.

Scope 4 (3rd Party Programs) focuses on the integration of Devices deployed under new energy programs that will be administered by 3rd party implementers. In contrast to Scope 2, the 3rd party implementer would be responsible for bringing new devices to the DERMS platform under this Scope. Scope 4 will include an NTE budget for Lunar's Connected Capacity Fee, third-party fees, program administration fees for the 3rd party administrator, and customer incentives that are necessary to integrate devices installed under 3rd Party-administered programs under the DERMS platform. Similarly to Scope 2, Lunar and PCE will draft a Program SOW for each new 3rd party program to be developed under Scope 4.

Figure 1: DERMS Contract Structure:



Service Fees and Budgets

As noted above, Scope 1 outlines the service fee structure that applies to the software services under the MSA. The fee structure incorporates the following fixed and volumetric costs:

- **Lunar Set-up and Fixed Fees**
  - One-time set-up fee for the Gridshare platform: $60,000
  - Annual platform fee for the Gridshare platform: $120,000
  - One-time fee to integrate the Gridshare platform with PCE's Customer Relationship Management (CRM) system: $20,000
- **Lunar Connected Capacity Fee**
  - Lunar charges a tiered fee for connecting devices under the DERMS platform. This Connected Capacity Fee is based on a reference capacity value that is established upfront by the parties in the Scope 1 contract for each technology type.[3] The Connected Capacity fee decreases as the number of managed devices[4] grows, thereby giving both parties an incentive to scale the amount of capacity connected to the platform:
    - up to 5 MW of capacity: $28/kW-year
    - 5 – 15 MW of capacity: $21/kW-year
    - Over 15 MW of capacity: $15/kW-year
  - **Third-Party Fees**
    - One-time Aggregator set-up fees: certain Aggregators (like Tesla and Rheem) charge set up fees to account for the incremental software work associated with the technical integration of the device to the DERMS platform. These set-up fees can go up to $50,000 per Aggregator but are not common. Lunar will bill those fees to PCE as a pass-through expense.
    - Ongoing API fees: Most OEMs charge an ongoing fee to allow integration of

the device under a DERMS platform. These API fees will be billed by Lunar as a pass-through to PCE. API fees vary by technology type and are estimated as:
    - BESS – up to $84/ Device-year
    - EV and EVSE - $10-40/ Device-year
    - SCT - $12-15/ Device-year
    - HPWHs – $35-40/ Device-year
- **Program Administration Fees**
    - Lunar's administrative costs for providing the software services are included in the fixed fees and Connected Capacity Fee outlined above.
    - Third-Party program administrators may charge additional fees for program administration services. These fees will be described in the respective Scopes (i.e., mostly Scope 4).
- **Lunar Hourly Rates**
    - Hourly rates for Lunar staff are specified in Scope 1 to allow for contracting with Lunar on specific additional tasks outside of the provision of services under the MSA under a future contract amendment

It must be highlighted that under this fee structure, most of the costs under the contract (except for the setup and fixed fees) only apply when devices are integrated under the DERMS platform. Additionally, volumetric fees paid to Lunar (i.e., the Connected Capacity Fee) decrease as economies of scale are achieved. Finally, Lunar is providing discounts to PCE due to the collaboration with SVCE – Lunar offered a discount on the annual platform fee and the capacity tiers under the Connected Capacity Fee are calculated based on capacity provided by both CCAs, therefore enabling quicker reduction of the Connected Capacity Fee.

Service Level Agreements and Load Shift Guarantees

In addition to the cost reduction measures mentioned above, the DERMS contract also incorporates several provisions to ensure that Lunar is encouraged to provide the Services under the contract in an efficient and streamlined manner.

First, the MSA (section 8) allows PCE to terminate the contract with Lunar both for cause and for convenience (i.e. without cause). Second, Scope 1 establishes clear SLAs for the provision of *software services*, as well as associated performance credits. Any technical issue that may arise in the provision of software services under the MSA is categorized into four severity levels, with each severity level having clear response and resolution timelines established for Lunar. If these timelines are not met, a performance credit is paid by Lunar to PCE which is set at 2% of the service fee for severity level 1 and 2 and 0.5% of the service fee for severity level 3 and 4.[5] Third, Scope 1 also establishes load shift performance guarantees. For BESS, Lunar commits to shifting a minimum of 95% of available energy[6] in the devices during dispatch events. For all other load shifting technologies, Lunar commits to achieving actual load shift delivery within a +/- 25% performance band compared to a mutually agreed upon forecast. If load shift performance falls outside of the expected performance over a 2 months period, Lunar will pay SVCE a performance credit of 1% of the Connected Capacity Fee of the affected DER Program or preset group for each percentage of excess deviation outside the +/- 25% tolerance band. Fourth, each of the Scopes outlines clear deliverables with specific timelines for core program administration services provided by Lunar.

[1] The GovPV program is currently not included under Scope 2 as PCE is already working with another provider to offer load flexibility services to the fleets under GovPV. The integration of EVs under the DERMS platform will be further discussed in the summer and fall of 2025.

[2] Potential future new program offerings could include load flexibility programs for commercial and industrial (C&I) customers, as well as EV management programs.

[3] Reference capacity values are: BESS – minimum of the inverter output power and the nameplate energy capacity minus the backup reserve divided by 2 hours; Light-duty EV or EVSE – 0.5kW, Residential SCT – 0.4kW, Residential HPWH – 0.3kW. For non-residential customer devices, the reference capacity value is based on the nominated capacity.

[4] The number of managed devices is calculated jointly between PCE and SVCE, therefore leading to economies of scale and cost savings more quickly for the CCAs.

[5] The Service Fee is defined as the Annual Platform Fee and the Connected Capacity Fee, calculated on a monthly basis

[6] Available energy is defined as energy that is not reserved for other use cases (like resiliency set asides) and excluding devices that are online at the time of dispatch.

FISCAL IMPACT

The following NTE budgets are incorporated into Scope 1 and Scope 2 under the DERMS MSA for the duration of the 5-year contract term:

1. Scope 1 – Lunar set-up and fixed fees - $700,000
2. Scope 2 – Lunar Connected Capacity Fee and 3rd party fees -$2.4 million

The total NTE budget for the MSA, Scope 1 and Scope 2 with Lunar Energy amounts to $3.1 million over 5 years.

Scopes of work and NTE budgets for Scope 3 and Scope 4 will be developed over the course of 2025 and brought back to the Board of Directors for approval later this year.

ATTACHMENTS:
PCE-Lunar-DERMS_MSA_2025-5-15.pdf
PCE-Lunar-DERMS-Scope 1_2025-5-15.pdf
PCE-Lunar-DERMS-Sope 2_2025-5-15.pdf

RESOLUTION NO. _____

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

APPROVAL OF A MAIN SERVICES AGREEMENT (MSA) AND TWO SUB-CONTRACTS ("SCOPES") WITH LUNAR ENERGY FOR A DISTRIBUTED ENERGY RESOURCE MANAGEMENT SYSTEM (DERMS) WITH A TERM OF FIVE (5) YEARS IN AN AMOUNT NOT-TO-EXCEED $3.1 MILLION

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

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

WHEREAS, PCE's mission is to reduce greenhouse gas (GHG) emissions by expanding access to sustainable and affordable energy solutions; and

WHEREAS, PCE has identified a need to further foster the development of distributed energy resources (DERs) as part of its strategic planning process; and

WHEREAS, a Distributed Energy Resource Management System (DERMS) is a centralized software system that helps load serving entities (LSEs) monitor, control, and optimize customer-sited DERs to provide reliable, clean, and cost-effective power; and

WHEREAS, PCE launched a request for proposal (RFP) for a DERMS platform in September 2024 and selected Lunar Energy as the proposed vendor under this RFP; and

WHEREAS, the approval of the Main Services Agreement, as well as two sub-contracts (Scope 1 and Scope 2), must be prioritized to allow for the integration of resources deployed under PCE's Solar + Battery Savings (SBS) Program under the DERMS platform as soon as possible due to regulatory compliance requirements; and

WHEREAS, the approval of Scopes 3 and 4 will be further developed over the course of 2025 and brought back to the Board of Directors for approval later this year.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to finalize the terms of and execute the MSA, Scope 1, and Scope 2 with Lunar Energy for a DERMS platform with a terms of 5 years and a budget of $3.1 million in a form approved by the General Counsel.

MAIN SERVICES AGREEMENT

This main services agreement ("Agreement") is made and effective on the date of last signature below ("Effective Date"), by and between Peninsula Clean Energy Authority, a joint powers authority of the state of California ("PCE") with a registered address at 2075 Woodside Rd., Redwood City, CA 94061, USA and Lunar Energy Limited, an English limited liability company with registered address at 55 Baker Street, London, W1U 7EU United Kingdom and with offices located at 11-29 Fashion Street, London E1 6PX United Kingdom ("Service Provider"). PCE and Service Provider may be referred to herein in the singular as "Party" or jointly as "Parties".

RECITALS

WHEREAS, PCE requires distributed energy resources management services, including Service Provider hosted "software as a service" services, as further described herein, with respect to certain of its information technology needs;

WHEREAS, PCE requested a proposal from Service Provider for the Services (defined below);

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, Service Provider submitted a proposal to PCE to perform such Services on behalf of PCE;

WHEREAS, based on Service Provider's knowledge and experience relating to such Services PCE has selected Service Provider to provide and manage the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and the security and availability of PCE's data are critical to the operation of PCE's business; and,

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

WHEREAS, Service Provider has agreed to provide the Services to PCE, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement and each Scope, the Parties hereby agree as follows:

1. Term. This Agreement is legally binding as of the Effective Date and shall continue until terminated as provided for herein. Unless this Agreement is terminated earlier in accordance with the terms set forth herein, the initial term (the "Initial Term") shall commence on the Effective Date and continue for five (5) years. Following the Initial Term and unless otherwise terminated as provided for in this Agreement, this Agreement may be renewed for successive one (1) year terms (each, a "Renewal Term") upon mutual written agreement of the Parties.

2. Termination of Scopes. Unless otherwise provided herein, termination of the Agreement shall mean termination of the Agreement and all Scopes (as defined in Section 3). Notwithstanding anything to the contrary herein, in the event that PCE terminates Scope One for cause pursuant to the terms herein or therein, PCE may, at its sole election and in its sole discretion, terminate one or more other Scopes for cause. In the event that PCE terminates all Scopes pursuant to the terms herein or therein, then PCE may, at its sole election and in its sole discretion, terminate the Agreement.

3. The Services. This Agreement sets forth the terms and conditions under which Service Provider agrees to provide distributed energy resource management services to PCE for distributed energy resources such as residential solar battery systems, electric vehicles, electric vehicle supply equipment, smart thermostats, heat pump water heaters and to license certain Service Provider hosted software, for the visibility and performance tracking of such management services including, customization / integration, user identification and password change management, data import / export, monitoring, technical support, maintenance, training, backup and recovery, and change management services (collectively, the "Services") as further set forth in various "Scopes" in writing from time to time, for the provision of, access to and use of the Services (as appropriate), each Scope further describing the specific Services to be provided, fees for such Services ("Services Fees"), and any other terms the Parties mutually agree to, excepting any delays impacted by Force Majeure events and Excused Events (as defined in the Scope). Services includes any software as a service ("Software Services", as may be more particularly defined or identified in the applicable Scope). Once duly executed by both parties, each Scope shall be incorporated herein by reference and shall stand alone with respect to any other Scope. If there is a conflict between the terms of this Agreement and the terms of a Scope, the terms of the Scope will take precedence over this Agreement, but only with respect to the Services specified in that Scope. Except as otherwise set forth herein, a breach or default by one Party under one Scope shall not automatically result in a breach or default by the same Party under a separate Scope unless the same circumstances result independently in a breach or default of such other independent Scope and the matter is separately enforced by the Parties to such Scope. Any amendment or modification made by the Parties to one Scope in accordance with its terms shall not serve to amend or modify this Agreement as it pertains to any other separate and independent Scope. Any amendment or modification by the Parties to a Scope, or waiver given by a Party under one Scope, shall only apply to amend, modify, or waive provisions of the separate and

independent Scope to which it relates. The first Scopes issued pursuant to this Section, or forms thereof which may be issued pursuant to this Section, are attached hereto.

3.1 Compliance with All Laws. During the Term, Service Provider shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement (and the Scopes). During the Term, Service Provider shall, at all times, observe and comply with all such laws and regulations, including, but not limited to the Americans with Disabilities Act, the Stored Communications Act, 18 U.S.C. Section 2701, et seq., California Civil Code Sections 1798.80 through 1798.84, and the California Consumer Privacy Act, Civil Code Section 1798.100, *et seq*. PCE, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Service Provider to comply with this paragraph.

3.2 Subcontractors. During the Term, Service Provider shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement (or any Scope), without PCE's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement and shall give PCE the right to automatically and immediately terminate this Agreement (or any applicable Scope) without penalty or advance notice. Service Provider's use of subcontractors shall not relieve Service Provider of any of its duties or obligations under this Agreement (or any Scope). Service Provider shall ensure that all subcontractors comply with the terms and conditions of this Agreement, carry the insurance required of Service Provider as set forth in Section 16.7 and make the representations and warranties applicable to Service Provider set forth in Section 11. Service Provider shall be fully responsible and liable for the works, services, and materials furnished by and the acts, defaults and neglects of any subcontractor, its agents or employees as fully as if they were Service Provider's own or those of Service Provider's agents or employees. For avoidance of doubt, a breach by a subcontractor of any provision of this Agreement shall be considered a breach by Service Provider, and PCE may obtain complete relief from Service Provider arising out of any breach of this Agreement as a result of such breach without the need to pursue the subcontractor directly. Service Provider shall only subcontract with subcontractors that are suitably qualified, experienced and duly licensed to perform the Services as required by applicable law and that have posted license bonds as required by applicable law.

3.3 Software Services. Notwithstanding anything to the contrary, the following terms of this Section 3.3 are only applicable to the Software Services (as may be defined in the applicable Scope):

3.3.1 Authorized Users. Unless otherwise limited herein, Service Provider grants PCE a renewable, irrevocable, nonexclusive, royalty-free, and worldwide right and license for any PCE employee, contractor, or agent, or any other individual or entity authorized by PCE, (each, an "Authorized User") to access and use the Software Services; provided that no Authorized Users are permitted without Service Provider's express written consent to (i) copy, transmit or modify the Software Services; (ii) decompile or reverse engineer the Software Services; (iii) use the Software Services to provide services to third parties; or (iv) sell or sublicense the Software Services. Other than any limitations otherwise described herein, Authorized Users will have no other limitations on their access to or use of the Software Services.

3.3.2 Unauthorized Use. PCE is responsible for the actions and omissions of its Authorized Users as if such actions and omissions were those of PCE provided such Authorized Users have accessed the Software Services by virtue of their employment or contract with PCE or as otherwise authorized by PCE. If there is unauthorized access and/or use by anyone who obtained access to the Software Services and/or Documentation (defined below) directly or indirectly through PCE, PCE will notify Service Provider and take all steps reasonably necessary promptly to terminate such unauthorized access and/or use. PCE will cooperate and assist with any actions taken by the Service Provider to prevent or terminate unauthorized access and/or use of the Software Services and/or any Documentation. The Service Provider reserves the right to suspend PCE's or an Authorized User's access to, or their account on, the Software Services if PCE materially breaches this Agreement.

3.3.3 Acknowledgement of License Grant. For the purposes of 11 U.S.C. § 365(n), the Parties acknowledge and agree that this Agreement constitutes a grant of license to use intellectual property in software form, to PCE by Service Provider.

3.3.4 Control and Location of Services. The method and means of providing the Software Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the written requests of PCE. The Parties hereby acknowledge and agree that Service Provider will use cloud-based storage in the provision of the Software Services. Such cloud-based storage shall be in compliance with ISO 27001 or successor standards thereto. Except as otherwise expressly set forth herein, the Software Services (including all data storage, including cloud-based storage), shall be provided solely from within the continental United States, and all such locations shall be disclosed to PCE annually and within thirty (30) days of the Effective

Date of this Agreement. The PCE Data will at all times be stored on servers located within the continental United States.

3.3.5 Storage. The Software Services shall include the applicable allocation of base data storage.

3.3.6 Test Environment. In addition to production use of the Software Services, PCE is entitled to one test environment for use by Authorized Users at no additional charge. Service Provider shall cooperate with PCE's requests in managing the non-production environments such as refreshing PCE Data upon request.

3.3.7 Documentation. The documentation for the Software Services ("Documentation") will accurately and completely describe the functions and features of the Software Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the Software Services. PCE shall have the right to make any number of additional copies of the Documentation at no additional charge.

3.3.8 Changes in Functionality. During the term of this Agreement, Service Provider shall not reduce or eliminate functionality in the Software Services. Where Service Provider has reduced or eliminated functionality in the Software Services, PCE, at PCE's sole election and in PCE's sole determination, shall: (a) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement with respect to some or all of the Scopes where functionality has been reduced or eliminated and be entitled to a return of any prepaid Services Fees for any terminated Software Services; or, (b) determine the value of the reduced or eliminated functionality and Service Provider will immediately adjust the Services Fees accordingly on a prospective basis. Where Service Provider has introduced like functionality in other services, PCE shall have an additional license and subscription right to use and access the new services, at no additional charge, with the same rights, obligations, and limitations as for the Software Services. Where Service Provider increases functionality in the Software Services, such functionality shall be provided to PCE without any increase in the Services Fees.

3.3.9 No Effect of Click-Through Terms and Conditions. Where an Authorized User is required to "click through" or otherwise accept or made subject to any online terms and conditions in accessing or using the Software Services, such terms and conditions are not binding and

shall have no force or effect as to the Software Services or this Agreement.

3.3.10 Modification of the Services. PCE's Director of Data and Technology, or another person authorized by PCE, shall be authorized to waive, in writing, any of the Service Provider's obligations with respect to the Software Services, where deemed to be in PCE's best interests, provided that no such modification shall result in any increase in the amount of the Services Fees.

4. Service Level Standards. Notwithstanding anything to the contrary, the following terms of this Section 4 are only applicable to the Software Services.

4.1 Service Levels. For the term of this Agreement, Service Provider shall provide the Software Services, Force Majeure events and Excused Events (as defined in the applicable Scope) excepted, in accordance with the applicable Service Level Standards, each as described the applicable Scope.

4.2 Cure Plan; Historical Reports. On (a) a biannual basis, commencing on the date that is six (6) months after the Effective Date, in arrears and no later than the sixtieth (60th) calendar day after the end of each biannual period, provided Performance Credits have been included or deemed included on an invoice provided in accordance with Section 10.1 during such biannual period, and (b) upon PCE's reasonable request if Performance Credits have been included or deemed included on an invoice provided in accordance with Section 10.1, Service Provider shall provide a cure plan to PCE, in a form mutually agreed by PCE and Service Provider, describing (x) the cause or basis for not meeting the Service Level Standard, and (y) the specific remedial actions Service Provider has undertaken or will undertake to ensure that the Service Level Standard will be subsequently achieved. Service Provider and PCE will meet as often as shall be reasonably requested by PCE to review the performance of Service Provider as it relates to the Service Level Standards. Service Provider shall, without charge, make PCE's historical Service Level Standard reports available to PCE upon request.

4.3 Failure to Meet Service Level Standards. In the event Service Provider does not meet a Service Level Standard, Service Provider shall: (a) owe to PCE any applicable Performance Credit, as liquidated damages and not as a penalty; and (b) use commercially reasonable efforts to ensure that any unmet Service Level Standard is subsequently met. Notwithstanding the foregoing, Service Provider will use commercially reasonable efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall PCE be required to notify Service Provider that a Performance Credit is due as a condition of payment of the same. Except as set forth in Section 4.4, this Section sets forth the Service Provider's sole and exclusive remedy with respect to failure to meet Service Level Standards.

4.4 Termination for Repeated Failures. PCE shall have, in addition to any other rights and remedies under this Agreement (or applicable Scope) or at law, the right to immediately terminate this Agreement (or applicable Scope) in accordance with the following sentence, and be entitled to a return of any prepaid Services Fees where Service Provider fails to meet any Service Level Standard for four (4) months out of any twelve (12) month period. If PCE exercises its termination right under this Section 4.4, PCE may, at its sole discretion, elect to terminate the Agreement with respect to (i) the Scope(s) for which Service Provider failed to meet any Service Level Standard, or (ii) all Scopes.

4.5 Audit of Service Levels. At a commercially reasonable interval and at a mutually agreed upon time and place, PCE or PCE's agent shall have the right to audit Service Provider's books, records, and measurement and auditing tools to verify Service Level Standard achievement and to determine correct payment of any Performance Credit on giving at least ten (10) Business Days' prior notice in writing and during normal business hours; provided, if PCE has cause to believe that Service Provider has not accurately reported the Service Level Standard achievement and/or determined any Performance Credit due to PCE, PCE may exercise the audit right described in this sentence more frequently . Where it is determined that any Performance Credit was due to PCE but not paid, Service Provider shall immediately owe to PCE such Performance Credit. As used herein, "Business Day" means any day other than a Saturday, Sunday, or a United States of America Federal Reserve Bank holiday.

5. Support; Maintenance; Additional Services.

5.1 Technical Support. Service Provider shall provide the Technical Support as defined and described in each Scope. The Services Fees shall be inclusive of the fees for the Technical Support.

5.2 Maintenance. Service Provider shall provide bug fixes, corrections, modifications, enhancements, upgrades, and new releases to the Services to ensure: (a) the functionality of the Services, as described in the Documentation, is available to Authorized Users; (b) the functionality of the Services in accordance with the representations and warranties set forth herein, including but not limited to, the Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Scopes and the Documentation; (c) the Service Level Standards can be achieved; and, (d) the Services work with the then-current version and the three prior versions of Internet Explorer, Mozilla Firefox, and Google Chrome Internet browsers. The Services Fees shall be inclusive of the fees for maintenance.

5.2.1 Required Notice of Maintenance. Unless as otherwise agreed to by PCE on a case-by-case basis, Service Provider shall provide no less than thirty (30) calendar day's prior written notice to PCE of all non-

emergency major maintenance to be performed on the Services involving code interfacing with PCE and the management system directly and which would have the effect of taking the management system offline, such written notice including a detailed description of all such non-emergency major maintenance to be performed. For emergency maintenance, Service Provider shall provide as much prior notice as commercially practicable to PCE and shall provide a detailed description of all such emergency maintenance performed no greater than one (1) calendar day following the implementation of the emergency maintenance.

5.2.2 Acceptance of Non-Emergency Major Maintenance. Unless as otherwise agreed to by PCE on a case-by-case basis, for major non-emergency maintenance described in Section 5.2.1, PCE shall have a ten (10) Business Day period to test any such major non-emergency maintenance changes prior to Service Provider introducing such maintenance changes into production (the "Maintenance Acceptance Period"). In the event that PCE rejects, for good cause, any such major non-emergency maintenance changes during the Maintenance Acceptance Period, Service Provider shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if PCE has not rejected the major non-emergency maintenance changes, the maintenance changes shall be deemed to be accepted by PCE and Service Provider shall be entitled to introduce the maintenance changes into production.

6. Audit Rights of Service Provider. Service Provider shall have no right to conduct an on-premises audit of PCE's compliance with the use of the Services.

7. Change Control Procedure. PCE may, upon written notice, request changes to any applicable Scope. If PCE requests any changes to an applicable Scope, PCE shall notify Service Provider, and, not more than five (5) Business Days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify PCE whether or not the change has an associated cost impact that will require an adjustment to the relevant Services Fees. If PCE approves, PCE shall issue a change order, which will be executed by the Service Provider.

8. Termination; Renewals.

8.1 Termination for Convenience. Without limiting the right of a Party to terminate this Agreement as provided for in this Agreement, PCE may terminate this Agreement with respect to some or all of the Scopes, for convenience upon not less than sixty (60) days' prior written notice to the Service Provider. If Service Provider is directed by PCE to use a certain subcontractor to perform a Scope, and PCE elects to terminate the applicable agreement between such subcontractor and Service

Provider by exercising its rights as a third party beneficiary thereunder, then Service Provider may immediately terminate or suspend the performance of its obligations under this Agreement with respect to such Scope without liability.

8.2 Termination for Cause. Without limiting the right of a Party to immediately terminate this Agreement for cause as provided for in this Agreement, including, without limitation, in Section 14.8, if either Party makes any material misrepresentation or materially breaches any of its duties, obligations, or warranties under this Agreement and such misrepresentation or breach is not cured, or the misrepresenting or breaching Party is not diligently pursuing a cure to the other Party's sole satisfaction, within thirty (30) calendar days after written notice of such breach, other Party may terminate this Agreement, with respect to some or all of the Scopes, for cause as of a date specified in such notice. Notwithstanding the foregoing, PCE shall have the right to immediately terminate this Agreement with respect to some or all of the Scopes if a change in law renders the Services provided under this Agreement (or any applicable Scope) illegal (and such illegality cannot be cured within thirty (30) calendar days after written notice of such illegality) or if an Event of Bankruptcy occurs with respect to Service Provider.

8.3 Payments upon Termination. Upon the termination of this Agreement (or applicable Scope), PCE shall pay to Service Provider all undisputed amounts due and payable hereunder (or thereunder), if any, and Service Provider shall pay to PCE all amounts due and payable hereunder (or thereunder), such as Performance Credits and prepaid Services Fees, if any. Due to PCE's termination for (i) convenience in accordance with Section 8.1, or (ii) cause due to illegality, where no cure is possible within the thirty (30) calendar day timeframe in accordance with Section 8.2, and unless otherwise agreed upon by the Parties, PCE shall pay, or Service Provider shall retain if Services Fees were prepaid, two (2) month's worth of additional Services Fees for the terminated Scope(s) calculated based on the most recent month's Services Fees for such terminated Scope(s); provided that if PCE terminates this Agreement (or applicable Scope) for (i) convenience in accordance with Section 8.1 or (ii) cause due to illegality, where no cure is possible within the thirty (30) calendar day timeframe in accordance with Section 8.2, less than six (6) months after the Effective Date, then PCE shall pay, or Service Provider shall retain if Services Fees were prepaid, one (1) month's worth of additional Services Fees for the terminated Scope(s) for every month that the termination date is shy of the six (6) month anniversary of the Effective Date, based on the most recent month's Services Fees for such terminated Scope(s). Any remaining prepaid funds shall be refunded to PCE.

8.4 Return of PCE Data. Upon the termination of this Agreement (or an applicable Scope), Service Provider shall, within thirty (30) days following the termination of this Agreement (or applicable Scope), provide PCE, without charge and without any conditions or contingencies whatsoever (including but not limited to the

payment of any Services Fees due to Service Provider), with a final extract of the PCE Data in the format reasonably specified by PCE. Further, Service Provider shall certify to PCE the destruction of any PCE Data within the possession or control of Service Provider, in accordance with Section 13.5, but such destruction shall occur only after the PCE Data has been returned to PCE.

8.5 Renewals. Should the Services continue beyond the Initial Term by mutual written agreement, so long as the scope of the Services have stayed substantially similar, the Services Fees for the Renewal Term may be increased no more than three percent (3%) on an annualized basis.

9. Transition Services. Provided that this Agreement (or applicable Scope) has been terminated by PCE, Service Provider will provide to PCE and/or to the service provider selected by PCE ("Successor Service Provider") assistance reasonably requested by PCE to effect the orderly transition of the applicable Services, in whole or in part, to PCE or to Successor Service Provider ("Transition Services") following the termination of this Agreement (or such Scope), in whole or in part. The Transition Services shall be provided for a period of no greater than six (6) months from the date of termination at the then-current Services Fees for the applicable Services, and may include: (a) developing a plan for the orderly transition of the terminated Services from Service Provider to PCE or Successor Service Provider; (b) if required, transferring the PCE Data to Successor Service Provider; (c) using commercially reasonable efforts to assist PCE in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Service Provider in connection with the applicable Services; (d) using commercially reasonable efforts to make available to PCE, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Service Provider in connection with the terminated Services; and, (e) such other activities upon which the Parties may agree. All applicable terms and conditions of this Agreement shall apply to the Transition Services.

10. Fees; Billing. PCE shall be responsible for and shall pay to Service Provider the Services Fees as further described in each Scope, subject to the terms and conditions contained in this Agreement (and such Scope). Any sum due to Service Provider for the Services for which payment is not otherwise specified shall be due and payable thirty (30) days after receipt by PCE of an invoice from Service Provider.

10.1 Billing Procedures. Service Provider shall, on a monthly basis in arrears and within fifteen (15) days after the end of each month, provide PCE a Service Level Standard report and bill to PCE the sums due pursuant to each Scope by Service Provider's invoice, which shall contain: (a) PCE's purchase order number, if any, and Service Provider's invoice number; (b) description of Services for which an amount is due; (c) a statement of the Services Fees or portion thereof that are due; (d) a statement of taxes, if any; (e) a statement of actual performance compared to the Service Level Standards; (f); a statement of any credit for failing to meet the Service Level

Standard, as determined in accordance with the applicable Scope ("Performance Credits") or other credits as required by a Scope due to PCE; and, (g) total amount due from PCE. Where Service Provider fails to timely provide an invoice meeting the requirements set forth in (e) and (f) of the foregoing sentence, the Service Level Standard shall be deemed unmet for the purpose of calculating Performance Credits, and such Performance Credits shall be deemed included on such invoice. Service Provider shall forward invoices in digital format to (finance@peninsulacleanenergy.com). Service Provider shall submit a completed W-8BEN-E form electronically to the same email addresses. Service Provider understands that no invoice will be paid by PCE unless and until a W-8BEN-E form is received by PCE.

