



**AGENDA  
REGULAR MEETING  
CITY COUNCIL OF THE TOWN OF COLMA  
Wednesday, April 24, 2024  
Closed Session – 6:00 PM  
Regular Session – 7:00 PM**

*The City Council meeting will be held in person in the Council Chambers as detailed below. As a courtesy and technology permitting, the meeting will also be held virtually via Zoom Video Conference. However, the Town cannot guarantee that the public's access to the Zoom virtual platform will be uninterrupted, and technical difficulties may occur from time to time. In those instances, so long as the public may still attend the meeting in person, the meeting will continue.*

**To attend the meeting in person:**

Town Hall, Council Chamber, 1198 El Camino Real, Colma CA 94014

**To participate in the meeting via Zoom Video Conference:**

*Join Zoom Meeting:*

<https://us02web.zoom.us/j/81289976261>

Passcode: 074407

Meeting ID: 812 8997 6261

*Dial by your location:*

+1 669 900 6833 US (San Jose)

+1 346 248 7799 US (Houston)

+1 253 215 8782 US (Tacoma)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Germantown)

**To provide Public Comment in person:**

Members of the public wishing to speak are requested to complete a yellow speaker card and submit it to the City Clerk. Comments should be kept to three minutes or less.

**To provide Public Comment via Zoom Video Conference:**

Live verbal public comments may be made by requesting to speak using the "raise hand" feature in Zoom or, if calling in by phone, by pressing \*9 on the telephone keypad prior to the consent calendar being heard, or prior to the close of the public comment period for agenda items or non-agenda items. In response, the Town will unmute the speaker and allow them to speak up to three minutes.

**To provide Public Comment in writing:**

Members of the public may provide written comments by email to the City Clerk at [abby@colma.ca.gov](mailto:abby@colma.ca.gov) before the meeting. Emailed comments should include the specific agenda item on which you are commenting or note that your comment concerns an item that is not on the agenda. The length of the emailed comment should be commensurate with the three minutes customarily allowed for verbal comments, which is approximately 250-300 words.

*As a reminder, the Town cannot guarantee that the public's access to the Zoom virtual platform will be uninterrupted, and technical difficulties may occur from time to time. Therefore, if you want to ensure you are able to attend the meeting and/or make public comment, you may wish to attend in person.*

**CLOSED SESSION – 6:00 PM**

1. **In Closed Session Pursuant to Government Code Section 54957.6** – Conference with Labor Negotiators.

Agency Negotiator:	Austris Rungis, IEDA
Employee Organizations:	Colma Peace Officers Association and Colma Communications/Records Association
Unrepresented Employees:	All (Except City Manager)

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

**ADOPTION OF AGENDA**

**PRESENTATION**

- Proclamation in honor of Arbor Day
- Proclamation in honor of National Poetry Month
- Citizen Recognition
- Swearing in of Community Service Officer Danilo Talavera and Officer Masashi Matsumoto

**PUBLIC COMMENTS**

Comments on the Consent Calendar and Non-Agenda Items will be heard at this time. Comments on Agenda Items will be heard when the item is called.

**CONSENT CALENDAR**

2. Motion to Accept the Minutes from the March 27, 2024 Regular Meeting.
3. Motion to Accept the Minutes from the April 2, 2024 Special Meeting.
4. Motion to Accept the Minutes from the April 10, 2024 Special Meeting.
5. Motion to Approve Report of Checks Paid for March 2024.
6. Motion to Adopt Resolution Approving and Authorizing the City Manager to Execute an Agreement with the Resource Conservation District to Assist the Town in Meeting Senate Bill 1383 Requirements for Procuring Organic Waste Materials Pursuant to CEQA Guideline 15308.

**PUBLIC HEARING**

7. **COLMA MUNICIPAL CODE AMENDMENT RELATING TO THE TOWN SEAL**

*Consider:* Motion to Introduce an Ordinance Amending the Colma Municipal Code to Add a New Subchapter 1.19, Relating to the Town Seal/Logo, Pursuant to CEQA Guideline 15378.

**NEW BUSINESS**

8. **POWER PURCHASE AGREEMENTS FOR SOLAR INSTALLATION**

*Consider:* Motion to Adopt Resolution Approving and Authorizing the City Manager to Execute Power Purchase Agreements for Solar Installation at the Police Department and Town Hall, Pursuant to CEQA Guidelines 15301 and 15303.

**REPORTS**

Mayor/City Council  
City Manager

## **ADJOURNMENT**

The City Council Meeting Agenda Packet and supporting documents are available for review on the Town's website [www.colma.ca.gov](http://www.colma.ca.gov) or at Colma Town Hall, 1198 El Camino Real, Colma, CA. Persons interested in obtaining an agenda via e-mail should call 650-997-8300 or email a request to [citymanager@colma.ca.gov](mailto:citymanager@colma.ca.gov).

### Reasonable Accommodation

Upon request, this publication will be made available in appropriate alternative formats to persons with disabilities, as required by the Americans with Disabilities Act of 1990. Any person with a disability, who requires a modification or accommodation to view the agenda, should direct such a request to Juan Rumayor, ADA Coordinator, at 650-997-8300 or [jrumayor@colma.ca.gov](mailto:jrumayor@colma.ca.gov). Please allow two business days for your request to be processed.



**1. In Closed Session Pursuant to Government Code Section § 54957.6  
– CONFERENCE WITH LABOR NEGOTIATOR**

Agency Negotiator:	Austris Rungis, IEDA
Employee Organizations:	Colma Peace Officers Association and Colma Communications/Records Association
Unrepresented Employees:	All (Except City Manager)



**MINUTES  
REGULAR MEETING**

City Council of the Town of Colma  
Town Hall Council Chamber  
1198 El Camino Real, Colma CA  
Also Accessible via Zoom.us  
**Wednesday, March 27, 2024**  
**7:00 PM**

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

Mayor Goodwin called the meeting to order at 7:00 p.m.

Council Present – Mayor John Irish Goodwin, Vice Mayor Ken Gonzalez, and Council Members Carrie Slaughter, Helen Fisicaro, and Joanne F. del Rosario were present.

Staff Present – City Manager Daniel Barros, City Attorney Christopher Diaz, Chief of Police John Munsey, City Planner Farhad Mortazavi, Interim Administrative Services Director Stuart Schillinger, Interim City Clerk Abigail Dometita, and Administrative Technician Shelby Wright were in attendance.

The Mayor announced, “Regarding Public Comment: Members of the public who are here in person are requested to complete a yellow speaker card and submit it to the City Clerk. Those of you on Zoom may make public comments by using the “raise hand” feature in Zoom or, if calling in by phone, by pressing \*9 on the telephone keypad. The City Clerk will unmute your microphone and allow you to speak. Comments should be kept to three minutes or less.”

**ADOPTION OF THE AGENDA**

Mayor Goodwin asked if there were any changes to the agenda. None were requested. The Mayor asked for a motion to adopt the agenda.

**Action:** Council Member del Rosario moved to adopt the agenda; the motion was seconded by Vice Mayor Gonzalez and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor	✓				
Ken Gonzalez	✓				
Carrie Slaughter	✓				
Helen Fisicaro	✓				
Joanne F. del Rosario	✓				
	5	0			

**PRESENTATIONS**

The Mayor recognized Laura Walsh who was in attendance. She was presented with a certificate in honor of her service with the San Mateo County Mosquito Vector Control District on behalf of the Town; and Ms. Walsh made a few remarks.

**PUBLIC COMMENTS**

Mayor Goodwin opened the public comment period at 7:05 p.m. and seeing no one request to speak, he closed the public comment period.

**CONSENT CALENDAR**

1. Motion to Accept the Minutes from the March 13, 2024 Regular Meeting.
2. Motion Accepting the 2023 Annual Report on the Implementation of the General Plan, Including the Housing Element Pursuant to CEQA Guideline 15378.
3. Motion Approving and Accepting the Development Impact Fee Report for Fiscal Year Ending June 30, 2023 Pursuant to CEQA Guideline 15378.
4. Motion to Adopt a Resolution Amending Colma Administrative Code Section 2.02.040, Relating to Disqualified Persons That Are Ineligible from Becoming a Tenant at the Town’s Senior Housing Complex (Creekside Villas) Pursuant to CEQA Guideline 15378.

**Action:** Council Member del Rosario moved to approve consent calendar items #1 through 4; the motion was seconded by Council Member Slaughter and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor	✓				
Ken Gonzalez	✓				
Carrie Slaughter	✓				
Helen Fiscaro	✓				
Joanne F. del Rosario	✓				
	5	0			

**NEW BUSINESS**

**5. ESTABLISHING AN ECONOMIC DEVELOPMENT SUBCOMMITTEE**

City Manager Daniel Barros presented the staff report. The Mayor opened the public comment period at 7:09 p.m. and seeing no one request to speak, he closed the public comment period. Council discussion followed.

**Action:** Council Member Fiscaro moved to Establish a City Council Standing Economic Development Subcommittee and Select Council Member Joanne del Rosario and Council Member Carrie Slaughter to Serve on the Subcommittee; the motion was seconded by Vice Mayor Gonzalez and carried by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor	✓				
Ken Gonzalez	✓				
Carrie Slaughter	✓				
Helen Fiscaro	✓				
Joanne F. del Rosario	✓				
	5	0			



## **STUDY SESSION**

### **6. PROPS AND MEASURES PRESENTATION**

City Manager Daniel Barros introduced Alex Wara-Macapinlac of Props and Measures and Emily Kirby Goodman of EMC Research to present the item. The Mayor opened the public comment period at 7:22 p.m. and seeing no one request to speak, he closed the public comment period. Council discussion followed.

*This item was for discussion only; no action was taken at this meeting.*

## **COUNCIL CALENDARING**

There will be a Special Meeting on Tuesday, April 2, 2024 at 11am in Town Hall with Congressman Kevin Mullin. The next Regular Meeting will be on Wednesday, April 10, 2024 at 7pm.

## **REPORTS**

City Manager Daniel Barros gave an update on the following topics:

- West side of Home Depot parking structure has reopened. They will have 180 days to submit a permit for a permanent fix.
- Walls have been constructed for Raising Cane's which is projected to open this summer.
- F Street Wall Mural is more than 75% finished.
- Recruitment for Administrative Services Director has closed and interviews are scheduled for April 17.
- Eggstravaganza is scheduled for Saturday, March 30 at 9 a.m. in Sterling Park.

Council Member Fisicaro asked about the repair work at the Cadillac dealership; Director of Planning and Public Works Brad Donohue provided a brief update.

Vice Mayor Gonzalez asked if the graffiti coating for the F Street Wall Mural will be applied by the muralist or a third party; the City Manager confirmed the muralist will apply the coating.

## **ADJOURNMENT AND CLOSE IN MEMORY**

Mayor Goodwin adjourned the meeting at 7:39 p.m. in memory of resident Sandy Calisher.

Respectfully submitted,

Abigail Dometita  
Interim City Clerk



**MINUTES  
SPECIAL MEETING**

City Council of the Town of Colma  
Town Hall, Conference Room  
1198 El Camino Real, Colma CA  
**Tuesday, April 2, 2024**  
**11:00 AM**

**COMMUNITY ROUNDTABLE WITH CONGRESSMAN KEVIN MULLIN**

Mayor Goodwin called the meeting to order at 11:05 a.m.

Council Present – Mayor John Irish Goodwin, Vice Mayor Ken Gonzalez, and Council Members Carrie Slaughter, Helen Fisicaro, and Joanne F. del Rosario were present.

Staff Present – City Manager Daniel Barros and Abigail Dometita were in attendance.

Guests Present – Congressman Kevin Mullin, Director of Constituent Services Raghda Karajah, and Director of Communications Samantha Weigel were in attendance.

City Manager Daniel Barros presented a slideshow and led the group in a discussion.

*This item was for discussion only; no action was taken at this meeting.*

Mayor Goodwin adjourned the meeting at 12:20 p.m.

Respectfully submitted,

Abigail Dometita  
Interim City Clerk



**MINUTES  
SPECIAL MEETING**

City Council of the Town of Colma  
Corner of F Street and El Camino Real  
37°40'57.9"N 122°27'46.6"W  
Colma, CA 94014  
(In front of the F Street Retaining Wall)  
**Wednesday, April 10, 2024**  
**4:00 PM**

**CALL TO ORDER**

Mayor Goodwin called the meeting to order at 4:00 p.m.

Council Present – Mayor John Irish Goodwin, Vice Mayor Ken Gonzalez, Council Members Carrie Slaughter, Helen Fiscaro and Joanne F. del Rosario were present.

Staff Present – City Manager Daniel Barros, City Attorney Christopher Diaz, Chief of Police John Munsey, Director of Planning and Public Works Brad Donohue, Police Commander Sherwin Lum, Police Dispatcher/Records Supervisor Amanda Velasquez, Interim City Clerk Abigail Dometita, Human Resources Analyst Juan Rumayor, Public Works Maintenance Supervisor Louis Gotelli, Recreation Coordinators Daisy Esquivias and Dinora Navarro, Accounting Technician Maria Martinez, Executive Assistant to Chief of Police Nikole Azzopardi, Administrative Technician Shelby Wright, and Maintenance Technicians Vicente Gonzalez and Ryan Rodriguez were in attendance.

**WELCOME AND INTRODUCTION OF SPECIAL GUESTS**

Mayor Goodwin welcomed everyone and introduced distinguished guests:

- Julie Englemann, Artist/Muralist
- Former Mayors and Council Members Dennis Fiscaro and Randi DuBois Taini
- Former Council Member Mary Brodzin
- Reno Taini, Creator of Colma’s motto “It’s Great to be Alive in Colma!”
- Daly City Mayor Juslyn Manalo
- Daly City Council Members Teresa Proaño and Pamela DiGiovanni
- Felicia Leong, CEO of the Colma Daly City Chamber of Commerce, including board members Rebecca Husted, Eleanor Serrato, Marie Villarosa, Ross Sit, Daisy Li, and Kevin Tong
- Sandie Arnott, San Mateo County Tax Collector
- Richard and Michael Rochetta from the Colma Historical Association

**RECOGNITION OF THE F STREET WALL MURAL COMMITTEE**

Mayor Goodwin made his opening remarks. He then presented certificates of recognition to the following panelists of the F Street Wall Mural Committee:

- Victoria Magbilang, District 5 Representative of the San Mateo County Arts Commission
- Stephen Seymour, District 1 Representative of the San Mateo County Arts Commission
- Yvette Cortes, Owner/Operator of Simply Uniforms
- Maureen O’Connor, President of the Colma Historical Association

- Council Member Helen Fisicaro
- Council Member Joanne del Rosario
- Brian Dossey, Former City Manager

### **REMARKS BY THE MAYOR**

The Mayor stated, "Today, as we cut the ribbon to showcase this stunning work of art, let us also recognize the individuals and groups whose dedication and hard work have made this project possible. From artist Julie Englemann who poured her heart into every brushstroke and beautifully captured the essence of Colma, to our Public Works Maintenance staff and Police Department who kept her safe with the road closure, and to the F Street Wall Mural Committee that came together and donated their time to choose the best artist they believed would do Colma justice—thank you all. But most importantly, let us remember that this mural is not just a piece of art; it is a symbol of our collective story, our shared journey, and our enduring legacy. May it inspire future generations to cherish and preserve the beauty and character of Colma for another hundred years and beyond."

### **REMARKS BY THE VICE MAYOR AND COUNCIL**

Vice Mayor Gonzalez, and Council Members del Rosario and Fisicaro made remarks.