10.2 Invoice Disputes. If PCE disputes any invoice, or part thereof, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute shall be made only in good faith, in writing and shall state the basis for the dispute. The Parties shall seek to resolve all such disputes expeditiously and in good faith within two (2) months. Upon resolution of the dispute, any required payment shall be made (or any inadvertent overpayment shall be returned) within five (5) Business Days of such resolution. Except for invoiced payments that PCE has successfully disputed, all late payments shall bear interest at lower of (a) the rate of four per cent (4%) per month, or (b) the highest rate permissible under applicable law, calculated daily and compounded monthly.

10.3 Reserved.

10.4 Taxes. Service Provider represents and warrants that it is an independent contractor for purposes of federal, state, and local taxes. Service Provider agrees that PCE is not responsible to collect or withhold any such taxes, including income tax withholding and social security contributions, for Service Provider. Any and all taxes, interest, or penalties, including any federal, state, or local withholding or employment taxes, imposed, assessed, or levied as a result of this Agreement shall be paid or withheld by Service Provider.

10.5 Credits. Any amounts due to PCE, such as a Performance Credit, from Service Provider may be applied by PCE, at the sole election of PCE, against any current or future Services Fees due to Service Provider. Any such amounts that are not so applied by PCE shall be paid to PCE by Service Provider within thirty (30) Business Days following Service Provider's delivery of the invoice detailing such amounts.

10.6 Non-binding Terms. Any terms and conditions included in a Service Provider invoice shall be deemed to be solely for the convenience of the Service Provider, and no such term or condition shall be binding upon the PCE.

10.7 Auditable Records. Service Provider shall maintain accurate records relating to the Services and records of all fees billable to, and payments made by, PCE in a format

that will permit audit by PCE for a period of no less than five (5) years, for records relating to the Services, and three (3) years, for records of all fees billable to, and payments made by, PCE, after PCE makes final payment and all other pending matters are closed, and Service Provider shall be subject to the examination and/or audit by PCE, a Federal grantor agency, and the State of California. Service Provider shall use reasonable commercial efforts to comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by PCE. Service Provider agrees upon reasonable notice to provide to PCE, to any Federal or State department having monitoring or review authority, to PCE'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. For the term of this Agreement, upon PCE's written request, Service Provider shall provide PCE with a copy of its annual American Institute of Certified Public Accountants Service Organization Control (SOC) 2 Type 1 report and SOC 2 Type 2 report (for at least three (3) SOC 2 Trust Services Criteria), or successor form of SOC reports.

10.8 No Suspension of Services. Except as set forth in Section 8.2, Service Provider shall not suspend any part of the Services where: (a) PCE is reasonably disputing any amount due to Service Provider in accordance with Section 10.2; or, (b) any unpaid but undisputed amount due to Service Provider is less than thirty (30) calendar days in arrears.

11. Representations and Warranties.

11.1 Mutual. PCE and Service Provider represent and warrant that:

11.1.1 it is a public entity or business duly incorporated, validly existing, and in good standing under the laws of its country or state of incorporation (as applicable) and is authorized to do business and in good standing in the state of California;

11.1.2 it has all requisite authority to execute, deliver, and perform its obligations under this Agreement and each Scope;

11.1.3 the execution, delivery, and performance of this Agreement has been (and for each Scope, will be) duly authorized by it, and this Agreement constitutes (and for each Scope, will constitute) the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;

11.1.4 it shall comply with all applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under this Agreement (and Scope) and shall obtain at its own expense and prior to the commencement of the Services all applicable permits and licenses required of it in connection with its obligations under this Agreement (and each Scope);

11.1.5 there is no outstanding litigation or arbitrated matter to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement or any Scope; and

11.1.6 no Event of Bankruptcy has occurred. As used herein "Event of Bankruptcy" means the occurrence of any of the following events: (i) the filing by such Party of a voluntary case or the seeking of relief under any chapter of Title 11 of the United States Bankruptcy Code, as now constituted or hereafter amended (the "Bankruptcy Code"), (ii) the making by such Party of a general assignment for the benefit of its creditors, (iii) the admission in writing by such Party of its inability to pay its debts as they mature, (iv) the filing by such Party of an application for, or consent to, the appointment of any receiver or a permanent or interim trustee of such Party or of all or any portion of its property, including the appointment or authorization of a trustee, receiver or agent under applicable law or under a contract to take charge of its property for the purposes of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of its creditors, (v) the filing by such Party of a petition seeking a reorganization of its financial affairs or to take advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or an answer admitting the material allegations of a petition filed against it in any proceeding under any such law or statute, (vi) an involuntary case is commenced against such Party by the filing of a petition under any chapter of Title 11 of the Bankruptcy Code and within ninety (90) calendar days after the filing thereof either the petition is not dismissed or the order for relief is not stayed or dismissed, (vii) an order, judgment or decree is entered appointing a receiver or a permanent or interim trustee of such Party or of all or any portion of its property, including the entry of an order, judgment or decree appointing or authorizing a trustee, receiver or agent to take charge of the property of such Party for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of the creditors of such Party, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) calendar days, or (viii) an order, judgment or decree

is entered, without the approval or consent of such Party, approving or authorizing the reorganization, insolvency, readjustment of debt, dissolution or liquidation of such Party under any such law or statute, and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) calendar days.

11.2 By Service Provider. Service Provider represents and warrants that:

11.2.1 it is in the business of providing the Services;

11.2.2 EXCEPT AS EXPRESSLY SET FORTH HEREIN AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND (EXPRESS, STATUTORY OR IMPLIED) INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT;

11.2.3 it is the lawful licensee or owner of the Services (excluding any PCE Data therein) and has all the necessary rights in the Services to provide the Services to PCE;

11.2.4 the Services and any other work performed by Service Provider hereunder shall not infringe upon any United States or foreign copyright, patent, trade secret, or other intellectual proprietary right, or misappropriate any trade secret, of any third-party, and that it has neither assigned nor otherwise entered into an agreement by which it purports to assign or transfer any right, title, or interest to any technology or intellectual property right that would conflict with its obligations under this Agreement or any Scope;

11.2.5 it shall disclose any third-party (which shall, for purposes of this Agreement and any Scope, be deemed a subcontractor) whose intellectual property is incorporated into the Services or who is necessary for the performance of the Services and it shall maintain in-force written agreements with such third-party, if any, for the term of this Agreement;

11.2.6 it has the expertise to perform the Services in a competent, workmanlike, and professional manner and in accordance with the highest professional standards;

11.2.7 it will use its commercially reasonable efforts to ensure that no computer viruses, worms, malware, or similar items (collectively, a "Virus") are introduced into PCE's computing and network environment by the

Services, and that, where it transfers a Virus to PCE through the Services, it shall reimburse PCE the actual documented cost incurred by PCE to remove or recover from the Virus, including the costs of persons employed by PCE to perform such services;

11.2.8 the Services are free of any mechanism which may disable the Services and Service Provider warrants that no loss of PCE Data will result from such items if present in the Services;

11.2.9 unless otherwise permitted by this Agreement, in the case of PCE's reasonable dispute of any Service Provider invoice in accordance with Section 10.2, it shall not withhold the performance of Services for up to two (2) months, including, without limitation, access and use of the Services, Technical Support, Maintenance, and extract of PCE Data; and,

11.2.10 the Services will conform in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the applicable Scope and the Documentation.

12. PCE Data.

12.1 Ownership. PCE's data ("PCE Data", which shall also be known and treated by Service Provider as Confidential Information) shall include any and all data, including personally identifiable information ("PII") and advanced metering infrastructure data ("AMI Data"), originating from PCE and/or from any Authorized User, that is collected, accessed, transmitted, used, processed, stored, or generated by Service Provider, or that is otherwise made accessible to Service Provider, as the result of or in connection with PCE's use, or Service Provider's provision of the Services, and any data sets generated therefrom. PII includes, without limitation, "personal information" as defined in California Civil Code Section 1798.81.5(d), any information that identifies an individual, such as an individual's social security number or other government-issued identification number, date of birth, address, telephone number, biometric data, mother's maiden name, email address, credit card information, or an individual's name in combination with any other of the elements listed herein. Except where subject to a third party's intellectual property rights, all PCE Data is and shall remain the sole and exclusive property of PCE and all right, title, and interest in the same belongs to PCE. Notwithstanding the foregoing, Service Provider may use the PCE Data to create anonymized, deidentified datasets ("Resulting Data"), provided that (a) Service Provider shall not use any AMI Data or data sets generated from AMI Data to create Resulting Data, (b) the PCE Data used shall have been made "anonymous" using technology that irreversibly alters data in such a way that the data subject can no longer be identified directly or indirectly, either by the data controller alone or in collaboration with any other party, and such data is thereby rendered

"anonymized data", as generally described in ISO 29100:2024, Section 3.3, (c) the Resulting Data shall not identify PCE as the source thereof and shall s not include any non-anonymized or individual identifiable information of any person, and (d) Service Provider may use the Resulting Data for its business purposes, only to improve its products and services, including the provision of the Services to PCE, and may not, for the avoidance of doubt, use the Resulting Data for direct marketing.

12.2 Reserved.

12.3 Service Provider Use of PCE Data. Except as set forth in Section 12.1, Service Provider is provided a limited license to access PCE Data for the sole and exclusive purpose of providing the Services, including a license to collect, process, store, generate, and display PCE Data only to the extent necessary in the providing of the Services. Service Provider shall: (a) keep and maintain PCE Data in strict confidence, maintaining reasonable and appropriate security measures and using such degree of care as is appropriate and consistent with its obligations as further described in this Agreement, each Scope and applicable law to avoid unauthorized access, use, disclosure, or loss; (b) use and disclose PCE Data solely and exclusively for the purpose of providing the Services, such use and disclosure being in accordance with this Agreement, such Scope, and applicable law; (c) allow access to PCE Data only to those employees of Service Provider who are directly involved with and responsible for providing the Services; (d) not use, sell, rent, transfer, distribute, or otherwise disclose or make available PCE Data for Service Provider's own purposes or for the benefit of anyone other than PCE without PCE's prior written consent, except as set forth in Section 12.1; and (e) inform PCE immediately upon learning that here has a breach in the security of the system or in the security of PII. For the purposes of this Section 12.3, security procedures are "reasonable and appropriate" when Service Provider complies with ISO27001 and SOC 2 Type 1, and Type 2 controls in connection with its access of PII.

12.4 Access to, and Extraction of PCE Data. PCE shall have full and complete virtual access to, and ability to virtually download (with Service Provider's assistance but without the need for physical access), as applicable, all Confidential Information and its PCE Data twenty-four (24) hours per day, seven (7) days per week, except during periods of maintenance conducted by Service Provider pursuant to Section 5.2. Further, Service Provider shall, within ten (10) Business Days of PCE's request, provide PCE, without charge and without any conditions or contingencies whatsoever (including, but not limited to, the payment of any Services Fees due to Service Provider), an extract of the PCE Data in the format reasonably specified by PCE, provided Service Provider shall within a reasonable amount of additional time, if necessary, furnish such extract if needed to support the format type specified by PCE. In the event PCE gives Service Provider written notice of a "litigation hold" or request under the California Public Records Act (Gov. Code §

7920.000 *et seq*., "Public Records Act"), then as to all data identified in such notice or request, Service Provider shall, at no additional cost to PCE, isolate and preserve all such data pending receipt of further direction from PCE.

12.5 Backup and Recovery of PCE Data. As a part of the Services, Service Provider is responsible for maintaining a backup of PCE Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Service Provider shall maintain a contemporaneous backup of PCE Data that can be recovered within eight (8) hours at any point in time. Additionally, Service Provider shall store a backup of PCE Data in an off-site (but within the continental United States) "hardened" facility no less than daily, maintaining the security of PCE Data, the security requirements of which are further described herein.

12.6 Loss or Unauthorized Access to Data. In the event of any act, error or omission, negligence, misconduct, or breach involving PCE Data in the possession of Service Provider that permits any unauthorized access to, or that compromises or is suspected to compromise the security, confidentiality, or integrity of PCE Data or the physical, technical, administrative, or organizational safeguards put in place by Service Provider that relate to the protection of the security, confidentiality, or integrity of PCE Data, Service Provider shall, as applicable: (a) notify PCE as soon as practicable but no later than forty eight (48) hours of becoming aware of such occurrence; (b) cooperate with PCE in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise reasonably required by PCE; (c) in the case of PII, at PCE's sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law including, but not limited to, the provisions of California Civil Code Section 1798.82, or, in the absence of any legally required notification period, within ten (10) calendar days of becoming aware of the occurrence; or, (ii) reimburse PCE for any costs in notifying the affected individuals; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no less than twelve (12) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; (f) without limiting Service Provider's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless PCE for any and all Claims (as defined herein) to the extent caused by breach of obligations of Service Provider in providing the Services, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from PCE in connection with the occurrence; (g) be responsible for recreating lost PCE Data in the manner and on the schedule set by PCE without charge to PCE; (h) provide to PCE a detailed plan within ten (10) calendar days of the discovery of the

occurrence, describing the measures Service Provider will undertake to prevent a future occurrence and (i) upon conclusion of the occurrence, or at PCE's reasonable request, provide to PCE a comprehensive summary of the occurrence, including reason for occurrence, details of occurrence, how occurrence was addressed and any other information required by PCE, which shall be executed by Service Provider and may be relied upon by PCE as a true and accurate account of the occurrence. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Service Provider's representative; a description of the nature of the loss; a list of the types of data involved; and the known or approximate date of the loss; how such loss may affect the affected individual; what steps Service Provider has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Service Provider.

13. Non-Disclosure of Confidential Information. The Parties acknowledge that each Party may be exposed to or acquire communication or data of the other Party that is confidential, privileged communication not intended to be disclosed to third parties.

13.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information, documents, and materials owned by such Party, including technical, financial, business, or customer information, which is not available to the general public, as well as information derived from such information. Confidential Information may include, without limitation, the following information about PCE customers: (i) names; (ii) service agreement numbers and account numbers; (iii) meter and other identification numbers; (iv) PCE-designated account numbers; (v) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (vi) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (vii) payment / deposit status; (viii) number of units; and (ix) other similar information specific to PCE customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Service Provider or its representatives that are derived from or based on Confidential Information disclosed by PCE, regardless of the form of media in which it is prepared, recorded or retained. Except for electric and gas usage information provided to Service Provider pursuant to this Agreement, the term "Confidential Information" does not include any information or documentation that was: (A) already in the possession of the receiving Party without an obligation of confidentiality; (B) developed independently by the receiving Party, as demonstrated by the receiving Party,

without violating the disclosing Party's proprietary rights; (C) obtained from a source other than the disclosing Party without an obligation of confidentiality; (D) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving Party); (E) disclosed or requires disclosure 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 (F) 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 PCE, unless such notice is prohibited. For purposes of this Agreement, in all cases and for all matters, PCE Data shall be deemed to be Confidential Information.

13.2 Obligation of Confidentiality. The Parties agree to hold all Confidential Information in strict confidence, take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information, and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties (other than employees, agents, lenders or investors, counsel, advisors, or subcontractors of a Party who have agreed to be bound by the confidentiality terms of this Agreement and have a need to know in connection with this Agreement) or to use such Confidential Information for any purposes whatsoever other than the purposes permitted by this Agreement, or as required by law, or in connection with a proposed financing or purchase of the receiving Party; provided, in connection with a proposed financing or purchase of the receiving Party, PCE Data or PII shall not be disclosed. The Parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential in accordance with the terms of this Agreement and to remain responsible for the actions and omissions of such employees, agents, and subcontractors as if such actions and omissions were those of such Party; however, such liability shall not limit or prevent any actions by PCE directly against such employees or representatives for improper disclosure and/or use. In no event shall Service Provider or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence.

13.3 Cooperation to Prevent Disclosure of Confidential Information. Each Party shall use its commercially reasonable efforts to assist the other Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, (i) promptly upon PCE's request, Service Provider shall execute, and cause its respective employees, agents, and subcontractors, as applicable, to execute, any third-party non-disclosure or confidentiality agreement that PCE determines is applicable to the provision of the Services, and (ii) each Party shall advise the other Party immediately in the event either Party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each Party will

cooperate with the other Party in seeking injunctive or other equitable relief against any such person. Nothing in this Agreement shall obligate PCE to monitor or enforce the Service Provider's compliance with the terms of this Agreement. It is understood that PCE is subject to the California Public Records Act. If a request under the California Public Records Act is made to view Service Provider's Confidential Information, PCE shall notify Service Provider of the request and the date that such records will be released to the requester unless Service Provider obtains a court order enjoining that disclosure. If Service Provider fails to obtain a court order enjoining that disclosure, PCE will release the requested information on the date specified. Service Provider shall promptly notify PCE should Service Provider, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any Party regarding this Agreement and the work performed hereunder or with respect to any project or property located within PCE's jurisdiction. PCE may, but has no obligation to, represent Service Provider or be present at any deposition, hearing or similar proceeding. Service Provider agrees to cooperate fully with PCE and to provide PCE with the opportunity to review any response to discovery requests provided by Service Provider. However, PCE's right to review any such response does not imply or mean the right by PCE to control, direct or rewrite the response.

13.4 Remedies for Breach of Obligation of Confidentiality. Each Party acknowledges that breach of its obligation of confidentiality as set forth in Section 13.2 may give rise to irreparable injury to the other Party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a Party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings (without posting bond), in addition to any other legal or equitable remedies which may be available, to include, in the case of PCE, at the sole election of PCE, the immediate termination, without liability to PCE, of this Agreement (and all Scopes).

13.5 Surrender of Confidential Information upon Termination. Upon termination of this Agreement or a Scope, in whole or in part, each Party shall, within five (5) calendar days from the date of termination, return to the other Party any and all Confidential Information received from the other Party, or created or received by a Party on behalf of the other Party, which is in such Party's possession, custody, or control; provided, however, that Service Provider shall return PCE Data to PCE following the timeframe and procedure described in Section 8.4. Should Service Provider or PCE determine that the return of any PCE Data or non-PCE Data Confidential Information is not feasible, Service Provider shall destroy the data comprising such Confidential Information in compliance with the most current version of NIST standard SP800-88, or other standard acceptable to PCE, and shall certify the same in writing within five (5) calendar days from the date of termination to the other

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

14. Data Privacy and Information Security.

14.1 Undertaking by Service Provider. Without limiting Service Provider's obligation of confidentiality as further described herein, Service Provider shall be responsible for establishing, maintaining, and providing a written description to PCE of, a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that comply with or are substantially similar to the security controls identified in the current version of NIST SP800-53, and that is designed to, consistent with prudent industry standards: (a) ensure the security and confidentiality of the PCE Data; (b) protect against any anticipated threats or hazards to the security or integrity of the PCE Data; (c) protect against unauthorized disclosure, access to, or use of the PCE Data; (d) ensure the proper disposal of PCE Data; and, (e) ensure that all employees, agents, and subcontractors of Service Provider, if any, comply with all of the foregoing. In no case shall the safeguards of Service Provider's data privacy and information security program used to protect PCE Data be less stringent than the safeguards used by Service Provider for its own data.

If the Services include handling credit card information, then the Service Provider shall comply at all times with all applicable Payment Card Industry Data Security Standards (PCI-DSS). Service Provider agrees and warrants that it is responsible for the security of "cardholder data" that Service Provider possesses, stores, processes or transmits on behalf of PCE, and for any impact on the security of PCE's cardholder data environment adversely affected by any failure of Service Provider to maintain compliance with provisions of the PCI-DSS applicable to the Services.

14.2 SOC 2 report. Annually, Service Provider shall provide PCE with its SOC 2 Type 2 report (for at least three (3) SOC 2 Trust Services Criteria), or successor form of SOC reports, when available, to demonstrate Services Provider's ongoing SOC 2 compliance, where relevant to the Services. PCE reserves the right to ask for additional information as needed.

14.3 Right of Audit by PCE. Without limiting any other audit rights of PCE, PCE shall have the right to review Service Provider's data privacy and information security program prior to the commencement of Services and from time to time during the

term of this Agreement or relevant Scope. During the providing of the Services, no more than annually, for not more than three (3) Business Days, on no less than thirty (30) days' prior written notice, and during normal business hours, on an ongoing basis from time to time, PCE, at its own expense, shall be entitled to perform, or to have performed, an on-site audit of Service Provider's data privacy and information security program. In lieu of an on-site audit, upon request by PCE, Service Provider agrees to complete, within forty-five (45 days) of receipt, an audit questionnaire provided by PCE regarding Service Provider's data privacy and information security program.

14.4 Audit Findings. Service Provider shall use reasonable commercial efforts, consistent with prudent industry standards, to implement any required safeguards as identified by PCE or by any audit of Service Provider's data privacy and information security program as applicable to the Services.

14.5 Pattern of Violations. It shall be considered a material breach of this Agreement if Service Provider engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Service Provider understands that if PCE finds that Service Provider is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement PCE may promptly cease all disclosures of Confidential Information to Service Provider. Service Provider further understands that if PCE receives a customer complaint about Service Provider's misuse of data or other violation of the Disclosure Provisions, PCE may promptly cease disclosing that customer's information to Service Provider and may notify the California Public Utilities Commission ("CPUC") of the complaint.

14.6 CPUC Compliance. Service Provider shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.

14.7 Reserved.

14.8 PCE's Right to Termination for Deficiencies. PCE reserves the right, at its sole election, to immediately terminate this Agreement (with respect to some or all of the Scopes) without limitation and without liability if PCE reasonably determines that Service Provider fails or has failed materially to meet its obligations under this Section 14 and such breach is not cured, or the Service Provider is not diligently pursuing a cure to PCE's sole satisfaction, within thirty (30) days after receiving written notice of such failure.

15. Proprietary Rights.

15.1 Pre-existing Materials. PCE acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials," which shall include the Services) and that the same shall remain the sole and exclusive property of Service Provider.

15.2 No License. Except as expressly set forth herein, including in Section 3, no license is granted by either Party to the other with respect to the Confidential Information or Pre-existing Materials. Nothing in this Agreement (or any Scope) shall be construed to grant to either Party any ownership or other interest, in the Confidential Information or Pre-existing Materials, except as may be provided under a license specifically applicable to such Confidential Information or Pre-existing Materials.

15.3 Reports.

15.3.1 Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Service Provider pursuant to or in connection with this Agreement, shall be the exclusive property of PCE. Any Report, information and data (other than Resulting Data) acquired or required by this Agreement shall become the property of PCE, and all publication rights are reserved to PCE. Service Provider may retain a copy of any Report furnished to the PCE pursuant to this Agreement.

15.3.2 All Reports prepared by Service Provider may be used by PCE in execution or implementation of: (1) the original project for which Service Provider was hired; (2) completion of the original project by a Successor Service Provider; (3) subsequent additions to the original project; and/or (4) other PCE projects as PCE deems appropriate in its sole discretion.

15.3.3 No Report, information or other data given to or prepared or assembled by Service Provider pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Service Provider without prior approval by PCE, other than as permitted pursuant to Section 13.2, and as described in Sections 13.1(E) and (F).

15.3.4 PCE shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by Service Provider prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

16. Indemnification; Limitation of Liability; Insurance.

16.1 General Indemnification. Service Provider agrees to indemnify, defend, and hold harmless PCE and its elected officials, officers, directors, agents, attorneys and employees (each, an "Indemnitee") from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (each, a "Claim," and collectively, the "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property caused by Service Provider's performance hereunder, provided any such Claim is brought by a third party; (b) any payment required to be paid to subcontractors, if any, of Service Provider, provided any such Claim is brought by a third party; (c) any material misrepresentation or breach of warranty set forth in this Agreement; (d) any destruction, or unauthorized access, use, or theft of PCE Data (collectively, "Cyber Theft"), to the extent arising out of or relating to Service Provider's breach of any covenant set forth in this Agreement, provided, however, that Service Provider's liability for Cyber Theft shall be limited to the cyber liability insurance policy limits set forth in Section 16.7; and/or, (e) any other material breach of any covenant set forth in this Agreement not covered by the foregoing clauses (a) - (d) provided any such Claim is brought by a third party; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim was caused by an Indemnitee. Subject to the provisions of Section 16.4, the duty of Service Provider to indemnify and save harmless as set forth by this Section 16 shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

16.2 Reserved.

16.3 Proprietary Rights Indemnification. Service Provider agrees to indemnify, defend, and hold harmless Indemnitees from and against any and all Claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, incurred by, accrued against, charged to, or recoverable from any Indemnitee, by reason of any Claim arising out of or relating to the Services allegedly or actually infringing or misappropriating any United States or foreign patent, copyright, trade secret, trademark, or other proprietary right. In the event that Service Provider is enjoined from providing the Services and such injunction is not dissolved within thirty (30) calendar days, or in the event that PCE is adjudged, in any final order of a court of competent jurisdiction from which no appeal is taken, to have infringed upon or misappropriated any patent, copyright, trade secret, trademark, or other proprietary right in the access or use of the Services, then Service Provider shall, at its expense: (a) obtain for PCE the right to continue using such Services; (b) replace or modify such Services so that they do not infringe upon or misappropriate such proprietary right and is free to be used by

PCE; or, (c) in the event that Service Provider is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, Service Provider shall reimburse to PCE any prepaid Services Fees and the full cost associated with any Transition Services.

16.4 Indemnification Procedures. Promptly after receipt by PCE of a threat, notice, or filing of any Claim against an Indemnitee, PCE shall give notice thereof to Service Provider, provided that failure to give or delay in giving such notice shall not relieve Service Provider of any liability it may have to the Indemnitee except to the extent that Service Provider demonstrates that the defense of the Claim is prejudiced thereby. Service Provider shall have sole control of the defense and of all negotiations for settlement of a Claim and PCE shall not independently defend or respond to a Claim; provided, however, that: (a) PCE may defend or respond to a Claim, at Service Provider's expense, if PCE's counsel determines, in its sole discretion, that such defense or response is necessary to preclude a default judgment from being entered against an Indemnitee; and, (b) PCE shall have the right, at its own expense, to monitor Service Provider's defense of a Claim. At Service Provider's request, PCE shall reasonably cooperate with Service Provider in defending against or settling a Claim; provided, however, that Service Provider shall reimburse PCE for all reasonable out-of-pocket costs incurred by PCE (including, without limitation, reasonable attorneys' fees and expenses) in providing such cooperation.

16.5 Third-Party Beneficiaries. Nothing, express or implied, in this Agreement (or any Scope, unless expressly provided therein) is intended to benefit, or to create or be construed to create any rights of enforcement in any persons or entities who are neither signatories to this Agreement nor Indemnitees (nor, in relation to a specific Scope, such Scope).

16.6 LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND / OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (OR ANY SCOPE); PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO (I) DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, (II) DAMAGES INCURRED AS A RESULT OF A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY OR CYBER SECURITY, OR (III) SERVICE PROVIDER'S INDEMNIFICATION OBLIGATIONS, PROVIDED THAT IN THE CASE OF CLAUSE (II) RELATING TO DATA BREACHES OR OTHER CYBER SECURITY LIABILITY, THE LIABILTY OF A PARTY SHALL NOT EXCEED THE AMOUNT OF THE APPLICABLE INSURANCE LIMITS SET FORTH IN SECTION 16.7. A PARTY SHALL BE LIABLE TO THE OTHER

FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT (OR ANY SCOPE); PROVIDED, HOWEVER, THAT EXCEPT AS OTHERWISE SPECIFICALLY NOTED IN SECTION 16.1, THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT (OR ANY SCOPE) SHALL NOT EXCEED AN AMOUNT EQUAL TO TWO (2) TIMES THE SERVICES FEES PAID DURING THE PREVIOUS TWELVE (12) MONTHS, PROVIDED, FURTHER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO: (A) DAMAGES INCURRED AS A RESULT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (B) DAMAGES INCURRED AS A RESULT OF A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY, AS FURTHER DESCRIBED IN THIS AGREEMENT.

16.7 Insurance. Unless otherwise approved in writing by PCE's risk manager, Service Provider shall, at its own expense, procure and maintain in full force and effect during the term of this Agreement, policies of insurance, of the types and in the minimum amounts as follows, with responsible insurance carriers duly licensed and qualified in California covering the operations of Service Provider, pursuant to this Agreement: commercial general liability ($1,000,000 per occurrence, $2,000,000 aggregate); excess liability ($2,000,000 per occurrence, $2,000,000 aggregate); workers' compensation (statutory limits) and employers' liability ($500,000 per accident); cyber liability ($5,000,000 per occurrence and in the aggregate) providing protection against claims and liabilities arising from: (i) errors and omissions in connection with maintaining security of PCE Data; (ii) data breach including theft, destruction, and/or unauthorized use of PCE Data; (iii) identity theft; and (iv) violation of privacy rights due to a breach of PCE Data; and professional liability/Technology Errors and Omissions liability ($1,000,000 per occurrence and in the aggregate). Any of the foregoing policy limits shall be subject to reasonable modification by PCE's/PCE's risk manager upon thirty (30) days' prior, written notice to Service Provider, and at any time prior to commencement of the Services; provided, no such policy limit shall be increased by more than one hundred percent (100%) over the Initial Term and any Renewal Term(s) and any modifications shall be subject to good faith negotiation and mutual approval of both Parties. Service Provider 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 Service Provider shall use diligence to obtain such insurance and to obtain such approval. Without limiting Service Provider's liability hereunder, the insurance required hereunder shall protect Service Provider 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 Service

Provider's operations under this Agreement, whether such operations be by Service Provider, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. In signing this Agreement, Service Provider 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.

The Indemnitees shall be named as additional insureds in the commercial general, cyber, and excess liability policies which shall contain standard cross liability clauses on all liability policies provided hereunder. Service Provider shall cause the liability it assumed under this Agreement to be specifically insured under the contractual liability section of the liability insurance policies. The liability policies shall be primary without right of contribution from any Indemnitee, and Service Provider waives all rights of subrogation with respect to said policies and all of Service Provider's liability policies provided hereunder shall include a provision that if the PCE 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. Such policies shall require that PCE be given no less than thirty (30) calendar days prior written notice of any cancellation thereof or material change therein. PCE shall have the right to request an adjustment of the limits of liability for commercial general, cyber, and/or excess liability as Service Provider's exposure to PCE increases. Service Provider shall provide PCE with certificates of insurance and original endorsements, evidencing all of the above coverage, including all special requirements specifically noted above, and shall provide PCE with certificates of insurance evidencing renewal or substitution of such insurance thirty (30) calendar days prior to the effective date of such renewal or substitution. In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, PCE, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

17. General

17.1 Relationship between PCE and Service Provider. Service Provider represents and warrants that it is an independent contractor with no authority to contract for PCE or in any way to bind or to commit PCE to any agreement of any kind or to assume any liabilities of any nature in the name of or on behalf of PCE. Under no circumstances shall Service Provider, or any of its staff, if any, hold itself out as or be considered an agent employee, joint venture, or partner of PCE. In recognition of Service Provider's status as an independent contractor, PCE shall carry no

Workers' Compensation insurance or any health or accident insurance to cover Service Provider or Service Provider's agents or staff, if any. PCE shall not pay any contributions to Social Security, unemployment insurance, federal or state withholding taxes, any other applicable taxes whether federal, state, or local, nor provide any other contributions or benefits which might be expected in an employer-employee relationship. Neither Service Provider nor its staff, if any, shall be eligible for, participate in, or accrue any direct or indirect benefit under any other compensation, benefit, or pension plan of PCE.

17.2 Governing Law. This Agreement and each Scope shall be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America. Service Provider hereby consents and submits to the jurisdiction and forum of the San Mateo County Superior Court or the United States District Court for the Northern District of California, in all questions and controversies arising out of this Agreement or any Scope.

17.3 Attorneys' Fees and Costs. In any arbitration, litigation, or other proceeding, informal or formal, by which one Party either seeks to enforce this Agreement or a Scope or seeks a declaration of any rights or obligations under this Agreement or Scope, the non-prevailing Party shall pay the prevailing Party's costs and expenses, including but not limited to, reasonable attorneys' fees.

17.4 Compliance with Laws; PCE Policies and Procedures. Service Provider agrees to comply with all applicable federal, state, and local laws, executive orders and regulations issued, where applicable.

17.5 Cooperation. Where agreement, approval, acceptance, consent or similar action by either Party hereto is required by any provision of this Agreement or Scope, such action shall not be unreasonably delayed or withheld. Each Party will cooperate with the other by, among other things, making available, as reasonably requested by the other, management decisions, information, approvals, and acceptances in order that each Party may properly accomplish its obligations and responsibilities hereunder, subject to such Party's need to comply with confidentiality provisions as set forth in Section 13. Without limiting the foregoing, Service Provider shall execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested in order for PCE to comply with CPUC, California Energy Resources Conservation and Development Commission ("CEC"), and/or California Independent System Operator ("CAISO") requirements applicable to PCE's intended use of the Services. Service Provider will cooperate with any PCE supplier performing services, and all parties supplying hardware, software, communication services, and other services and products to PCE, including, without limitation, the Successor Service Provider. Service Provider agrees to use commercially reasonable efforts to cooperate with such suppliers, and

shall not commit or permit any act which may interfere with the performance of services by any such supplier.

17.6 Force Majeure; Excused Performance. Neither Party shall be liable for delays or any failure to perform the Services or this Agreement due to Force Majeure. As used herein, "Force Majeure" 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 Such Force Majeure events may include fire, explosion, flood or other natural catastrophe, pandemic, governmental legislation, acts, orders, or regulation, strikes or labor difficulties, and failures in communication lines and routes not under a Party's control. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed Party. However, the delayed Party shall use commercially reasonable efforts to minimize the delays caused by any Force Majeure event. Where Service Provider fails to use commercially reasonable efforts to minimize such delays, the delays shall be included in the determination of Service Level Standard achievement for the applicable Scope. The delayed Party must notify the other Party promptly upon the occurrence of any such event, or performance by the delayed Party will not be considered excused pursuant to this Section, and inform the other Party of its plans to resume performance. A Force Majeure event does not excuse Service Provider from providing Services and fulfilling its responsibilities relating to the requirements of backup and recovery of PCE Data. In no event shall any of the following constitute a Force Majeure event: (a) failure, inadequate performance, or unavailability of Service Provider's subcontractors, unless their failure, inadequate performance or unavailability is itself due to a Force Majeure event; (b) configuration changes, other changes, Viruses, or other errors or omissions introduced, or permitted to be introduced, by Service Provider that result in an outage or inability for PCE to access or use the Services unless such event is caused as a result of the gross negligence or willful misconduct of PCE; or (c) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic. Within thirty (30) calendar days following the Effective Date and on an annual basis thereafter until the termination of this Agreement, Service Provider shall provide its then-current business continuity plan ("Business Continuity Plan") to PCE upon PCE's request. The Business Continuity Plan shall include: (a) Services and PCE Data backup and recovery procedures, including procedures and resources for disaster recovery; (b) fail-over procedures; and, (c) how Service Provider will interact with its business continuity suppliers, if any. Service Provider shall test its Business Continuity Plan on an annual basis in line with the renewal of ISO 27001 certification, until the termination of this Agreement and shall provide the test results to PCE upon PCE's request.

17.7 Advertising and Publicity. Service Provider shall not refer to PCE directly or indirectly in any advertisement, news release, or publication, or use any PCE logo, seal or mark, without prior written approval from PCE.

17.8 No Waiver. The failure of either Party at any time to require performance by the other Party of any provision of this Agreement (or Scope) shall in no way affect that Party's right to enforce such provisions, nor shall the waiver by either Party of any breach of any provision of this Agreement (or Scope) be taken or held to be a waiver of any further breach of the same provision.

17.9 Notices. Any notice given pursuant to this Agreement (or any Scope) shall be in writing and shall be given by personal service or by United States certified mail, return receipt requested, postage prepaid, or by email to the addresses appearing at the end of this Agreement, or as changed through written notice to the other Party. Notice given by personal service shall be deemed effective on the date it is delivered to the addressee, and notice mailed shall be deemed effective on the third day following its placement in the mail addressed to the addressee. Notice given by email shall be deemed effective on the next Business Day following transmission.

17.10 Assignment of Agreement (and Scope). This Agreement (and any applicable Scope) and the obligations of Service Provider hereunder are personal to Service Provider. Neither Service Provider nor any successor, receiver, or assignee of Service Provider shall directly or indirectly assign this Agreement (or applicable Scope) or the rights or duties created by this Agreement (or such Scope), without the prior written consent of PCE, which consent shall not be unreasonably conditioned, delayed, or withheld, whether such assignment is to an affiliate or effected in connection with a sale of Service Provider's assets or stock or through merger, an insolvency proceeding or otherwise. In the case of an assignment by Service Provider, Service Provider represents and warrants that it has all requisite rights and power to transfer any agreements or other rights with third-parties whose software is incorporated into the Services or who are necessary for the performance and use of the Services. PCE, at PCE's sole election, may assign any and all of its rights and obligations under this Agreement to any company that succeeds to substantially all of PCE's business.

17.11 Counterparts; Facsimile/PDF/Electronic Signature. This Agreement (and each Scope) may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement (or Scope, as applicable). The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

17.12 Entire Agreement. This Agreement, together with each Scope, and any and all attached addenda, schedules and exhibits, each of which is incorporated by reference herein, constitute the entire agreement between the Parties and supersede any and all previous representations, understandings, or agreements between PCE

and Service Provider as to the subject matter hereof. No representation or promise not expressly set forth herein shall be binding. The provisions of each Scope shall govern over any inconsistent or conflicting provisions contained in this Agreement. This Agreement and each Scope may only be amended by an instrument in writing signed by the Parties. This Agreement and each Scope shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

17.13 Cumulative Remedies. All rights and remedies of each Party herein (and each Scope) shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance against the other Party for the enforcement of this Agreement (and each Scope), and temporary and permanent injunctive relief.

17.14 No Recourse against Constituent Members of Authority. PCE is organized as a Joint Powers PCE in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated February 29, 2016, and is a public entity separate from its constituent members. PCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Service Provider shall have no rights and shall not make any claims, take any actions or assert any remedies against any of PCE's constituent members in connection with this Agreement.

17.15 Non-Discrimination. In the performance of this Agreement, no person shall be denied any services provided pursuant to this Agreement (except as limited by the applicable Scope) and Service Provider, and any subcontractor of Service Provider shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital or domestic partner status, national origin, ancestry, age, physical disability, mental disability, medical condition (including cancer-related), genetic information, sexual orientation, military or veteran status, familial or parental status (including pregnancy) or other basis prohibited by law, except as provided in Government Code section 12940. Service Provider shall have responsibility for compliance with this Section.

a. Equal Employment Opportunity. Service Provider 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. Service Provider's equal employment policies shall be made available to PCE upon request.

b. Section 504 of the Rehabilitation Act of 1973. Service Provider shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a

disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

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

d. 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 Service Provider 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.

e. History of Discrimination. Service Provider must check one of the two following options, and by executing this Agreement, Service Provider certifies that the option selected is accurate:

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

__Finding(s) of discrimination have been issued against Service Provider 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, Service Provider shall provide PCE with a written explanation of the outcome(s) or remedy for the discrimination.

f. Reporting; Violation of Non-discrimination Provisions. Service Provider shall report to the Chief Executive Officer of PCE 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 17.4. 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 Service Provider 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 Service Provider 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 Service Provider from being considered for or being awarded a PCE 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 Service Provider under this Agreement or any other agreement between Service Provider and PCE.

17.16 Conflict Of Interest. Service Provider and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Service Provider's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Service Provider may perform similar services for other clients, but Service Provider and its officers, employees, associates and subcontractors shall not, without PCE's prior written approval, perform work for another person or entity for whom Service Provider is not currently performing work that would require Service Provider or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Service Provider shall incorporate a clause substantially similar to this Section into any subcontract that Service Provider executes in connection with the performance of this Agreement.

17.17 Severability. If any provision in this Agreement (or any Scope) is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

17.18 Reserved.

17.19 PCE's Rights to Employ Other Consultants. PCE reserves the right to employ other consultants in connection with the subject matter of the Services.

17.20 Captions and Terms. The captions in this Agreement (and any Scope) are for convenience only, are not a part of the Agreement (or Scope) and in no way affect, limit or amplify the terms or provisions of this Agreement (or Scope).

17.21 Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

17.22 Survival. The following sections shall survive the termination or expiration of this Agreement or any Scope: Section 4.2, Section 4.3, Section 4.5, Section 8.4, Section 9, Section 10.4, Section 10.5, Section 10.7, Section 12.1, Section 12.2, Section 12.6, Section 13, Section 15, Sections 16.1 - 16.6, Section 17.

Executed on the dates set forth below by the undersigned authorized representative of PCE and Service Provider to be effective as of the Effective Date.

RECOMMENDED FOR APPROVAL

_____

APPROVED AS TO FORM

_____

PENINSULA CLEAN ENERGY AUTHORITY (PCE)
By:
Name:
Title:
Date:

Address for Notice: 2075 Woodside Rd., Redwood City, CA 94061
Email for Notice: jkopyciok-lande@peninsulacleanenergy.com

LUNAR ENERGY LIMITED (SERVICE PROVIDER)
By:
Name:
Title:
Date:

Address for Notice: % Lunar Energy, Inc., 755 Ravendale Drive, Mountain View, CA 94043
Email for Notice: EdF@lunarenergy.com cc legal@lunarenergy.com

SCOPE 1: DISTRIBUTED ENERGY RESOURCE MANAGEMENT SYSTEM

V.1 – 5/15/2025

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This Scope 1: DERMS Platform ("Scope 1") shall be incorporated into and governed by the terms of that certain MSA by and between **PENINSULA CLEAN ENERGY AUTHORITY**, a joint powers authority formed under the laws of the State of California ("PCE") with a registered address at 2075 Woodside Rd., Redwood City, CA 94061, USA and **LUNAR ENERGY LIMITED**, an English limited liability company with the registered address at 55 Baker Street, London, W1U 7EU United Kingdom and with offices located at 11-29 Fashion Street, London E1 6PX United Kingdom ("Service Provider") dated [Date], as may be amended, modified and supplemented from time to time (the "Main Service Agreement" or "MSA"). In the event of a conflict between the provisions contained in the MSA and those contained in this Scope 1, the provisions contained in this Scope 1 shall prevail.

SCOPE 1 – DESCRIPTION OF SERVICES AND TERM

This Scope 1 focuses on the technical details, as well as the roles, responsibilities and compensation structure relating to the implementation of the Distributed Energy Resource Management System (DERMS) that the Service Provider will provide for PCE.

This Scope 1 is effective beginning on the latest signed date of the Parties and will remain in effect for five (5) years or until either of the Parties terminates the agreement per the terms defined in the MSA. Capitalized terms used but not defined here in this Scope shall have the meaning given to them in the MSA.

All tasks and subtasks set forth in this Scope 1 are considered Software Services (as specified in the MSA) and are subject to the Service Level Standards section in this Scope 1 (including, for avoidance of doubt, sections involving Technical Support Problem Severity Levels, Technical Support Response and Resolution, Service Level Standard Performance Credits, Load Shift Performance Guarantees, and Load Shift Performance Credits).

This Scope 1, together with the MSA and Scope 2, constitutes the sole and entire agreement of the Parties with respect to Scope 1 and supersedes all prior and contemporaneous understandings, agreements, and warranties, both written and oral, with respect to such subject matter.

SCOPE 1 – TASKS AND DELIVERABLES

TASK 1: GRIDSHARE PLATFORM DELIVERY

Service Provider shall provide to PCE the Gridshare Platform in accordance with Subtasks 1.1 through 1.8, as set forth below.

Subtask 1.1: Gridshare Base Software Service

Service Provider shall provide to PCE Gridshare Base Software Service:

a) Connecting the Gridshare Platform to Devices and collecting, normalizing, and storing data. Provide access to that data through User Interfaces ("UI"s) and Application Programming Interfaces ("API"s).

1) Manage the timely integration of new Device Partners as agreed upon in Program Statements of Work (SoWs), which Program SoWs shall be incorporated into this Scope 1.

2) Ensure that new Device Partners meet the following high-level requirements:

    i. Suitable communication protocol available e.g. OpenADR 3.0, REST API;

    ii. Sufficient control points available to enable a smart management of Devices and a clear roadmap to deploying them;

    iii. Telemetry available to the granularity and accuracy required for the targeted services;

    iv. Secure authorization methodology for assigning account access;

    v. Best practice cyber security in place, ideally certified to a recognized standard, and satisfaction of the same cybersecurity insurance requirements applicable to Service Provider under the Main Services Agreement;

    vi. Willingness to sign an integration agreement with Service Provider;

    vii. Clear documentation and a responsive support team; and

    viii. Server site locations meet expectations around safe management of customer personal data.

b) Providing a PCE company account with authorized user access. There is no limit on the number of authorized users that can access the Gridshare Platform from PCE.

c) Managing authorized user functionality: account creation, deletion and access level setting.

d) Managing PCE Data in accordance with the MSA using a cloud-based service, currently Amazon Web Services. There shall be no cap on the amount of data storage associated with all Scopes entered under the MSA.

Subtask 1.2: Gridshare Partner

Service Provider shall provide to PCE "Gridshare Partner", a platform for PCE to visualize Device-level and fleet-level data on the Gridshare Platform. Gridshare Partner will give PCE access to:

a) Gridshare Partner UI and API.

b) Program-level aggregate metrics Dashboard and maps, to track key performance indicators as per the Program SoW and/or Program Design Document.

c) Visualization of individual customer sites and Devices.

Subtask 1.3: Gridshare Flex

Service Provider shall provide to PCE forecasting, monitoring, measurement, and verification of Device load shift performance to optimize the Devices through automated dispatch of fleets, including:

a) Providing Device health reporting via UI to help PCE understand long-term performance trends across Device types, DER Programs, Aggregator partners or within preset groups as defined in the Program SoWs.

b) Providing detailed reports for each dispatch event via UI, including performance data with fleet and Device-level granularity through the Gridshare Flex UI and/or API.

c) Providing visualization and management of Participants in DER Programs via Gridshare Flex UI and/or API.

d) Providing an integration pathway for Program Implementers and Aggregators into the Gridshare Platform using OpenADR or similar communication protocols or standards.

Subtask 1.4: Gridshare Client

In addition to the Gridshare Base, Gridshare Partner, and Gridshare Flex modules, Service Provider also offers a Gridshare Client interface that allows end customers to visualize energy and participation data, set user or Device preferences and manage program participation aspects. Access to the Gridshare Client module for PCE is currently not included under this Scope 1 task and fee structure but can be considered by PCE under future Scopes and/or specific Program SoWs.

Subtask 1.5: Gridshare integration into PCE CRM system

Service Provider shall, at PCE's direction, integrate the Gridshare Platform into PCE's Customer Relationship Management (CRM) system. Integration and/or communication between PCE's and Lunar's CRMs is critical to manage the enrollment and eligibility of Devices integrated under the DERMS platform in an easily searchable and reportable way and to analyze program performance. Service Provider may be directed to:

a) Query the PCE CRM to perform automated customer eligibility checks for DER Program participation.

b) Update customer participation data and DER information within the PCE CRM.

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

Subtask 1.6: Gridshare data provision to PCE

Service Provider shall facilitate access to an API for data downloads and set up a regular data sync (at least quarterly) with a nominated storage platform. Data made available will comprise:

a) Device/customer identifiers;

b) Program enrolment characteristics;

c) Device characteristics;

d) Device telemetry;

e) Load/energy consumption data; and

f) Device or load shift performance data.

The required data is defined in the Data Requirements Table, which shall be incorporated into this Scope 1, and will be made available in the standard Gridshare data format, as shown on the Gridshare for Developers website (developers.gridshare.com).

Subtask 1.7: Gridshare implementation and testing

Service Provider shall configure and deploy Gridshare to meet PCE's needs, including:

a) Incorporate PCE's requests regarding Dashboard setup/structure and enrollment/performance visualization.

b) Provide functional testing of all Dashboards, UIs and reporting functions.

c) Provide user acceptance testing with PCE.

d) Implement and test bilateral data flow of enrollment data to and from the PCE CRM.

e) Implement and test the transfer of performance data to PCE both via the Gridshare API and through recurring Data downloads. PCE to provide three (3) weeks' notice of additional data requirements beyond the ones defined in the initial Data Requirements Table.

Subtask 1.8: Training

Service Provider shall provide training sessions to relevant PCE staff to ensure staff are equipped to operate and navigate Gridshare Partner and Gridshare Flex interfaces. Service Provider shall provide:

a) A detailed page by page user guide covering all system functionality. The user guide will be maintained and updated periodically in line with continued product development.

b) Product demonstrations with either in-person or online live sessions, including interactive walkthrough of the Gridshare Platform and live question and answer (Q&A) sessions.

c) Training sessions to ensure that a minimum of two (2) PCE staff have been through the training at any time. Scenario based training of operations relevant to PCE's use of Gridshare Partner. Using real sites where possible. Includes Q&A. Refresher training sessions held upon request.

Task 1 Deliverables

Task 1 deliverables to be provided by Service Provider are:

a) Outreach to Device Partners will be initiated within five (5) days after signing a Program SoW. Integration timelines will be defined in each Program SoW.

b) Create Gridshare accounts for PCE staff within five (5) business days of request.

c) Provide standard metrics Dashboard and maps in Gridshare Partner, as well as visualization of Participants via Gridshare Flex UI and/or API, within five (5) days of first Device dispatch. Program specific dashboard customizations to be completed within 30 days from first Device dispatch.

d) Provide Device health reporting and detailed reports for each event dispatch under a DER Program at least on a monthly basis or as otherwise specified in the Program SoW.

e) Integrate with PCE's CRM within ninety (90) days of receiving the request to integrate from PCE.

f) Facilitate access to an API for data downloads from the Gridshare Platform within thirty (30) days of signing this Scope 1.

g) Set up a regular data sync with a nominated storage platform on at least a daily basis.

h) Finalize end to end testing at least ten (10) business days prior to the launch of each DER Program or as otherwise specified in the Program SoW.

i) Provide a detailed user guide for the Gridshare Platform to PCE within thirty (30) days of signing this Scope 1.

j) Provide a minimum of three (3) product demonstrations within ninety (90) days of signing this Scope 1.

k) Provide training sessions to PCE staff within ten (10) days of request. A maximum of four (4) training sessions per year will be provided.

TASK 2: DERMS OPERATION SERVICES

Service Provider shall operate and manage fleets of Devices to provide daily load shift, emergency or event-based load shift, and any other load management activities as specified by PCE ("DERMS Operation Services"). The DERMS Operation Services listed below aim to optimize the performance of Devices.

Service Provider shall provide to PCE the DERMS Operation Services in accordance with Subtasks 2.1 through 2.3, as set forth below. The details of the implementation of the DERMS Operation Services for a specific DER Program will be set forth in the Program SoWs that will be

entered in accordance with Task 3 - DER Program Administration Services, and upon execution shall be deemed to be incorporated into this Scope 1.

Subtask 2.1: Configuration, implementation and testing of Gridshare Flex

Service Provider shall configure and implement the Gridshare Platform to meet PCE's needs for the DER Programs:

a) Collect inputs from PCE for the initial configuration of Gridshare Flex. The inputs required are key DER Program Design Parameters such as device type, dispatch window, dispatch parameters, baseline and performance calculation, settlement point, performance metrics, and any other requirements of a particular DER Program. These DER Program Design Parameters will be defined in the Program SoWs or Program Design Document.

b) Optimize the dispatch configuration and work with PCE to define the required outcomes and determine the optimal dispatch operation that considers impacts on customers and PCE.

c) Manage program testing schedule:

    1) Conduct simulated dispatch testing within Gridshare, if required, depending on program type.

    2) Conduct live dispatch proving tests to ensure test results confirm to mutually agreed upon outcomes. Provide a report outlining the results of the proving tests and discuss with PCE. Implement retesting as required.

Subtask 2.2: Deployment of Gridshare Flex for DERMS operation

Service Provider shall deploy and maintain a Gridshare Flex instance with the following functionality:

a) Automatic monitoring and alerting systems, both for event triggers as well as for backup alerts and weather events as specified in the Program SoW.

b) Aggregate load modelling of Participants and the predicted response of Devices to dispatch instructions or rate plan, at site or Device level.

c) Baseline and/or performance calculations based on the parameters agreed upon in the Program SoWs.

d) Availability forecast for the dispatch event at either site or Device level, delivered via UI or API.

e) Generation of optimized dispatch plans per DER Program and sending commands to execute such plans, accounting for Device-specific operational limitations. Ability to schedule multiple shaped dispatches via UI or API.

f) Measurement and Verification: establish methodologies to measure fleet- and Device-level performance against mutually agreed upon DER Program baseline, as established in the Program SoWs, to calculate load shifting impact.

Subtask 2.3: Gridshare Flex ongoing operation

Service Provider shall provide the following ongoing DERMs operation services:

a) Assign sites/Devices/aggregated fleets to DER Programs or preset groups based on polygon defined zones, customer attributes, or other parameters defined in the Program SoWs.

b) Schedule and perform Device dispatching set via UI, API, or automated dispatch via trigger signal (e.g. LMP pricing or a system alert).

    1) Service provider operates the DERMS according to the needs and instructions of PCE and based on the agreed DER Program Design Parameters. PCE will give at least one (1) business day notice to the Service Provider of any changes to DER Program Design Parameters.

    2) Service Provider will dispatch fleets of Devices directly or via Aggregators as specified by PCE in the Program SoWs.

c) PCE can access performance data at the Device-, fleet-, program-, or any other level of granularity as defined in the Program SoWs through the UI.

d) Perform ongoing Device and fleet connectivity and health monitoring. Use reports and data to identify, assess, and diagnose performance issues, such as Devices being offline/not reporting data, data integrity issues, API down, commands not being followed, etc.. Provide alerts if issues occur and develop a plan for rectifying these issues in accordance with the timeframes set forth for Technical Support Response and Resolution set forth in this Scope 1.

e) Monitor and report on performance trends, capabilities, and limitations across different Device categories, Device manufacturers, Program Implementers' / Aggregators' fleets or within preset groups established for performance tracking purposes by either the Service Provider or PCE.

f) Develop recommendations for improving performance. Once an improvement has been identified and approved by PCE implement the recommendations and engage in testing.

Task 2 Deliverables

Task 2 deliverables to be provided by Service Provider are:

a) Implement initial Device and fleet connectivity testing within seven (7) days of first Devices onboarded to Gridshare for a particular DER Program.

b) Gridshare Flex is configured to operate PCE's DER Programs according to the DER Program Design Parameters specified in the Program SoW within two (2) weeks of finalizing the Program Design Document.

c) Set up monitoring and alerting systems within three (3) weeks of finalizing the Program Design Document.

d) Provide operational support system (escalation paths, setup of notification, recurring review meetings and responsible staff for monitoring) within ten (10) days after first Device dispatch.

e) Completed testing and systems are confirmed to be ready to deliver PCE's DER Programs within four (4) weeks of finalizing the Program Design Document

f) At a minimum monthly, provide Device health and event reporting of fully integrated Devices and Aggregators, including Device and Aggregator performance against baseline, device alerts (misbehavior, telemetry, opt outs), and customer cost impacts (if data available). The exact reporting cadence for each DER Program will be established in the Program SoWs.

These delivery dates may be adjusted in the Program SoWs as mutually agreed upon by the Service Provider and PCE.

TASK 3: DER PROGRAM ADMINISTRATION SERVICES

Service Provider shall provide to PCE administrative support to ensure successful DER Program delivery ("DER Program Administration Services"). Service Provider shall provide to PCE the DER Program Administration Services in accordance with Subtasks 3.1 through 3.6, as set forth below. Additional details of the implementation of the DER Program Administration Services for a specific DER Program will be set forth in the Program SoWs.

Subtask 3.1: Project management and advisory

Service Provider shall provide the following ongoing project management services:

a) Run at least monthly operational check-in meetings with PCE staff to align and coordinate all DER Program activity. The frequency of meetings may be increased during the initial launch phase of the services.

b) Document and provide information management services via shared repositories and communication channels.

c) Assess the capacity value and load management assessment across all existing and potential Device categories in PCE's service area for informal reporting purposes (e.g., to inform the DER Plan 2025-2030).

Subtask 3.2: Program contracting and design documents

Service Provider shall develop, in collaboration with PCE, the following contracting and design documents for each DER Program:

a) DER Program Onboarding Template: a template attached to this Scope 1 that allows PCE to provide basic information about the DER Program to the Service Provider for drafting of the Program SoW.

b) Program SoW: Enter into a separate Statement of Work (SoW) for each DER Program ("Program SoWs") agreed upon by both Parties in writing, using a mutually agreed upon template. The Program SoWs establish the key DER Program Design Parameters and specify how the Service Provider will provide the Services for each DER Program to PCE (including potential additional obligations on Service Provider and/or PCE).

c) Program Design Document: Draft a Program Design Document that outlines the implementation details of each DER Program. This is a working document that will be maintained by both Parties throughout the duration of the DER Program.

Subtask 3.3: Customer management

Service Provider shall provide the following ongoing customer enrollment and eligibility processes:

a) Manage customer enrollment and unenrollment under a specific DER Program.

b) Perform customer eligibility checks as defined in the Program Design Document.

Subtask 3.4: Reporting

Service Provider shall report on Device and Participant enrollment metrics, as well as load shift performance, via the following methods:

a) Provide a User Interface that visualizes Device management and load shift performance and allows for download of data.

b) Provide an API for PCE to integrate with their systems for automatic data downloads and reporting.

c) Provide monthly reporting on metrics established in the Program SoWs via email or shared depository.

Subtask 3.5: Program Implementer and Aggregator management

Service Provider shall provide the following services to manage DER Program Implementers and Aggregators:

a) Manage the timely onboarding and integration of new Program Implementers / Aggregators.

b) Ensure that new Program Implementers / Aggregators shall meet the following high-level requirements:

    1) Suitable communication protocol available e.g. OpenADR 3.0, REST API;

    2) Sufficient control points available to enable a smart management of Devices and a clear roadmap to deploying them;

    3) Telemetry available to the granularity and accuracy required for the targeted services;

    4) Secure authorization methodology for assigning account access;

    5) Best practice cyber security in place, ideally certified to a recognized standard, and satisfaction of the same cybersecurity insurance requirements applicable to Service Provider under the Main Services Agreement;

    6) Willingness to sign an integration agreement with Service Provider;

    7) Clear documentation and a responsive support team; and

    8) Server site locations meeting expectations around safe management of customer personal data.

c) Manage DER Program-related settlement and billing with Program Implementers / Aggregators, if applicable, per the Program SoWs.