### **REMARKS BY MEMBERS OF THE PUBLIC**

The Mayor asked if any members of the public wished to speak. The following people made remarks:

- Julie Englemann, Artist/Muralist
- Victoria Magbilang, District 5 Representative of the San Mateo County Arts Commission
- Felicia Leong, CEO of the Colma Daly City Chamber of Commerce
- Daly City Mayor Juslyn Manalo
- Maureen O'Connor, President of the Colma Historical Association
- Daly City Council Members Teresa Proaño and Pamela DiGiovanni
- Sharon Dinkin, resident
- Stephen Seymour, District 1 Representative of the San Mateo County Arts Commission

### **RIBBON CUTTING AND ADJOURNMENT**

The City Council and Artist Julie Englemann cut the ribbon together. The Mayor adjourned the meeting at 4:32 p.m. and invited everyone for sparkling cider and mini cupcakes at Sterling Park.

Respectfully submitted,

Abigail Dometita  
Interim City Clerk

apCkHist  
04/02/2024 2:31PM

Check History Listing  
Town of Colma

Bank code: first

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
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58110	03/08/2024	01375 NATIONWIDE RETIREMENT SC	C	03/15/2024	03082024 B	03/08/2024	3,283.06	5,483.06
			C	03/15/2024	03082024 M	03/08/2024	2,200.00	
58111	03/08/2024	02944 ASSOCIATION OF CALIFORNIA	C	03/14/2024	03082024 B	03/08/2024	45.00	45.00
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58113	03/07/2024	03546 JUDIT ABARCA			2002753.003	02/28/2024	200.00	200.00
58114	03/07/2024	03267 ACC BUSINESS	C	03/18/2024	240427573	02/27/2024	679.66	679.66
58115	03/07/2024	00522 ALAMEDA COUNTY SHERIFFS			Mar 23, 2024	02/28/2024	300.00	300.00
58116	03/07/2024	00013 ANDY'S WHEELS & TIRES	C	03/15/2024	67094	02/13/2024	583.19	829.75
			C	03/15/2024	67154	02/29/2024	100.78	
			C	03/15/2024	67091	02/13/2024	100.78	
			C	03/15/2024	67105	02/15/2024	45.00	
58117	03/07/2024	00623 ARAMARK	C	03/12/2024	5180313732	03/04/2024	15.90	31.80
			C	03/12/2024	5180313738	03/04/2024	15.90	
58118	03/07/2024	00051 CALIFORNIA WATER SERVICE	C	03/13/2024	6544607057-02/20/24	02/20/2024	190.07	190.07
58119	03/07/2024	01037 COMCAST CABLE	C	03/13/2024	0097051 022024	02/20/2024	360.01	720.02
			C	03/13/2024	0097028 022024	02/20/2024	360.01	
58120	03/07/2024	00366 CRITICAL REACH, INC.	C	03/12/2024	3135	12/08/2023	325.00	325.00
58121	03/07/2024	03450 FLOCK GROUP, INC	C	03/15/2024	INV-34058	02/26/2024	17,945.21	17,945.21
58122	03/07/2024	02499 GE CAPITAL INFORMATION (RI	C	03/12/2024	5069043931	03/01/2024	1,212.08	1,212.08
58123	03/07/2024	02773 GRAPHICS ON THE EDGE	C	03/11/2024	5284	02/21/2024	1,493.75	1,493.75
58124	03/07/2024	00464 HINDERLITER, DE LLAMAS	C	03/14/2024	SIN036215	02/29/2024	1,798.24	1,798.24
58125	03/07/2024	00254 METRO MOBILE COMMUNICAT	C	03/12/2024	240316	03/01/2024	602.00	602.00
58126	03/07/2024	01340 NAVIA BENEFIT SOLUTIONS	C	03/11/2024	10817329	02/28/2024	400.00	400.00

Check History Listing  
Town of Colma

Bank code: first

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
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			C	03/12/2024	0567147369-1 29Feb24	02/29/2024	310.44	
			C	03/12/2024	2039987372-6 022324	02/23/2024	12.33	
			C	03/12/2024	9956638930-2 022324	02/23/2024	9.53	
58128	03/07/2024	00609 SMC MANAGER'S OFFICE			Mar 13-14, 2024	02/28/2024	100.00	100.00
58129	03/07/2024	02224 STANDARD INSURANCE COMF	C	03/12/2024	Mar2024Coverage	02/13/2024	227.32	227.32
58130	03/07/2024	02849 6746050100 U.S. BANK PARS A	C	03/11/2024	2024-02 OPEB	02/01/2024	101,073.00	202,146.00
			C	03/11/2024	2024-03 OPEB	03/01/2024	101,073.00	
58131	03/07/2024	00432 VISION SERVICE PLAN	C	03/11/2024	819912441	02/19/2024	1,132.12	1,132.12
58132	03/07/2024	02132 JASON WOLLMAN	C	03/11/2024	02/29/24 REIMBURSE	02/29/2024	297.27	297.27
58133	03/07/2024	00013 ANDY'S WHEELS & TIRES	C	03/15/2024	67003	01/22/2024	1,188.25	688.42
			C	03/15/2024	67002	01/22/2024	151.17	
			C	03/15/2024	67008	01/23/2024	45.00	
			C	03/15/2024	67004	01/22/2024	-696.00	
58134	03/07/2024	00098 COUNTY OF SANTA CLARA	C	03/28/2024	AF-2401-02000	02/21/2024	4,339.00	4,339.00
58135	03/12/2024	00020 ASSOCIATED SERVICES	C	03/25/2024	124030029	03/01/2024	49.00	49.00
58136	03/12/2024	01183 BEST BEST & KRIEGER LLP	C	03/18/2024	989714	03/07/2024	21,769.88	26,384.12
			C	03/18/2024	989715	03/07/2024	3,990.90	
			C	03/18/2024	989716	03/07/2024	623.34	
58137	03/12/2024	00051 CALIFORNIA WATER SERVICE	C	03/19/2024	02/29/2024 Bill Date	02/29/2024	3,390.88	3,390.88
58138	03/12/2024	00093 CITY OF SOUTH SAN FRANCIS	C	03/26/2024	519808	12/15/2023	19,123.84	32,889.83
			C	03/26/2024	519931	02/16/2024	13,765.99	
58139	03/12/2024	03539 CLARK PEST CONTROL	C	03/20/2024	34940595	03/07/2024	135.00	135.00
58140	03/12/2024	01037 COMCAST CABLE	C	03/20/2024	0094769 022624	02/26/2024	16,046.15	16,046.15
58141	03/12/2024	00649 DAVEY TREE EXPERT COMPAN	C	03/25/2024	918300522	02/24/2024	1,200.00	1,200.00
58142	03/12/2024	01995 DBA CELETTA INVESTIGATIVE	C	03/19/2024	24-0305	03/05/2024	770.00	770.00



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Town of Colma

Bank code: first

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
58143	03/12/2024	01831 JOANNE F. DEL ROSARIO	C	03/26/2024	2002757.003	03/05/2024	275.00	275.00
58144	03/12/2024	02793 DITO'S MOTORS			29809	03/04/2024	1,495.85	1,495.85
58145	03/12/2024	03268 DAISY ESQUIVIAS	C	03/18/2024	Feb 27-Mar 01,2024	03/06/2024	211.99	211.99
58146	03/12/2024	00463 HELEN FISICARO	C	03/18/2024	2002756.003	03/05/2024	275.00	275.00
58147	03/12/2024	02499 GE CAPITAL INFORMATION (RI	C	03/21/2024	5069044045	03/01/2024	293.57	293.57
58148	03/12/2024	02967 GOVINVEST INC.			2024-5193	03/07/2024	3,400.00	3,400.00
58149	03/12/2024	03601 HEALTH AND HUMAN RESOUR	C	03/18/2024	E0314825	03/05/2024	64.80	64.80
58150	03/12/2024	00174 HOME DEPOT CREDIT SERVIC	C	03/21/2024	02/28/24 CLOSING	02/28/2024	401.02	401.02
58151	03/12/2024	00181 IEDA	C	03/26/2024	24494	03/01/2024	1,685.04	1,685.04
58152	03/12/2024	03607 MARK THOMAS & COMPANY, II	C	03/19/2024	50248	02/14/2024	21,100.25	21,100.25
58153	03/12/2024	02993 VANESSA MOSQUEDA VELEZ (	C	03/21/2024	Feb 15-Mar 07,2024	03/07/2024	400.00	400.00
58154	03/12/2024	03061 NICK BARBIERI TRUCKING LLC	C	03/18/2024	CL38459	03/01/2024	221.06	221.06
58155	03/12/2024	03557 O'CONNOR & COMPANY	C	03/18/2024	0224-20	02/29/2024	8,362.50	8,362.50
58156	03/12/2024	00280 ODP BUSINESS SOLUTIONS	C	03/25/2024	355576341001	02/23/2024	33.96	33.96
58157	03/12/2024	00311 PITNEY BOWES INC.	C	03/25/2024	3106550706	02/27/2024	899.64	899.64
58158	03/12/2024	02926 INC PRECISION BODY SHOP &	C	03/18/2024	DETAIL29838	03/05/2024	35.00	35.00
58159	03/12/2024	03384 PROTELESIS CORPORATION	C	03/19/2024	XTLQ49652	03/06/2024	3,936.47	3,936.47
58160	03/12/2024	02216 RAMOS OIL CO. INC.	C	03/19/2024	CL080754	02/29/2024	1,242.07	1,242.07
58161	03/12/2024	00349 SEGALE & CERINI INC.			17925 17926	02/29/2024 02/29/2024	21,992.00 613.00	22,605.00
58162	03/12/2024	01032 SHAUGHNESSY ROOFING, INC	C	03/19/2024	0031219-IN	03/04/2024	1,480.00	1,480.00
58163	03/12/2024	00500 SMC CONTROLLERS OFFICE	C	03/25/2024	February 2024	03/04/2024	3,529.60	3,529.60
58164	03/12/2024	01030 STEPFORD, INC.	C	03/18/2024	2406166	03/05/2024	1,705.00	1,705.00

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Town of Colma

Bank code: first

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
58165	03/12/2024	01865 THYSSENKRUPP ELEVATOR C	C	03/22/2024	3007778438	03/01/2024	4,032.00	4,032.00
58166	03/12/2024	00411 TURBO DATA SYSTEMS	C	03/19/2024	42367	02/29/2024	1,867.25	1,867.25
58167	03/12/2024	03015 U.S. BANK CORPORATE PMT S	C	03/25/2024	02/22/2024	02/22/2024	13,775.42	13,775.42
58168	03/19/2024	00522 ALAMEDA COUNTY SHERIFFS			Apr 15-17, 2024	03/11/2024	678.00	678.00
58169	03/19/2024	00623 ARAMARK	C	03/25/2024	5180316246	03/11/2024	15.90	
			C	03/25/2024	5180316240	03/11/2024	15.90	31.80
58170	03/19/2024	00004 AT&T			000021360478	03/01/2024	37.99	37.99
58171	03/19/2024	03334 LLC AT&T MOBILITY NATIONAL	C	03/28/2024	287296200335X031024	03/02/2024	2,481.23	2,481.23
58172	03/19/2024	03447 NIKOLE AZZOPARDI	C	03/25/2024	Mar 2024 REIMB	03/11/2024	16.28	16.28
58173	03/19/2024	01565 BAY CONTRACT MAINTENANC	C	03/25/2024	31466	03/11/2024	2,877.53	
			C	03/25/2024	31467	03/11/2024	2,794.42	
			C	03/25/2024	31465	03/11/2024	2,794.42	
			C	03/25/2024	31470	03/11/2024	1,630.07	
			C	03/25/2024	31468	03/11/2024	665.32	
			C	03/25/2024	31471	03/11/2024	232.37	
			C	03/25/2024	31469	03/11/2024	203.01	11,197.14
58174	03/19/2024	00051 CALIFORNIA WATER SERVICE	C	03/27/2024	3422893362- 03/04/24	03/04/2024	55.28	
			C	03/27/2024	0944444444-03/04/24	03/04/2024	55.22	
			C	03/27/2024	5793906861-03/04/24	03/04/2024	36.86	147.36
58175	03/19/2024	00057 CINTAS CORPORATION #2	C	03/29/2024	4185187915	03/04/2024	784.76	
			C	03/29/2024	4185187828	03/04/2024	465.77	1,250.53
58176	03/19/2024	03539 CLARK PEST CONTROL	C	03/28/2024	34940599	03/13/2024	145.00	
			C	03/28/2024	34940596	03/13/2024	135.00	
			C	03/28/2024	34940597	03/13/2024	135.00	
			C	03/28/2024	34940598	03/13/2024	115.00	530.00
58177	03/19/2024	01037 COMCAST CABLE	C	03/27/2024	0097069 022724	02/27/2024	365.01	
			C	03/27/2024	0096715 030724	03/07/2024	122.01	487.02
58178	03/19/2024	03702 CORODATA RECORDS MANAG	C	03/25/2024	RS3590581	02/29/2024	97.05	97.05

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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
58179	03/19/2024	02827 CORODATA SHREDDING, INC.	C	03/25/2024	DN 1462028	02/29/2024	115.69	115.69
58180	03/19/2024	00071 CSG CONSULTANTS, INC.	V	03/20/2024			0.00	0.00
58181	03/19/2024	00071 CSG CONSULTANTS, INC.	C	03/26/2024	12/30/23-01/26/24	03/12/2024	121,707.10	
			C	03/26/2024	11/25/23-12/29/23	03/12/2024	119,483.29	
			C	03/26/2024	55350	03/12/2024	41,690.00	
			C	03/26/2024	54637	03/12/2024	21,252.50	
			C	03/26/2024	55349	03/12/2024	14,400.00	
			C	03/26/2024	54631	03/12/2024	9,952.50	
			C	03/26/2024	54634	03/12/2024	8,817.50	
			C	03/26/2024	55352	03/12/2024	5,232.50	
			C	03/26/2024	54633	03/12/2024	5,152.50	
			C	03/26/2024	54630	03/12/2024	4,728.50	
			C	03/26/2024	55351	03/12/2024	3,540.00	
			C	03/26/2024	55348	03/12/2024	2,042.52	
			C	03/26/2024	54636	03/12/2024	1,156.50	
			C	03/26/2024	55353	03/12/2024	940.00	
			C	03/26/2024	54632	03/12/2024	450.00	
			C	03/26/2024	54629	03/12/2024	257.00	
			C	03/26/2024	54635	03/12/2024	235.00	361,037.41
58182	03/19/2024	00112 DEPARTMENT OF JUSTICE	C	03/26/2024	720242	03/04/2024	49.00	49.00
58183	03/19/2024	02558 DIAL GLASS AND WINDOW CO	C	03/26/2024	46127	11/22/2023	6,986.00	6,986.00
58184	03/19/2024	03616 FLEXIBLE BENEFIT ADMIN	C	03/29/2024	194408	03/12/2024	20.00	20.00
58185	03/19/2024	03273 HOME DEPOT PRO, THE	C	03/25/2024	792307423	03/01/2024	961.61	961.61
58186	03/19/2024	01954 ARACELI MILLEZA	C	03/26/2024	2002759.003	03/11/2024	220.00	220.00
58187	03/19/2024	03396 DINORA NAVARRO	C	03/28/2024	02/27-03/01/24 REIMB	03/11/2024	187.39	187.39
58188	03/19/2024	02763 OPENGOV, INC.	C	03/26/2024	INV12809	03/12/2024	17,115.00	17,115.00
58189	03/19/2024	02710 MARBING PABLICO	C	03/28/2024	2002760.003	03/11/2024	300.00	300.00
58190	03/19/2024	00307 PACIFIC GAS & ELECTRIC	C	03/26/2024	3007220528-6 08Mar24	03/08/2024	5,042.16	
			C	03/26/2024	0576889222-5 08Mar24	03/08/2024	307.47	