Subtask 3.6: Regulatory and compliance support

Service Provider shall use commercially reasonable efforts to support PCE with any regulatory, compliance or other reporting obligations that may arise under any of the DER Programs, including, but not limited to:

a) Provide reporting as specified by any potential public funding agency (e.g.; California Public Utilities Commission, California Energy Commission etc.).

b) Deliver load modification impact forecast reports of Participants for regulatory purposes.

Task 3 Deliverables

Task 3 deliverables to be provided by Service Provider are:

a) Run at least monthly operational check-in meetings with PCE staff.

b) Draft initial Program SoW within ten (10) business days of receiving the DER Program Onboarding Template from PCE.

c) Initial response to customer enrollment and un-enrollment requests to and from the Gridshare platform within two (2) business days. For the avoidance of doubt, if the customer enrollment or un-enrollment is initiated by the customer via a Device partner, Aggregator or other entity other than Service Provider directly, reference is made only to the required time for Service Provider to respond to the instruction it received from the CCAs or the applicable partner.

d) Perform initial customer eligibility check within five (5) business days of receiving enrollment request.

e) Provide reports on Devices under management, customer enrollment, customer unenrollment and customer eligibility issues under each DER Program at least on a monthly basis or as otherwise specified in the Program SoW.

f) Deliver load modification impact forecast reports of Participants for regulatory purposes; at least one (1) month before the LSE filing deadline or as otherwise specified in the Program SoW.

SCOPE 1 - SERVICES FEES AND BUDGET

FEE STRUCTURE

In consideration of Service Provider's provision of the Scope 1 Services, PCE shall be responsible for, and shall pay to Service Provider, the Services Fees described below, subject to the terms and conditions of the MSA. Additional service fees (such as program implementation fees) may be included in other Scopes under the MSA.

a) **Setup fee**

   1) One-time setup fee for the implementation and configuration of the Gridshare software.

   2) Pricing: $60,000 (one time)

b) **Fixed Platform Fee**

   1) Fixed fee for the software license and ongoing tasks, charged independently of the utilization of, or the capacity connected to, the DERMS platform.

   2) Pricing: $120,000 (per year)

c) **CRM Integration Fee**

   1) Fixed fee for the integration of DERMS platform to PCE CRM

   2) Pricing: $20,000 (one time)

d) **Connected Capacity Fee**

1) Variable, tiered fee for utilization of the DERMS platform and ongoing Tasks, charged per kW per year of total capacity connected to the platform across all DER Programs ("Connected Capacity").

2) Connected capacity is defined as the sum of the Connected Capacity across all Devices. The monthly Connected Capacity for a Device is the product of the number of Devices in the month multiplied by the "Reference Capacity" of the Device (as defined below). For Connected Capacity pertaining to DER Programs that do not run year-round, the monthly Connected Capacity fee is calculated by dividing the annual fee of the applicable Capacity tier by the DER Program season duration expressed in months.

3) Reference Capacity Values per Device type (kW/Device):

   i. Battery energy storage system (BESS) (both residential and non-residential): minimum of 1) the inverter output power of a Device (kW) and 2) the nameplate energy capacity of a Device (kWh) minus a 20% backup reserve, divided by two (2) hours

   ii. Light-duty EV[1] or EVSE: 0.5

   iii. Residential smart control thermostat: 0.4

   iv. Heat Pump Water Heaters: 0.3

   v. Non-residential Devices across technology types (excluding energy storage systems and including medium- and heavy-duty vehicles): based on nominated capacity and as further defined in the Program SoWs.

4) Pricing: The Connected Capacity Fee decreases as the number of Devices under management grows. Pricing steps down at the 5 MW and 15 MW mark, calculated between both PCE and Silicon Valley Clean Energy (SVCE), who partner on this procurement of demand flexibility services

   i. Up to 5 MW: $28/kW-year

   ii. 5 MW up to 15 MW: $21/kW-year

   iii. Over 15 MW: $15/kW-year

h) **Device Partner integration fees**

1) Service Provider continuously updates and expands its base of Device Partner integrations. As a principle, Service Provider does not charge for integration with

[1] Light Duty EVs are defined as any Class 1 or 2 vehicles, up to a weight of 10,000 lbs.

new Device Partners, subject to satisfactory assessment of expected Device volume and compliance with the requirements set out in Subtask 1.a.a.

i) **Device Partner / Aggregator Setup Fees**

1) Certain Device Partners and Aggregators may charge a one-time setup fee to incorporate their Devices under the DERMS platform. These potential Device and Aggregator set-up fees will be billed as pass-through to PCE

2) Estimated Pricing of up to $50,000 per Device Partner or Aggregator (one time).

j) **Device API Fees**

1) Device Partners may charge an ongoing API fee to allow integration of the Device under the DERMS platform. Potential Device ongoing API fees will be billed as pass-through

2) Estimated pricing for residential Devices. Specific pricing for a particular DER Program will be defined in each Program SoW:

i. Energy storage systems: up to $84/Device-year

ii. Light-duty EV or EVSE: $10-$40/ Device-year

iii. Smart control thermostat: up to $15/Device-year

iv. HPWH $35-$40/ Device-year

3) API fees for non-residential Devices are defined on a case-by-case basis. Specific API fees for a DER Program will be determined in the Program SoW.

h) **Service Provider Hourly Rate Card**

1) The following hourly rates apply when Service Provider provides customized work or services to PCE outside of the agreed Scope under a future contract amendment.

Labor Role	**Hourly Rate ($)**
Engineer	$ 143.00
Senior / Lead Engineer	$ 247.00
Principle Engineer	$ 416.00
Product Management	$ 208.00

Delivery Management	$ 221.00
Legal	$ 286.00

NOT-TO-EXCEED BUDGET FOR SCOPE 1

Scope 1 Services Fees include the following setup and fixed fees throughout the contract term (i.e., 5 years):

a) One-time set-up fee: $60,000

b) Annual platform fee: $120,000 per year or $600,000 for 5 years

c) CRM integration fee: $20,000

Accordingly, the total not-to-exceed (NTE) budget for Scope 1 Services is set at $700,000 (estimated costs plus a buffer of $20,000 on estimated CRM integration costs).

TIMING OF SCOPE 1 SERVICES FEE BILLING AND PAYMENTS

Services Fees payable under this Scope 1 contract as defined above will be invoiced on the following timeframes:

a) Set-up fee: at the latest date on which this Scope 1 is executed by either Party

b) Annual platform fee: annual platform fee applies once the Gridshare platform connects to managed Devices The platform fee is billed quarterly, on the first day of the quarter, in four equal payment amounts.

c) CRM integration fee: upon completion of deliverable (e) of Task 1.

d) Connected Capacity Fees: billed monthly, at the end of the month, as further defined in the Program SoWs.

e) Device Partner and Aggregator Setup Fees will be billed as pass-through when expenses occur, payable net-15 days from date of invoice.

f) Device API Fees will be billed monthly as pass-through, payable net-15 days from date of invoice.

PCE shall pay to Service Provider the Services Fees outlined above in accordance with the billing and payment structure outlined in Scope 1 and the MSA.

SCOPE 1 – SERVICE LEVEL STANDARDS

TECHNICAL SUPPORT PROBLEM SEVERITY LEVELS

a) Problem Severity Level 1 – "Critical Service Error".

1) Description. A Critical Service Error includes: (a) a significant and core functionality of the Software Service is unavailable, including unplanned system downtime, either with respect to the Software Service as a whole (e.g. users are unable to see any data on Gridshare Partner) or with respect to performance of Gridshare Flex (e.g. Device plans or dispatch commands are not being sent); (b) operational issues that materially impact delivery of Gridshare Flex with no work around available (e.g. incorrect Device plans or dispatch commands are being sent); (c) unauthorized exposure of all of part of PCE Data; or, (d) loss or corruption of all or part of PCE Data.

2) Request Response Time. 2 hours

3) Request Resolution Time. 36 hours

b) Problem Severity Level 2 – "High Service Error".

1) Description. A High Service Error includes: (a) operational issues that materially impact delivery of the Gridshare Platform with no work around available (e.g. data upload or download issues with Gridshare Partner UI or Gridshare Flex UI); or, (b) a significant and / or ongoing interruption of an Authorized User's use of a critical function of the Software Services and for which no acceptable (as determined by the Authorized User) work-around is available, including unacceptable system response time.

2) Request Response Time. 24 hours

3) Request Resolution Time. 72 hours

c) Problem Severity Level 3 – "Medium Service Error".

1) Description. A Medium Service Error includes: (a) a bug, or issue with an available work around or unexpected behavior that does not materially impact the functionality of Gridshare Partner or Gridshare Flex; (b) minor and / or limited interruption of an Authorized User's use of a non-critical function of the Software Services; or, (c) problems which are not included in Problem Severity Levels 1 or 2.

2) Request Response Time. 24 hours

3) Request Resolution Time. one work week

d) Problem Severity Level 4 – "Low Service Error".

1) Description. A Low Service Error includes: (a) general questions pertaining to the Software Services; or, (b) problems which are not included in Problem Severity Levels 1, 2, or 3.

2) Request Response Time. three workdays

3) Request Resolution Time. (a) three workdays, (b) two work weeks or date certain

TECHNICAL SUPPORT RESPONSE AND RESOLUTION

Service Provider shall provide to PCE support via electronic communication (email, messenger and web-conferencing) ("Technical Support") twenty-four (24) hours per day, seven (7) days per week, three-hundred-sixty-five (365) days per year. Technical Support will be any research and resolution activity performed by Service Provider in connection with any task and subtask in this Scope 1. Service Provider shall respond to all requests for Technical Support in accordance with the required times and other terms and conditions set out below.

a) Request for Technical Support. Authorized Users will make Technical Support requests by calling or emailing Service Provider's Technical Support staff or by submitting a request via Service Provider's customer service web portal. The Technical Support staff shall assign the Problem Severity Level to the request.

b) Problem Severity Levels 1 and 2 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Service Provider shall confirm to the requestor receipt of the request by Service Provider. If a Problem Severity Level 1 or 2 (as described below) request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, Service Provider will: (a) immediately escalate the request to Service Provider's management; (b) take and continue to take the actions which will most expeditiously resolve the request; (c) provide a hourly report to the requestor of the steps taken and to be taken to resolve the request, the progress to correct, and the estimated time of correction until the request is resolved; and, (d) every 24 hours, provide increasing levels of technical expertise and Service Provider management involvement in finding a solution to the request until it has been resolved.

c) Problem Severity Levels 3 and 4 Response and Resolution. For Technical Support requests not made by telephone, within the Request Response Time of such a request, Service Provider shall confirm to the requestor receipt of the request by Service Provider. If a Problem Severity Level 3 or 4 (as described below) request cannot be corrected to the reasonable satisfaction of the requestor within the Request Resolution Time after the requestor makes the initial request for Technical Support, at the sole election of requestor: (a) Service Provider will work continuously to resolve the request; or, (b) requestor and Service Provider will mutually agree upon a schedule within which to resolve the request.

SERVICE LEVEL STANDARD PERFORMANCE CREDITS

The following Service Level Standards (SLSs) and associated Performance Credits shall apply to the Software Services provided by Service Provider under the MSA. Additional SLS for specific DER Programs may be developed in the Program SoWs.

a) Technical Support Problem Response Service Level Standard.

1) Definition. "Total Problems" shall mean the total of problems occurring in the reporting month, for each Problem Severity Level, provided that any problems caused by an Excused Event, shall not be included in Total Problems.

2) Service Level Standard. Problems shall be confirmed as received by Service Provider 100% of the time each reporting month, in accordance with the Request Response Time associated with the Problem Severity Level.

3) Performance Credit.

i. Problem Severity Level 1 – 2. PCE shall be due a Performance Credit in the amount of 0.5% of the Services Fees (defined as the Annual Platform Fee and the Connected Capacity Fee, calculated on a monthly basis for the reporting month) for each Problem failing to meet the Request Response Time specified for the Problem Severity Level.

ii. Problem Severity Level 3 – 4. PCE shall be due a Performance Credit in the amount of 0.2% of the Services Fees (as calculated on a monthly basis for the reporting month) for each Problem failing to meet the Request Response Time specified for the Problem Severity Level.

4) Example Calculation (Using Problem Severity Level 1 – 2).

i Total Problems failing the Request Response Time Standard equals 2.

ii Therefore, PCE is due (2 x 0.5%), or 1% of the Services Fees as a Performance Credit.

b) Technical Support Problem Resolution Service Level Standard.

1) Definition. "Total Problems" shall mean the total of problems occurring in the reporting month provided that any problems caused by an Excused Event, shall not be included in Total Problems.

2) Service Level Standard. Problems shall be resolved by Service Provider 100% of the time each reporting month, in accordance with the Request Resolution Time associated with the Problem Severity Level.

3) Performance Credit.

i Problem Severity Level 1 – 2. PCE shall be due a Performance Credit in the amount of 2% of the Services Fees (as calculated on a monthly basis for the reporting month) for each Problem failing to meet the Request Resolution Time specified for the Problem Severity Level.

ii. Problem Severity Level 3 – 4. PCE shall be due a Performance Credit in the amount of 0.5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each Problem failing to meet the Request Resolution Time specified for the Problem Severity Level.

4) Example Calculation (Using Problem Severity Level 3 – 4).

i. Total Problems failing the Request Resolution Time Standard equals 3.

ii. Therefore, PCE is due (3 x 0.5%), or 1.5% of the Services Fees as a Performance Credit.

LOAD SHIFT PERFORMANCE GUARANTEES

Service Provider will manage and control Devices under the Gridshare platform as described in Subtask 2.3 above. Service Provider commits to the following performance guarantees in the provision of load shifting services. Additional load shift performance guarantees may be established in the Program SoWs.

a) For battery energy storage systems, the commands will achieve the minimum of either >95% the Maximum Available Energy or the Target Delivered Energy at the aggregated level, excluding any circumstances outside of Subcontractor's control (i.e. Excused Events, Force Majure events, global OEM outages, Global Cloud Service Provider Outages).

1) "Maximum Available Energy" is energy available in Plannable Devices not reserved for hardware requirements or customer resiliency, calculated at the time of dispatch start.

2) "Target Delivered Energy" is the contract delivery obligation in MW as defined in the Program SoW.

3) "Plannable Devices" are those Devices which are: (1) enrolled in the program evaluated, (2) part of the preset group whose response is requested, and (3) online at the time of planning.

b) For all other technologies, after 6 weeks of DER Program operation, Service Provider's average monthly load shift delivery shall be within a maximum +/- 25% of the forecast excluding any circumstances outside of Subcontractor's control (i.e. Excused Events, Force Majure events, global OEM outages, Global Cloud Service Provider Outages). The specific performance band will be defined in the Program SoW but must be smaller than +/-25%.

1) Service Provider will forecast the load shift performance of managed Devices under a DER Program or a preset group on at least a monthly basis. The forecasting details will be defined between both Parties in each Program SoW.

2) Service Provider will report on the actual load shift performance achieved within one month of the closing of the reporting month (or on a frequency as specified in the Program SoWs)

LOAD SHIFT PERFORMANCE CREDITS

If load shift delivery falls outside of these performance guarantees (other than due to Excused Events) consistently over a 2-month period, Service Provider shall pay PCE a Performance Credit of 1% of the Connected Capacity Fee of the affected DER Program or preset group for each percentage of excess deviation outside the +/- 25% tolerance band for each applicable month.

Agreed and accepted as of the latest date on which this Scope 1 is executed by either Party:

LUNAR ENERGY LIMITED	**PENINSULA CLEAN ENERGY**
By:	By:
Name: Ed Franklin	Name:
Title: General Manager	Title:
Date:	Date:

APPENDIX A - DEFINITIONS

"**Aggregator**" means an entity controlling fleets of Devices that can be contracted with as a strategy to add volumes of Devices on the DERMS Platform.

"**API**" means the application programming interface used by Gridshare to interface with PCE or OEM software.

"**PCE Data**", per the MSA, shall include any and all data, including personally identifiable information ("PII") and AMI Data, originating from PCE and/or from any Authorized User, that is collected, accessed, transmitted, used, processed, stored, or generated by Service Provider, or that is otherwise made accessible to Service Provider, as the result of or in connection with PCE's use, or Service Provider's provision of the Services, and any data sets generated therefrom.

"**Data Requirements Table**" means the document developed by PCE and mutually agreed upon by the Parties, as amended from time to time (by mutual agreement and pursuant to Subtask 1.7.e)) defining the data that the Service Provider will provide to PCE as part of the Services.

"**Dashboard**" means a web hosted User Interface for the Gridshare software service.

"**DERMS**" means distributed energy resource management system.

"**DER**" means a distributed energy resource.

"**DER Program**" means a customer program implemented by PCE and/or their partners, as set forth in a Program SoW agreed upon in writing by the Parties.

"**DER Program Design Parameters**" means key inputs into the Program SoWs such as Device type, dispatch window, dispatch parameters, baseline and performance calculation, settlement point, performance metrics, and any other requirements of a particular DER Program.

"**DER Program Onboarding Template**" means the template used between the Parties for PCE to provide basis DER Program information to the Service Provider for drafting of the Program SoW.

"**Device**" means a customer-sited load flexibility resource.

"**Device Health**" means a measurement of the ability to utilize a Device in the program.

"**Device-level Data**" means data which is broken down to the Device level, as opposed to Fleet-level, or aggregated, data.

"**Device Partner**" means an original equipment manufacturer that integrates with Gridshare to enable DER data exchange and control.

"**Dispatch Proving Test**" means real dispatches to prove the functionality and performance of a Device.

"**Excused Event**" means an event caused by (a)PCE's acts or omissions; (b) factors outside of Service Provider's reasonable control related to lack of internet access or similar problems beyond the demarcation point of the Services; (c) any actions or inactions of an Authorized User, PCE, end user, OEM, Program Implementer, Aggregator or any third party, including without limitation the disabling of the applicable device by an end user; (d) any failure or unavailability of Authorized User's, OEM's, Program Implementer's, Aggregator's, PCE's or any third party's equipment, networks, products, services, software or other technology; and/or (e) any issues with internet connectivity with a Device.

"**Fleet-level Data**" means data which is aggregated for a group (or fleet) of Devices.

"**Gridshare**" or "**Gridshare Platform**" means the software developed by Service Provider, including Gridshare Base, Gridshare Partner, and Gridshare Flex.

"**Gridshare Base**" means the base module of Gridshare which enables connection to devices, data ingestion/control, user accounts and user management.

"**Gridshare Flex**" means the energy flexibility product module of Gridshare which enables group management, dispatching, and health and performance reporting

"**Gridshare Partner**" means the User Interfaces, Dashboards and APIs provided to allow a user to interact with Gridshare.

"**Program Implementer**" means an entity that provides implementation services for a particular DER Program (including, but not limited to, customer enrollment and management, program management services, customer payments etc.). Program Implementers can be "Aggregators" but don't have to be.

"**Load Management**" means the active control of Devices for reducing or increasing load in accordance with established signals/parameters.

"**OEM**" means original equipment manufacturer of a particular Device.

"**Participants**" means Devices, sites or aggregates enrolled in a DER Program and operated for the purposes of that Program. If there are several Devices on one site (i.e., behind one customer's meter), they are all being covered under the "Participations" definition.

"**Program Design Document**" means the informational document to be developed by both Parties for each DER Program specifying all the design and operational elements of the DER Program. This is a working document, not a contractual agreement.

"**Program Implementer**" means a 3rd party hired to implement a DER Program for PCE.

"**Program Statements of Work (SoWs)**" are contractual agreements that are developed for each DER Program by both Parties in writing, using the DER Program Onboarding Template attached to this Scope 1. They establish the DER Program Design Parameters and specify how the Service Provider will provide the Services for each DER Program to PCE (including potential additional obligations on Service Provider and/or PCE).

"**Software Services**" is as defined in in the MSA. Software Services include all the tasks and subtasks in Scope 1.

"**Subcontractor**" means an entity supporting the Service Provider in the provision of the services under this MSA.

"**User Interface**" or "**UI**" means the user interface, providing visualization of the Software Services provided to PCE.

"**Virtual Power Plant**" or "**VPP**" means an aggregation of customer-sited Devices that can be controlled by the DERMS platform.

APPENDIX B – DER PROGRAM ONBOARDING TEMPLATE

An authorized representative of PCE may agree with Service Provide to amend this Program Onboarding Template during the Term to meet the needs of specific DER Programs.

DER Program Design Parameters

1. Program name
2. Program objective(s)
3. External funding
4. Program term
5. Geographic location
6. Preset groups
7. Device type
8. Device Partner(s)
9. Aggregator(s)
10. Implementer(s)
11. Subcontractor(s)
12. Additional Authorized User(s)

Additional obligations

1. Dispatch triggers
2. Timeline for Device and Device Partner integration
3. Baseline definition
4. Measurement & Verification (M&V) methodology
5. Data needs
6. Key performance indicators
7. Reporting
8. Program Implementer/ Aggregator billing
9. Program-specific budget

Services fees

1. Reference Capacity Value for Connected Capacity Fee
2. Device Partner(s) integration fee
3. Device Partner(s) setup fee
4. Device API fees

Service Level Agreement

1. Target Delivered Energy

APPENDIX C - SERVICE PROVIDER STAFFING

Service launch

Lunar Resource	Title	Project Role	FTE
Roland Doorduyn	Head of Commercial (US)	Contract management, account management, program design.	20%
John Linfoot	Head of Energy Platform Products	Grid services product deployment and device integrations. Train on the use of the Gridshare platform.	20%
Amanda Little	Head of Legal	Contracting: MSA, SoWs, OEMs, aggregators, and all our other partners in this project.	10%
Grace Hsu	VP Legal	Contracting: overall/MSA	10%
Adam Cundy	Head of Delivery	Gridshare SaaS delivery oversight.	10%
Stefanie Bator	Senior Program Manager	Project and program management oversight	30%
Ed Gunn	VP of Commercial Sales	Executive sponsor, escalation management, commercial oversight	5%
Rowan Hawksdale + Team	VPP and Integrations Software Lead	DERMS/OEM integrations, Flex Product	30%
Jesus Prieto	Senior Director of Software Engineering	Engineering oversight	5%
George Penny	Head of Markets	Program design, Simulations, modeling.	5%
Sam Wevers	Director of Software Product	Product oversight - products meet PCE's expectations	2%

Natalie Sullivan	Senior Information Security Manager	Oversee the implementation of all cybersecurity compliance requirements	2%

Post launch live service:

Lunar Resource	**Title**	**Project Role**	**FTE**
Stefanie Bator	Senior Program Manager	Program operations, admin, reporting, client support.	5 - 50%
Roland Doorduyn	Head of Commercial (US)	Account management, program strategy, future roadmap and strategy	10%
John Linfoot	Head of Energy Platform Products	DERMS product oversight	10%
Amanda Little	Head of Legal	Legal support	2%
Adam Cundy	Head of Delivery	Service delivery oversight	5%
Ed Gunn	VP of Commercial Sales	Executive sponsor, escalation management, commercial oversight	2%
Rowan Hawksdale + Team	VPP and Integrations Software Lead	DERMS ongoing development, testing, tech support	5 - 20%

SCOPE 2: PCE-ADMINISTERED PROGRAMS

V.1 – 5/15/2025

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SCOPE 2 – SERVICE LEVEL STANDARDS *6*

This Scope 2: PCE-Administered Programs ("Scope 2") shall be incorporated into and governed by the terms of that certain MSA by and between **PENINSULA CLEAN ENERGY AUTHORITY**, a joint powers authority formed under the laws of the State of California ("PCE") with a registered address at 2075 Woodside Rd., Redwood City, CA 94061, USA and **LUNAR ENERGY LIMITED**, an English limited liability company with the registered address at 55 Baker Street, London, W1U 7EU United Kingdom and with offices located at 11-29 Fashion Street, London E1 6PX United Kingdom ("Service Provider") dated [Date], as may be amended, modified and supplemented from time to time (the "Main Service Agreement" or "MSA"). In the event of a conflict between the provisions contained in the MSA and those contained in this Scope 2, the provisions contained in this Scope 2 shall prevail.

SCOPE 2 - DESCRIPTION OF SERVICES AND TERM

This Scope 2 establishes the framework to enable Service Provider to onboard PCE-administered DER Programs to the Distributed Energy Resource Management System (DERMS), which has been implemented pursuant to Scope 1 under the MSA. The document outlines the technical requirements, as well as the roles, responsibilities and compensation structure relating to the integration of Devices that were developed under energy programs administered by PCE. Service Provider will use commercially reasonable efforts to onboard existing PCE DER Programs to the DERMS.

Scope 2 becomes effective beginning on the latest signed date of the Parties and will remain in effect for five (5) years, unless earlier terminated by either of the Parties per the terms defined in the MSA or upon termination of the MSA or Scope 1, whichever occurs first. Capitalized terms used but not defined here in this Scope shall have the meaning given to them in the MSA or Scope 1.

All tasks and subtasks set forth in this Scope 2 are considered Software Services (as specified in the MSA) and are subject to the Service Level Standards section in Scope 1 (including, for avoidance of doubt, sections involving Technical Support Problem Severity Levels, Technical Support Response and Resolution, Service Level Standard Performance Credits, Load Shift Performance Guarantees, and Load Shift Performance Credits) as if the same were repeated in its entirety in this Scope 2, except that any references to "Scope 1" therein shall be read as applying to "Scope 2".

This Scope 2, together with the MSA and Scope 1, constitutes the sole and entire agreement of the Parties with respect to the Software Services provided under Scope 2 and supersedes all prior and contemporaneous understandings, agreements, and warranties, both written and oral, with respect to such subject matter.

SCOPE 2 – TASKS AND DELIVERABLES

TASK 1: DERMS OPERATION SERVICES

Service Provider shall operate and manage Devices to provide daily load shift, emergency or event-based load shift, and any other load management activities as specified by PCE ("DERMS Operation Services"). Service Provider shall onboard PCE-administered DER Programs to the Gridshare Platform in accordance with the tasks and deliverables outlined in Scope 1, Task 2: DERMS Operation Services. In addition, the details of the implementation of the DERMS Operation Services for a specific DER Program will be set forth in the Program SoWs that will be entered in accordance with Subtask 3.2 of Scope 1 and as further detailed in Task 2 below.

A non-exhaustive list of the roles and responsibilities of the Service Provider and PCE in providing DERMS Operation Services for CCA-Administered DER Programs are outlined in the following table:

Tasks: DERMS Operation Services	**Responsibility**	
	Service Provider	**PCE**
Configure Gridshare Flex per the DER Program Design Parameters outlined in the Program SoW or Program Design Document	Responsible	
Onboard new Device Partners and Aggregators	Responsible	
Conduct simulated and dispatch proving testing	Responsible	Support
Assign sites and Devices to the specific DER Program and define preset groups if any	Responsible	Support
Provide load modelling and forecasting of participating Devices	Responsible	Support
Schedule and perform Device dispatches	Responsible	
Provide Measurement and Verification (M&V) of participating Devices	Responsible	
Perform ongoing Device and fleet connectivity and health monitoring	Responsible	
Provide access to PCE to Device enrolment and load shift data via UI and API	Responsible	
Provide DER Program reporting		

Task 1 Deliverables

Task 1 deliverables to be provided by Service Provider are set forth in Scope 1, Task 2: DERMS Operation Services.

TASK 2: DER PROGRAM ADMINISTRATION SERVICES

Service Provider shall provide to PCE administrative support to ensure successful DER Program delivery ("DER Program Administration Services") in accordance with the tasks and deliverables outlined in Scope 1, Task 3: DER Program Administration Services.

In addition, the following subtasks provide more details about the roles and responsibilities of the Service Provider and PCE in the provision of DER Program Administration Services to onboard CCA-Administered DER Programs under the Gridshare Platform.

Subtask 2.1 Program contracting and design documents

Service Provider will work jointly with PCE to develop the program contracting and design documents as outlined in Subtask 3.2 of Scope 1 (i.e., the DER Program Onboarding Template, the Program Statement of Work (SoW), and the Program Design Document. A non-exhaustive list of the roles and responsibilities of the Service Provider and PCE in developing and maintaining the program contracting and design documents is provided in the following table:

Tasks: Program contracting and design documents	**Responsibility**	
	Service Provider	**PCE**
Define program objectives		Responsible
Define customer and Device eligibility criteria		Responsible
Define customer enrolment processes	Supporting	Responsible
Define dispatch parameters (window, duration etc.)	Supporting	Responsible
Define program incentive structure		Responsible
Define enrolment and performance metrics for reporting purposes	Supporting	Responsible
Determine M&V (incl. baseline and performance calculations, settlement point etc.)	Jointly Responsible	Jointly Responsible
Define program-specific service level agreements	Jointly Responsible	Jointly Responsible
Define Connected Capacity Reference Value (if not covered in Scope 1)	Jointly Responsible	Jointly Responsible
Establish program-specific budget	Jointly Responsible	Jointly Responsible

Subtask 2.2: Customer Management

Service Provider and PCE will both be responsible for customer enrolment and management services under CCA-administered DER Programs. Service Provider shall provide ongoing customer enrolment and eligibility processes as outlined in Subtask 3.3 of Scope 1. A non-exhaustive list of the roles and responsibilities of the Service Provider and PCE in managing customer enrolment and engagement under the DERMS platform is provided in the following table:

Tasks: Customer Management	Responsibility	
	Service Provider	**PCE**
Customer participation workflows		Responsible
Lead customer outreach and recruitment		Responsible
Provide list of participating customers to Service Provider for each DER Program		Responsible
Enrol Participants in Gridshare platform	Responsible	Support
Perform customer eligibility checks	Responsible	Support
Obtain end user consent for operation of Device (via customer participation agreement)		Responsible
Provide customer support and issue resolution	Support	Responsible
Customer payment functions		Responsible

Subtask 2.3: Program Payments

PCE shall be responsible for all payments to customers and implementers that are related to the installation of a Device. Incentive levels and payment structure for these "upfront incentives" are established in the CCA-Administered incentive programs outside of the DERMS framework. Service Provider shall be responsible for distributing any potential payments to customers and implementers that are related to the load shift performance of the Device when integrated under the Gridshare platform. The Program SoWs will establish the incentive levels and payment process for each DER Program.

A non-exhaustive list of the roles and responsibilities of the Service Provider and PCE in providing program payments to customers is provided in the following table:

Tasks: Customer Management	Responsibility	
	Service Provider	**PCE**
Distribute customer payments for installation of Device		Responsible
Distribute customer payments for load shift performance (if any)		Responsible

Task 2 Deliverables

Task 2 deliverables to be provided by Service Provider are set forth in Scope 1, Task 3: DER Program Administration Services.

SCOPE 2 – SERVICE FEES AND BUDGET

FEE STRUCTURE AND BILLING

PCE shall be responsible for, and shall pay to Service Provider, Services Fees in accordance with the fee structure outlined in Scope 1, and subject to the terms and conditions of the MSA. In particular, the following fees are expected to incur in the provision of Scope 2 services:

a) Connected capacity fee: volumetric fee charged based on the capacity integrated under the DERMS and expressed in $/kW-year;

b) Device Partner/ Aggregator setup fees: Certain Device Partners and Aggregators may charge a one-time setup fee to incorporate their Devices under the DERMS platform. These potential Device and Aggregator set-up fees will be billed as pass-through to PCE

c) Device API fees: OEMs may charge ongoing API fees to allow for integration of the Device under the DERMS platform. Potential Device ongoing API fees will be billed as pass-through

PCE shall pay to Service Provider the Services Fees outlined above in accordance with the billing and payment structure outlined in Scope 1 and the MSA.

NOT-TO-EXCEED BUDGET FOR SCOPE 2

Scope 2 Services Fees include the following fees to cover the integration of CCA-Administered DER Programs under the DERMS platform throughout the contract term (i.e., 5 years):

a) Estimated Connected Capacity Fee: $1,100,000

b) Estimated Device Partner/ Aggregator fees: $925,000

    1) Estimated Device Partner/ Aggregator setup fee: $200,000

    2) Estimated Device API fees: $725,000

c) Total forecasted fees: $2,025,000

The total not-to-exceed (NTE) budget for Scope 2 Services is set at $2.4 million (forecasted costs plus a ~20% contingency)

SCOPE 2 – SERVICE LEVEL STANDARDS

Scope 2 Service Level Standards provided by Service Provider are set forth in Scope 1, Service Level Standards.

Agreed and accepted as of the latest date on which this Scope 2 is executed by either Party:

LUNAR ENERGY LIMITED	**PENINSULA CLEAN ENERGY**
By:	By:
Name: Ed Franklin	Name:
Title: General Manager	Title:
Date:	Date:

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 13, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Shalini Swaroop, Chief Operating Officer

SUBJECT: Discussion of Peninsula Clean Energy's 2026-2030 Strategic Planning Elements and Process (Discussion)

RECOMMENDATION

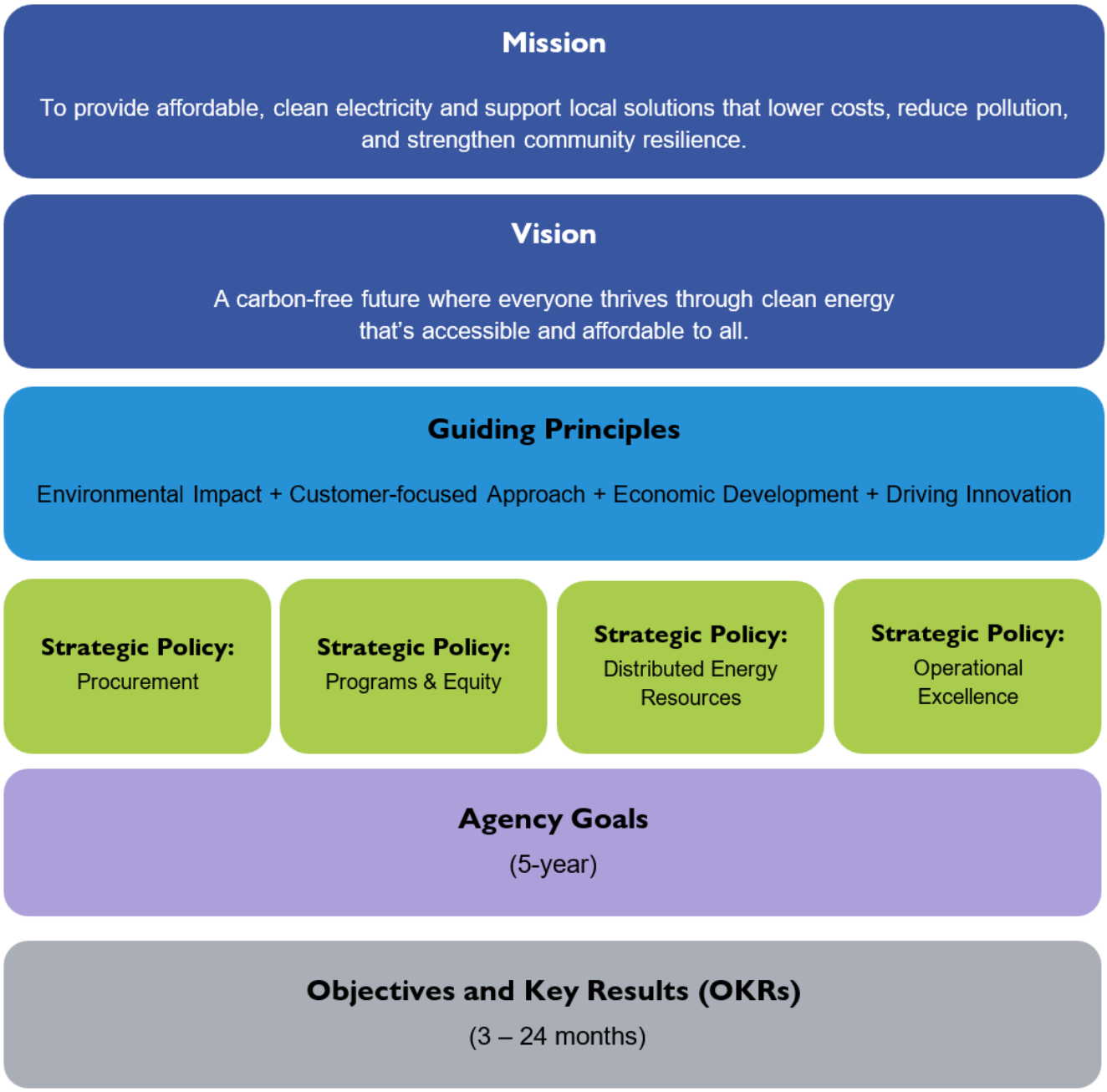
Discussion item only.

BACKGROUND

Peninsula Clean Energy (PCE) launched a strategic planning process in late Summer 2024 to update its strategic plan and focus its efforts for the period 2026-2030. Iterative content and feedback conversations have included various community partners, the Community Advisory Committee, PCE Staff, the Board Ad Hoc Committee, and the Board of Directors. These conversations focused on identifying the critical questions PCE needed to address in its next phase of growth and operations. From there, contributing participants provided input to potential strategies in response to these questions. From there, the Strategy Roadmap was created from extensive input and staff discussions to provide clear guidance for long-term and ongoing decisions. Included in the roadmap and for today's presentation are:

- Refreshed PCE mission and vision statements
- Addition of Agency guiding principles
- Addition of a new strategic policy focused on Operational Excellence

Following feedback and direction given at the January 23, 2025 Board of Directors meeting, the framework for the Strategic Plan was adjusted to better identify where the Strategic Policies align with PCE's current and future work. The updated framework is below.



After identifying interest in a refresh of PCE's mission and vision statements, Staff worked with IDLab to present initial "strawman options" to PCE leadership, the Community Advisory Committee (CAC) Strategic Planning Subcommittee, and the Executive Committee. These groups were then asked for to identify helpful phrases and top options. This feedback resulted in a single proposal for the refreshed mission and vision.

The updated framework has been presented to the Board Ad Hoc Strategic Planning Committee, the Board Executive Committee, and the Community Advisory Committee Strategic Planning Subcommittee and the Executive Committee for feedback and discussion. Following the May 22, 2025 Board of Directors meeting, Staff will focus on developing five-year agency goals with specific objectives and key results (OKRs) and return to the above-mentioned groups for feedback and input before bringing the completed 2026-2030 Strategic Plan to the full Board for adoption at its October 2025 Board Retreat.

DISCUSSION

The May 22, 2025 Board of Directors meeting will provide an opportunity to discuss the updated mission and vision statements, new guiding principles, and the four strategic policies as part of the review process for the 2026-2030 Strategic Plan.

Mission Statement Refresh:

PCE's mission statement should clearly articulate PCE's purpose and impact, clarify who the organization serves, and how PCE delivers value and frames accountability by providing a public statement of intent. The mission is grounded in the present while the vision describes what the world will look like when PCE fulfills that mission. PCE's current mission is: "to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions."

The majority of the PCE staff, Board Executive Committee, Ad Hoc Board Strategic Planning Committee, and Community Advisory Strategic Planning Committee felt the mission statement should be updated. By a large margin these groups supported the adoption of the following mission statement:

To provide affordable, clean electricity and support local solutions that lower costs, reduce pollution, and strengthen community resilience.

Vision Statement Refresh:

PCE's vision should paint the picture of a prosperous future led by our people and our community. It should inspire the PCE team, the Board and key stakeholders, and shape strategic planning by outlining what success looks like. PCE's current vision is: "a sustainable world with clean energy for everyone."

The majority of the PCE staff, Board Executive Committee, Ad Hoc Board Strategic Planning Committee, and Community Advisory Strategic Planning Committee felt the vision statement should be updated. Marketing staff, in consultation with others, took the most popular elements from the vetted vision statements and configured a new vision statement that reads:

A carbon-free future where everyone thrives through clean energy that's accessible and affordable to all.

Strategic Plan Guiding Principles:

PCE staff and other participants are recommending 4 Guiding Principles to serve as a foundation and "wrap around" the Agency strategic policies and five year goals that will follow.

1. **Environmental Impact.** PCE was founded on the vision of a sustainable world for everyone; a world in which energy choice could dramatically reduce harmful greenhouse gas emissions by accelerating the transition from a fossil-based grid to one that runs principally on carbon-free and renewable resources. PCE will continue to be a champion for the environment in our procurement and program initiatives. PCE will expand its focus to include environmental justice in its decision-making and new clean energy technologies that leverage local renewables to support energy resilience and reliability.

2. **Customer Focused Approach.** PCE would not exist without its customers. Keeping customer and community needs at the forefront of decision-making and program design while seeking to provide affordable energy is central to PCE's continued success and will be at the core of what will differentiate PCE from other providers in the future. PCE's customers are not only the clients it serves, they are also PCE's critical partners in the transition to a clean energy future.
3. **Economic Development.** In its quest to expand renewable energy production, support electrification, and reduce greenhouse gases, PCE will also serve as an economic engine for its service area. It will do this by considering affordability in rate-setting, investing in local decarbonization and electrification efforts, supporting the development of new renewable projects (additionality), and expanding the "green economy," including local workforce development and local jobs.
4. **Drive Innovation.** PCE will continue to be an innovator and thought leader in the CCA industry — recognized locally, statewide and nationally for its leading-edge renewable procurement strategies, scalable and replicable building and transportation policies and programs, workforce DEAI initiatives, and piloted distributed energy resource and advanced energy projects that can be replicated for greatest environmental, economic, and customer impact — and that show the way towards broad market change.

Strategic Policy - Procurement:

NOTE: This Strategic Policy is likely to evolve as PCE staff develops its updated Integrated Resource Plan (IRP) for submittal to the CPUC later in 2025.

Maintain a 100% zero-carbon power resource portfolio while working towards delivering 100% renewable energy on an annual basis by 2030 through strategic and cost-effective procurement of resources that maximize PCE's 24/7 hourly matching of renewable energy and load.

This policy statement encompasses the following key elements:

- Continued commitment to achieving industry-leading renewable energy targets.
- Built-in flexibility on the 24/7 hourly matching goal to balance against potential cost impacts on PCE's customers.
- An emphasis on strategic procurement to minimize cost and risk exposure to PCE, minimize cost pressures for customers, and maintain PCE's financial health.
- A target of 60% minimum Renewable Portfolio Standard (RPS) of PCE's annual retail sales prior to 2030, with flexibility on the remaining portfolio composition to balance incremental gains toward the 100%renewable goal while maintaining cost competitiveness.

Strategic Policy - Programs and Equity:

Reduce GHGs as quickly as possible by continuing to deliver programs and services that benefit PCE customers, including designing certain programs and services with equity and vulnerable customers' needs in mind by:

- Prioritizing rate affordability for all customers, and offering targeted discounts for some equity customer segments with greatest need
- Offering certain programs specifically designed for equity customers and, where

programs have broad customer participation, providing tiered levels of support that enhance access and assistance for more vulnerable customers
- Initiating policy initiatives and seeking third-party funding for programs that benefit vulnerable and equity customers and improve affordability and access to PCE services and benefits
- Engaging equity customers and communities by working with community-based organization (CBO) partners to support equity customers, engage diverse and vulnerable communities, and solicit feedback on ways to improve PCE's equity services

Strategic Policy - Distributed Energy Resources:

Over the next five years, PCE will prioritize efforts to accelerate the development of carbon-free distributed energy resources (DERs) in order to further innovation and market transformation of distributed energy technologies, accelerate greenhouse gas (GHG) reductions, and provide customer and community resilience, including:

- Expanded DER project development support.
- Expanded customer access to capital in support of DER/electrification projects.
- Expanded technical assistance and support for local resiliency projects.
- Drive relevant policy development and advocacy.

Strategic Policy - Operational Excellence:

PCE will invest in its people, infrastructure, systems, and processes to enhance efficiency, resiliency, and adaptability. PCE will ensure that its operations are aligned with industry best practices; leverage technology; support a high-performing workforce equipped to meet evolving customer and stakeholder needs; and achieve its diversity, equity, access, and inclusion (DEAI) commitments. Operational enhancements drive PCE's ability to partner effectively with the customers and communities it serves, adhere to the guiding principles, and advance its mission impact. This policy includes specific guidance around:

- Maintaining effective and strong Agency governance
- Scaling process optimization through effective use of technology
- Empowering an agile and diverse workforce
- Driving decisions with good data
- Ensuring cybersecurity and IT resilience
- Promoting equity and accessibility in operations
- Effectively managing risk and maintaining compliance

Our Strategic Plan consultant, La Piana, has developed a graphic Executive Summary that highlights the key elements of PCE's Strategic Plan as discussed above. These elements are also included in the Draft PCE Strategy Roadmap, which offers additional context, rationale, and definitions. Both documents are attached; however, Staff encourages focus on the Executive Summary, as it represents the final product of Phase 1, apart from updates to the Strategic Policy on Procurement, which will be brought back to the Board later in 2025. Following this, Phase 2 will involve Staff development of five-year Agency goals with specific objectives and key results (OKRs). Staff will return to the various review groups in late Summer 2025 for discussion/feedback on the five-year Agency goals. The full 2026-2030 Strategic Plan (Phase 1 and Phase 2) will return to the Board for final approval at the October 23, 2025 Board Retreat.

ATTACHMENTS:

PCE Strategy Roadmap Exec Summary 05-14-25.pdf
PCE DRAFT Strategy Roadmap 05-14-25.pdf

PENINSULA CLEAN ENERGY

2025 - 2030

Strategy Roadmap

Executive Summary



Presented By:

LA PIANA CONSULTING

Context

Peninsula Clean Energy (PCE) launched a strategic planning process in Summer 2024 to focus its efforts through 2030. This Strategy Roadmap is focused on Board-driven decisions. Staff-driven decisions will be added over the coming months and added to create a complete Strategic Plan, to be presented for Board approval in October 2025.

This Roadmap was developed through iterative conversations with staff, the Board, and a range of community members.



Mission & Vision

Based on the work completed in 2024, marketing staff initiated an effort to review and, as needed, update PCE's mission and vision statements to ensure strong alignment with the organization's guiding principles.

Mission Statement

All staff, most Board members, and many Community Advisory Committee members were consulted and a strong majority supported adoption of a new mission statement:

To provide affordable, clean electricity and support local solutions that lower costs, reduce pollution, and strengthen community resilience.

Vision Statement

Staff, Board members, and Community Advisory Committee members were also asked for their input into the vision statement. Marketing staff, in consultation with others, took the most popular elements from the vision statements that were vetted and created this new proposal:

A carbon-free future where everyone thrives through clean energy that's accessible and affordable to all.

PENINSULA CLEAN ENERGY

Guiding Principles



Environmental Impact

PCE was founded on the vision of a sustainable world for everyone; a world in which energy choice could dramatically reduce harmful greenhouse gas emissions by accelerating the transition from a fossil-based grid to one that runs principally on carbon-free and renewable resources. PCE will continue to be a champion for the environment in our procurement and program initiatives. PCE will expand its focus to include environmental justice in its decision-making and new clean energy technologies that leverage local renewables to support energy resilience and reliability.



Customer-Focused Approach

PCE would not exist without its customers. Keeping customer and community needs at the forefront of decision-making and program design while seeking to provide affordable energy is central to PCE's continued success and will be at the core of what will differentiate PCE from other providers in the future. PCE's customers are not only the clients it serves, they are also PCE's critical partners in the transition to a clean energy future.

Guiding Principles



Economic Development

In its quest to expand renewable energy production, support electrification, and reduce greenhouse gases, PCE will also serve as an economic engine for its service area. It will do this by considering affordability in rate-setting, investing in local decarbonization and electrification efforts, supporting the development of new renewable projects (additionality), and expanding the "green economy," including local workforce development and local jobs.



Driving Innovation

PCE will continue to be an innovator and thought leader in the CCA industry — recognized locally, statewide and nationally for its leading-edge renewable procurement strategies, scalable and replicable building and transportation policies and programs, workforce DEAI initiatives, and piloted distributed energy resource and advanced energy projects that can be replicated for greatest environmental, economic, and customer impact — and that show the way towards broad market change.

Strategic Policy:
Procurement

NOTE: This Strategic Policy is likely to evolve as PCE Staff develop its Integrated Resource Plan (IRP) to submit to the CPUC later in 2025.

The question posed was, *what are PCE's procurement priorities and how do affordability concerns affect those priorities?*

The proposed updated policy statement is that PCE will:
Maintain a 100% zero-carbon power resource portfolio while working towards delivering 100% renewable energy on an annual basis by 2030 through strategic and cost-effective procurement of resources that maximize PCE's 24/7 hourly matching of renewable energy and load.

This policy statement encompasses the following key elements:

- Continued commitment to achieving industry-leading renewable energy targets.
- Built-in flexibility on the 24/7 hourly matching goal to balance against cost impacts on PCE's customers.
- An emphasis on strategic procurement to minimize cost and risk exposure to PCE, minimize cost pressures for customers, and maintain PCE's financial health.
- A target of 60% minimum Renewable Portfolio Standard (RPS) of PCE's annual retail sales prior to 2030, with flexibility on the remaining portfolio composition to balance incremental gains toward the 100% renewable goal while maintaining cost-competitiveness.

[1] A "zero carbon" power resource portfolio might include *de minimus* emissions from geothermal facilities.

Strategic Policy:

Programs & Equity

The question posed was, *how can PCE continue to deliver services within an equity framework while also scaling decarbonization?*

The proposed policy position is for PCE:
To reduce GHGs as quickly as possible by continuing to deliver programs and services that benefit PCE customers, including designing certain programs and services with equity and vulnerable customers' needs in mind by:

- Prioritizing rate affordability for all customers, and offering targeted discounts for some equity customer segments with greatest need.
- Offering certain programs specifically designed for equity customers and, where programs have broad customer participation, providing tiered levels of support that enhance access and assistance for more vulnerable customers.
- Initiating policy initiatives and seeking third-party funding for programs that benefit vulnerable and equity customers and improve affordability and access to PCE services and benefits.
- Engaging equity customers and communities by working with community-based organization (CBO) partners to support equity customers, engage diverse and vulnerable communities, and solicit feedback on ways to improve PCE's equity services.

Strategic Policy:

Distributed Energy Resources

The question posed was, *are there any new or enhanced areas of work that PCE should engage with to further support decarbonization and electrification in California?*

The proposed policy is that:
Over the next five years, PCE will prioritize efforts to accelerate the development of carbon-free distributed energy resources (DERs) in order to further innovation and market transformation of distributed energy technologies, accelerate greenhouse gas (GHG) reductions, and provide customer and community resilience, including:

- Expanded DER project development support.
- Expanded customer access to capital in support of DER/electrification projects.
- Expanded technical assistance and support for local resiliency projects.
- Drive relevant policy development and advocacy.

Strategic Policy:

Operational Excellence

The need identified was to articulate a policy of continuous growth and excellence in PCE operations to maximize mission impact; invest in optimal teams, systems, and business practices; and ensure operations align with the guiding principles.

The proposed policy is that:
PCE will invest in its people, infrastructure, systems, and processes to enhance efficiency, resiliency, and adaptability. PCE will ensure that its operations are aligned with industry best practices; leverage technology; support a high-performing workforce equipped to meet the evolving customer and stakeholder needs; and achieve its diversity, equity, access, and inclusion commitments. Operational enhancements drive PCE's ability to partner effectively with the customers and communities it serves, adhere to the guiding principles, and advance its mission impact. This policy includes specific guidance around:

- Scaling process optimization through effective use of technology.
- Empowering an agile and diverse workforce.
- Driving decisions with good data.
- Ensuring cybersecurity and IT resilience.
- Promoting equity and accessibility in operations.
- Effectively managing risk and maintaining compliance.
- Maintaining effective and strong Agency governance.



Presented By:

LA PIANA CONSULTING

PENINSULA CLEAN ENERGY

DRAFT 2025 – 2030 Strategy Roadmap

v 5.14.25

La Piana CONSULTING

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Strategy Roadmap

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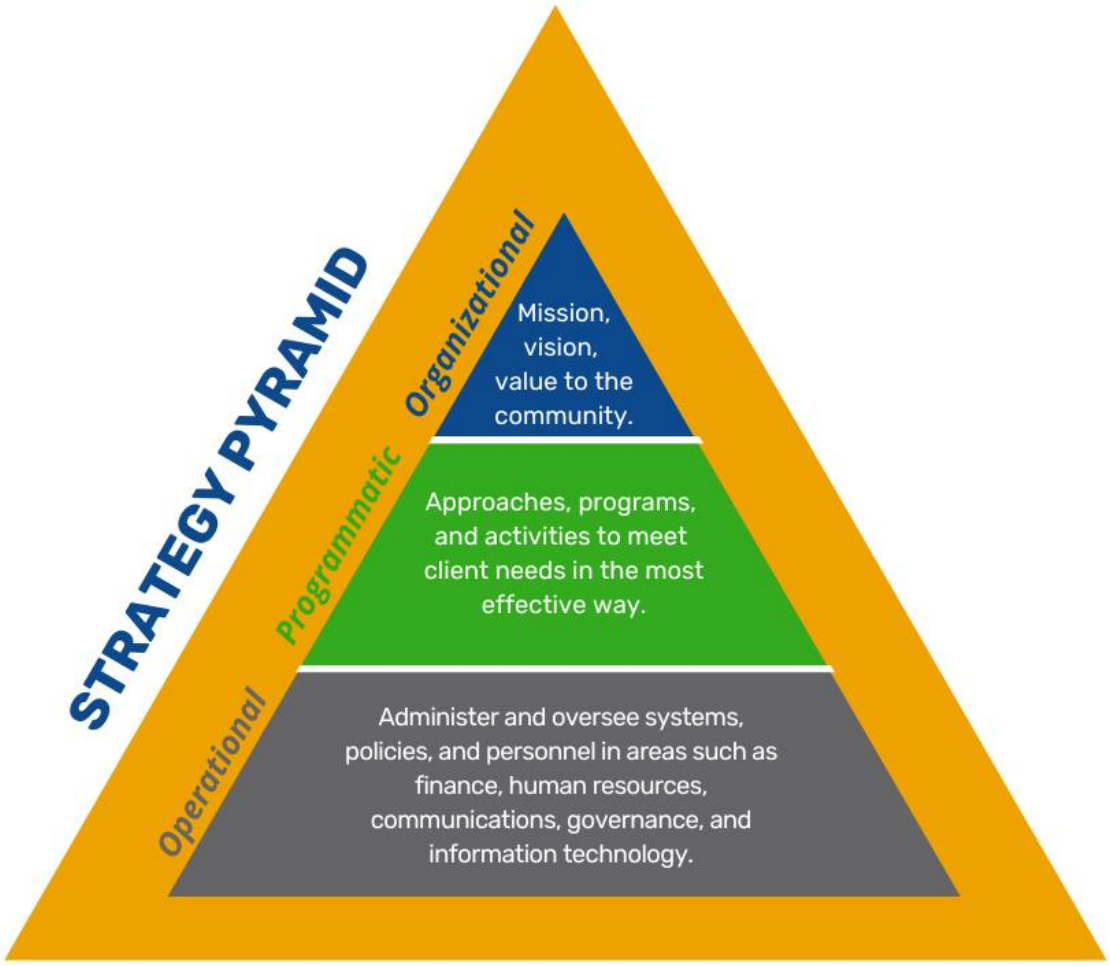
Process Summary

Process Purpose and Overview

Peninsula Clean Energy (PCE) engaged La Piana Consulting in the early Summer of 2024 to lead its strategic planning process. The primary outcomes PCE sought from the process were a strategic framework providing a clear path forward and the flexibility to anticipate and respond to a constantly changing environment.

The Strategy Pyramid and Process Outline

PCE is advancing its strategy development and planning effort through three distinctive stages. These three stages of work align with the graphic below, including Organizational Strategy, Programmatic Strategy, and Operational Strategy.

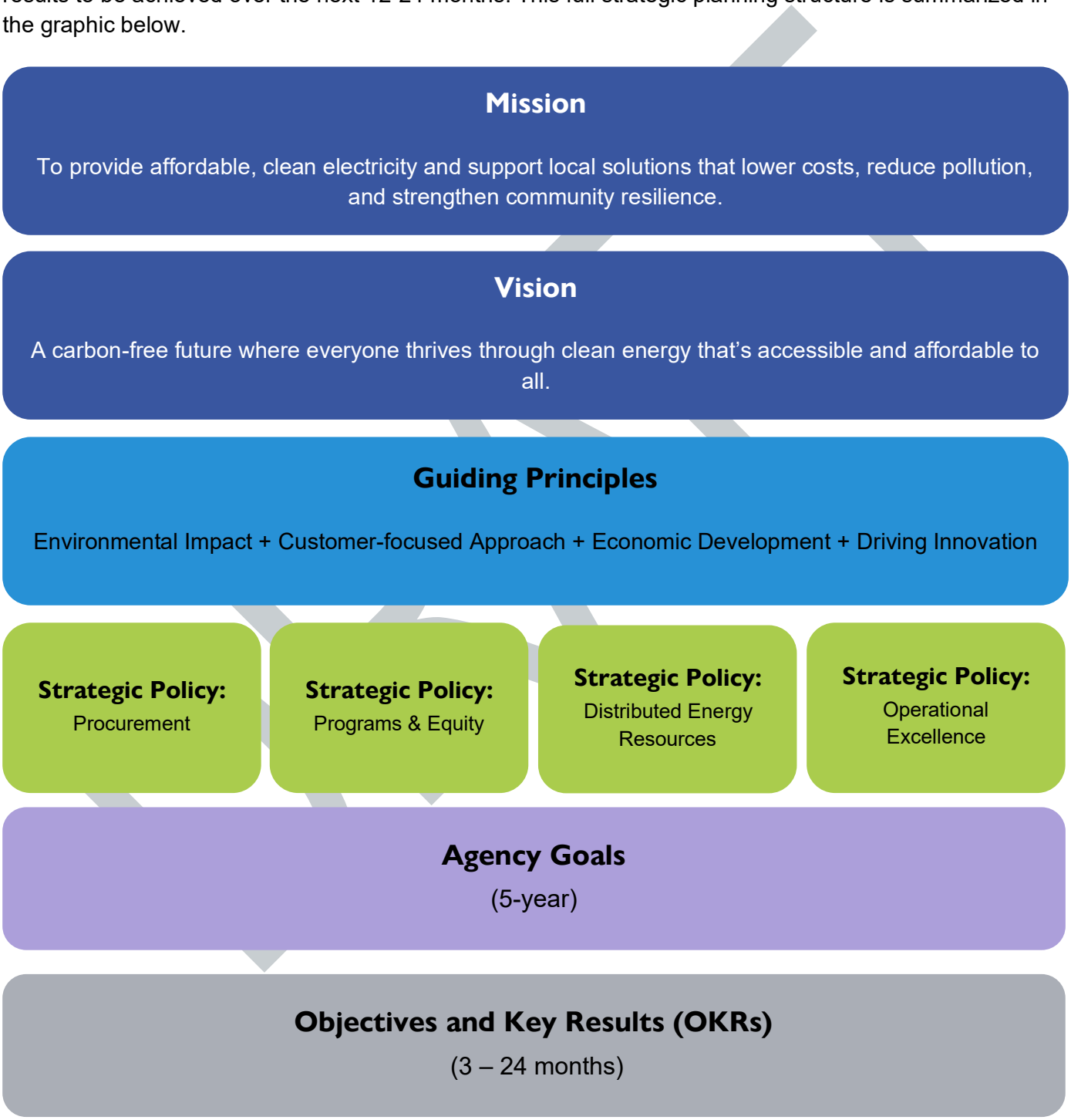


Strategy Roadmap

This Strategy Roadmap is focused on PCE's proposed Organizational Strategy, with high-level elements of Programmatic and Operational Strategy included. This Roadmap includes:

- Updated mission and vision statements
- New guiding principles
- Four strategic policies

Once the Board approves the framework inherent in this Strategy Roadmap, staff will develop programmatic and operational strategies with a particular focus on five-year agency goals, specific objectives and key results to be achieved over the next 12-24 months. This full strategic planning structure is summarized in the graphic below.