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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
			C	03/26/2024	0035222590-8 08Mar24	03/08/2024	43.45	5,393.08
58191	03/19/2024	03551 QUENCH USA, INC	C	03/29/2024	INV07092932	03/07/2024	262.20	262.20
58192	03/19/2024	00534 SMC INFORMATION SERVICES			1YCL12402	02/29/2024	82.25	82.25
58193	03/19/2024	03606 SOLAR LIGHTING INT'L, INC.			102909	03/13/2024	1,340.00	1,340.00
58194	03/19/2024	00334 SOUTH BAY REGIONAL TRAINI			163780 INV	03/11/2024	1,727.00	1,727.00
58195	03/19/2024	03338 SYNAPSE TECHNOLOGIES, IN	C	03/28/2024	1994	03/11/2024	4,794.00	4,794.00
58196	03/19/2024	00412 TELECOMMUNICATIONS ENGI			48704	03/10/2024	1,652.50	1,652.50
58197	03/19/2024	02799 WAVE/ASTOUND	C	03/27/2024	103745301-0010682	03/01/2024	440.22	440.22
58198	03/19/2024	02132 JASON WOLLMAN			03/11/24 REIMBURSE	03/11/2024	688.23	688.23
58199	03/20/2024	01189 DEPARTMENT OF MOTOR VEH			Clean Air Sticker	11/22/2023	22.00	22.00
58200	03/22/2024	00047 C.L.E.A.	C	03/28/2024	03222024 B	03/22/2024	512.00	
			C	03/28/2024	03222024 S	03/22/2024	32.00	544.00
58201	03/22/2024	01340 NAVIA BENEFIT SOLUTIONS	C	03/28/2024	03222024 B	03/22/2024	1,992.40	1,992.40
58202	03/22/2024	01375 NATIONWIDE RETIREMENT SC			03222024 B	03/22/2024	3,283.06	3,283.06
58203	03/22/2024	02224 STANDARD INSURANCE COMF	C	03/28/2024	03222024 B	03/22/2024	323.00	
			C	03/28/2024	03222024 S	03/22/2024	11.00	334.00
58204	03/26/2024	03594 A-1 FENCE AND DECK, INC.,			26211 03/12/24	03/18/2024	4,300.00	4,300.00
58205	03/26/2024	00623 ARAMARK			5180318749	03/18/2024	15.90	
					5180318755	03/18/2024	15.90	31.80
58206	03/26/2024	00004 AT&T			000021407839	03/13/2024	1,661.38	1,661.38
58207	03/26/2024	03389 RICKIE BREAUX			03/20/24 Reimburse	03/20/2024	4.94	4.94
58208	03/26/2024	00071 CSG CONSULTANTS, INC.			01/27/24-02/23/24	03/21/2024	115,294.26	
					55710	03/21/2024	9,710.00	
					55705	03/21/2024	9,357.50	
					55706	03/21/2024	7,517.50	
					55707	03/21/2024	5,560.00	147,439.26

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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
58209	03/26/2024	00116 DALY CITY/COLMA CHAMBER			03/15/24 Crab Feed	03/20/2024	500.00	500.00
58210	03/26/2024	01472 MARIELA DELATORRE			2002765.003	03/18/2024	50.00	50.00
58211	03/26/2024	00117 DELTA DENTAL OF CALIFORNIA			BE005904988	02/01/2024	14,039.21	
					BE005943934	03/01/2024	13,860.42	27,899.63
58212	03/26/2024	00112 DEPARTMENT OF JUSTICE			718658	03/04/2024	382.00	382.00
58213	03/26/2024	02793 DITO'S MOTORS			29915	03/19/2024	79.45	
					29928	03/20/2024	79.45	158.90
58214	03/26/2024	02935 EMCOR SERVICES-MESA ENERGY			940019993	03/22/2024	4,955.00	4,955.00
58215	03/26/2024	03428 ROMULO FERRO			2002763.003	03/18/2024	275.00	275.00
58216	03/26/2024	02257 SAIDA GARCIA			2002764.003	03/18/2024	710.00	710.00
58217	03/26/2024	02499 GE CAPITAL INFORMATION (R)			107963159	01/19/2024	387.33	
					107887559	12/22/2023	287.32	
					108060322	02/21/2024	287.32	
					107955663	01/17/2024	282.74	
					107968273	01/23/2024	274.76	1,519.47
58218	03/26/2024	00433 GRAINGER INC			9061127644	03/21/2024	77.50	77.50
58219	03/26/2024	02605 SAUL GUERRERO	C	03/28/2024	02/20/24 Reimburse	02/20/2024	82.72	82.72
58220	03/26/2024	03607 MARK THOMAS & COMPANY, II			50496	03/08/2024	60,107.74	60,107.74
58221	03/26/2024	03441 MARVIN GARDENS CATERING			16580	03/20/2024	911.09	911.09
58222	03/26/2024	03648 METROPOLITAN PLANNING GROUP			2004367	03/11/2024	1,072.50	1,072.50
58223	03/26/2024	02545 JOHN MICHAEL MURRAY			2002758.003	03/11/2024	50.00	50.00
58224	03/26/2024	03701 OUTDOOR CREATIONS INC.			10998	03/13/2024	14,421.10	14,421.10
58225	03/26/2024	00307 PACIFIC GAS & ELECTRIC			1918250367-2 19Mar24	03/19/2024	7,174.41	
					0512181543-4 11Mar24	03/11/2024	2,764.66	9,939.07
58226	03/26/2024	03366 PREMIER LOCKSMITH			08585	03/18/2024	1,900.00	1,900.00

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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
58227	03/26/2024	01023 PRIORITY 1			9644	03/13/2024	2,347.35	2,347.35
58228	03/26/2024	03652 QUANTUM ENERGY SERVICES			24010	03/14/2024	1,100.00	1,100.00
58229	03/26/2024	02216 RAMOS OIL CO. INC.			CL083678	03/20/2024	1,880.78	3,564.60
					CL082218	03/10/2024	1,683.82	
58230	03/26/2024	02886 READY REFRESH BY NESTLE			04C0036457661	03/08/2024	66.97	66.97
58231	03/26/2024	03430 ALLIED WASTE SERVICES REF			0893-000188883	02/29/2024	82.10	82.10
58232	03/26/2024	00349 SEGALE & CERINI INC.			17927	02/29/2024	53.75	53.75
58233	03/26/2024	03686 SERRA YELLOW CAB, INC			1078-003	01/31/2024	898.07	898.07
58234	03/26/2024	00388 SONITROL			361139	03/12/2024	1,143.11	1,143.11
58235	03/26/2024	00830 STAPLES BUSINESS CREDIT			7000110184	02/25/2024	375.95	375.95
58236	03/26/2024	01030 STEPFORD, INC.			2401195	03/20/2024	9,636.40	9,936.39
					2401209	03/22/2024	299.99	
58237	03/26/2024	02383 JESSICA TOSCANO			2002762.003	03/18/2024	275.00	275.00
58238	03/26/2024	02849 6746050100 U.S. BANK PARS A			2024-04 OPEB	04/01/2024	101,073.00	101,073.00
58239	03/26/2024	01687 UNITED SITE SERVICES OF			INV-4350915	03/14/2024	168.16	168.16
58240	03/26/2024	03645 WHITLOCK & WEINBERGER TF			31062	03/11/2024	1,668.75	1,668.75
58241	03/26/2024	02132 JASON WOLLMAN			03/18/24 Reimburse	03/18/2024	663.37	663.37
58242	03/26/2024	02132 JASON WOLLMAN			03/21/24 REIMBURSE	03/21/2024	18.00	18.00
95079	03/08/2024	00130 EMPLOYMENT DEVELOPMENT			03082024 M	03/08/2024	150.00	150.00
95080	03/08/2024	00521 UNITED STATES TREASURY			03082024 M	03/08/2024	1,240.60	1,240.60
95081	03/08/2024	00631 P.E.R.S.			03082024 M	03/08/2024	854.22	854.22
95082	03/08/2024	01360 MISSIONSQUARE RETIREMEN			03082024 M	03/08/2024	493.26	493.26
95083	03/08/2024	00282 RETIREMENT SYSTEM CALIFC			03082024 M	03/08/2024	5,335.07	5,335.07

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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
95084	03/08/2024	00130 EMPLOYMENT DEVELOPMENT			03082024 B	03/08/2024	16,177.87	16,177.87
95085	03/08/2024	00521 UNITED STATES TREASURY			03082024 B	03/08/2024	69,247.13	69,247.13
95086	03/08/2024	00282 RETIREMENT SYSTEM CALIFC			03082024 B	03/08/2024	80,142.19	80,142.19
95087	03/08/2024	00631 P.E.R.S.			03082024 B	03/08/2024	53,202.29	53,202.29
95088	03/08/2024	01360 MISSIONSQUARE RETIREMEN			03082024 B	03/08/2024	5,432.52	5,432.52
95089	03/08/2024	00068 COLMA PEACE OFFICER'S			03082024 B	03/08/2024	1,176.54	1,176.54
95093	03/22/2024	00130 EMPLOYMENT DEVELOPMENT			03222024 B	03/22/2024	16,247.51	16,247.51
95094	03/22/2024	00521 UNITED STATES TREASURY			03222024 B	03/22/2024	69,444.39	69,444.39
95095	03/22/2024	00631 P.E.R.S.			03222024 B	03/22/2024	51,087.04	51,087.04
95096	03/22/2024	01360 MISSIONSQUARE RETIREMEN			03222024 B	03/22/2024	5,377.18	5,377.18
95097	03/22/2024	00068 COLMA PEACE OFFICER'S			03222024 B	03/22/2024	1,091.03	1,091.03
95105	03/22/2024	00130 EMPLOYMENT DEVELOPMENT			03222024 S	03/22/2024	900.34	900.34
95106	03/22/2024	00521 UNITED STATES TREASURY			03222024 S	03/22/2024	3,774.42	3,774.42
95107	03/22/2024	01360 MISSIONSQUARE RETIREMEN			03222024 S	03/22/2024	300.00	300.00
95108	03/22/2024	00631 P.E.R.S.			03222024 S	03/22/2024	1,843.99	1,843.99
95109	03/22/2024	00068 COLMA PEACE OFFICER'S			03222024 S	03/22/2024	85.51	85.51
120071	03/04/2024	00282 RETIREMENT SYSTEM CALIFC			100000017458121	02/14/2024	7,733.35	7,733.35
120072	03/04/2024	03616 FLEXIBLE BENEFIT ADMIN			MAR2024HRA	03/01/2024	64,347.53	64,347.53

first Total: 1,705,477.47

157 checks in this report

Total Checks: 1,705,477.47







# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Kathleen Gallagher, Sustainability Manager  
 VIA: Dan Barros, City Manager  
 MEETING DATE: April 24, 2024  
 SUBJECT: Approval of Agreement with the Resource Conservation District to assist meeting SB 1383 procurement requirements

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## RECOMMENDATION

Staff recommends the City Council adopt the following:

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE RESOURCE CONSERVATION DISTRICT TO ASSIST THE TOWN IN MEETING SENATE BILL 1383 REQUIREMENTS FOR PROCURING ORGANIC WASTE MATERIALS PURSUANT TO CEQA GUIDELINE 15308.

## EXECUTIVE SUMMARY

SB 1383 is landmark legislation that requires jurisdictions to meet organic waste diversion requirements, meet organic waste procurement requirements, complete reporting, and monitoring of requirements to CalRecycle, and procure recycled content products. A particularly challenging aspect of SB 1383 for jurisdictions is meeting the annual target of procuring organic waste materials such as mulch or compost. Therefore, Colma and all other San Mateo County jurisdictions participated in 2023 in a regional organic waste procurement program where the non-profit organization, Resource Conservation District, provided a regional solution to procuring organic waste material (e.g., compost or mulch) on behalf of the jurisdictions to San Mateo County agricultural and ranchlands in collaboration with the landowners. This regional program has been successful and has been used as a model in other regions in California. Staff recommends approval of the agreement with the Resource Conservation District because it assists the Town is meeting this challenging aspect of SB 1383 requirements.

## FISCAL IMPACT

The cost of participation is \$4,027.79 and these costs are covered through a grant from CalRecycle.

## **ANALYSIS**

This program would allow the Town to participate in a regional organic waste procurement program where the non-profit organization, Resource Conservation District, provides a regional solution on behalf of the jurisdictions to procure organic waste material (e.g., compost or mulch) for distribution onto agricultural and ranchlands in collaboration with the landowners. This regional program has been very successful and has been used as a model in other regions in California. Staff recommends approval of the agreement with the Resource Conservation District because it assists the Town in meeting this challenging aspect of SB 1383 requirements. The cost of the program is covered through a grant from CalRecycle.

### **Council Adopted Values**

The adoption of the Resolution is consistent with the Council value of *vision* and *responsibility* because it enables the Town to meet SB 1383 requirements for organic waste procurement.

### **Sustainability Impact**

Adoption of the Resolution will improve the Town's sustainability by advancing a more sustainable, environmentally friendly product such as compost or mulch instead of manufactured chemical and or fertilizers on agricultural and ranchlands where the organic material is delivered.

## **FINAL RECOMMENDATION**

Staff recommends that the City Council adopt the Resolution approving and authorizing the City Manager to execute the agreement with the Resource Conservation District.

## **ATTACHMENTS**

- A. Resolution
- B. Agreement

**RESOLUTION 2024-\_\_  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE SAN MATEO COUNTY RESOURCE CONSERVATION DISTRICT TO ASSIST THE TOWN IN MEETING SENATE BILL 1383 REQUIREMENTS FOR PROCURING ORGANIC WASTE MATERIALS PURSUANT TO CEQA GUIDELINE 15308**

**1. Background.**

**(a)** The Town of Colma is required to meet requirements under SB 1383 to procure an annual target of organic waste material and report to CalRecycle.

**(b)** The Town has worked collaboratively with the San Mateo County Resource Conservation District and all other San Mateo County jurisdictions to participate in the regional program to provide mulch and compost to agricultural and ranchlands. The Town wishes to continue this successful partnership with the Resource Conservation District and has reviewed the agreement with the Resource Conservation District.

**2. Order**

**(a)** The City Council hereby approves and authorizes the City Manager to execute an agreement with the San Mateo County Resource Conservation District.

**Certification of Adoption**

I certify that the foregoing Resolution No. 2024-\_\_ was duly adopted at a regular meeting of said City Council held on April 24, 2024, by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor					
Ken Gonzalez					
Carrie Slaughter					
Helen Fisicaro					
Joanne F. del Rosario					
<i>Voting Tally</i>					

Dated \_\_\_\_\_

\_\_\_\_\_  
John Irish Goodwin, Mayor

Attest: \_\_\_\_\_  
Abigail Dometita, Interim City Clerk



**TOWN OF COLMA  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement is made and entered into as of April 25, 2024, by and between the Town of Colma, a public agency organized and operating under the laws of the State of California with its principal place of business at 1198 El Camino Real, Colma, CA 94014 (“Town”), and the Resource Conservation District, a non-profit organization located at 80 Stone Pine #100 Half Moon Bay, CA 94019 (hereinafter referred to as “Consultant”). Town and Consultant are sometimes individually referred to as “Party” and collectively as “Parties” in this Agreement.

**RECITALS**

A. Town is a public agency of the State of California and is in need of professional services for the following project, the SB 1383 Compost Broker Program, (hereinafter referred to as “the Project”).

B. Consultant is duly licensed and has the necessary qualifications to provide such services.

C. The Parties desire by this Agreement to establish the terms for Town to retain Consultant to provide the services described herein.

**AGREEMENT**

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Services.

Consultant shall provide the Town with the services described in the Scope of Services attached hereto as Exhibit “A.”

2. Compensation.

a. Subject to paragraph 2(b) below, the Town shall pay for such services in accordance with the Schedule of Charges set forth in Exhibit “B.”

b. In no event shall the total amount paid for services rendered by Consultant under this Agreement exceed the sum of \$ 4,027.79. This amount is to cover all printing and related costs, and the Town will not pay any additional fees for printing expenses. Periodic payments shall be made within 30 days of receipt of an invoice which includes a detailed description of the work performed. Payments to Consultant for work performed will be made on a monthly billing basis.