Also included in this process was the development of two foundational tools: defining PCE's future value proposition and developing a set of decision-making criteria to guide PCE's strategic choices throughout and beyond this process. These tools are included in the appendices.

Community and Staff Input

This process has been driven by the extensive engagement of staff, community members, and the Board.

Project Team

A Project Team including three staff members has guided this process as thought partners and logistical guides for La Piana. The Project Team has met approximately every other week during the process.[1]

Board Ad Hoc *Strategic Planning Committee*

The Board's *Ad Hoc* Strategic Planning Committee included five members of the Board and provided substantial input into the content of this process — including shaping the critical questions and proposed organizational strategy. The Committee has met multiple times during the process.[2]

Staff

All staff have been engaged both in the formative and latter stages of this process through small group conversations and several all-staff meetings.

Senior Staff

Senior staff have been actively involved by participating in all *Ad Hoc* Committee meetings and meeting independently approximately 6-8 times. Specific senior staff members with primary responsibility for implementing the organizational strategy were responsible for working with their teams to review information gathered and craft policy proposals for *Ad Hoc* Committee review.

Community

Community groups were engaged both in the formative and latter stages of this process through small group conversations. Groups consulted in the early stages of the process included the Community Advisory Committee, partner Community-based Organizations, Labor, and City and County sustainability staffs (including the primary liaison with Los Banos). The Community Advisory Committee and its Strategic Planning committee has provided input as the process progressed.

Mission and Vision

Based on the work completed in 2024, marketing staff initiated an effort to review and, as needed, update PCE's mission and vision statements to ensure strong alignment with the organization's guiding principles.

[1] Project Team members initially included Shalini Swaroop and Jana Kopyciok-Lande. Beginning in January 2025 the Project Team consisted of Shalini Swaroop and Nelly Wogberg.
[2] *Ad Hoc* Strategic Planning Committee members included Adam Loraine, Donna Colson, Leslie Ragsdale, Marty Medina, and Rick DeGolia.

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Updated Mission Statement

PCE's current mission statement is: To reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions.

The majority of the PCE staff, Board Executive Committee, *Ad Hoc* Board Strategic Planning Committee, and Community Advisory Strategic Planning Committee felt the mission statement should change. By a large margin these groups supported the adoption of one of the potential new statements presented.

Proposed Updated Mission Statement

To provide affordable, clean electricity and support local solutions that lower costs, reduce pollution, and strengthen community resilience.

Updated Vision Statement

PCE's current vision statement is: A sustainable world with clean energy for everyone.

The majority of the PCE staff, Board Executive Committee, *Ad Hoc* Board Strategic Planning Committee, and Community Advisory Strategic Planning Committee felt the vision statement should change. They did not, however, have a preferred choice.

Proposed Updated Vision Statement

Marketing staff, in consultation with others, took the most popular elements from the vetted vision statements and configured a new proposal:

A carbon-free future where everyone thrives through clean energy that's accessible and affordable to all.

Guiding Principles

As PCE progressed through this strategic planning process, it became clear that there was a need to develop guiding principles. Guiding principles outline the broad approach to enhance PCE's future value proposition and direct its decision-making towards achieving significant mission impact. PCE's guiding principles are:

Environmental Impact. PCE was founded on the vision of a sustainable world for everyone; a world in which energy choice could dramatically reduce harmful greenhouse gas emissions by accelerating the transition from a fossil-based grid to one that runs principally on carbon-free and renewable resources. PCE will continue to be a champion for the environment in our procurement and program initiatives. PCE will expand its focus to include environmental justice in its decision-making and new clean energy technologies that leverage local renewables to support energy resilience and reliability.

Customer-Focused Approach. PCE would not exist without its customers. Keeping customer and community needs at the forefront of decision-making and program design while seeking to provide affordable energy is central to PCE's continued success and will be at the core of what will

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differentiate PCE from other providers in the future. PCE's customers are not only the clients it serves, they are also PCE's critical partners in the transition to a clean energy future.

Economic Development. In its quest to expand renewable energy production, support electrification, and reduce greenhouse gases, PCE will also serve as an economic engine for its service area. It will do this by considering affordability in rate-setting, investing in local decarbonization and electrification efforts, supporting the development of new renewable projects (additionality), and expanding the "green economy," including local workforce development and local jobs.

Driving Innovation. PCE will continue to be an innovator and thought leader in the CCA industry — recognized locally, statewide and nationally for its leading-edge renewable procurement strategies, scalable and replicable building and transportation policies and programs, workforce DEAI initiatives, and piloted distributed energy resource and advanced energy projects that can be replicated for greatest environmental, economic, and customer impact — and that show the way towards broad market change.

Strategic Policies

Context

At the outset of this process, participants identified three critical questions to focus on[3]. These questions, if resolved, provide broad guidance for ongoing decision-making by PCE:

1. What are PCE's procurement priorities and how do affordability concerns affect those priorities?
2. How can PCE continue to deliver services within an equity framework while also scaling decarbonization?
3. Are there any new or enhanced lines of business that PCE should engage in to further support decarbonization and electrification in California?

The resolution of each of these critical questions resulted in a strategic policy, providing more guidance for ongoing decision making. As the process continued, the need for a fourth strategic policy related to operations became clear and was added.

Strategic Policy: Procurement

NOTE: This Strategic Policy is likely to evolve as PCE Staff develop its Integrated Resource Plan (IRP) to submit to the CPUC later in 2025.

Context

PCE's mission is to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. PCE's vision is a sustainable world with clean energy for everyone.

[3] Another question that has been raised is PCE's stance on geographic expansion. Resolving this is not central to this process and can be addressed at a later time.

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PCE's power procurement strategy aims to displace fossil fuel generation on the grid and to serve customers with renewable energy each hour of the day while keeping costs low and meeting all regulatory requirements. PCE has been serving its customers with 100% clean energy on an annual basis since 2021.

Strategic Policy

In April 2024, PCE's Board of Directors approved and adopted the following Strategic Plan Priority, which serves as a general policy-level framework for future power procurement activities:

> *Deliver 100% renewable energy on an annual basis by 2030 through strategic and cost-effective procurement of resources that maximize PCE's 24/7 hourly matching of renewable energy and load.*

While the current policy statement accurately reflects PCE's forward-looking renewable goals, in an effort to emphasize PCE's commitment to maintain a 100% zero-carbon resource portfolio at all times, the new policy statement is proposed to be:

> *Maintain a 100% zero-carbon power resource portfolio while working towards delivering 100% renewable energy on an annual basis by 2030 through strategic and cost-effective procurement of resources that maximize PCE's 24/7 hourly matching of renewable energy and load.*

This policy statement encompasses the following key elements:

- Continued commitment to achieving industry-leading renewable energy targets.
- Built-in flexibility on the 24/7 hourly matching goal to balance against cost impacts on PCE's customers.
- An emphasis on strategic procurement to minimize cost and risk exposure to PCE, minimize cost pressures for customers, and maintain PCE's financial health.
- A target of 60% minimum Renewable Portfolio Standard (RPS) of PCE's annual retail sales prior to 2030, with flexibility on the remaining portfolio composition to balance incremental gains toward the 100% renewable goal while maintaining cost-competitiveness.

Measurable Expectations (What PCE is Doing)

Since the adoption of PCE's strategic procurement priority earlier in 2024, PCE released two solicitations for long-term renewable and storage resources and received numerous quality project offers. PCE's updated selection criteria focuses on:

- Portfolio fit to advance 24/7 hourly renewable matching
- Maximizing resource value
- Minimizing operational risk
- Providing benefits to communities surrounding project sites

Half a dozen projects have been shortlisted through the solicitation process. Over the next two years, PCE expects to contract an additional 1GW of new renewable and storage capacities to contribute to the renewable transition on the grid.

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Rationale

Maintaining the recently updated renewable goal and clarifying procurement criteria is recommended for the following reasons:

1. Since April 2024, there have been no significant changes in resource availability or pricing. Therefore, the analysis previously performed that justified the adjustment of PCE's renewable target is still valid. Pursuing a more aggressive 24/7 goal immediately could be both costly and risky.

2. The adopted strategic policy continues to focus on the concept of additionality through the 24/7 hourly matching approach, which has been PCE's long-standing strategy to facilitate deployment of new renewable and storage capacities on the grid in order to displace fossil fuel generation and reduce emissions.

3. While the adopted strategic policy is not the lowest cost option, it retains flexibility, maintaining room for adjustment on an annual basis based on market conditions and PCE's financial well-being, which in turn provides opportunities to minimize rate impacts to customers.

4. Accelerating GHG reduction through the 24/7 hourly matching approach is important to push the boundaries for customers interested in achieving rapid carbon reductions or have sustainability goals of their own. Continuing to procure towards a 24/7 target could create opportunities for future products that might be desired by such customers.

Future Policy Considerations

While the proposed strategic policy statement above provides adequate procurement guidance for the next five years, it is imperative for PCE to continue exploring alternatives for future policy considerations as the market keeps on evolving and the political, economic, and regulatory environments change. PCE will continue to look for opportunities to accelerate GHG reduction including considering additional concepts such as:

- How to create an ecosystem that could better facilitate an industry transition from an annual renewable to a hourly renewable framework
- How to adjust PCE's renewable targets if there are major changes to the current tax credit rules and import tariffs
- Whether or not a 24/7 carbon-free approach would be more viable than 24/7 renewable
- Whether minimizing marginal grid emissions should be used as the new metric
- Whether it is feasible to pursue or prioritize carbon-free capacity procurement in addition to electricity procurement

Strategic Policy: Programs & Equity

Context

Again, PCE's mission is to reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions. PCE's vision is a sustainable world with clean electricity for everyone.

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PCE's programs and services address multiple goals to reduce climate pollution, lower electricity costs, increase resilience, support economic development and underserved communities, and ensure a sustained customer base and business.

In 2021, PCE's Board of Directors approved and adopted the following Strategic Plan Priority, which serves as a general policy-level framework for program activities:

> *Contribute to our community reaching a goal of 100% greenhouse gas-free in buildings and transportation by 2035.*

PCE's core programmatic goal is to decarbonize communities by leveraging market forces and policy to drive affordability and ultimately achieve clean energy solutions without the need for market support.

In 2021, PCE's Board of Directors also adopted a strong DEAI Policy, and in 2022 a DEAI Action Plan to direct staff in how to implement it. This policy requires that staff report to the Board twice yearly on progress in implementing the Action Plan.

As part of this Action Plan, PCE developed the Diversity, Equity, Accessibility, and Inclusion (DEAI) Decision-Making Framework which establishes guidelines for how different customers should benefit from the organization's investments. It states:

> *While not all customers will always benefit equally from our expenditures, we should take care to ensure that we are not inadvertently exacerbating inequalities by:*
>
> - *Distributing ratepayer funds from less wealthy to wealthier[4] customers, or*
> - *Inadvertently discriminating based on race, ethnicity, or country of origin in the distribution of PCE customer benefits (per Title VI of the Civil Rights Act)*

PCE is committed to serving its equity customers with thoughtfulness and intentionality. "Equity customers" is an umbrella term that represents a range of customer groups but is centered on customers who are vulnerable to economic, environmental, societal, or other pressures. PCE will focus its efforts on serving three types of equity customers:

- *Low-income Customers:* Customers with household incomes at or below 80% of area median income (AMI). [5]
- *Customers with Greatest Need for Support.* PCE is striving towards supporting vulnerable customers under its self-funded programs. At this time, there is no standard definition available to identify such customers, therefore, these customers will be identified on a program-by-program basis. For example, a potential resiliency program may focus on a coastal area with frequent outages.

[4] Definition: Wealth, or net worth, is the value of assets owned by a family or an individual (such as a home or a savings account) minus outstanding debt (such as a mortgage or student loan). See https://www.pewresearch.org/social-trends/2020/01/09/trends-in-income-and-wealth-inequality/.
[5] Per the US. Department of Housing (HUD). See at https://www.huduser.gov/portal/datasets/il/il2024/select_Geography.odn. In PCE's service territory there are approximately 56,000 customers that are at or below 80% AMI, which represents about 20% of PCE's residential customer accounts.

- *Disadvantaged Communities (DACs):* DACs refer to the areas throughout California that suffer most from a combination of economic, health, and environmental burdens. These burdens include poverty, high unemployment, air and water pollution, the presence of hazardous wastes as well as high incidence of asthma and heart disease. California's official definition of DAC is the top 25% of census tract per the CalEnviroScreen (CES) tool.[6]

Equity or vulnerable customers are disproportionally impacted by climate change, experience additional energy burdens, and face unique challenges such as language barriers, distrust, and non-ownership of assets — all of which create barriers to receiving the benefits of market transformation. PCE's programs provide targeted investments that deliver benefits to equity customers. That said, supporting equity populations through many customer-facing programs is generally more expensive on a per capita basis, often leaves out equity customer segments, may not take into account the difficulty in reaching equity customer segments, and/or emissions reductions can be less certain for more accessible technologies.

Strategic Policy

PCE's policy is to reduce GHGs as quickly as possible by continuing to deliver programs and services that benefit PCE customers, including designing certain programs and services with equity and vulnerable customers' needs in mind by:

- Prioritizing rate affordability for all customers, and offering targeted discounts for some equity customer segments with greatest need
- Offering certain programs specifically designed for equity customers and, where programs have broad customer participation, providing tiered levels of support that enhance access and assistance for more vulnerable customers
- Initiating policy initiatives and seeking third-party funding for programs that benefit vulnerable and equity customers and improve affordability and access to PCE services and benefits
- Engaging equity customers and communities by working with community-based organization (CBO) partners to support equity customers, engage diverse and vulnerable communities, and solicit feedback on ways to improve PCE's equity services

Measurable Expectations (What PCE is Doing)

To reduce GHG emissions quickly, PCE will prioritize applying its self-funded investments in ways that:

- Can be leveraged for scaling
- Are ready to deploy rapidly
- Are cost-effective by delivering relatively high GHG reduction for the dollars provided
- Avoid engaging in PCE self-funded programs in ways that duplicate existing programs operated by community partners or supported by third-party funders

As implied in the policy description above, PCE will incorporate equity considerations into its decision-making in several specific areas:

[6] See CES tool at https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40. Around 23,000 of PCE's customers are located in the top 25% of DACs, which represents around 8% of PCE's residential customer accounts.

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- Rates and Discounts
  - Providing cost-competitive rates to enhance community affordability
  - Expanding the DAC-GT program
  - Considering new opportunities to provide rate assistance
- Targeted programs and tiered support
  - Continuing to maintain current levels of PCE's self-funded program revenues (approximately one-quarter of the total) to support efforts by equity customers to reduce GHG
  - Adhering to PCE's DEAI Decision-Making Framework to ensure that ratepayer funds are not inadvertently distributed from less wealthy to wealthier customers
  - Where feasible, increasing the tiers of support in its broad-based programs so that more support is offered to equity customers to enhance access
  - Identifying customers that may benefit from greater support on a program-by-program basis and identifying ways to provide tailored assistance for full program access
- Policy initiatives and third-party funding
  - Advocating for policies that center equity customers' interests
  - Advancing affordability policies at the California Public Utilities Commission, California Energy Commission, state legislature, and other regulatory bodies
  - Continuing to offer technical support for cities considering reach codes, which benefit equity customers through new affordable housing being built EV ready and with clean appliances
  - Securing state funding for equity programs such as Equitable Building Decarbonization, Self-Generation Incentive Program, and CPUC energy efficiency funding
  - Identifying and pursuing additional opportunities as they arise
- Equity community engagement
  - Creating and implementing community engagement plans to inform program planning, implementation, and evaluation
  - Sustaining the Community Grant program and focus groups
  - Engaging in ongoing program review to ensure its programs are as effective as possible at reducing GHG and reducing barriers to access by equity customers
  - Identification of equity customers through CBOs

Rationale

This proposed policy retains a strategic emphasis on rapid scaling of GHG reductions while introducing key new concepts in how PCE will support equity customers. Rapid scaling of GHG reduction adheres to PCE's primary mission while also delivering longer-term benefits to all ratepayers including equity customers. Equity customers benefit both through GHG reductions and associated impacts as well as by lowering the costs of products and services needed in the transition to GHG-free electricity. This policy aligns with PCE's

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decision-making criteria by emphasizing GHG reductions while supporting PCE's equity commitments and value proposition.

Relevant Information

During the vetting process, the Board and community members asked for more information to support policy decisions made in this process. The information below is not complete and more will be generated when PCE moves into Programmatic and Operational Planning. However, the information here does provide further background so that Board decisions are well informed.

- *What is PCE's current program investment to support equity customers?*

  Currently, PCE invests approximately a quarter of its self-funded program budget in serving low-income customers. This percentage does *not* reflect additional funding that PCE is and will seek from external public funding sources that benefit PCE's low-income customers, such as the DAC-GT program, Self-Generation Incentive Program, and Equitable Building Decarbonization program. The financial impact of these public funds targeted toward low income and/or equity programs may be approximately $9 million in 2025-26. These numbers also do not include any electricity rate initiatives that PCE offers to low-income customers (e.g., freezing rates at previous levels or the December 2023 $300 bill credit to CARE/FERA customers).

- *What is the level of GHG reduction for dollars invested by different programs?*

  Determining the exact level of GHG reduction per dollar invested in PCE's energy programs is a complex task. PCE staff are currently working on a detailed analysis and can only provide initial conceptual trends at this time. The table below presents an overview of PCE's eight existing energy programs and initiatives that benefit residential customers, listed in order of increasing cost for GHG reduction per sector based on historic figures (still under review). The table also describes how quickly GHG reductions are expected (GHG immediacy) and if the concept is scalable (note that "demand-constrained" means the uptake does not exceed available funds (i.e., more funds do not result in more uptake)).

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Table 1: Conceptual analysis of PCE's residential programs' GHG benefits and costs.

Program	Market target	Scalability & market dynamic	Benefits & Costs	GHG immediacy
Buildings				
Reach codes	All	High, through replication in state policy	High GHG reduction, very low cost	Not immediate but grows rapidly as new buildings are built and existing ones are being remodeled
Appliance	Mainly owner-occupied single family	High scalability, essential for early market transformation	High GHG, moderate cost	Immediate
Home Upgrade income qualified	Owner-occupied single family	Med-high, core of market transformation	Med GHG, expensive but significant co-benefits (including non-energy home repairs)	Immediate
Distributed Energy Resources (DERs)				
Residential solar & storage (forthcoming)	Owner-occupied single family	Med-high, likely popular to lower bills	Significant financial benefit, makes electrification attractive	Indirect GHG benefits through load shaping
Community Solar	Low-income customers located in DACs	Med-low, highly dependent on state funding	Moderate; customers receiving a material, long-term bill discount	Low; higher when program evolves to include storage
Transportation				
E-Bikes	Broad low-income	Uptake is slowing but could be med-high	Theoretically high GHG at low cost but data is uncertain (self-reported subset of participants)	Depends on usage
Used EV	Broad low-income	Uptake is low such that further investment will not increase uptake (demand-constrained)	Low cost Delivers customer financial benefits	Immediate but low GHG additionality Used vehicles would likely have entered market anyway
EV Ready (EV charging)	Multifamily (& other)	Demand-constrained but essential for equity and opening up the EV market	High GHG eventually, moderate cost	Low-med, can take years for vehicles to start using chargers depending on site

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- *Do we need or do we have any information about what equity customers say they want/value/need?*

  Multiple workshops and focus groups with equity customers in both English and Spanish find that these customers are interested in:

  - Lower rates and help enrolling in discount programs
  - More program offerings that are accessible for renters
  - Improving indoor air quality in their homes
  - Resilience, including access to air conditioning during heat emergencies
  - Increased access to EVs

Strategic Policy: Distributed Energy Resources

Context

The California energy landscape is in a constant state of transition as it advances towards meeting the State's aggressive decarbonization goals.[7] PCE must continue to be an innovator and thought leader in California's clean energy transition while focusing on its core strengths. Currently, PCE focuses on providing electrical services to its customers while PG&E provides delivery (i.e., transmission and distribution (T&D)) services. PCE's core competencies include (1) the procurement of centralized, large-scale front-of-the-meter (FTM) generation and storage projects (supply-side) and (2) offering beneficial energy programs to its customers for a variety of behind-the-meter (BTM) solutions (demand side). PCE must consider if there are other lines of business that it should engage in, or if its existing lines of business should be modified, to adjust to new and emerging realities during California's transition to a decarbonized and decentralized energy economy.

Through this Strategic Planning process, a variety of possible new or enhanced lines of business were identified and considered for prioritization. Incorporated in these options — as vetted with PCE staff, the Board of Directors, and community members — was the concept of focusing on further fostering the development of distributed energy resources (DERs). DERs are defined as:

> *"Distributed Energy Resources (DERs) are assets on the distribution grid, either at the consumer's side of the energy meter (behind-the-meter DERs) or in front of the customer meter connected to the distribution grid (front-of-the-meter DERs). They can be used individually or in aggregate to provide value to the grid and individual customers."*

Strategic Policy

Over the next five years, PCE will prioritize efforts to accelerate the development of carbon-free distributed energy resources (DERs) in order to further innovation and market transformation of distributed energy technologies, accelerate greenhouse gas (GHG) reductions, and provide customer and community resilience.

[7] SB 100 (2018) requires that all retail electricity resources must be renewable or zero carbon by 2045.

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Measurable Expectations (What PCE is Doing)

The initiative to foster DERs will include an array of activities to support the diverse needs of different customers (not in order of priority):

- *DER Project Development*: Expanded and new means to support the installation of both BTM and FTM DERs in PCE's service area, such as:
  - Growing PCE's Virtual Power Plant (VPP) by leveraging customer-sited assets for grid flexibility and reliability
  - Developing front-of-meter (FTM), distribution-connected projects such as microgrids or local community solar+storage projects in collaboration with local communities
- *Financial Services*: Expanded and new means of increasing customer access to capital in support of DER/electrification projects to install BTM DER projects, such as:
  - Offering power purchase agreements (PPAs) for BTM solar+storage projects to an expanded customer group by accessing third-party financing
  - Offering on-bill financing to customers for carbon-free energy investments with varying interest rates based on financial need
  - Exploring the ownership and operation of a spectrum of dispatchable energy assets, including generation, electricity storage, electric vehicle (EV) charging infrastructure, building loads, and other tools to meet PCE's emission reduction and equity goals.
- *Consulting & Technical Assistance*: Expanded and new ways to support customers with technical information and direct support to facilitate their installation of local DERs, such as:
  - Providing direct technical assistance and consulting services — both free and fee-based — to aid commercial and residential customers
  - Increasing distribution of educational materials providing "how-to" information for customers seeking to add DERs
- *Advocacy*: Drive policy development and advocacy to foster the development of DERs, such as:
  - Enacting policies to reduce or eliminate regulatory and/or investor-owned utilities (IOU) hurdles to expand DERs
  - Addressing limitations to the benefits of DERs because of transmission and distribution (T&D) systems' weaknesses

This list reflects many examples of what PCE might do to create a comprehensive DER initiative. The actual activities will be developed as part of phases 2 and 3 (Programmatic and Operational Strategy development) of this process.

Rationale

This proposal was developed by weighing each identified option against PCE's decision-making criteria. Key considerations from that conversation and from input received from staff, Board, and community include:

- The high mission benefit of accelerating GHG reduction that can be achieved through improved customer economics that DER can provide

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- Reduced power resource costs by improving PCE's load shape, matching demand to clean supply, and lowering commodity costs
- The opportunity to build on PCE's future value proposition by becoming a trusted partner with its customers and the community with a range of relevant services
- The local investment that DERs represent, providing economic and environmental benefits within PCE's service area
- The potential for DER support to provide new funding streams to PCE, either through partnerships with for-profit providers, direct fee-for-service activities, or new sources of public support
- Response to customer demand that ensures PCE's position is not eroded by competitors

Strategic Policy: Operational Excellence

Context

As in every organization, PCE must operate effectively in order to deliver high mission impact through its programming. As the mission-focused work proceeded during this process, the parallel need for an operational strategy became clear in order to improve upon PCE's "start-up" systems and processes that no longer matched the size and maturity of the organization and to ensure that PCE is operating in alignment with its guiding principles.

Strategic Policy

Over the next five years, PCE will advance operational infrastructure, systems, and processes to deliver outstanding customer service, enhance public trust, empower staff, and enable efficiencies that will increase its mission impact.

PCE will invest in its people, infrastructure, systems, and processes to enhance efficiency, resiliency, and adaptability. PCE will ensure that its operations are aligned with industry best practices; leverage technology; support a high-performing workforce equipped to meet the evolving customer and stakeholder needs; and achieve its diversity, equity, access, and inclusion commitments. Operational enhancements drive PCE's ability to partner effectively with the customers and communities it serves, adhere to the guiding principles, and advance its mission impact. This policy includes specific guidance around:

Scalable Process Optimization. Continuously refine operational processes to improve workflow efficiency, remain nimble, and reduce administrative burdens while investing in scalable technology solutions that can grow with PCE's expanding programs and services to improve customer experience.

Empowered and Agile Workforce. Provide its diverse workforce with the necessary training and resources to drive innovation, enhance collaboration, and maintain operational excellence in a rapidly evolving energy landscape.

Data-Driven Decision-Making. Leverage data analytics and automation to drive informed decisions, streamline operations, reduce costs, maintain a strong financial position, and continuously improve overall efficiency across the organization to better understand and serve all of its customers.

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Cybersecurity and IT Resilience. Establish and maintain comprehensive cybersecurity measures and continuously strengthen IT infrastructure to protect customer data and sensitive information, ensure system reliability, and safeguard against emerging threats.

Equity and Accessibility in Operations. Maintain efficient operations that also ensure the needs of all stakeholder segments are met. In particular, consider how operations can enhance access for equity customers by addressing language, ability, financial, and other needs.

Effectively Managing Risk and Maintaining Compliance. Maintain PCE's operational policies, conduct regular audits, and ensure adherence to legal and industry standards while navigating policy and market challenges and maintaining autonomy and financial stability.

Strong Agency Governance. Cultivate and maintain a strong Board and staff relationship based on transparency and trust to ensure that PCE's Board is fully equipped to provide informed, effective, and strategic oversight of the agency.

Measurable Expectations (What PCE is Doing)

PCE is undergoing numerous initiatives in order to achieve "PCE 2.0" or an evolutionary expansion of its operational capacity. As part of this strategy, PCE has:

- Hired its first Energy Risk Manager, approved a new risk management policy, and created a Risk Oversight Committee
- Approved a cost-of-service ratemaking model, limiting PCE's dependence on being tied to the rates of the incumbent utility
- Launched PCE's call center with dedicated customer service representatives who speak the major languages of PCE's service area: English, Spanish, and Mandarin
- Began using technology tools to better segment PCE's customers and provide them with bespoke communications
- Hired a new People and Culture Director to lead workforce training and human resources processes such as instituting a common date staff review system and creating new standard operating procedures for routine human resources tasks, hiring, and performance management
- Adjusted its time commitment for its contracted General Counsel and initiated an assessment to determine whether those services should be brought in-house to better manage legal risk and operations
- Diversified PCE's revenue streams beyond its ratepayer base including applying for state funds through numerous programs administered by the California Energy Commission and California Public Utilities Commission

Rationale

This policy was developed keeping in mind the need to provide guidance to the variety of operational functions at PCE. Only by advancing an effective operational infrastructure that advances PCE beyond its start-up phase will PCE be able to deliver on its mission promise, work within its guiding principles, and maintain efficient processes that allow it to keep costs as low as possible for its customers.