3. Additional Work.

If changes in the work seem merited by Consultant or the Town, and informal consultations with the other party indicate that a change is warranted, it shall be processed in the following manner: a letter outlining the changes shall be forwarded to the Town by Consultant with a statement of estimated changes in fee or time schedule. An amendment to this Agreement shall be prepared by the Town and executed by both Parties before performance of such services, or

the Town will not be required to pay for the changes in the scope of work. Such amendment shall not render ineffective or invalidate unaffected portions of this Agreement.

4. Maintenance of Records.

Books, documents, papers, accounting records, and other evidence pertaining to costs incurred shall be maintained by Consultant and made available at all reasonable times during the contract period and for four (4) years from the date of final payment under the contract for inspection by Town.

5. The term of this Agreement shall be from April 25, 2024, to May 1, 2026, unless earlier terminated as provided herein. The Parties may, by mutual, written consent, extend the term of this Agreement if necessary to complete the Project. Consultant shall perform its services in a prompt and timely manner within the term of this Agreement and shall commence performance upon receipt of written notice from the Town to proceed ("Notice to Proceed"). ] The Notice to Proceed shall set forth the date of commencement of work.

Consultant shall perform its services in a prompt and timely manner and shall commence performance upon receipt of written notice from the Town to proceed ("Notice to Proceed").

6. Delays in Performance.

a. Neither Town nor Consultant shall be considered in default of this Agreement for delays in performance caused by circumstances beyond the reasonable control of the non-performing party. For purposes of this Agreement, such circumstances include but are not limited to, abnormal weather conditions; floods; earthquakes; fire; epidemics; pandemics; war; riots and other civil disturbances; strikes, lockouts, work slowdowns, and other labor disturbances; sabotage or judicial restraint.

b. Should such circumstances occur, the non-performing party shall, within a reasonable time of being prevented from performing, give written notice to the other party describing the circumstances preventing continued performance and the efforts being made to resume performance of this Agreement.

7. Compliance with Law.

a. Consultant shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government, including Cal/OSHA requirements.

b. If required, Consultant shall assist the Town, as requested, in obtaining and maintaining all permits required of Consultant by federal, state and local regulatory agencies.

c. If applicable, Consultant is responsible for all costs of clean up and/ or removal of hazardous and toxic substances spilled as a result of his or her services or operations performed under this Agreement.

8. Standard of Care

Consultant's services will be performed in accordance with generally accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions.

9. Assignment and Subconsultant

Consultant shall not assign, sublet, or transfer this Agreement or any rights under or interest in this Agreement without the written consent of the Town, which may be withheld for any reason. Any attempt to so assign or so transfer without such consent shall be void and without legal effect and shall constitute grounds for termination. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement. Nothing contained herein shall prevent Consultant from employing independent associates, and subconsultants as Consultant may deem appropriate to assist in the performance of services hereunder.

10. Independent Contractor

Consultant is retained as an independent contractor and is not an employee of Town. No employee or agent of Consultant shall become an employee of Town. The work to be performed shall be in accordance with the work described in this Agreement, subject to such directions and amendments from Town as herein provided.

11. Insurance. Consultant shall not commence work for the Town until it has provided evidence satisfactory to the Town it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

a. Commercial General Liability

(i) The Consultant shall take out and maintain, during the performance of all work under this Agreement, in amounts not less than specified herein, Commercial General Liability Insurance, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for Commercial General Liability insurance shall be at least as broad as the following:

(1) Insurance Services Office Commercial General Liability coverage (Occurrence Form CG 00 01) or exact equivalent.

(iii) Commercial General Liability Insurance must include coverage for the following:

- (1) Bodily Injury and Property Damage
- (2) Personal Injury/Advertising Injury
- (3) Premises/Operations Liability
- (4) Products/Completed Operations Liability
- (5) Aggregate Limits that Apply per Project
- (6) Explosion, Collapse and Underground (UCX) exclusion deleted
- (7) Contractual Liability with respect to this Agreement
- (8) Property Damage
- (9) Independent Contractors Coverage

(iv) The policy shall contain no endorsements or provisions limiting coverage for (1) contractual liability; (2) cross liability exclusion for claims or suits by one insured against another; (3) products/completed operations liability; or (4) contain any other exclusion contrary to the Agreement.

(v) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status using ISO endorsement forms CG 20 10 10 01 and 20 37 10 01, or endorsements providing the exact same coverage.

(vi) The general liability program may utilize either deductibles or provide coverage excess of a self-insured retention, subject to written approval by the Town, and provided that such deductibles shall not apply to the Town as an additional insured.

b. Automobile Liability

(i) At all times during the performance of the work under this Agreement, the Consultant shall maintain Automobile Liability Insurance for bodily injury and property damage including coverage for owned, non-owned and hired vehicles, in a form and with insurance companies acceptable to the Town.

(ii) Coverage for automobile liability insurance shall be at least as broad as Insurance Services Office Form Number CA 00 01 covering automobile liability (Coverage Symbol 1, any auto).

(iii) The policy shall give Town, its officials, officers, employees, agents and Town designated volunteers additional insured status.

(iv) Subject to written approval by the Town, the automobile liability program may utilize deductibles, provided that such deductibles shall not apply to the Town as an additional insured, but not a self-insured retention.

c. Workers' Compensation/Employer's Liability

(i) Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and he/she will comply with such provisions before commencing work under this Agreement.

(ii) To the extent Consultant has employees at any time during the term of this Agreement, at all times during the performance of the work under this Agreement, the Consultant shall maintain full compensation insurance for all persons employed directly by him/her to carry out the work contemplated under this Agreement, all in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any acts amendatory thereof, and Employer's Liability Coverage in amounts indicated herein. Consultant shall require all subconsultants to obtain and maintain, for the period required by this Agreement, workers' compensation coverage of the same type and limits as specified in this section.

d. Professional Liability (Errors and Omissions)



At all times during the performance of the work under this Agreement the Consultant shall maintain professional liability or Errors and Omissions insurance appropriate to its profession, in a form and with insurance companies acceptable to the Town and in an amount indicated herein. This insurance shall be endorsed to include contractual liability applicable to this Agreement and shall be written on a policy form specifically designed to protect against acts, errors or omissions of the Consultant. "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy must "pay on behalf of" the insured and must include a provision establishing the insurer's duty to defend.

e. Minimum Policy Limits Required

(i) The following insurance limits are required for the Agreement:

Combined Single Limit

Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate for bodily injury, personal injury, and property damage
Automobile Liability	\$1,000,000 combined single limit
Employer's Liability	\$1,000,000 per accident or disease
Professional Liability	\$1,000,000 per claim and aggregate (errors and omissions)

(ii) Defense costs shall be payable in addition to the limits.

(iii) Requirements of specific coverage or limits contained in this section are not intended as a limitation on coverage, limits, or other requirement, or a waiver of any coverage normally provided by any insurance. Any available coverage shall be provided to the parties required to be named as Additional Insured pursuant to this Agreement.

f. Evidence Required

Prior to execution of the Agreement, the Consultant shall file with the Town evidence of insurance from an insurer or insurers certifying to the coverage of all insurance required herein. Such evidence shall include original copies of the ISO CG 00 01 (or insurer's equivalent) signed by the insurer's representative and Certificate of Insurance (Acord Form 25-S or equivalent), together with required endorsements. All evidence of insurance shall be signed by a properly authorized officer, agent, or qualified representative of the insurer and shall certify the names of the insured, any additional insureds, where appropriate, the type and amount of the insurance, the location and operations to which the insurance applies, and the expiration date of such insurance.

g. Policy Provisions Required

(i) Consultant shall provide the Town at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Consultant shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term

of this Agreement, the Consultant shall deliver renewal certificate(s) including the General Liability Additional Insured Endorsement to the Town at least ten (10) days prior to the effective date of cancellation or expiration.

(ii) The Commercial General Liability Policy and Automobile Policy shall each contain a provision stating that Consultant's policy is primary insurance and that any insurance, self-insurance or other coverage maintained by the Town or any named insureds shall not be called upon to contribute to any loss.

(iii) The retroactive date (if any) of each policy is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the work under this Agreement. Consultant shall purchase a one (1) year extended reporting period A) if the retroactive date is advanced past the effective date of this Agreement; B) if the policy is cancelled or not renewed; or C) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement.

(iv) All required insurance coverages, except for the professional liability coverage, shall contain or be endorsed to provide a waiver of subrogation in favor of the Town, its officials, officers, employees, agents, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against Town, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

(v) The limits set forth herein shall apply separately to each insured against whom claims are made or suits are brought, except with respect to the limits of liability. Further the limits set forth herein shall not be construed to relieve the Consultant from liability in excess of such coverage, nor shall it limit the Consultant's indemnification obligations to the Town and shall not preclude the Town from taking such other actions available to the Town under other provisions of the Agreement or law.

h. Qualifying Insurers

(i) All policies required shall be issued by acceptable insurance companies, as determined by the Town, which satisfy the following minimum requirements:

(1) Each such policy shall be from a company or companies with a current A.M. Best's rating of no less than A:VII and admitted to transact in the business of insurance in the State of California, or otherwise allowed to place insurance through surplus line brokers under applicable provisions of the California Insurance Code or any federal law.

i. Additional Insurance Provisions

(i) The foregoing requirements as to the types and limits of insurance coverage to be maintained by Consultant, and any approval of said insurance by the Town, is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by the Consultant pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

(ii) If at any time during the life of the Agreement, any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, Town has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Town will be promptly reimbursed by Consultant or Town will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, Town may cancel this Agreement.

(iii) The Town may require the Consultant to provide complete copies of all insurance policies in effect for the duration of the Project.

(iv) Neither the Town nor any of its officials, officers, employees, agents or volunteers shall be personally responsible for any liability arising under or by virtue of this Agreement.

j. Subconsultant Insurance Requirements. Consultant shall not allow any subcontractors or subconsultants to commence work on any subcontract until they have provided evidence satisfactory to the Town that they have secured all insurance required under this section. Policies of commercial general liability insurance provided by such subcontractors or subconsultants shall be endorsed to name the Town as an additional insured using ISO form CG 20 38 04 13 or an endorsement providing the exact same coverage. If requested by Consultant, Town may approve different scopes or minimum limits of insurance for particular subcontractors or subconsultants.

## 12. Indemnification.

a. To the fullest extent permitted by law, Consultant shall defend (with counsel of Town's choosing), indemnify and hold the Town, its officials, officers, employees, volunteers, and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury of any kind, in law or equity, to property or persons, including wrongful death, in any manner arising out of, pertaining to, or incident to any acts, errors or omissions, or willful misconduct of Consultant, its officials, officers, employees, subcontractors, consultants or agents in connection with the performance of the Consultant's services, the Project or this Agreement, including without limitation the payment of all damages, expert witness fees and attorney's fees and other related costs and expenses. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Consultant, the Town, its officials, officers, employees, agents, or volunteers.

b. If Consultant's obligation to defend, indemnify, and/or hold harmless arises out of Consultant's performance of "design professional" services (as that term is defined under Civil Code section 2782.8), then, and only to the extent required by Civil Code section 2782.8, which is fully incorporated herein, Consultant's indemnification obligation shall be limited to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, and, upon Consultant obtaining a final adjudication by a court of competent jurisdiction, Consultant's liability for such claim, including the cost to defend, shall not exceed the Consultant's proportionate percentage of fault.

## 13. California Labor Code Requirements.

a. Consultant is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects

("Prevailing Wage Laws"). If the services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It shall be mandatory upon the Consultant and all subconsultants to comply with all California Labor Code provisions, which include but are not limited to prevailing wages (Labor Code Sections 1771, 1774 and 1775), employment of apprentices (Labor Code Section 1777.5), certified payroll records (Labor Code Sections 1771.4 and 1776), hours of labor (Labor Code Sections 1813 and 1815) and debarment of contractors and subcontractors (Labor Code Section 1777.1). The requirement to submit certified payroll records directly to the Labor Commissioner under Labor Code section 1771.4 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Section 1771.4.

b. If the services are being performed as part of an applicable "public works" or "maintenance" project, then pursuant to Labor Code Sections 1725.5 and 1771.1, the Consultant and all subconsultants performing such services must be registered with the Department of Industrial Relations. Consultant shall maintain registration for the duration of the Project and require the same of any subconsultants, as applicable. Notwithstanding the foregoing, the contractor registration requirements mandated by Labor Code Sections 1725.5 and 1771.1 shall not apply to work performed on a public works project that is exempt pursuant to the small project exemption specified in Labor Code Sections 1725.5 and 1771.1.

c. This Agreement may also be subject to compliance monitoring and enforcement by the Department of Industrial Relations. It shall be Consultant's sole responsibility to comply with all applicable registration and labor compliance requirements. Any stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor that affect Consultant's performance of services, including any delay, shall be Consultant's sole responsibility. Any delay arising out of or resulting from such stop orders shall be considered Consultant caused delay and shall not be compensable by the Town. Consultant shall defend, indemnify and hold the Town, its officials, officers, employees and agents free and harmless from any claim or liability arising out of stop orders issued by the Department of Industrial Relations against Consultant or any subcontractor.

14. Verification of Employment Eligibility.

By executing this Agreement, Consultant verifies that it fully complies with all requirements and restrictions of state and federal law respecting the employment of undocumented aliens, including, but not limited to, the Immigration Reform and Control Act of 1986, as may be amended from time to time, and shall require all subconsultants and sub-subconsultants to comply with the same.

15. Laws and Venue.

This Agreement shall be interpreted in accordance with the laws of the State of California. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Mateo, State of California.

16. Termination or Abandonment

a. Town has the right to terminate or abandon any portion or all of the work under this Agreement by giving ten (10) calendar days written notice to Consultant. In such event, Town shall be immediately given title and possession to all original field notes, drawings and specifications, written reports and other documents produced or developed for that portion of the work completed and/or being abandoned. Town shall pay Consultant the reasonable value of services rendered for any portion of the work completed prior to termination. If said termination occurs prior to completion of any task for the Project for which a payment request has not been received, the charge for services performed during such task shall be the reasonable value of such services, based on an amount mutually agreed to by Town and Consultant of the portion of such task completed but not paid prior to said termination. Town shall not be liable for any costs other than the charges or portions thereof which are specified herein. Consultant shall not be entitled to payment for unperformed services, and shall not be entitled to damages or compensation for termination of work.

b. Consultant may terminate its obligation to provide further services under this Agreement upon thirty (30) calendar days' written notice to Town only in the event of substantial failure by Town to perform in accordance with the terms of this Agreement through no fault of Consultant.

18. Documents. Except as otherwise provided in "Termination or Abandonment," above, all original field notes, written reports, Drawings and Specifications and other documents, produced or developed for the Project shall, upon payment in full for the services described in this Agreement, be furnished to and become the property of the Town.

19. Limitation of Agreement.

This Agreement is limited to and includes only the work included in the Project described above.

20. Notice

Any notice or instrument required to be given or delivered by this Agreement may be given or delivered by depositing the same in any United States Post Office, certified mail, return receipt requested, postage prepaid, addressed to:

TOWN:

Town of Colma  
1198 El Camino Real  
Colma, CA 94014  
Attn: City Manager

CONSULTANT:

Resource Conservation District, Attn. Contract  
Manager  
80 Stone Pine #100  
Half Moon Bay, CA 94019

21. Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the Town and the Consultant.

23. Equal Opportunity Employment.

Consultant represents that it is an equal opportunity employer and that it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Entire Agreement

This Agreement, with its exhibits, represents the entire understanding of Town and Consultant as to those matters contained herein, and supersedes and cancels any prior or contemporaneous oral or written understanding, promises or representations with respect to those matters covered hereunder. Each Party acknowledges that no representations, inducements, promises or agreements have been made by any person which are not incorporated herein, and that any other agreements shall be void. This Agreement may not be modified or altered except in writing signed by both Parties hereto. This is an integrated Agreement.

25. Severability

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the remaining provisions unenforceable, invalid or illegal.

26. Successors and Assigns

This Agreement shall be binding upon and shall inure to the benefit of the successors in interest, executors, administrators and assigns of each Party to this Agreement. However, Consultant shall not assign or transfer by operation of law or otherwise any or all of its rights, burdens, duties or obligations without the prior written consent of Town. Any attempted assignment without such consent shall be invalid and void.

27. Non-Waiver

None of the provisions of this Agreement shall be considered waived by either Party, unless such waiver is specifically specified in writing.

28. Time of Essence

Time is of the essence for each and every provision of this Agreement.

29. Town's Right to Employ Other Consultants

Town reserves its right to employ other consultants, including engineers, in connection with this Project or other projects.

30. Prohibited Interests

Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting

from the award or making of this Agreement. For breach or violation of this warranty, Town shall have the right to rescind this Agreement without liability. For the term of this Agreement, no director, official, officer or employee of Town, during the term of his or her service with Town, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

When funding for the services is provided, in whole or in part, by an agency of the federal government, Consultant shall also fully and adequately comply with the provisions included in Exhibit "D" (Federal Requirements) attached hereto and incorporated herein by reference ("Federal Requirements"). With respect to any conflict between such Federal Requirements and the terms of this Agreement and/or the provisions of state law, the more stringent requirement shall control.

**[SIGNATURES ON FOLLOWING PAGE]**

**SIGNATURE PAGE FOR PROFESSIONAL SERVICES AGREEMENT  
BETWEEN TOWN OF COLMA  
AND RESOURCE CONSERVATION DISTRICT**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

TOWN OF COLMA

RESOURCE CONSERVATION DISTRICT

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

By: Resource Conservation District Manager

: \_\_\_\_\_

ATTEST:

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

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney



## EXHIBIT A: Scope of Services

Contractor to provide and implement a compost procurement and application program that will assist the Town to meet its recovered organic waste product procurement requirements under CA Senate Bill 1383 (SB 1383). The program will consist of the following aspects:

### 1. Outreach & Technical Assistance:

- Contractor shall conduct outreach to agricultural producers or other organizations such as but not limited to farmers, ranchers, landowners, open space districts, nonprofits, and universities about the compost procurement and application program established under this agreement, benefits of compost use, and carbon farming. Contractor shall translate any material created to conduct outreach to Spanish, and Simplified Chinese as needed.
- Contractor shall provide agricultural producers and other organizations with technical assistance to incorporate compost into their operations, such as soil sampling, identifying compost application rates, etc.
- Contractor shall provide agricultural producers with information for funding opportunities for compost application, such as CDFA's Healthy Soils Program and NRCS's farm bill programs.

### 2. Compost Procurement

- Contractor shall identify and recruit compost procurement and application projects for the compost procurement and application program established under this agreement that will help the Town meet its SB 1383 recovered organic waste procurement requirements.
- Contractor shall cover up to 75% of compost/hauling/spreading costs or provide funding as cost-share for other funding sources (whichever is less). If the program is oversubscribed, Contractor shall develop a system for equitable distribution of compost or ranking system to identify projects.
- Contractor shall track procurement credits attributed to the Town and where necessary, shall ensure that a signed agreement between the Town and project owner/compost recipient is in place prior to the purchase of compost. This shall be done in order for the Town to claim SB 1383 procurement credit for procured compost in instances where the Contractor is not directly purchasing compost procured under this agreement.
- Contractor shall procure high-quality compost that is eligible to count towards the Town's SB 1383 procurement target as described in the CA Senate Bill 1383 regulations.

### 3. Record Keeping & Reporting

- Contractor shall keep documentation proving that SB 1383 procurement credit attributed to the Town under this agreement is solely for the use of the the Town's and not claimed by any other entity or jurisdiction for their SB 1383 reporting. Contractor shall collect a release of liability waiver from all individuals who receive compost through the compost procurement and application program established under this agreement. Contractor shall provide all signed waivers to the Town upon request.
- Contractor shall collect a photo release form from all individuals who receive compost through the compost procurement and application program established under this agreement allowing the Town to use photos taken under this agreement in public presentations, reports, or other outreach. Contractor shall provide all signed forms to the the Town upon request.
- Contractor shall take pictures and/or videos of compost application projects.
- Contractor shall calculate the net carbon sequestration associated with this agreement and attributed to the Town.
- Contractor shall provide the Town with all procurement records associated with this agreement and required for the Town s SB 1383 recycled organic waste procurement compliance recordkeeping and reporting.

### 4. Scaling Compost Procurement Opportunities

- Contractor shall identify equipment and infrastructure necessary to increase compost use amongst agricultural producers in San Mateo County, provide cost estimates, and, if deemed necessary by the Contractor, design an equipment sharing program.
- Contractor shall explore innovative strategies for the jurisdictions within San Mateo County to provide ongoing funding for this program beyond the term of the CalRecycle SB 1383 local assistance grant.

### 5. Administration

- Contractor shall submit invoices quarterly. The Town will receive .573% of the SB 1383 procurement credits associated with the contractor's compost procurement and application program
- Each quarterly invoice shall be accompanied by a progress report, which shall include updates on the Contractor's outreach, technical assistance, and compost procurement and application efforts completed during the reporting period. The progress report may also include images of compost application projects for the jurisdiction to use in public reports, presentations, or other outreach.
- Contractor shall submit a final report by March 1, 2026 summarizing all outreach, technical assistance, and compost procurement and application efforts

completed through this agreement; all costs associated with the project; the SB 1383 procurement and carbon sequestration credit accredited to the Town and a summary of the needs, strategies, opportunities identified in Task 4, and any other relevant information.

#### 6. Procurement Only Subcontractors

- The Town expressly authorizes Contractor to subcontract with farmers, ranchers, nonprofits, and other organization to procure compost for application on land they own or manage (“Procurement Only Subcontractors”) in order to meet the Contractor’s requirements under this agreement and facilitate the Town’s compliance with its recovered organic waste product procurement requirements under SB 1383. Contractor shall require Procurement Only Subcontractors to provide an executed release of liability form and executed photo release form prior to procuring any compost on Contractor’s behalf. Contractor shall require all Procurement Only Subcontractors to provide Contractor with all procurement records associated with Procurement Only Subcontractor’s compost procurement required for the Town’s SB 1383 recycled organic waste procurement compliances recordkeeping and reporting. Under no circumstances shall Contractor obligate the Town’s to any financial obligation beyond the do not exceed amount for this agreement through subcontracting.

#### 7. Additional Projects

- Contractor shall identify projects that help the Town meet its SB 1383 recovered organic waste procurement requirements beyond compost procurement and application such as mulch procurement and application, composted mulch procurement and application, and/or other projects that help a jurisdiction to meet its procurement target. With written prior approval from the Town’s and agreement from Contractor, Contractor shall carry out identified projects for this program if the cost of a project is comparable or less than compost application projects. Contractor shall collect a release of liability waiver and procurement records the Town requires for its SB 1383 procurement compliance from all individuals or organization who receive any material through the program established under this agreement.

## EXHIBIT B

### Schedule of Charges/Payments

Consultant will invoice Town on a monthly cycle. Consultant will include with each invoice a detailed progress report that indicates the amount of budget spent on each task. Consultant will inform Town regarding any out-of-scope work being performed by Consultant. This is a time-and-materials contract.







# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Christopher J. Diaz, City Attorney  
 VIA: Dan Barros, City Manager  
 MEETING DATE: April 24, 2024  
 SUBJECT: Colma Municipal Code Amendment Relating to the Town Seal

## RECOMMENDATION

The City Council should introduce the following:

ORDINANCE AMENDING THE COLMA MUNICIPAL CODE TO ADD A NEW SUBCHAPTER  
 1.19, RELATING TO THE TOWN SEAL/LOGO, PURSUANT TO CEQA GUIDELINE 15378

## EXECUTIVE SUMMARY

The Town does not currently have a clear municipal ordinance regulating the use of its Town seal/logo. Nevertheless, the Town seal/logo is the Town's personal property and would be considered a common law trademark. As a common law trademark, the Town can control how the Town seal/logo is used and prevent other parties from using it. However, to prevent unauthorized use, the Town would have to take, or threaten to take, court action to enforce its rights.

To avoid the inconvenience and costs of litigating over trademark rights, the City Council should consider adopting an ordinance prohibiting the unauthorized use of the Town seal/logo, and its variations, for non-official Town business.

## FISCAL IMPACT

The City Council's potential introduction and adoption of the ordinance is not anticipated to lead to any financial impact other than staff time spent in research and drafting this item.

## ENVIRONMENTAL

The City Council's introduction and adoption of any ordinance regarding the Town seal/logo is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) as the action does not meet the definition of a "project" under CEQA pursuant to CEQA Guideline 15378 as it is more akin to an organizational or administrative activity of the Town that will not result in direct or indirect physical changes in the environment.

## **ANALYSIS**

### **I. COMMON LAW TRADEMARK**

As noted above, the Town's current seal/logo, and its variations which include one commemorating the Town's 100<sup>th</sup> Anniversary, and another variation which celebrates the Town's cemeteries, are subject to common law trademark protection.

The term "common law" indicates that trademark rights can be created through their use and are not governed by statute. Once a trademark is used in conjunction with the sale of goods or the advertisement of services, common law trademark rights are attributed to the owner of the mark. There is no registration process required to create or claim common law trademark rights. However, common law trademark rights are limited to the geographic area where the mark is used and the owner is only entitled to actual damages arising from the use in a trademark infringement action.

Under both federal and state trademark laws, city seals or logos are specifically exempted from being registered trademarks under the understanding that common law controls. As a common law trademark, the Town may exercise its police powers to prohibit unauthorized use of its seal or logo to protect the Town from the negative consequences of the unauthorized use for commercial, malicious, or other unauthorized purposes. However, as noted above, in order to enforce common law trademark rights, it would require a court action. In the alternative, staff is bringing forward a draft ordinance that would allow the Town to enforce its rights to its seal/logo, and its variations, through administrative means as further detailed below.

### **II. STATE LAW**

In addition to common law trademark, there are certain provisions in state law prohibiting misuse of a City's seal or logo primarily in a campaign or election context.

Using a city's logo, letterhead, or seal with the intent to deceive voters into thinking the communication is from an agency can be a violation of California election law. (Elect. Code § 18304.) California law makes it a misdemeanor to use city seals with the intention of creating an impression that a document is authorized by a public official. For example, Government Code Section 34501.5 provides:

- (a) Any person who uses or allows to be used any reproduction or facsimile of the seal of the city in any campaign literature or mass mailing, as defined in Section 82041.5, with intent to deceive the voters, is guilty of a misdemeanor.
- (b) For purposes of this section, the use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official is evidence of intent to deceive.

Both the Government Code and the Elections Code provide that "evidence of intent to deceive the voters" includes the "use of a reproduction or facsimile of a seal in a manner that creates a misleading, erroneous, or false impression that the document is authorized by a public official." (See Gov. Code § 34501.5(b) and Elections Code § 18304(b).)



### **III. REGULATION OF CITY SEALS AND LOGOS**

Adopting policies and ordinances restricting the use of a city's seal and logo are common. Such ordinances usually give the city clerk custody of the city's seal and create penalties for unauthorized use.

Some policies include affirmative statements limiting the use of either the city seal or logo for purposes directly connected with city's official business. Some also create processes for approving other uses by the city council or a designated individual. Finally, some city policies prohibit using mock-ups of the city's seal. The purpose of such policies is to prevent people from using altered versions of the agency's identity with the intent of causing those who may be unfamiliar with the city's logo or seal to believe it came from the city. Such prohibitions also enable the agency to discourage such practices by creating penalties for such uses.

### **IV. THE PROPOSED ORDINANCE**

The City Attorney's Office opted to create a simple ordinance prohibiting the unauthorized use of the Town seal/logo, and its variations, including any imitations.

For example, the proposed ordinance would specifically protect the Town's traditional seal/logo, but also those that are variations on the current Town seal/logo. Those include the variation created for the Town's 100<sup>th</sup> Anniversary, and a more recent version with stained glass flowers in the center celebrating the Town's cemeteries. Thus, the following would be protected under the Town's proposed ordinance:





In addition, the proposed ordinance would do the following:

- Make it unlawful and a misdemeanor for any person to use the Town seal/logo or its variations other than for official Town business.
- Make it unlawful and a misdemeanor for any person to use any imitation of the Town seal/logo, or its variations, on any publication, object, or material to confuse, deceive, or mislead someone to believing it originated from the Town.
- Make it unlawful and a misdemeanor for a person or campaign committee to use the Town seal/logo, or its variations, to support or oppose the nomination or election of any person to office, or to support or oppose any ballot measure.
- Make the City Clerk custodian of the Town/seal logo, and its variations, consistent with other city ordinances, and some aspects of state law.

### **Council Adopted Values**

The Council's introduction and adoption of the ordinance is consistent with the Council's value of *Responsibility* as it is the responsible thing to do to ensure the Town seal/logo is protected at the local level without requiring a court action to enforce the Town's rights.

### **Alternatives**

The City Council could choose not to proceed with the ordinance and default to protecting the Town seal/logo via common law trademark rights. Doing so is not recommended, however, as the ordinance will add an additional layer or protection to ensure the Town seal/logo is protected at the local level without requiring a court action to enforce the Town's rights.

### **CONCLUSION**

The City Council should introduce the ordinance regarding the Town seal/logo.

### **ATTACHMENTS**

- A. Ordinance

**ORDINANCE NO.  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**ORDINANCE ADDING SUBCHAPTER 1.19 TO THE COLMA MUNICIPAL CODE  
RELATING TO THE TOWN SEAL/LOGO PURSUANT TO CEQA GUIDELINE 15378**

The City Council of the Town of Colma does ordain as follows:

**ARTICLE 1. CMC SUBCHAPTER 1.19 ADDED.**

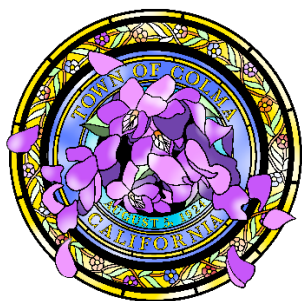
**Subchapter 1.19: Town Seal/Logo**

**1.19.010 Town Seal/Logo**

The official logo of the Town of Colma shall be in the form of a circle, the face of which is as set forth below:



In addition, the Town of Colma also makes use of variations of the existing Town Seal/Logo which also constitute the official logos of the Town of Colma and shall be governed by this Subchapter. Other variations include one for anniversaries of the Town's incorporation, and one commemorating its cemeteries as follows:



### **1.19.020 Use of Town Seal/Logo**

It is unlawful and a misdemeanor for any person to make or use the logo, or its variations, of the Town of Colma, or any cut, facsimile, or reproduction thereof, for any purpose other than for the official business of the Town, its City Council, officers or departments, except upon approval of the City Council by ordinance or resolution.

### **1.19.030 Imitation of Town Seal/Logo**

No person shall place any imitation of the Town seal/logo, or its variations, on any publication, object or material that is designed, calculated, intended or likely to confuse, deceive or mislead the public to believe it to be an official Town publication, object or material, and no person shall circulate or distribute any such publication, object or material in the Town of Colma. Any person violating this provision shall be guilty of a misdemeanor.

### **1.19.040 Use of Town Logo/Seal for Political Campaign Prohibited**

No person or campaign committee shall use the Town seal/logo, or its variations, or any cut, facsimile, or reproduction thereof, for purposes of supporting or opposing the nomination or election of any person to any Town or other public office, or for purposes of supporting or opposing any ballot measure, nor include such Town seal/logo, or its variations, on any writing distributed for purposes of influencing the action of the electorate, or any part thereof, in any election.

### **1.19.050 Custodian of Town Seal/Logo**

The City Clerk of the Town of Colma shall be the official custodian of the Town's official seal/logo, and its variations.

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## **ARTICLE 2. EFFECTIVE DATE.**

This ordinance, or a summary thereof prepared by the City Attorney, shall be posted on the three (3) official bulletin boards of the Town of Colma within 15 days of its passage and is to take force and effect thirty (30) days after its passage.