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PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 9, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Kelly Lew-Quintal, Risk Manager

SUBJECT: Energy Supply Procurement Quarterly Report

BACKGROUND

In November 2024, the Board of Directors (Board) approved Policy Number 23 – Energy Risk Policy. A summary of all short-term energy procurement contracts (terms of less than five (5) years) will be reported to the Board quarterly.

DISCUSSION

This memo summarizes all short-term energy procurement contracts entered into by the Chief Executive Officer or the Senior Director of Power Resources since the Board meeting in February 2025.

Execution Month	Purpose	Counterparty	Term
March	Sale of RA Energy	Central Coast Community Energy	1 month
March	Purchase of Hedge Energy	NextEra Energy Marketing, LLC	3 months
March	Purchase of Hedge Energy	NextEra Energy Marketing, LLC	3 months
March	Sale of Hedge Energy	Morgan Stanley Capital Group Inc.	3 months
March	Purchase of Hedge Energy	Morgan Stanley Capital Group Inc.	9 months
March	Purchase of Resource Adequacy	Calpine Energy Services, L.P.	1 month
April	Purchase of Resource Adequacy	Ava Community Energy Authority	1 month
April	Sale of Resource Adequacy	Lockhart ESS, LLC	3 Days
April	Sale of PCC1 Energy	City of Anaheim	12 months
May	Purchase of Resource Adequacy	Shell Energy North America (US), L.P.	2 months

STRATEGIC PLAN

The above contracts were executed in March 2025, April 2025, and May 2025 to support the Power Resources Objective 2 for Procurement: Procure power resources to meet regulatory mandates and internal priorities at affordable cost.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 13, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jeremy Waen, Senior Director of Regulatory Policy

SUBJECT: Regulatory Policy Team Quarterly Report

DISCUSSION

California Public Utilities Commission (CPUC)

Integrated Resource Planning (IRP)

In accordance with Senate Bill ("SB") 350,[1] the CPUC's IRP is an "umbrella" planning proceeding to consider all of the Commission's electric procurement policies and programs to ensure California has a safe, reliable, and cost-effective electricity supply. The IRP proceeding occurs on a 2–3-year cycle with two distinct phases in each cycle. Phase one establishes a CPUC statewide reference system plan, which models what types of new electricity supply resources are likely to be necessary to maintain adequate progress towards California's climate goals over the next decade. Phase one also directs individual Load-Serving Entities (LSEs), like PCE, to submit their own IRP analysis. The CPUC then combines all LSEs' IRP submissions and compares them to the Commission's reference system plan to determine whether California as a whole remains on track.

If the Commission determines there are shortfalls within the combined LSEs' IRPs, then it launches a Phase two within the proceeding cycle to issue forward procurement mandates. Through these mandates LSEs must procure additional new clean energy resources or otherwise risk non-compliance penalties.

Examples of these prior procurement mandates include:

- Decision ("D.") 19-11-016 mandated 3,300 MW be built between 2021-23;
- D. 21-06-035 (i.e. the Mid-Term Reliability or "MTR" decision) mandated 11,500 MW of new resources be built between 2023-25 with 2,000 MW allowed by 2028; and
- D. 23-02-040 (i.e. "Supplemental MTR" decision) mandated 4,000 MW of additional resources be built between 2025-26.

PCE is subject to these procurement mandates and must satisfy our portion based on a load-share-ratio. The resource types, timelines, and other specifics within these mandates make

the procurement very competitive and challenging to harmonize with PCE's own procurement objectives. Due to frustrations voiced by LSEs over this piecemeal approach to forward procurement, the CPUC has pledged to create a Reliable Clean Power Procurement Program ("RCPPP" or "R C Triple P") framework to improve forward procurement efforts within the IRP proceedings.

On April 29, 2025, CPUC Energy Division staff have released a proposal for RCPPP, which aims to create a system for ensuring California's procurement needs are met by the state's LSEs while providing fairness and flexibility to LSEs and ratepayers. The proposal contains two main programs: one to prescribe needed procurement by LSEs and one to ensure that the energy sold to customers is increasingly clean. The RCPPP program could proceed under one of two models:

The first would assess the total capacity need of the state on a 10-year forward basis and then allocate the needed capacity to each LSE. LSEs would have flexibility to meet this capacity with either new or existing resources, with informational filings 5-to-10-years out and binding filings for 2-to-4-years out. Requirements for the current year and next year would be handled by the Resource Adequacy program. This would provide PCE with credit for capacity already contracted for. Once PCE's contracted portfolio is sufficient to meet customer load in all hours, all requirements for future procurement would have been satisfied.

The second model would allocate only the need for new capacity, with capacity older than ten years no longer qualifying to meet requirements. This could leave PCE needing to procure more resources once contracted generators are more than ten years old. The clean energy program would operate similarly to the Renewable Portfolio Standard, but with requirement to meet an increasing proportion of energy with zero carbon or renewable energy, in line with the definitions in SB100. Development of these proposals is anticipated to continue through the summer of 2025.

PCE staff, alongside the CalCCA trade organization, is monitoring and engaging within this case to ensure the RCPPP is devised and implemented in a manner that minimizes friction within PCE's own procurement objectives.

Power Charge Indifference Adjustment (PCIA) Reform

Continuing the report-out from last quarter, the Commission continues to contemplate further reform to the PCIA. As outlined in the Order Instituted Rulemaking ("OIR") issued by the Commission on February 20, 2025, the rulemaking will consider two phases:

- In Phase 1, the CPUC is proposing a series of changes to the RA Market Price Benchmark, including incorporating old, out-of-date pricing into the benchmark to evaluate current RA costs, as well as removing transactions between corporate affiliates, swap contracts, sleeve contracts, and moving to a monthly RA value, among others. A decision on Phase 1 matters is expected by June.
- In Phase 2, the CPUC has signaled openness to evaluating how resources are revintaged if the IOUs extends a contracted resource, the rules governing the sale of PCIA resources, and other critical issues that may have major impacts on the value of the PCIA going forward.

Comments on Phase 1 and briefing on legal issues are now complete, with the CCAs taking a strong position against incorporating older contracts in calculations of current market prices.

The remaining proposals to simplify the Market Price Benchmark and remove some potentially problematic transactions from the calculation were not opposed. Collectively, if adopted, these changes could sharply increase the PCIA, leaving less headroom for CCA operations.

On April 15, 2025, PCE staff met with advisors to assigned Commissioner John Reynolds to emphasize the fact that CPUC actions to bring RA prices down are already bearing fruit, rendering the proposed changes non-urgent and unnecessary. In addition, PCE staff also submitted a technical legal reply briefing, emphasizing the lack of evidence in the record and the technical inadequacies of the proposed solutions. In addition to potentially changing the PCIA rate methodology for 2026 rate calculations, the anticipated decision is expected to also establish to further clarify the timing and scope of issues for Phase 2 of this case. PCE staff, alongside the CalCCA trade organization, is monitoring and engaging within this case to try to guide any possible PCIA reform imposed by the Commission to be fair for PCE's customers and to be minimally disruptive to the financials of our agency.

California Independent System Operator (CAISO)

The CAISO continues to implement stakeholder processes that are likely to have critical impacts on PCE's operations, particularly relating to our procurement objectives. Timely updates from these processes include:

1. **Interconnection Process Enhancements:** The results of the reformed interconnection process that PCE staff helped craft over the multiple years of advocacy have shown significant success, with a smaller, prioritized list of projects in the interconnection queue for Cluster 15. However, concerns remain that the mix of technologies selected by CAISO for study based on the new criteria includes nearly entirely all solar and storage projects. Based on both the CPUC's IRP and PCE's IRP, a much more diverse supply of new resources is clearly needed. PCE is engaging to assist CAISO in evaluating what, if any, corrective steps might need to be taken to encourage a more resource diverse in forward interconnection studies.
2. **Demand and Distributed Energy Market Integration ("DDEMI"):** The DDMEI is a relatively new initiative started by the CAISO in January 2025. PCE is engaging in developing additional participation models for Demand and Behind-the-Meter Distributed Resources to be able to bid into CAISO markets and receive revenues for responding to CAISO dispatch instructions.

[1] https://www.energy.ca.gov/rules-and-regulations/energy-suppliers-reporting/clean-energy-and-pollution-reduction-act-sb-350

FISCAL IMPACT

None

STRATEGIC PLAN

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

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 25, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Marc Hershman

SUBJECT: Legislative Update

RECOMMENDATION

Informational

BACKGROUND

Sacramento Summary – the 2025-26 Legislative Session

At the time of preparation of this report, the Governor's May budget revision has not been made public. Media reports indicate the state budget, that was previously balanced in the Governor's January proposal, will show a significant deficit when unveiled later this month.

In recent weeks, Legislators have been busy with hearings in policy committees. The deadline for policy committees in the house of the Legislature where the bill was introduced was May 2. Many bills we are following were referred for consideration to more than one committee for a hearing. However, the number of committee referrals does not change this deadline.

May 23 is the last day for the fiscal committees to meet and report bills to the floor. This includes both houses' Committee on Appropriations and their "Suspense Calendars." The first week of June is reserved for floor votes of the full chamber on their bills.

Additionally, Speaker Rivas announced the formation of four select committees to address affordability. Select committees do not hear bills, but they may hold informational hearings and conduct investigations. Legislation could be developed as a result. Among the four new select committee announced is the Select Committee on Transportation Costs and Impact of the Low Carbon Fuel Standard.

DISCUSSION

2025 California State Budget

State coffers could be impacted by the recent economic actions taken by Washington as well

as the Southern California wildfires. The state's funds are closely linked to taxes generated from capital gains on the sale of stock. With the recent downturn in the markets, it is very likely that the state will see smaller than anticipated revenues. In addition, the federal government's withholding of federal funding, and the amount of that withholding for California, remains a significant unknown factor that will impact the state's budget.

The possibility of lower revenues was anticipated by the Governor when he submitted his initial budget in January, and Governor Newsom included a proposed withdrawal from the state's Rainy Day Fund to cover the deficit. However, the fiscal uncertainty is likely to exceed the amount that fund can provide for FY 2025-26. It is expected that the Governor's budget revisions (May Revise) will be released on or before May 14.

Legislation of Interest

There has been a significant increase in the number of energy bills introduced in 2025 as compared to prior years. Please refer to the attached **Bill Matrix** for a compendium of some of the legislation being followed closely by Peninsula Clean Energy and CalCCA. This is not a complete list of the bills we are following. More than 100 bills of interest have been introduced. Many of those not included on this list are bills that are not moving forward in 2025.

Peninsula Clean Energy Policy 1 delegates authority by the Board of Directors to the CEO to timely engage and position the organization on public policy matters, including legislative and regulatory issues.

Some of the bills we are actively engaged on and/or closely watching currently include:

SB 540 (Josh Becker, D-Menlo Park and Henry Stern, D-Calabasas)

SB 540, authored by Senators Josh Becker and Henry Stern, would allow the formation of a regional transmission organization to operate regional energy markets with other western states. Currently the California Independent System Operator (CAISO), the authority that manages the transmission grid in California, is only permitted to use energy from markets outside the state on a limited basis.

Proponents of **SB 540** believe that regional energy markets are a critical solution to bring down electricity costs as energy islanding is inefficient and expensive. Allowing California to trade energy across the west would enable carbon reduction through increasing access to complementary renewable energy like hydro and wind, while reducing solar curtailment. This also helps with reliability by allowing California to more easily import energy from other states during times of grid stress.

An informational hearing was held by the Senate Committee on Energy, Utilities and Communications on March 12 in Sacramento under the title Regional Expansion of Wholesale Electricity Markets: Overview of the West-Wide Governance Pathways Initiative. At this hearing, Senators heard arguments for and against the West-Wide Governance Pathways Initiative, with some lawmakers voicing concerns about guardrails against market manipulation and what the effort means for the state's autonomy to set its own policies. At the informational hearing in Sacramento, Peninsula Clean Energy staff Mike Mielke voiced support for the Pathways Process. Mike spoke to the fact that this process would expand renewable energy supply and help achieve California's ambitious climate change goals, help make electricity more available and affordable for the consumers and businesses in our service territory, while

also ensuring that California retains control over critical functions such as transmission planning, procurement, and other critical policies.

In addition to Peninsula Clean Energy and CalCCA, CCA support for **SB 540** includes MCE, Silicon Valley Clean Energy, and San Diego Community Power. To date, no CCAs have taken an oppose position on **SB 540**.

Support for **SB 540** from labor, business and environmental groups includes CA & NV State Association of Electrical Workers (IBEW), California Chamber of Commerce, California Environmental Voters, Coalition of California Utility Employees (CCUE), Environmental Defense Fund, Natural Resources Defense Council (NRDC), Silicon Valley Leadership Group (SVLG), and Union of Concerned Scientists.

Voicing opposition at the March 12 hearing was former CPUC Commissioner and President Loretta Lynch and a representative from the Indivisible California Green Team. Consumer Watchdog has also come out with opposition to **SB 540**.

As a result of the information received at the March 12 hearing, SB 540 has been amended. The bill now states that a participant in the Regional Organization may *withdraw unilaterally* without further approval needed and that state policies to reach renewable energy targets are not changed by the legislation.

On April 21 **SB 540** was heard in the Senate Committee on Energy, Utilities and Communications. It was passed out of that committee with a unanimous vote of 17-0.

On April 29 **SB 540** was heard in the Senate Judiciary Committee where it was also unanimously passed, this time by a vote of 11-0. It will next be considered by the Senate Committee on Appropriations and if it obtains a favorable vote in that Committee, it will be presented to the full state Senate.

It is possible that the bill will be amended prior to its being considered by the Committee on Appropriations. We will be closely following any new developments.

At its April meeting of the Board of Directors Peninsula Clean Energy heard from two distinguished guests who discussed **SB 540**, Evelyn Kahl, General Counsel and Director of Policy for CalCCA and Loretta Lynch, Former President of the CPUC.

After extensive discussion of **SB 540** the Board referred the matter to the PCE Ad Hoc Legislative Committee for further consideration. That Committee is set to meet on May 28. Two recent newspaper articles written by local authors about **SB 540** can be found attached to this report.

SB 254 (Becker, D – Menlo Park)

In late April, Senator Becker introduced **SB 254**. The bill addresses electricity affordability and addresses the way wildfire mitigation and transmission are financed and seeks to discourage rate increases that exceed inflation.

SB 254 was referred to the Senate Committee on Energy, Utilities and Communications where is was heard on April 29. It passed that Committee by a vote of 13-2 and sent to the Senate Committee on Appropriations for consideration.

CalCCA has taken a support position on **SB 254.**

AB 303 (Dawn Addis, D–Monterey) would make it much more difficult to license a Battery Energy Storage System (BESS). Not only would the permitting process be more difficult, but the bill seeks to limit the locations in which a BESS can be placed.

BESS facilities are viewed as an essential tool needed for the state to reach its clean energy goals that employ new technologies and features that make them much safer than the infrastructure at Moss Landing.

CalCCA has taken an oppose position on **AB 303**. The bill was triple referred, meaning it must move through three policy committees. However, it was not heard in any of those Committees before the legislative deadline and is therefore not advancing this year.

In addition to Asm. Addis, the Moss Landing area is represented in the Legislature by state **Senator John Laird (D-Monterey)**, who has filed a bill on BESS facilities, **SB 283**. **SB 283** seeks to ensure that BESS facilities develop emergency response plans, hold regular safety drills, and document maintenance and incidents. SB 283 does not address the location of BESS facilities. After the introduction of the bill, it was amended to require facilities over 600 KWH be in a noncombustible, dedicated-use building or is a remote outdoor installation.

SB 283 was passed unanimously by both the Senate Committee on Energy, Utilities and Communications and by the Senate Committee on Local Government. It is now before the Senate Committee on Appropriations for consideration.

A third bill to address BESS facilities was introduced at the filing deadline. **AB 1285** is a committee bill whose authorship includes a bipartisan group of Assemblymembers comprising the Assembly's Committee on Emergency Management.

AB 1285 centers on developing state-wide specific fire safety guidance for lithium-ion batteries, the type which were in use at Moss Landing.

It was passed unanimously by the Assembly Committee on Emergency Management and is now before the Assembly Committee on Appropriations.

AB 306 (Nick Schultz, D–Burbank)

Introduced by Assemblymember Schultz and part of a package of bills sponsored by **Assembly Speaker Robert Rivas (D-Salinas),** whose stated goal is to support the rebuild of Southern California and advance home building in the state, **AB 306** would place a 6-year moratorium on reach codes and any other local government efforts to modify building codes on new construction throughout the state, not just in the fire-effected areas. It would also impact existing building modifications.

Peninsula Clean Energy and other CCAs have shared our concerns with the authors and CalCCA has taken an oppose position on the bill. Among the concerns expressed by the CCAs is the fact that electrifying new buildings helps local jurisdictions implement their Climate Action Plans and supports the state's goal of reducing Greenhouse Gas Emissions while creating clean energy jobs. In addition, energy efficiency measures in reach codes help improve building performance while also reducing energy costs and increasing grid reliability.

A letter of concern was submitted by Peninsula Clean Energy prior to the hearing on **AB 306**. That letter was attached to the March 2025 Board packet.

AB 306 passed out of the Assembly Committee on Housing and Community Development on March 12 by a vote of 12-0 and was re-referred to the Committee on Appropriations where it was also voted out. Designated as an urgency bill, **AB 306** needed a 2/3 vote to pass the state Assembly.

After passing the Assembly by a vote of 71-0 **AB 306** was sent to the Senate where it has been double referred: to the Committee on Housing and the Committee on Local Government. It has not yet been scheduled for a hearing in the Senate.

SB 330 (Steve Padilla, D-Chula Vista)

SB 330 would enable the Governor to establish one or more pilot projects to develop, finance, or operate electrical transmission infrastructure that meet certain criteria, including: being identified by the California Independent System Operator (CAISO) in its transmission planning process, provides a significant reduction in cost, and is implemented under a Project Labor Agreement (PLA). It authorizes the Governor to designate existing state agencies, local public agencies, tribal organizations, or joint powers authorities to implement the pilot projects.

The bill could be seen as an important tool to promote a robust and cost-effective transmission network in the CAISO footprint. CCA projects rely on transmission in the CAISO system for deliverability.

Transmission is key to meeting 100% renewable/clean energy objectives. There is no transition without transmission. At the same time, as referenced above, transmission costs are expected to rise and create additional cost pressures on ratepayers.

SB 330 addresses these concerns by saying we need more transmission, but we should do it in a more cost-effective way: through public financing or ownership. The bill currently focuses on a pilot program approach. The sponsor's hope is to create support for the general concept of public financing and to refine the bill further down the road.

The bill has been passed by both the Senate Energy, Utilities and Communications and Environmental Quality Committees. It is now before the Senate Committee on Appropriations.

AB 526 (Papan, D– San Mateo)

This bill, authored by Assemblymember Papan, would require, among other things, the Energy Commission, in coordination with the PUC, Air Resources Board, and other state agencies, to develop a strategic plan for the development of new in-state geothermal energy.

Consistent with our support of similar efforts last year regarding geothermal development and our Legislative Policy Platform we sent in a letter of support for the bill prior to its April 21 hearing before the Committee on Natural Resources where it was passed by the Committee. A copy of that letter is included with this May Board packet.

AB 942 (Calderon, D– City of Industry)

AB 942, as introduced, would transition NEM 1.0 and 2.0 solar contracts to NBT after they

have been in effect for 10 years. Of particular concern to PCE was how this bill, if it becomes law, would impact on our GovPV program that places solar infrastructure on government buildings.

This bill was referred to the Assembly Committee on Utilities and Energy where it was heard on April 30. Prior to the vote on the bill the author took amendments that would only migrate solar systems from NEM to NBT if the property on which the systems were sited changed ownership. With that change the bill was passed by the Committee by a 10-5 vote, and it is now before the Assembly Committee on Appropriations.

AB 1372 (Papan, D– San Mateo)

This bill, sponsored by Caltrain, would direct the California Public Utilities Commission to add regenerative braking to those energy sources that would receive compensation under Net Billing Tariff (NBT) and in turn require that Caltrain receive compensation for regenerative braking from PCE and other energy providers.

Peninsula Clean Energy has had extensive conversations with Caltrain and with Asm. Papan's staff on this bill and have shared concerns that as written the legislation infringes upon CCA rate setting autonomy.

Discussions were ongoing between PCE, Caltrain and the author prior to the scheduled hearing date. San Jose Clean Energy was also involved as it too provides electrical generation for Caltrain. Just prior to the initial hearing on the bill before the Assembly Committee on Utilities and Energy the legislation was converted into a 2-year bill, meaning it will not be considered by the Assembly until January 2026.

Federal Developments of Interest

Peninsula Clean Energy continues to closely monitor the many Executive Orders and legislative actions emanating from the Nation's Capital for their impact on energy policy and Peninsula Clean Energy. This includes the President's recent Executive Order seeking to halt state enforcement of state environmental laws.

As noted in our March Legislative Update an encouraging development was a letter dated March 9, signed by 21 members of the Republican Conference, and addressed to the Chair of the House of Representatives Way and Means Committee, the tax writing committee in that chamber. The letter voiced support for the continuation of "sector-wide energy tax credits" that have led to major investments in "domestic energy production and infrastructure for traditional and renewable energy sources alike." A similar effort in support of energy tax credits was initiated by 4 U.S. Senators.

During the week of March 31, 2025, PCE staff member Mike Mielke participated in a Washington, D.C. federal advocacy trip organized by LEAN Energy US (Local Energy Aggregation Network). Members of various CCAs from across the U.S., including 5 California CCAs, held a series of meetings with key federal agencies, congressional staff, and trade associations to assess federal energy policy trends, identify risks and opportunities for CCAs, and align on strategies going forward. These conversations focused heavily on the evolving landscape for tax credits, permitting reform, clean energy funding, and CCA engagement at both the state and federal levels.

Our key takeaways from the meetings in Washington are that IRA (Inflation Reduction Act) tax credits are at risk and tax credit defense remains the top priority across stakeholders.

At the end of April, the Speaker of the House Mike Johnson (R-LA) was prodding the House Ways and Means Committee to release legislative text as soon as possible. However, by the end of April it became clear that this timeline was no longer feasible as Republicans on the Committee had not finalized their position. Reports indicate that some sections of the text have been drafted but as of this writing they have not been made public and the time for their release remains uncertain. It is a similar story with legislative text from the House Committee on Energy and Commerce.

Many Republicans have voiced support for continuing the Tax Cuts and Jobs Act (TCJA), passed in 2017 and with many provisions expiring in 2026, but struggle to find offsets. It was reported that a full repeal of the IRA tax credits was possible, but as noted above there was pushback from many Republicans in the House and Senate. A phase out of some IRA credits is now being considered as a likely path forward based on the premise that it could be less disruptive for businesses than a full repeal. Also under consideration is an end to tax credits that benefit solar and wind. Rep. Julie Federochak (R-ND) introduced a bill that would phase out the Investment Tax Credit (ITC) and Production Tax Credit (PTC) for what were defined as "intermittent" energy sources over 5 years but would maintain the credits for nuclear, hydrogen and other "dispatchable" sources.

Media reports continue to signal uncertainty surrounding the status of an agreement on the future of some of the largest tax issues and programs overseen by the federal government including the State and Local Tax (SALT), Medicaid, and Supplement Nutrition Assistance Program (SNAP).

In the short time since the federal advocacy meetings held by CCAs in Washington the President has unveiled further significant tariffs and walked back others. We continue to review the President's proposal and the status of the tariffs for implications on energy markets, California, CCAs and Peninsula Clean Energy.

(Public Policy Objective B, Key Tactic 1)

FISCAL IMPACT

None

ATTACHMENTS:
PCE LOS - AB 526 - ANR.pdf
SB 540 - Support - Michael Wara.pdf
SB 540 - Oppose - Loretta Lynch.pdf
May 2025 Bill Matrix.docx

PENINSULA CLEAN ENERGY

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

April 21, 2025

The Honorable Isaac Bryan
Chair, Assembly Natural Resources Committee
1021 O St., Suite 5630
Sacramento, CA 95814

Re: AB 526 (Papan) - SUPPORT

Dear Assemblymember Bryan,

On behalf of Peninsula Clean Energy Authority (PCE), a community choice aggregator (CCA) serving approximately 800,000 Californians in San Mateo County and the City of Los Banos in Merced County, we write in support of AB 526 (Papan), a bill that helps enable development of new geothermal resources.

As a community-led energy provider, PCE is committed to delivering clean, reliable power at competitive rates to the residents and businesses we serve. We believe a clean energy portfolio is like a diversified investment strategy—it spreads risk, improves performance, and helps ensure we benefit from a stronger, reliable, and more adaptable grid. That is why we combine clean sources like wind, solar, hydro, geothermal, and storage to create a reliable and sustainable energy portfolio that keeps the lights on and energy rates stable, while minimizing fossil fuel pollution.

Geothermal energy plays an important role in our energy mix as a firm resource, we balance the baseload power it provides with intermittent resources like solar. To date, we have contracted for 70 megawatts of geothermal energy and continue to develop new opportunities for additional geothermal energy procurement. We believe geothermal energy is an important resource for the state to meet our clean energy goals and the strategic plan envisioned by AB 526 will enhance this resource in the coming years.

Peninsula Clean Energy appreciates Assemblymember Papan's leadership on this issue and we are pleased to support AB 526. We respectfully request your aye vote on the measure.

Sincerely,

Shawn Marshall
Chief Executive Officer

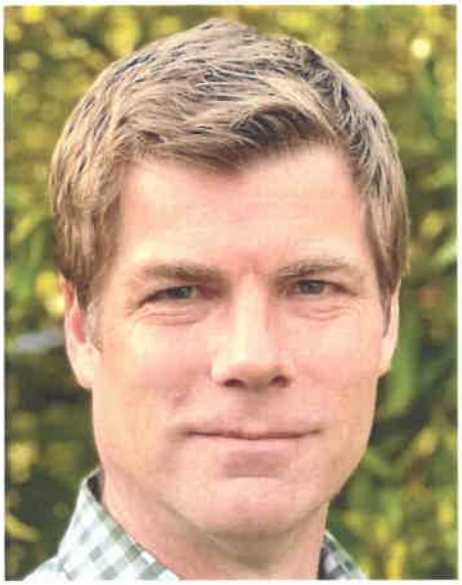
cc: The Honorable Diane Papan
The Honorable Members of the Assembly Utilities & Energy Committee

https://www.smdailyjournal.com/opinion/guest_perspectives/keeping-state-s-lights-on-will-require-a-major-electricity-market-partnerships-across-west/article_7ab3d7c4-c80d-4733-8221-4532f7e8a35d.html

From the Daily Journal archives

Keeping state's lights on will require a major electricity market, partnerships across West

By Michael Wara
Apr 23, 2025



Michael Wara

Clean. Reliable. Affordable. Those are the challenging but achievable goals for California's electric grid.

To affordably and reliably get the clean energy required to run a state as populous and prosperous as California, we have to build. We must build all of the rooftop renewables that we can. We need to build unprecedented amounts of new solar and battery storage at big power plants throughout California. And we must import significant quantities of renewable energy from other states to fill the gaps.

We need all three. And the third means renewed and deeper collaboration with our energy partners across the West.

State Sen. Josh Becker's proposal, Senate Bill 540, represents the carefully considered path to achieving that partnership. SB 540 continues the march started by several western energy officials who proposed a new independently governed entity offering an expansive suite of wholesale electricity market functions across the largest possible footprint. Making a market that spans the North American West is fundamental to providing a road map for solar and wind projects to get built, helping fill the gaps left by our transformative buildout of clean energy in California.

SB 540 is also critical to enabling California's participation in that market, and ensures our state has a leadership role since other competing market concepts are less likely to share the commitment to our clean energy goals.

During a 2020 heat wave, California's grid operator was forced to institute rotating outages, a necessary step to protect the grid in California and neighboring states. Gov. Gavin Newsom led a careful multiagency after-action analysis, identified causes and made changes to market design. The state began accelerating the deployment of batteries to help stabilize the grid.

When the next heat wave occurred in 2022, these changes brought positive results. But it was still a close call. During extreme heat last year, the grid remained stable as the solutions had progressed even further.

We cannot afford to rest on this success.

Heat waves and related emergencies highlight the challenges of decarbonizing a grid as large as California's amid ever-worsening climate change. Unfortunately, we need to redouble our efforts because climate change is going to get worse even as we become more dependent on renewable energy resources that do not produce energy at all times.

SB 540 will allow us to rely on our neighbors in a pinch, and allow them to rely on us as well. This bill is a key next step.

This is nothing new. Since the Pat Brown era, California has always collaborated in securing its electricity. The transformation we are leading — with our pathbreaking commitment to clean electricity, commitment to electric vehicles and broader goal of demonstrating what a prosperous, opportunity-creating clean energy economy can look like — requires a renewed focus on interstate institutions and structures that have shaped our modern energy reality in ways that may be hard to see. They are taken for granted.

As the Western Interstate Energy Board brings together stakeholders in California and other states to continue a west-wide pathway, clean, reliable, affordable energy is edging closer to reality. Consumers, utilities and regulators must continue developing a shared market concept that creates wins for everyone.