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## **ARTICLE 3. SEVERABILITY.**

If any provision of this ordinance or its application to any person or circumstance is held to be invalid, such invalidity has no effect on the other provisions or applications of this ordinance that can be given effect without the invalid provision or application and, to this extent, the provisions of this ordinance are hereby declared to be severable.

---

## **ARTICLE 4. NOT A CEQA PROJECT.**

The City Council's introduction and adoption of any ordinance regarding the Town seal/logo is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) as the action does not meet the definition of a "project" under CEQA pursuant to CEQA Guideline

15378 as it is more akin to an organizational or administrative activity of the Town that will not result in direct or indirect physical changes in the environment.

**Certification of Adoption**

I certify that the foregoing Ordinance No. \_\_\_ was duly introduced at a regular meeting of the City Council of the Town of Colma held on April 24, 2024, and adopted at a regular meeting of the City Council of the Town of Colma held on \_\_\_\_\_, 2024, by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor					
Ken Gonzalez					
Carrie Slaughter					
Helen Fisicaro					
Joanne F. del Rosario					
<i>Voting Tally</i>					

Dated: \_\_\_\_\_

\_\_\_\_\_  
John Irish Goodwin, Mayor

Attest: \_\_\_\_\_  
Abigail Dometita, Interim City Clerk





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Farhad Mortazavi, City Planner  
 Kathleen Gallagher, Sustainability Manager  
 VIA: Dan Barros, City Manager  
 MEETING DATE: April 24, 2024  
 SUBJECT: Approval of Solar Power Purchase Agreements for the Police Department and Town Hall

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## RECOMMENDATION

Staff recommends the City Council adopt the following:

RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE  
 POWER PURCHASE AGREEMENTS FOR SOLAR INSTALLATION AT THE POLICE  
 DEPARTMENT AND TOWN HALL, PURSUANT TO CEQA GUIDELINES 15301 AND 15303

## EXECUTIVE SUMMARY

On November 8, 2023, the City Council heard a staff presentation regarding the solar procurement program provided by Peninsula Clean Energy (PCE) for potential solar installations at the Police Department and Town Hall. Staff and PCE presented information detailing PCE's solar procurement process on behalf of San Mateo County jurisdictions, collaboration with staff regarding solar array layout alternatives, and PCE's responsibilities for design, installation, and maintenance through the Power Purchase Agreement (PPA). Benefits to the Town include \$2.1 million cost savings over the 20-year PPA term, along with the Town leading by example in generating renewable energy and meeting one of the Town's Climate Action Plan 2030 programs. City Council approved the resolution on November 8th for participation in the solar procurement for the Police Department and Town Hall and authorized the City Manager to execute documents and directed staff to return to City Council in April with the final Power Purchase Agreements. At the November meeting, staff understood Council's preference for reduced visual impact of solar arrays at Town Hall. Therefore, staff met with PCE and their design engineers on several occasions to consider alternatives that would reduce the visual impact of the solar structures (Carports), while striving to keep the financial benefits in place, less dependency on PCE and PG&E and making advancements to meet the Town's Climate Action Plan goals for 2030. To reduce solar visual impact, staff moved solar away from the front portion of Town Hall's parking lot, decreased solar size, moved solar farther away from the holiday (Christmas) tree; staff will present a Power Point with these visuals. The PPAs for the Police Department and Town Hall include the reduced solar array capacity while still achieving

\$2.1 million in costs savings for the Town over the PPA term. It is also important to note, these PPAs achieve significantly more favorable financial results for the Town because these projects are grandfathered under the net energy metering (NEM2), if the Town were to wait and or postpone these projects, the net metering cost savings will be reduced going into the future.

## **ENVIRONMENTAL**

The City Council's action in authorizing the PPAs is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines 15301 and 15301. With regard to 15301, the addition of solar panels and solar carports would be considered a minor alteration of an existing public facility involving negligible or no expansion of use as the panels and carport would be installed at existing government buildings in Town. With regard to 15303, the addition of solar panels and carports would also be considered the installation of small structures for which CEQA acknowledges can be exempt under that guideline.

## **FISCAL IMPACT**

Approval of the PPAs results in a total cost savings estimate of \$2,100,000 over the 20-year PPA term once the new solar installations are completed at Town Hall and PD, and the cost savings begin in year one. The costs savings for Town Hall are \$1,707,200, and the cost savings for the Police Department are \$421,800. Because PCE staff manages the solar procurement, design, installation, operation, and system maintenance on behalf of the Town, the Town also realizes cost savings due to significantly reduced need for Town staff resources who would have had to manage a solitary solar procurement process, vet solar contractors, etc. to install solar at these Town facilities. Staff resources are needed for construction management, inspection and administration for this project and these costs are estimated at \$15,000 to \$20,000.

## **BACKGROUND AND ANALYSIS**

Benefits of the Town's approval of the PPAs include the following:

- The Town achieves \$2.1 million cost savings over PPA term and costs savings begin in year one. The costs savings for Town Hall are \$1,707,200, and the cost savings for the Police Department are \$421,800. The PPA pricing and cost savings detail are included in the Attachments.
- The Town saves on staff resources, solar contractors, structural engineers, and consultant time which would have been required if the Town choose to pursue solar installations outside of PCE's procurement process
- The PPA price does not increase over the 20-year term
- The PPA price provides protection or a hedge against rising energy costs (note PG&E rate increased 14% from 2020-2024 and in January 2024 alone all commercial energy rates for PG&E increased 24%)
- No upfront costs to the Town to install solar, except for providing administrative costs to monitor the project from start to finish
- The selected solar providers (IME and McMillan) are local and union
- The Town collaborating with partner, PCE, and their experienced solar contractors who have already had success in the first solar procurement process
- The current PPAs for Town Hall and Police Department are virtually the same document as the prior PPA which was reviewed/approved by BBK; San Mateo County jurisdictions all have the same PPA



- The Town leading by example in generating renewable energy and implementing one of the Climate Action Plan programs approved in Town's CAP 2030
- The Town saves on staff resources, solar contractors, structural engineers, and consultant time which would have been required if the Town choose to pursue solar installations outside of PCE's procurement process

City Council heard a staff presentation on November 8, 2023, regarding the solar procurement program and potential solar installations at the Police Department and Town Hall. Staff and Peninsula Clean Energy (PCE) presented the process where PCE manages a solar procurement process, collaborates with staff regarding solar array layout, and completes design, installation, and maintenance through the Power Purchase Agreement (PPA). Benefits to the Town include \$2.1 million cost savings over the PPA term for both projects, the Town leading by example in generating renewable energy and meeting one of the Town's Climate Action Plan programs. Specifically, the Town's CAP stated the Town would install and or expand solar installations on Town facilities so Town leads by example for community, and leverage programs and resources with regional partners where feasible PCE, etc. The City Council approved the resolution on November 8th for participation for the Police Department and Town Hall and authorized the City Manager to execute documents to participate and directed staff to return to City Council in April with the final Power Purchase Agreements.

The Town's existing Code exempts solar and solar carports from design review in the DR(S) Zone and from the Spanish Mediterranean requirement per CMC 5.03.153, and the P Zone section of the Code confirmed there is nothing in the P Zone regulations requiring design review for solar carports.

The following images of the solar arrays at Town Hall and the Police Department.

### Town Hall

Aerial view of Town Hall is below to show the reduced solar visual impact where solar array was moved away from the front portion of Town Hall's parking lot, decreased solar array capacity, and moved solar farther away from the holiday tree.

Top View

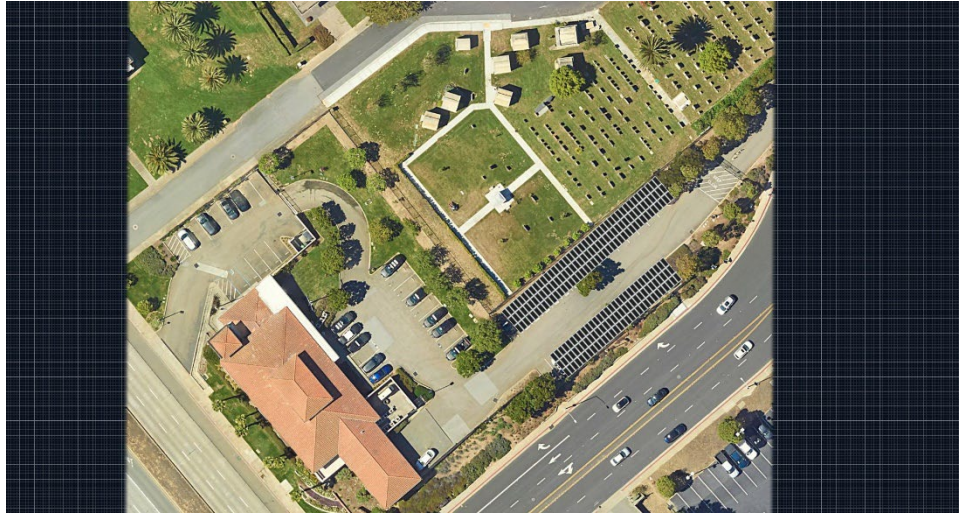


Visual of Town Hall from El Camino Real



## Police Department

Aerial view of Police Department where solar arrays are not visible from El Camino Real



## Council Adopted Values

The adoption of the Resolution is consistent with the Council value of *vision* and *responsibility* because it enables the Town to lead by example in generating renewable energy, meeting one of the Town's Climate Action Plan 2030 programs and saves the Town over \$2.1 million over the PPA term.

## Sustainability Impact

Adoption of the Resolution will improve the Town's sustainability by generating renewable energy from Town Hall and the Police Department and assist the Town in meeting one of the Climate Action Plan 2030 programs approved by City Council.

## ATTACHMENTS

- A. Resolution
- B. Power Purchase Agreement Pricing and Cost Savings Estimate Town Hall
- C. Power Purchase Agreement Pricing and Cost Savings Estimate Police Department
- D. Power Purchase Agreement for Town Hall
- E. Power Purchase Agreement for Police Department



**RESOLUTION 2024-\_\_  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE  
POWER PURCHASE AGREEMENTS FOR SOLAR INSTALLATION AT THE POLICE  
DEPARTMENT AND TOWN HALL, PURSUANT TO CEQA GUIDELINES 15301 AND  
15303**

**1. Background.**

**(a)** The Town of Colma has demonstrated its commitment to a sustainable and resilient future through adoption of its Climate Action Plan 2030 and original Climate Action Plan in 2013 and has implemented some energy efficiency, renewable energy, and water conservation programs. The Town needs to continue implementation of sustainable programs that include adding solar installations to generate renewable energy to meet aggressive greenhouse gas reductions targets in the Town's Climate Action Plan 2030.

**(b)** The Town has worked collaboratively with Peninsula Clean Energy (PCE) by participating in regional programs that assist the Town in meeting greenhouse gas reduction targets.

**(c)** The Town participated in the first solar collaborative procurement process for solar installation at the Colma Community Center over \$600,000 in cost savings over the twenty-year PPA term, generate renewable energy and implement one of its CAP 2030 programs to increase local renewable generation and reduce energy costs.

**(d)** A Community Choice Aggregation program such as Peninsula Clean Energy (PCE) is a mechanism by which local governments assume responsibility for providing electrical power for residential and commercial customers in their jurisdiction in partnership with local commercial energy purveyors and owners of transmission and distribution facilities, which in the case of San Mateo County is Pacific Gas & Electric Co.

**(e)** The Town heard a presentation on November 8, 2023, and approved participation in the PCE Solar Program and requested staff return with the final Power Purchase Agreements at a subsequent meeting.

**(f)** The Town reviewed the Power Purchase Agreements (PPA) for solar installation at Town Hall and Police Department and will participate in the program because of the benefits of cost savings, meeting one of its CAP 2030 programs to generate renewable energy, protection against rising energy rates and reducing energy costs.

**2. Order**

**(a)** The City Council hereby approves and authorizes the City Manager to execute the Power Purchase Agreements for Town Hall and the Police Department.

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### Certification of Adoption

I certify that the foregoing Resolution No. 2024-\_\_ was duly adopted at a regular meeting of said City Council held on April 24, 2024, by the following vote:

Name	Voting		Present, Not Voting		Absent
	Aye	No	Abstain	Not Participating	
John Irish Goodwin, Mayor					
Ken Gonzalez					
Carrie Slaughter					
Helen Fiscaro					
Joanne F. del Rosario					
<i>Voting Tally</i>					

Dated \_\_\_\_\_

\_\_\_\_\_  
John Irish Goodwin, Mayor

Attest: \_\_\_\_\_  
Abigail Dometita, Interim City Clerk

**Peninsula Clean Energy Solar for Public Buildings Pilot Portfolio**  
**Power Purchase Agreement (PPA) Pricing and Savings Estimate**

SUMMARY		
Facility	Colma Town Hall	
Total Solar System Size	168	kW DC
<b>SOLAR PPA RATE</b>	<b>\$0.274</b>	<b>\$/kWh</b>

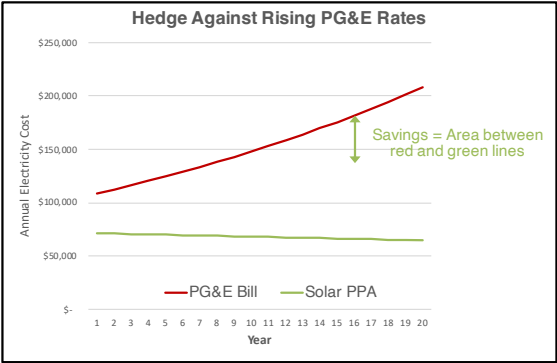
Current Electric Tariff	B1	Rate
<b>Current Effective Facility Energy Rate</b>	<b>\$0.42</b>	<b>\$/kWh</b>
<b>PPA Escalation</b>	<b>0%</b>	<b>%/yr</b>
Solar Production Year 1	260,400	kWh/yr 1
<b>Estimated 20-Year Energy Savings (simple)</b>	<b>\$1,707,200</b>	<b>\$/20-yrs</b>
<b>Estimated 20-Year NPV at 3% discount rate</b>	<b>\$1,189,800</b>	<b>\$/20-yrs</b>

ADDITIONAL POTENTIAL VALUE POST INITIAL TERM	
<b>Years 21 - 25 Savings (Simple)</b>	<b>\$ 835,500</b>
<b>Years 21 - 25 Savings (at 3%)</b>	<b>\$ 399,039</b>

Would require either purchase of system at Fair Market Value at end of initial term or mutual agreement to extend PPA.  
 PV calc takes Present Value of Year 21 - 25 Savings at Year 25 at specified discount rate

Assumptions:		
Regular utility bill escalation (\$/kWh component)		4% per year
PPA escalation		0% per year
Discount rate		3% per year
Solar Module Degradation		0.50% per year

Demand Charges	
Include Demand Charge Reduction Estimate?	No
Assumed Additional Demand Charge Savings	2% %/year



Year-->	1	2	3	4	5	6	7	8	9	10
Solar Generation (kWh/year)	260,400	259,098	257,803	256,513	255,231	253,955	252,685	251,422	250,164	248,914
Cost if solar generation purchased from grid	\$ 108,691	\$ 112,473	\$ 116,387	\$ 120,437	\$ 124,629	\$ 128,966	\$ 133,454	\$ 138,098	\$ 142,904	\$ 147,877
Cost of mitigated demand charges	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including
Total cost if purchased from grid	\$ 108,691	\$ 112,473	\$ 116,387	\$ 120,437	\$ 124,629	\$ 128,966	\$ 133,454	\$ 138,098	\$ 142,904	\$ 147,877
PPA Cost	\$ 71,300	\$ 70,944	\$ 70,589	\$ 70,236	\$ 69,885	\$ 69,535	\$ 69,188	\$ 68,842	\$ 68,497	\$ 68,155
<b>Net Savings</b>	<b>\$37,391</b>	<b>\$41,529</b>	<b>\$45,798</b>	<b>\$50,201</b>	<b>\$54,744</b>	<b>\$59,430</b>	<b>\$64,266</b>	<b>\$69,256</b>	<b>\$74,406</b>	<b>\$79,722</b>

Year-->	11	12	13	14	15	16	17	18	19	20
Solar Generation (kWh/year)	247,669	246,431	245,199	243,973	242,753	241,539	240,331	239,130	237,934	236,744
Cost if solar generation purchased from grid	\$ 153,023	\$ 158,348	\$ 163,858	\$ 169,561	\$ 175,461	\$ 181,567	\$ 187,886	\$ 194,424	\$ 201,190	\$ 208,192
Cost of mitigated demand charges	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including
Total cost if purchased from grid	\$ 153,023	\$ 158,348	\$ 163,858	\$ 169,561	\$ 175,461	\$ 181,567	\$ 187,886	\$ 194,424	\$ 201,190	\$ 208,192
PPA Cost	\$ 67,814	\$ 67,475	\$ 67,138	\$ 66,802	\$ 66,468	\$ 66,136	\$ 65,805	\$ 65,476	\$ 65,149	\$ 64,823
<b>Net Savings</b>	<b>\$85,209</b>	<b>\$90,873</b>	<b>\$96,721</b>	<b>\$102,759</b>	<b>\$108,993</b>	<b>\$115,432</b>	<b>\$122,081</b>	<b>\$128,949</b>	<b>\$136,042</b>	<b>\$143,369</b>

Year-->	21	22	23	24	25
Solar Generation (kWh/year)	235,561	234,383	233,211	232,045	230,885
Cost if solar generation purchased from grid	\$ 215,437	\$ 222,934	\$ 230,692	\$ 238,720	\$ 247,028
Cost of mitigated demand charges	Not including	Not including	Not including	Not including	Not including
Total cost if purchased from grid	\$ 215,437	\$ 222,934	\$ 230,692	\$ 238,720	\$ 247,028
PPA Cost	\$ 64,499	\$ 64,176	\$ 63,855	\$ 63,536	\$ 63,218
<b>Net Savings</b>	<b>\$150,938</b>	<b>\$158,758</b>	<b>\$166,837</b>	<b>\$175,184</b>	<b>\$183,809</b>





**Peninsula Clean Energy Solar for Public Buildings Pilot Portfolio  
Power Purchase Agreement (PPA) Pricing and Savings Estimate**

SUMMARY		
Facility	Colma Police Department	
Total Solar System Size	102	kW DC
<b>SOLAR PPA RATE</b>	<b>\$0.260</b>	<b>\$/kWh</b>

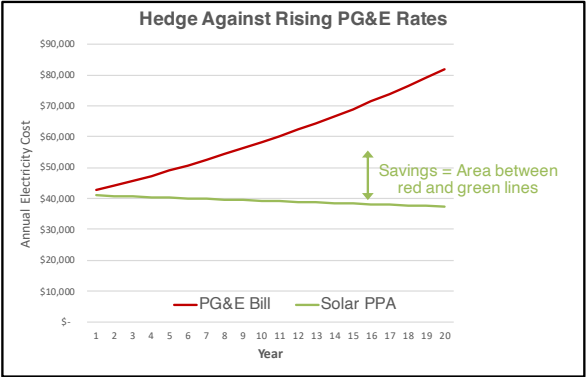
Current Electric Tariff	B10	Rate
<b>Current Effective Facility Energy Rate</b>	<b>\$0.27</b>	<b>\$/kWh</b>
<b>PPA Escalation</b>	<b>0%</b>	<b>%/yr</b>
Solar Production Year 1	158,286	kWh/yr 1
<b>Estimated 20-Year Energy Savings (simple)</b>	<b>\$421,800</b>	<b>\$/20-yrs</b>
<b>Estimated 20-Year NPV (at discount rate below)</b>	<b>\$281,400</b>	<b>\$/20-yrs</b>

ADDITIONAL POTENTIAL VALUE POST INITIAL TERM	
<b>Years 21 - 25 Savings</b>	<b>\$ 270,000</b>
Would require either purchase of system at Fair Market Value at end of initial term or mutual agreement to extend PPA	

Assumptions:	
Regular utility bill escalation (\$/kWh component)	4% per year
PPA escalation	0% per year
Discount rate	3% per year
Solar Module Degradation	0.50% per year

Demand Charges	
Include Demand Charge Reduction Estimate?	No
Assumed Additional Demand Charge Savings	2% %/year

We are not assuming utility demand charge savings, though for customers on B10 rates we would expect an additional 2% savings based on historical data



Year-->	1	2	3	4	5	6	7	8	9	10
Solar Generation (kWh/year)	158,286	157,495	156,707	155,924	155,144	154,368	153,596	152,828	152,064	151,304
Cost if solar generation purchased from grid	\$ 42,744	\$ 44,232	\$ 45,771	\$ 47,364	\$ 49,012	\$ 50,717	\$ 52,482	\$ 54,309	\$ 56,199	\$ 58,154
Cost of mitigated demand charges	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including
Total cost if purchased from grid	\$ 42,744	\$ 44,232	\$ 45,771	\$ 47,364	\$ 49,012	\$ 50,717	\$ 52,482	\$ 54,309	\$ 56,199	\$ 58,154
PPA Cost	\$ 41,119	\$ 40,913	\$ 40,709	\$ 40,505	\$ 40,303	\$ 40,101	\$ 39,901	\$ 39,701	\$ 39,503	\$ 39,305
<b>Net Savings</b>	<b>\$1,625</b>	<b>\$3,318</b>	<b>\$5,062</b>	<b>\$6,858</b>	<b>\$8,709</b>	<b>\$10,616</b>	<b>\$12,582</b>	<b>\$14,608</b>	<b>\$16,696</b>	<b>\$18,849</b>

Year-->	11	12	13	14	15	16	17	18	19	20
Solar Generation (kWh/year)	150,547	149,795	149,046	148,300	147,559	146,821	146,087	145,357	144,630	143,907
Cost if solar generation purchased from grid	\$ 60,178	\$ 62,272	\$ 64,440	\$ 66,682	\$ 69,003	\$ 71,404	\$ 73,889	\$ 76,460	\$ 79,121	\$ 81,874
Cost of mitigated demand charges	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including	Not including
Total cost if purchased from grid	\$ 60,178	\$ 62,272	\$ 64,440	\$ 66,682	\$ 69,003	\$ 71,404	\$ 73,889	\$ 76,460	\$ 79,121	\$ 81,874
PPA Cost	\$ 39,109	\$ 38,913	\$ 38,718	\$ 38,525	\$ 38,332	\$ 38,141	\$ 37,950	\$ 37,760	\$ 37,571	\$ 37,383
<b>Net Savings</b>	<b>\$21,070</b>	<b>\$23,359</b>	<b>\$25,721</b>	<b>\$28,157</b>	<b>\$30,670</b>	<b>\$33,263</b>	<b>\$35,939</b>	<b>\$38,700</b>	<b>\$41,550</b>	<b>\$44,491</b>

Year-->	21	22	23	24	25
Solar Generation (kWh/year)	143,187	142,471	141,759	141,050	140,345
Cost if solar generation purchased from grid	\$ 84,723	\$ 87,672	\$ 90,723	\$ 93,880	\$ 97,147
Cost of mitigated demand charges	Not including	Not including	Not including	Not including	Not including
Total cost if purchased from grid	\$ 84,723	\$ 87,672	\$ 90,723	\$ 93,880	\$ 97,147
PPA Cost	\$ 37,197	\$ 37,011	\$ 36,825	\$ 36,641	\$ 36,458
<b>Net Savings</b>	<b>\$47,527</b>	<b>\$50,661</b>	<b>\$53,897</b>	<b>\$57,239</b>	<b>\$60,689</b>



### Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of [date], 2024 (the “**Effective Date**”).

Purchaser:		Seller:	
<span style="background-color: cyan;">Name and Address</span>		Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
	<span style="background-color: cyan;">Attention:</span>		
<span style="background-color: cyan;">Phone</span>		Phone	(650) 260-0087
<span style="background-color: cyan;">E-mail</span>		E-mail	rreyes@peninsulacleanenergy.com
Premises Ownership	Purchaser owns the Premises.		
Tax Status			System Owner
Project Name	Colma Town Hall		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in **Schedule A** to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The System shall initially be owned by Seller. “**System Owner**” means Seller or a subsequent owner of the System in the event that Seller transfers title to the System.

The exhibits listed below are incorporated by reference and made part of this Agreement.

<b><u>Exhibit 1</u></b>	Pricing
<b><u>Exhibit 2</u></b>	System Description, Delivery Point and Premises
<b><u>Exhibit 3</u></b>	General Terms and Conditions
<b><u>Exhibit 4</u></b>	Performance Guaranty

Purchaser:

Seller: Peninsula Clean Energy Authority

Signature: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Printed Name: Shawn Marshall  
Title: Chief Executive Officer  
Date: \_\_\_\_\_

## Exhibit 1

### Pricing

1. **Initial Term:** Twenty (20) years, beginning on the date that Commercial Operation is achieved (such date, the “**Commercial Operation Date**” and such term, the “**Initial Term**”). “**Commercial Operation**” means that the System is mechanically complete, commences regular, daily operation, complies with all applicable law, has undergone successful system testing, is providing electricity to the Delivery Point at the System Size specified in Exhibit 2 and has obtained all necessary Approvals (as defined in Section 5(b) of Exhibit 3), including permission to operate from the Utility and Seller.
2. **Additional Terms:** Upon mutual written agreement, the Parties may extend the Initial Term for up to two (2) additional terms of up to five (5) years each beginning on the expiration of the Initial Term or on the expiration of the first Additional Term, as applicable (each, an “**Additional Term**”).
3. **Contract Price:** \$0.266 per kilowatt-hour (“**kWh**”) AC at the Delivery Point specified in Exhibit 2.
4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
  - a. Statutory prevailing wage rates (e.g., Davis-Bacon) do apply.
  - b. A Performance Guaranty is being provided.
5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:
  - a. Groundwork (including excavation and circumvention of underground obstacles) that is unforeseen despite reasonable efforts to assess existing site conditions. Upgrades or repair to Purchaser or Utility electrical infrastructure (including Purchaser or Utility service, transformers, substations, poles, breakers, reclosers, and disconnects). “**Utility**” means the electric distribution utility serving Purchaser.
  - b. Tree removal, tree trimming, mowing and any landscape improvements.
  - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - d. Removal of existing lighting, light poles, or concrete light post bases.
  - e. Roof membrane maintenance or reroofing work.
  - f. Structural upgrades to the Improvements, including Americans with Disabilities Act (“**ADA**”) upgrades.
  - g. Installation of public information screen or kiosk (including accompanying Internet connection, power supply, technical support and ADA access).
  - h. Changes in System design caused by any inaccuracy in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

If such excluded costs will result in an increase to the Contract Price, Seller shall deliver notice to Purchaser of such increase to the Contract Price not less than sixty (60) days prior to commencement of the installation of the System (“**Commencement of Installation**” and such notice, the “**Excluded Costs Notice**”). If excluded costs will result in an increase to the Contract Price such that the revised Contract Price would increase by no more than five percent (5%), Purchaser shall be responsible for such increased Contract Price and the Contract Price shall be amended to reflect the new Contract Price included in the Excluded Costs Notice. If such excluded costs will result in an increase to the Contract Price, such that the revised Contract Price would increase by more than five percent (5%), Purchaser shall have a right to terminate this Agreement without penalty by providing notice of such termination within thirty (30) days of delivery of the Excluded Costs Notice.

6. Termination Payment Schedule:

Contract Year	Termination Payment (\$)
1	\$983,146
2	\$939,187
3	\$895,287
4	\$851,447
5	\$807,669
6	\$763,956
7	\$720,307
8	\$676,727
9	\$633,217
10	\$589,778
11	\$546,414
12	\$503,126
13	\$459,916
14	\$416,788
15	\$373,743
16	\$330,783
17	\$287,913
18	\$245,133
19	\$202,447
20	\$159,858

**Exhibit 2**

**System Description, Delivery Point and Premises**

1. System Location: 1198 El Camino Real, Colma, CA 94014
2. System Size (DC kW): 184.9 (AC kW): 168.4
3. System Description (Expected Structure, etc.): Carport and Rooftop
4. Delivery Point and Premises: **Schedule A** to this **Exhibit 2** contains one or more drawings or images depicting:
  - a. Premises, including the Improvements (as applicable);
  - b. Proposed System location at the Premises;
  - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
  - d. Access points needed for Seller to cause the System to be installed and serviced (building access, electrical room, stairs, etc.); and
  - e. Construction assumptions (if any).

**Schedule A**

1. Physical building address:
2. Number of Stories:
3. Total Square Footage:
4. Year Built:
5. Year of any mechanical/electrical updates:
6. Type of Construction, (example; wood frame, masonry, steel):
7. Description/ Type of roof structure/system:
8. Confirm whether the building is sprinklered:
9. Describe any additional security measures, (example: video surveillance, etc.):

A Site Plan and Single Line Diagram are attached at the end of this **Schedule A** labeled “Attachment 1 to **Schedule A** of **Exhibit 2**”.

Exhibit 3

General Terms and Conditions

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## Exhibit 3

### General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to the terms and conditions of this Agreement, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that it will deliver the electricity to Purchaser at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.
  
2. **Term and Termination.**
  - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 1 of Exhibit 1) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
  - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for up to two (2) Additional Terms at a Contract Price to be negotiated by the Parties prior to the expiration of the Initial Term or the first Additional Term, as applicable.
  - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation, (i) Purchaser terminates this Agreement pursuant to Section 5 of Exhibit 1, or (ii) Seller determines that the installation of the System will not be viable for any reason, then either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise.
  - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred within three hundred and sixty-five (365) days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.
  
3. **Billing and Payment; Taxes.**
  - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 as adjusted by Section 5 of Exhibit 1, if applicable (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in Exhibit 1, Section 4 are Purchaser’s responsibility.
  - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly for amounts owed by Purchaser hereunder. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
  - c. **Payment Terms.** All amounts due under this Agreement are due and payable within thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars. “**Prime Rate**” shall mean the annual prime rate of interest published in the Wall Street Journal for the applicable period during which interest is incurred pursuant to the terms of the Agreement.



d. **Taxes.**

- i. **Purchaser's Taxes.** Purchaser is responsible for: (A) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the Utility's electricity distribution system; (B) real property taxes; and (C) any sales or use taxes as a result of exercising the options to purchase the System in Section 14(b).
- ii. **Seller's Taxes.** Seller is responsible for: (A) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (B) personal property taxes imposed on the System ("**Seller's Taxes**").

- e. **Budgeting for Contract Price.** Upon execution of this Agreement and prior to the commencement of each subsequent budgetary cycle of Purchaser during the Initial Term (and Additional Term, if any), Purchaser shall take all necessary action to obtain all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such budgetary cycle, including, but not limited to including the maximum amount of its annual payment obligations under this Agreement in its budget submitted to Purchaser's **[City Council / Town Council / Board of Supervisors / Governing Board]** for each year of that budget cycle.

4. **RECs and Incentives.**

a. **Definitions.**

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, including, but not limited to, the election to receive a payment with respect to investment tax credits or production tax credits pursuant to Code Section 6417, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

- b. **RECs.** The Parties hereby agree that Seller is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall not sell, assign or otherwise transfer the RECs to a third party. If necessary, Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs, nor shall Purchaser attempt to sell, assign or transfer such RECs. If any RECs are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.
- c. **Incentives.** The Parties hereby agree that Seller or a subsequent System Owner, if applicable, and not Purchaser, is entitled to the benefit of, and will retain all ownership interests in, the Incentives. If necessary, Purchaser shall cooperate with Seller and any such third-party System Owner in obtaining, securing and transferring any and all Incentives, including cooperating, as requested by Seller, with respect to any challenges as to Seller obtaining any portion or amount of the Incentives. Without limiting the foregoing, Purchaser acknowledges that Seller intends to qualify for the elective payment incentive (the "**Elective Pay Incentive**") and make the elective payment election in Section 6417 of the Internal Revenue Code of 1986, as amended (the "**Code**") with respect to the federal income tax credits (the "**Applicable Credits**") under either Code Sections 45 or 48. Purchaser agrees to cooperate with Seller to the extent requested by Seller, so that Seller can (i) qualify for the Applicable Credits in the context of the Elective Pay Incentive, (ii) make the elective payment election and obtain a payment of applicable proceeds with respect to the Elective Pay

Incentive, (iii) avoid a disallowance, recapture, or reduction of the proceeds with respect to the Elective Pay Incentive, and (iv) prevent an excessive payment as set forth in Code Section 6417(d)(6). Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller or any such System Owner. Purchaser shall not make any filing or statements inconsistent with Seller's or System Owner's ownership interests in the Incentives, nor shall Purchaser attempt to sell, assign or transfer such Incentives. If any Incentives are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.