SB 540 ensures that California can continue to benefit from those wins and increase collaboration and efficiencies across the West. History — both the early path to national economic leadership and the recent close calls with our grid — counsel continued work to create the governance necessary to build and run the 100% clean grid that is California's North Star.

My research with economists, engineers and policy analysts has shown that clear, equitably enforced market rules are key for achieving California's energy and climate goals. SB 540 is the next major step on a course toward practical solutions to this challenge.

Michael Wara is the director of the Climate and Energy Policy Program and a senior research scholar at the Stanford Woods Institute for the Environment. He is also a senior director for policy at the Sustainability Accelerator within the Stanford Doerr

Don't let Trump administration kill state's clean energy policies



Clearway Energy Group's 192 megawatt solar energy facility in Rosamond (Kern County) is pictured in 2021. The Trump administration dismisses clean energy and wants to reinvigorate coal-powered energy. A bill moving through the California Legislature could make it easier for that to happen.

BY LORETTA LYNCH

Last week, Willie Phillips, a Biden-appointed Federal Energy Regulatory Commission member, resigned with 14 months left on his term. His departure flipped control of this key energy agency. When he appoints a replacement, President Donald Trump will effectively run what's supposed to be an independent body in charge of federal energy policies that can determine whether the U.S. moves to clean power sources or favors fossil fuels.

Commission Chair Mark Christie, a Trump first-termer up for reappointment this summer, promised that it will clear everything through the White House as soon as it can.

Well, now it can. And the implications for California are profound and disturbing.

On April 8, Trump issued an executive order directing Attorney General Pam Bondi to take legal action against state climate and clean energy laws, which Trump called "illegitimate."

Other orders granted sweeping emergency powers to Energy Secretary Chris Wright to prevent the shutdown of aging, polluting coal plants and to promote fossil fuel use in regions that Wright deems at risk of energy shortages. Scientific American called Trump's orders "an unprecedented peacetime intervention in America's electricity sector."

Californians know that nefarious forces are gathering to attack our clean energy laws. The barbarians are at our gates.

Yet instead of taking action to protect our state, California's legislators and Gov. Gavin Newsom appear ready to hand them the keys.

Here's how:

Today, a corporation, the California Independent System Operator, runs our electricity markets and transmission grid, and must follow state laws. It is required to manage electricity markets for the benefit of Californians by maximizing available electricity for our use and minimizing costs to California customers. It must also run electricity markets consistent with "state law intended to protect the public's health and the environment."

That includes a prohibition on contracting coal-fired electricity and requiring California to transition to 100% clean energy by 2045.

But a bill barreling through the Legislature would turn over control of our electricity markets to a new multi-state regional operator explicitly exempted from complying with these laws.

SB540 from state Sen. Josh Becker, D-Menlo Park, would allow the California Independent System Operator to join a new regional electricity market with other as-yet-unspecified Western states. Proponents say that a bigger market will unlock more electricity resources, drive down prices and create new destinations for California's clean energy.

They warn that if we don't cede control, other Western states will join different markets east of the Rockies, and we will be isolated. But California already buys and sells electricity throughout the West, using bilateral contracts and owning power plants. And most Western states have shown no interest in giving up their states' authority to join this proposed market.

SB540's proposed regional operator will be incorporated in Delaware, beyond the reach of the California attorney general's oversight. It also removes California's power to appoint a new board. Instead, California will become partners with states like Nevada, Utah and Wyoming, home to the very coal plants Trump wants to keep running.

Even if the California Independent System Operator continues to run the new regional markets, SB540 exempts it from following California law — requiring it to adhere only to the regional operator's new rules, as approved by the Federal Energy Regulatory Commission.

SB540 supporters argue that California must already file for federal approval of market rules, so we are already vulnerable to Trump. But California fought for, and won in court, independence from complying with some key federal rules.

SB540 voluntarily relinquishes that independence. In doing so, it makes California more vulnerable to Trump in three crucial ways:

First, California now possesses the legal right to design and propose all the rules for its markets. We used these rights, called Section 205 rights, to obtain federal approval for the market rules we use today. And the California Independent System Operator used these rights to try to fix the problems that caused the 2020 blackouts.

SB540 surrenders those rights to the new Delaware corporation, which will have to apply to Trump's Federal Energy Regulatory Commission for approval from scratch — without the key protection of having to comply with California law. The new operator, for instance, could agree with Trump that the regional market should favor coal plants or even subsidize coal power to outcompete green energy.

Second, current electricity-market rules don't conflict with state laws because the California Independent System Operator isn't allowed to propose rules that conflict. SB540 eliminates that protection and hands attackers the weapons they need to challenge our laws.

Third, California has no coal-fired power plants. As a single-state market with rules mandated to accord with California law, it's difficult for Trump or fossil fuel interests to attack state clean energy laws using the Constitution's Commerce Clause.

However, in a broader market that contains coal plants and new market rules that fail to incorporate our state laws, California consumers could be forced to pay for coal power, while simultaneously paying for clean power we've already bought.

State legislators are pushing these changes before we even see the new rules the Delaware corporation will propose or learn which other states will join us. Lawmakers promise that California will be able to get out of this new arrangement if we want, but the Federal Energy Regulatory Commission must approve any exit from a regional market. And FERC gets to set the conditions — and costs — of any withdrawal.

Why act so fast?

Let's see what Trump has in store for us before we abandon California's public health and environmental laws — or the legal duty to minimize costs and provide enough electricity to meet the state's needs.

Such a move naively trusts the goodwill of people who simply do not share our climate commitments.

The barbarians are coming. Tell your legislators not to welcome them in.

Loretta Lynch, a former California Public Utilities Commission president, is a lawyer and regulatory expert.

Status of 2025 Legislative Session Bills
As of May 12, 2025
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
AB 259 (B. Rubio) Brown Act Exemption: Remote Participation	This bill would remove the January 1, 2026, sunset that allows members of a local legislative body to appear remotely, under certain circumstances, without having to provide their location and other requirements of the Brown Act.	Awaiting Senate Policy Committee Referral. Passed the Assembly Floor.			This is a simple sunset removal to extend the policy first enacted by AB 2449, the bill Asm. Rubio authored in 2022. The bill is sponsored by the CA Special Districts Assn.
AB 303 (Addis) Battery Energy Storage Facilities	The existing law, until June 30, 2029, authorizes a person proposing an eligible facility, including an energy storage system capable of storing 200 megawatt hours or more of energy, to submit an application for certification with the State Energy Resources Conservation and Development Commission of the site and related facility. Existing law specifies that the issuance by the commission of the certificate is in lieu of any permit, certificate, or similar document required by any state, local, or regional agency, or federal agency to the extent permitted by federal law, except as provided. Existing law establishes the procedures by which the commission is to review the application. This bill would specify that energy	This bill failed to pass a policy committee and is now a 2-year bill.		Oppose	

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	storage systems do not include battery energy storage systems for the above-described purposes. This bill contains other related provisions and other existing laws.				
AB 306 (Schultz) Building Regulations: state building standards	Existing law authorizes any city or county to make changes to building standards that are published in the code, including to green building standards. Existing law requires the governing body of a city or county, before making modifications or changes to those green building standards, to make an express finding that those modifications or changes are reasonably necessary because of local climatic, geological, or topographical conditions. This bill would, from June 1, 2025, until June 1, 2031, inclusive, prohibit a city or county from making changes to the above-described building standards unless a certain condition is met, including that the commission deems those changes or modifications necessary as emergency standards to protect health and safety. By requiring a city or county to take certain actions relating to building standards, this bill would impose a state-mandated local program.	Awaiting Committee Referral in the Senate.	Concern	Oppose Unless Amended	
AB 526 (Papan)	This bill would require the Energy Commission, in coordination with the PUC, Air Resources	Scheduled for May 14 hearing in the	Support	Support	This bill is sponsored by

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
Geothermal Energy Generation	Board, and other state agencies, to develop a strategic plan for the development of new in-state geothermal energy. The bill would also require the Energy Commission, on or before June 1, 2026, to evaluate and quantify the maximum feasible capacity of new in-state geothermal energy to achieve reliability, ratepayer, employment, and decarbonization benefits, and to establish megawatt in-state next-generation geothermal planning goals for 2035 and 2045.	Assembly Committee on Appropriations.			Sonoma Clean Power
AB 527 (Papan) CEQA: Geothermal Exploratory Projects	This bill proposes to create a categorical exemption from CEQA for geothermal exploratory wells.	Scheduled for May 14 hearing in Assembly Committee on Appropriations		Support	This bill is sponsored by Sonoma Clean Power
AB 531 (Rogers) Environmental Leadership Development Projects: Geothermal	This bill would expand the types of facilities eligible to be certified as environmental leadership development projects by the Energy Commission, which enjoy CEQA streamlining benefits, to include geothermal powerplants and geothermal field development projects.	Referred to Assembly Committee on Appropriations' Consent File		Support	This bill is sponsored by Sonoma Clean Power and co-authored by Asm. Papan
AB 706 (Aguiar-Curry) BioMAT	The California Renewables Portfolio Standard Program requires every electrical corporation to file with the PUC a standard tariff for electricity generated by an electric generation facility, as	Scheduled for May 14 hearing in Assembly		Support	This bill seeks to create a funding source that can reduce the cost of

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	defined, that qualifies for the tariff, is owned and operated by a retail customer of the electrical corporation, and is located within the service territory of, and developed to sell electricity to, the electrical corporation. The PUC refers to this requirement as the renewable feed-in tariff. The renewable feed-in tariff law, in part, requires the PUC to direct the electrical corporations, collectively, to procure at least 250 megawatts of cumulative rated generating capacity from developers of bioenergy projects that commence operation on or after June 1, 2013. Pursuant to this requirement, the PUC has established and revised the Bioenergy Market Adjusting Tariff (BioMAT) program. On March 18, 2016, the PUC issued Resolution E-4770 to order investor-owned utilities to each hold a solicitation for contracts with facilities that can use biofuel from high hazard zones to address an Emergency Proclamation using the Bioenergy Renewable Auction Mechanism (BioRAM) program. This bill would establish the FOREST and Wildfire Prevention Fund in the State Treasury, and would continuously appropriate the fund to the Natural Resources Agency to reduce organic fuel sources that increase fire risk by providing funding for the fire fuel	Committee on Appropriations			BioMAT and BioRAM. The author successfully ran legislation in 2021 (AB 846) to make CCAs eligible under BioMAT.

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	reduction procurement program, which the bill would also establish, to support sufficient procurement, transport, and beneficial use of forest biomass waste that reduces fuel for wildfires, as specified. By continuously appropriating moneys in the fund to the agency, the bill would make an appropriation. The bill would require the fire fuel reduction program to grant funding priority to BioRAM, as defined, and BioMAT, as defined, fleets, in operation on or before January 1, 2031.				
AB 729 (Zbur) IOUs: Climate Credits	The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The act authorizes the state board to include the use of market-based compliance mechanisms in regulating those emissions. The implementing regulations adopted by the state board provide for the direct allocation of greenhouse gas allowances to electrical corporations and gas corporations pursuant to a market-based compliance mechanism. This bill would require that the electric California Climate Credit be provided to residential, small business, and emissions-intensive trade-exposed retail customers of	Scheduled for May 14 hearing in Assembly Committee on Appropriations		Support	

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	electrical corporations on the bills of those customers for the months of August and September of each year unless otherwise directed by the commission, as specified.				
AB 740 (Harabedian) Virtual Power Plants	Existing law requires the CEC, in consultation with specified entities, to adopt a biennial integrated energy policy report containing certain information, including an overview of major energy trends and issues facing the state. This bill would require the CEC, on or before November 1, 2026, to adopt a virtual power plant deployment plan. The bill would require the Energy Commission, in developing the plan, to take certain actions, and would require that the plan meet specified requirements. The bill would require the plan adopted pursuant to these provisions to be included in the above-described integrated energy policy report. This bill contains other related provisions and other existing laws.	Scheduled for May 14 hearing in Assembly Committee on Appropriations		Support	
AB 915 (Petrie-Norris) Clean Energy Reliability Investment Plan	This bill would appropriate the remaining $900 million to the Clean Energy Reliability Investment Plan contained in SB 846 (Dodd, 2022).	Scheduled for May 14 hearing in the Assembly Committee on Appropriations.			

Status of 2025 Legislative Session Bills
As of May 12, 2025
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
AB 941 (Zbur) CEQA: Electrical Infrastructure Projects.	This bill would require the PUC to determine whether to certify the environmental impact report for an electrical infrastructure project that is a priority project, as defined, no later than 270 days after the commission determines that an application for an electrical infrastructure project is complete.	Scheduled for May 14 hearing in the Assembly Committee on Appropriations.		Support	
SB 57 (Padilla) Data Centers: Special Rates	This bill, the Ratepayer and Technological Innovation Protection Act, would require the commission, on or before July 1, 2026, to establish a special rate structure for data centers, as defined, that, among other things, protects residential ratepayers and small businesses and prevents cost shifts to those existing ratepayers and ensures electrical grid investments to serve data centers are fully recovered.	Referred to the Senate Appropriations Committee Suspense File			
SB 239 (Arreguín) Brown Act Exemption: Subsidiary Bodies	This bill would authorize a subsidiary body, defined as one that serves exclusively in an advisory capacity and has no final decision-making authority, to use similar alternative teleconferencing provisions and would impose requirements for notice, agenda, and public participation, as prescribed. To use teleconferencing pursuant to this act, the bill would require the legislative body that established the subsidiary body by charter,	Awaiting vote on the Senate Floor.			A very similar bill was attempted in the last session as AB 817 (Pacheco). The bill failed to pass the Senate Local Government Committee as the author refused to

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	ordinance, resolution, or other formal action to make specific findings by 2/3 vote before the subsidiary body uses teleconferencing for the first time and every 12 months thereafter.				accept certain amendments.
SB 254 (Becker) FERA Customers	Existing law requires the PUC, by March 1, 2025, and each year thereafter, to require the state's 3 largest IOUs to report on their efforts to enroll customers in the FERA program and to review those reports to ensure the IOUs have made reasonable efforts to enroll eligible households in the FERA program. If the commission, in its review of a report, determines an IOU has not made reasonable efforts to enroll eligible households in the FERA program, the PUC shall require the IOU to develop a strategy and plan to sufficiently enroll eligible households within 3 years of the adoption of the strategy and plan. This bill would additionally require each electrical corporation's report to provide a breakdown of the number of eligible households and FERA program enrollment by disadvantaged community, as defined by the PUC. The bill would also require the above-described strategy and plan to include strategies to reach households in disadvantaged communities.	Scheduled for May 12 hearing in the Assembly Committee on Appropriations.		Support	

Status of 2025 Legislative Session Bills
As of May 12, 2025
With Peninsula Clean Energy and CalCCA Adopted Positions

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
SB 282 (Wiener) Residential Heat Pump Systems: Water Heaters and HVAC: Permit Streamlining	This bill would require the commission, on or before January 1, 2027, to establish a statewide certification program for licensed contractors of residential heat pump water heaters and heat pump HVAC systems to obtain a heat pump installation certification. The bill would authorize a licensed contractor with a heat pump system installation certification described above to self-certify that the installation of a residential heat pump water heater or heat pump HVAC system meets all relevant code requirements without any requirement that an inspector be present for the installation, and would require a city, including a charter city, county, or city and county to accept the certification for those purposes, as specified.	Scheduled for May 12 hearing in the Senate Committee on Appropriations.			This bill is co-sponsored by SPUR, Bay Area Air District, and Building Decarb Coalition
SB 283 (Laird) Battery Energy Storage Facilities: Emergency Response Plans and Emergency Action Plans	Existing law requires the State Fire Marshal, before the next triennial edition of the California Building Standards Code adopted after January 1, 2025, to propose to the Building Standards Commission (commission) updates to the fire standards relating to requirements for lithium-based battery systems, as provided. This bill would require the commission and the Office of the State Fire Marshal to review and consider the most recently published edition of the National Fire Protection Association (NFPA)	Scheduled for May 19 hearing in the Senate Committee on Appropriations.		Support if Amended	

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	855, Standard for the Installation of Stationary Energy Storage Systems, for incorporation into the next update of the California Building Standards Code adopted after July 1, 2026. This bill contains other related provisions and other existing laws.				
SB 302 (Padilla) County Sealers: EV Chargers	This bill would align California's tax code with provisions in the Inflation Reduction Act that expand financing options for clean energy developers. In other states, developers may exclude, when reporting their gross income, earnings from the sale of clean energy tax credits, which accrue under the law once projects are up and running.	Referred to the Senate Appropriations Committee Suspense File		Support	
SB 314 (Padilla) Electric Vehicle Supply Equipment: Weights & Measures	This bill would authorize an EVSE that has been audited or tested by the manufacturer or supplier to be used commercially without further testing during the remainder of the inspection period adopted by the Secretary of Food and Agriculture, but not until it has been sealed by a sealer. The bill would, until January 1, 2028, among other things, exempt an EVSE installed in a workplace for the exclusive use of its employees, or installed in a residence, including a multifamily residential dwelling, for the exclusive use of the residents, from specified laws, and would authorize an EVSE,	Scheduled for May 12 hearing in the Senate Committee on Appropriations.			

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	following installation, to be used in connection with the sale of electricity as a motor vehicle fuel without being placed into service by a service agency or sealer, a specified.				
SB 330 (Padilla) Transmission Infrastructure Financing	Enables the Governor to establish one or more pilot projects to develop, finance, or operate electrical transmission infrastructure that meet certain criteria, including: being identified by the ISO in its transmission planning process, provides a significant reduction in cost, and is implemented under a PLA. Authorizes the Governor to designate existing state agencies, local public agencies, tribal organizations, or joint powers authorities to implement the pilot projects.	Scheduled for May 12 hearing in the Assembly Committee on Appropriations.		Support	
SB 332 (Wahab) PUC Commissioners	Would require the Energy Commission, in coordination with the public advisor and the PUC, on or before March 31, 2026, to issue a request for proposals for a team to undertake a study to (1) conduct a historical energy justice assessment of IOU operations and impacts, (2) complete a comparative analysis of the benefits and challenges of transitioning the IOUs to a successor entity in order to identify a recommended model, and, (3) if the study finds that it is in the best long-term interests of the people and ecologies of California to transition	Referred to the Senate Appropriations Committee Suspense File			

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	away from an IOU model, create a justice-centered implementation plan for managing the transition. The bill would require the Energy Commission to hold a public proceeding and submit a report of the study team's findings and recommendations to the Legislature no later than 24 months after selecting the study team for the feasibility portion of the study, and no later than 36 months after selecting the study team for the implementation plan portion of the study, as specified.				
SB 540 (Becker) Western Regional Organization	This bill codifies the West-Wide Pathways recommendation to authorize CAISO to relinquish its singular control of the Western Energy Imbalance Market (EIM) and Western Enhanced Day Ahead Market (EDAM) so that those two markets could be governed by an independent western regional organization.	Scheduled for May 19 hearing in the Assembly Committee on Appropriations.	Support	Support	This is the effort to create a new western regional organization that is an interim step to the full western regionalization grid.
SB 541 (Becker) Load Shifting: Dynamic Pricing	Existing law requires the CEC to adopt a biennial integrated energy policy report (IEPR). Existing law requires the CEC, in consultation with the PUC and the ISO, to adopt a goal for load shifting to reduce net peak electrical demand and adjust this target in each biennial IEPR. This bill would require the CEC, as part of each IEPR, to allocate the incremental load shifting needed	Scheduled for May 12 hearing in the Assembly Committee on Appropriations.		Oppose	CalCCA and individual CCAs have engaged with Sen. Becker's staff to explain concerns and there has been acknowledgement

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	to reach the above-described load-shifting goal, including biennial adjustments to the goal, to each retail supplier. The bill would require the CEC to establish rules for evaluating the effectiveness of the various load-shifting strategies for the purpose of determining how much credit a retail supplier should get for each type of load flexibility effort it undertakes, as specified.				to work together to address those concerns.
SB 707 (Durazo) Open Meetings: Brown Act Requirements	This bill is an omnibus proposal for exemptions to the Brown Act for local public meetings including extending until 1/1/30 the AB 2449 sunset, authorizing virtual meetings for subsidiary bodies, neighborhood councils, and multijurisdictional bodies. For multijurisdictional bodies, an in-person quorum must be established, each remote attending member must be identified in the agenda, a member receiving compensation must participate from a physical location accessible to the public, the remote participating members must be at least 20 miles round trip from the in-person meeting location.	Scheduled for May 12 hearing in the Assembly Committee on Appropriations.			
SB 842	Would require the State Energy Resources Conservation and Development Commission, on or before July 1, 2026, through a new or ongoing proceeding, to identify programs it	Scheduled for May 19 hearing in the Assembly		Position Under Consideration	

Bill	Summary	Status	PCE Position	CalCCA Position	Comments
	administers that provide, or could provide, financial support to deploy firm zero-carbon resources, mechanisms to use uncommitted or newly authorized funds in a manner that maximizes system and local reliability benefits and affordability outcomes, and the expected scope of energy resources that could be deployed based on current and expected funding availability, as provided. The bill would require the Public Utilities Commission, on or before December 31, 2026, to produce a report identifying opportunities and needs to provide for local reliability with firm zero-carbon resources over the short term, midterm, and long term, as provided. The bill would require the PUC, beginning on or before July 1, 2027, to evaluate resources necessary to optimize local reliability at least cost. The bill would require the PUC, as part of the evaluation, to ensure that each load-serving entity's integrated resource plan considers all reasonable new resource options that could be deployed to meet local reliability requirements at least cost.	Committee on Appropriations.			

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 18, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Nelly Wogberg, Board Clerk

SUBJECT: Report on California Community Power (CCP) Joint Powers Authority

ATTACHMENTS:
CA Community Power Board Meeting Report - April 23, 2025.pdf

California Community Power

901 H St, Ste 120 PMB 157, Sacramento, CA 95814 | cacommunitypower.org

TO: CC Power Board of Directors and Alternates **DATE:** 4/24/25
FROM: Alex Morris – General Manager
SUBJECT: **Report on CC Power Regular Board of Directors Meeting – April 23, 2025**

The CC Power Board of Directors held its December Board Meeting on April 23, 2025, 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 March 19, 2025.
- **Regular Agenda Items**:
  - **Resolution 25-04-01 – Approval of Coordinated Operations Agreement for Tumbleweed Project:** The Board authorized an amendment to the Tumbleweed Energy Storage Project's Project Participation Share Agreement ("PPSA") to incorporate a Coordinated Operations Agreement ("COA"). This COA specifies decision-making protocols and roles and responsibilities amongst CC Power and participating members for operating the Tumbleweed Energy Storage Project, scheduled to come online in April 2026. The COA directs the establishment of an Operations Advisory Subcommittee by which relevant input from participating members is provided to CC Power, the entity ultimately tasked with daily operating responsibilities, including schedule coordinator management, outage management, settlements validation, required compliance activities, etc.
  - **General Manager Report:** the General Manager provided updates to the Board on plans to launch negotiations and or further contract explorations for geothermal projects, a wind demonstration project in California coastal waters, and a non-lithium-ion long-duration energy storage project. Members must opt in to these project opportunities to participate. Funding for these joint-procurement activities was previously approved via the 2024-2025 CC Power Budget Authorization (Resolution 24-06-02). CC Power will host its Member Forum on October 21-22, 2025, near Camp Mather, CA, where members will assess the role of long-lived resources, including, benefits, operations, and ownership models through a tour of Hetch Hetchy hydropower facilities.

- **Work-Planning and Budget *Ad Hoc* Committee Update*:*** Chair Lori Mitchell (SJCE), on behalf of the *Ad Hoc* Budget Committee, shared a draft 2025-2026 CC Power budget. The Ad Hoc Committee will provide a final recommended budget for Board consideration at the May 21, 2025, CC Power Board Meeting. For some members, budget approval at a CC Power Board meeting would be contingent upon related approvals from those members' respective Boards. In remarks and related discussion with the Board, Chair Mitchell and members of the Ad Hoc Committee highlighted deliberations of the Ad Hoc Committee and conclusions on key features of the budget, including the accompanying work-plan, invoicing approaches, cost-allocation approaches, the reserve-build goal, and the rollover of some funds from the current budget cycle. The *Ad Hoc* Budget Committee includes Chair Mitchell, Treasurer Mitch Sears (VCE), Monica Padilla (SVCE), and Shawn Marshall (PCE).

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: April 18, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Brianna Arroyo, Administrative Assistant

SUBJECT: Social Media FAQ's

ATTACHMENTS:
PCE_ How to handle comments on Nextdoor.pdf
PCE_Social media talking points.pdf

How to handle comments on Nextdoor

What qualifies as an incendiary comment?

- The post contains aggressive or accusatory language.
- The post spreads misinformation about PCE's programs, services, or billing—or about clean energy.
- The post escalates negativity within the Nextdoor community, even if the original post is not negative.

How do I know if PCE should respond?

- ☐ Does the comment contain misinformation that could harm PCE's reputation?
- ☐ Is the comment receiving significant, negative attention (likes, replies, etc.)?
- ☐ Does responding to the post align with PCE's values and commitment to candor, transparency, and community support?
- ☐ Is someone asking a question related to PCE's billing or services?

It may be helpful to respond proactively, even if the original comment isn't particularly negative. This early intervention can help prevent misinformation and keep the community conversation on track.

I found an incendiary comment. What should I do next?

1. **Notify the Marketing team.**
   Send an email with the subject line: "Nextdoor comment for review" with a direct link to the post and any necessary screenshots to the following PCE team members:

   - Aleisha Juarez, ajuarez@peninsulacleanenergy.com
   - Kerstin Grune (cc'd), kgrune@peninsulacleanenergy.com
   - Gwen Rose (cc'd), grose@peninsulacleanenergy.com
   - Kirsten Andrews-Schwind (cc'd), kandrews-schwind@peninsulacleanenergy.com
   - Jayden Hanan (cc'd), jhanan@peninsulacleanenergy.com

2. **Be prepared to take action.**
   Given Nextdoor's limited access, we may ask you to respond via your personal profile. If the Marketing team confirms that a response is necessary, we will provide you with the appropriate post copy.

Helpful reminders

- When you see a negative Nextdoor comment, be a calm observer and collect details for escalation.
- Do not engage with incendiary comments, unless the Marketing team provides you with post copy.
- Responses on behalf of PCE should always reflect the organization's values.
- Stay ahead of the negativity: Responding to questions early can help keep the tone positive and prevent the situation from escalating.

PENINSULA CLEAN ENERGY

Social media FAQs

Here are some helpful tips for responding to frequently asked questions about Peninsula Clean Energy (PCE) on social media. Frame your response in a way that is accurate, concise, and friendly—all while staying true to PCE's mission and values. Feel free to adapt these prompts to your own voice, keeping it casual, personable, and polite.

Depending on the social media platform, your response could also encourage people to contact PCE Support for more information at info@peninsulacleanenergy.com or 1-866-966-0110.

What is Peninsula Clean Energy (PCE)? How is PCE different from PG&E?
PCE is your local, not-for-profit electricity provider. PCE provides the majority of the electricity supply—97% in fact—for San Mateo County and Los Banos.

PCE provides you with clean electricity, while PG&E delivers it to you through their wires. It's kind of like ordering takeout from your favorite restaurant (PCE) and having a food delivery service (PG&E) deliver it to your door.

Does PCE cost more than PG&E?
No! PCE's rates are competitive with or even lower than PG&E's, so you save money with PCE. You can compare PCE's and PG&E's rates here:
https://www.pge.com/assets/pge/docs/account/alternate-energy-providers/pce-sm_rateclasscomparison.pdf

Why was I automatically enrolled?
Your city or county voted to join PCE to bring cleaner, affordable energy to your community.

Can I opt out of PCE?
Yes, you can opt out. However, PCE's rates are typically lower than PG&E's, so opting out of PCE will make your electricity bill go up.

I opted out of PCE and my bill went down.
When you opted out of PCE, PG&E put you on a special temporary rate (TBCC) for six months. Recently, this rate has been lower than PCE's, which is probably why your bill went down. However, after six months, you'll be switched back to PG&E's regular rates, which are at least 5% higher than PCE's. So, even though it seems like you're saving money now, your bill will likely go up in the long term.

What clean energy options do I have?
You are automatically enrolled in ECOplus, which is 100% clean, 50% from renewable sources, and cheaper than PG&E. If you want to do even more good for the environment, you can upgrade to ECO100, which is 100% renewable energy for a small additional cost.

I have solar power. Why do I still have fees?
PCE only charges for the electricity you use beyond what your solar panels generate. If your panels produce less energy than your household needs, you'll see charges for the extra electricity you pulled from the grid. However, if your solar panels generate more energy than you use, PCE gives you a credit!

Why did my bill go up after switching to PCE?
Your bill increase is likely due to PG&E's delivery rates, not PCE. In fact, PCE has frozen rates multiple times to keep costs stable and put savings back in customers' pockets.

PENINSULA CLEAN ENERGY

PENINSULA CLEAN ENERGY AUTHORITY
JPA Board Correspondence

DATE: May 9, 2025
MEETING DATE: May 22, 2025
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Executive Committee

FROM: Nelly Wogberg, Board Clerk

SUBJECT: Acronym List

ATTACHMENTS:
ACRONYMS - as of 02-01-2024.pdf

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