**5. Project Completion.**

- a. **Project Development.** Seller shall use reasonable efforts to pursue or cause to be pursued the development and installation of the System, subject to Section 2(c) and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use reasonable efforts to cause to be obtained the following at its sole cost and expense (each, an "Approval"):
  - i. any zoning, land use and building permits required for Seller to cause the System to be constructed, installed and operated; and
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall reasonably cooperate with Seller's reasonable requests to assist Seller in expeditiously obtaining such Approvals, including, without limitation, the execution of documents required to be provided by Purchaser to the Utility. The Parties acknowledge and agree that Purchaser does not have authority or jurisdiction over any other public agency's ability to grant Approvals or ability to impose limitations that may affect the System, provided, that such acknowledgment and agreement does not apply to joint powers authorities or related agencies over which Purchaser asserts authority.

**c. Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event, up to a maximum of two (2) years.
- ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of three hundred sixty-five (365) days or more, then either Party may elect to terminate this Agreement without either Party having further liability under this Agreement except: (A) liabilities accrued prior to termination, (B) Seller's obligation to cause the System to be removed as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (C) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay Seller a termination payment equal to the amount set forth in Section 6 of Exhibit 1. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the three hundred sixty-five (365) day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
- iii. **Definition of "Force Majeure Event."** "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation: an act of God; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction, tariff or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tsunami; storm; tornado; blizzard; heatwave; hurricane; flood; lightning; hail; wind; drought; animals; epidemic; pandemic; action or the failure to act by a Governmental Authority or the Utility, including, but not limited to, a moratorium on any activities related to this Agreement or the delay or a lack of a final Approval based on the California Environmental Quality Act ("CEQA") or other applicable law, provided

that the delay in decision-making is not attributable to the Party claiming a Force Majeure Event and that such Party has exercised its reasonable efforts to cause such Approval to be obtained; delays in interconnection, provided that the delay in obtaining interconnection is not attributable to the Party claiming a Force Majeure Event or its agents; unavailability of electricity from the Utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. For purposes of the definition of "Force Majeure Event," a Party shall not be considered a Governmental Authority if such Party is claiming the presence of a Force Majeure Event as an excuse for its failure to timely perform its obligations under this Agreement.

- d. **Extension of Time**. If Seller is delayed in causing the achievement of Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation**. Seller shall notify Purchaser in writing at least one week prior to the Commercial Operation Date. Upon Purchaser's reasonable request, Seller shall provide Purchaser with the "Final Completion Certificate" as executed by the contractor to Seller responsible for installing the System and the "Final Completion Notification" as executed by Seller to evidence that the System is ready to begin Commercial Operation. Purchaser may not turn on, electrify or otherwise operate the System in the absence of prior, written permission from Seller.

6. **Installation, Operation and Maintenance**.

- a. **Seller's General Obligations Regarding the System**. Subject to the terms and conditions of this Agreement, Seller shall use reasonable efforts to cause the System to be designed, engineered, installed, commissioned, monitored, operated and maintained, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the State of California. The Seller shall ensure that the System complies with all applicable law, rules, regulations and local building codes. In furtherance of the foregoing, Seller shall use reasonable efforts to enforce all of its rights under its agreement or agreements with the installer of the System and with the entity engaged to operate and maintain the System; provided, that Seller shall maintain full discretion with respect to any determinations regarding the nature of such enforcement actions and Seller shall not be obligated pursuant to this Agreement to initiate litigation or other legal process.
- b. **System Design Approval**. Seller has provided Purchaser with a copy of the System design, and Purchaser has approved such design. Should any subsequent changes to the System design be made prior to Commencement of Installation, Purchaser shall be provided with a copy of any such revised System design and any resulting changes to the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, and Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised design and any such resulting changes in writing, such approval not to be unreasonably withheld. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, Seller may either (i) cause the design to be reverted to the original design approved by Purchaser or (ii) terminate this Agreement and such termination shall be without further liability to Purchaser. If changes to the System design or other changes, including new information regarding Purchaser's electricity needs or Seller's selection of equipment for the System, will result in a change to any of the data on Exhibit 2 (including, but not limited to the System Size), the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, such sections and/or table of this Agreement may be revised if any such changes are approved by both Parties in writing. If changes to the System design are reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in an addendum to this Agreement.
- c. **System Repair and Maintenance**. Seller may cause the suspension of delivery of electricity from the System to the Delivery Point for the purpose of causing the maintenance to and repairs of the System; provided that Seller shall use reasonable efforts to minimize any interruption in service to the Purchaser and shall provide at least thirty (30) business days' advance notice to Purchaser of any scheduled maintenance and repairs. Emergency maintenance and repairs may be performed in the absence of such notice if necessary to prevent harm to persons or property. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **System Outage Allowance**. Upon Purchaser's written request, Seller shall cause the System to be taken off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "**Outage**" and the forty-eight (48) hour period the

“**Outage Allowance**”). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(c) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser’s request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity that could have been delivered by the System but for an Outage up to the annual Outage Allowance. If the aggregate hours for Outages, including, but not limited to Outages resulting from a temporary disconnection or removal pursuant to Section 6(f), exceed the Outage Allowance in a given Contract Year and Purchaser has opted out of receiving retail electric generation service from Seller, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.

- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local Utility grid at all times; and (ii) shall not permit cessation of delivery of electric service to the Premises from the local Utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser’s side of the Delivery Point, including all of Purchaser’s equipment that utilizes the System’s outputs. Purchaser shall use reasonable efforts to cooperate with Seller to comply with any technical standard of the Utility providing electrical power to the Purchaser.
- f. **Alteration or Repairs to Premises.** Not less than ninety (90) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall cause to be performed such work, and any re-connection of the System, at Purchaser’s cost, subject to Section 6(c), 6(d), and 6(e). To the extent that temporary removal of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall use reasonable efforts to cause to be performed such removal work within one hundred and eighty (180) days of Seller’s determination that such temporary removal is required and any such removal and re-installation work shall be at Purchaser’s cost, subject to Section 6(c), 6(d), and 6(e). Purchaser shall cause to be made any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights.** In consideration of and in order to effectuate the mutual covenants and terms of this Agreement, Purchaser hereby grants to Seller and to Seller’s agents, employees, contractors and subcontractors and the Utility (i) a non-exclusive license running with the Premises (the “**Non-Exclusive License**”) for access to, on, over, under and across the Premises from the Effective Date until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement (the “**License Term**”), for the purposes of performing all of Seller’s obligations and enforcing all of Seller’s rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement, including, but not limited to design, engineering, development, construction, installation, inspection, interconnection, testing, operation, maintenance, repair, replacement and removal of the System and all incidental and related uses connected therewith. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, sub-licensable license running with the Premises (the “**Exclusive License**”, and together with the Non-Exclusive License, the “**Licenses**”) for purposes of the installation, operation, use and maintenance of the System on such exclusively licensed area of the Premises during the License Term. Seller shall provide at least seventy-two (72) hours advance notice to Purchaser of any access required prior to the Commercial Operation Date; after the Commercial Operation Date notice shall be provided subject to Section 6(c). Seller shall use reasonable efforts to ensure that when on the Premises during the License Term, it and its employees, agents, contractors and subcontractors comply with Purchaser’s site safety and security requirements, which are to be provided to Seller in writing within sixty (60) days of the Effective Date. During the License Term, Purchaser shall preserve and protect Seller’s rights under the Licenses and Seller’s access to the Premises and shall not interfere, or permit any third parties under Purchaser’s control to interfere, with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (“**OSHA**”) requirements and other similar applicable safety laws and codes with respect to such Party’s performance under this Agreement.

- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors. Without limiting the foregoing, Seller shall arrange for security of the System, equipment and tools during the construction of the System and Purchaser shall cooperate with Seller and its contractor with respect to such security measures. The obligations set forth in this Section 7(c) shall survive until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement.
- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If either Party discovers any activity or condition that could diminish the Insolation of the System, such Party shall immediately notify the other Party and Purchaser shall cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use and shall cause to be used suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by such contractors and subcontractors. Seller shall pay or shall cause to be paid when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
- i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following such Party's discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).
8. **Relocation of System.** If, during the Term, Purchaser ceases to conduct operations at the Premises or vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser shall propose in writing the relocation of the System, at Purchaser's cost. Such proposal shall be practically feasible and preserve the economic value of this Agreement for Seller. The Parties shall seek to negotiate in good faith an agreement for the relocation of the System. Pending agreement on relocation of the System, Purchaser shall continue to make payments to Seller pursuant to Section 11(b)(i)(C).
9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not purchase the System pursuant to the terms and conditions of Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), cause to be removed all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than one hundred and eighty (180) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition as is reasonably possible, except for ordinary wear and tear, including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. Seller is required to cause to be repaired any and all damage to the Premises caused by removal of the System. Notwithstanding the foregoing, Seller shall not be obligated to remove

or cause to be removed any support structures for the System which are affixed to and below the exposed surface of Purchaser's structures or any below grade structures, including foundations and conduits, or any roads. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. Purchaser shall comply with Section 7(c) and Section 13 until removal is complete. If Seller fails to cause the removal of the System within one hundred and eighty (180) days after expiration of the Term, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost, *provided* that if Seller pays Purchaser for such costs, Seller shall not be liable to Purchaser for a Default Event by Seller.

## 10. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the monitoring system caused to be installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall cause the Meter to be calibrated in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.
- c. **Internet Connection.** At all times during the Term, Purchaser shall maintain and make available, at Purchaser's cost:
  - i. A hard-wired ethernet port for connection to System equipment located within fifty (50) physical feet of the electrical room of the Premises; or, if such hard-wired port is not feasible, Wi-Fi available seven (7) days per week and twenty-four (24) hours per day;
  - ii. Information technology support services as needed to provide Internet connectivity via the connection described in Section 10(c)(i); and
  - iii. A dedicated IP address for System equipment.

If Purchaser does not maintain such Internet connection described above, Seller will not be able to cause the System to be monitored or provide the performance guaranty set forth on Exhibit 4. Further, if Seller is not able to monitor the System, Seller will be required to estimate the System's power production for purposes of determining the monthly payment(s) for any such month in which the required Internet connection was not available.

## 11. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":
  - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
  - ii. failure of a Party to perform any material obligation under this Agreement or an act or omission of a Party in violation of the terms and conditions of this Agreement not addressed elsewhere in this Section 11 within sixty (60) days following receipt of written notice from the Non-Defaulting Party demanding such cure; *provided*, that if the Default Event cannot reasonably be cured within sixty (60) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
  - iii. such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) business days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
  - iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party

demanding such cure;

- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is (are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless the Parties agree upon a relocation under Section 8 above; (B) loses its right to provide access to the System or is otherwise in default under Section 7(a); or (C) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (x) permitted under this Agreement, or (y) cured within ten (10) days after written notice thereof from Seller.

**b. Remedies.**

- i. **Purchaser Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where the Purchaser is the Defaulting Party, including a Payment Default:
  - A. Seller may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Seller's rights against the Purchaser, including rights to any payments due hereunder in an action for damages, and to compel the Purchaser to perform and carry out its duties and obligations under the law and its covenants and agreements with the Seller as provided herein.
  - B. Seller may suspend performance of its obligations under this Agreement, including, but not limited to, turning off the System, until the earlier to occur of (x) the date that Purchaser cures the Default Event in full, including making payment in full as provided in Section 11(b)(i)(C), or (y) the termination date of this Agreement. Seller's rights under this Section 11(b)(i)(B) are in addition to any other remedies available to it under this Agreement, at law or in equity.
  - C. Except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Purchaser shall continue to pay, and Seller shall be entitled to recover payment for: (x) all electricity delivered by Seller pursuant to Section 3 of this **Exhibit 3**, and (y) all electricity that Seller reasonably estimates it would have been able to deliver to Purchaser in accordance with this Agreement but for the Default Event by Purchaser, in each case at the Contract Price, together with (z) any other amounts due and payable pursuant to this Agreement.
- ii. **Seller Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party:
  - A. Purchaser may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Purchaser's rights against the Seller, including rights to any payments due hereunder in an action for damages, and to compel the Seller to perform and carry out its duties and obligations under the law and its covenants and agreements with the Purchaser as provided herein.
  - B. except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Seller and Purchaser shall continue to pay all amounts due and payable pursuant to this Agreement.
- iii. **Optional Termination by Purchaser.** In addition to the remedies provided for in Section 11(b)(ii), upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party, the Purchaser may terminate this Agreement as further set forth in this Section 11(b)(iii) by providing thirty (30) days prior written notice to the Seller; provided, that, in the case of a Default Event under Section 11(a)(v) where the Seller is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iii), Seller shall pay to Purchaser an amount equal to the sum of (A) the present value of the excess, if any, of the reasonably expected cost of electricity delivered by the Utility over the Contract Price for the reasonably expected production of the System for a period of the lesser of five (5) years or the remainder of the Initial Term or the then current Additional Term, as applicable; (B) all direct costs reasonably incurred by Purchaser by reason of the termination; and (C) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser (the "**Seller Termination Payment**"). The Seller Termination Payment determined under

this Section 11(b)(iii) cannot be less than zero.

- iv. **Optional Termination by Seller.** In addition to the remedies provided for in Section 11(b)(i), upon the occurrence and during the continuation of a Default Event where Purchaser is the Defaulting Party, the Seller may terminate this Agreement as further set forth in this Section 11(b)(iv) by providing thirty (30) days prior written notice to the Purchaser; provided, that, in the case of a Default Event under Section 11(a)(v) where the Purchaser is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iv), Purchaser shall pay to Seller an amount equal to the sum of (1) the applicable amount set forth in the Termination Payment Schedule of Section 6 of Exhibit 1, and (2) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller (collectively, the “**Purchaser Termination Payment**” and, together with the Seller Termination Payment, the “**Termination Payment**”). The Purchaser Termination Payment determined under this Section 11(b)(iv) cannot be less than zero.
  - v. **Severability of Remedies.** If any remedy in Section 11(b) is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other remedies herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in Section 11(b) of this Exhibit 3 shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Section 11(b) and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Parties hereby declare that they each would have executed this Agreement and each and every other section hereof irrespective of the fact that any one or more sections of this Section 11(b) may be held illegal, invalid or unenforceable.
  - vi. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(iv), actual damages would be difficult to ascertain, and the Purchaser Termination Payment determined in accordance with Section 11(b)(iv) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(iii), or Section 11(b)(iv), then following such termination, Seller shall cause and shall have the right to cause the equipment constituting the System to be removed in compliance with Section 9 at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to cause the System to be removed following the occurrence of a Default Event by Purchaser, unless Purchaser has paid the Purchaser Termination Payment to Seller or pre-pays the cost of removal and restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(iii) or Section 11(b)(iv) and payment of a Termination Payment, if any, determined as provided therein, nothing in this Section 11 limits either Party’s right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
  - ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser’s obligation to pay the full Purchaser Termination Payment set forth in Section 6 of Exhibit 1 following a Default Event by Purchaser.
  - iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party’s obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

## 12. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
  - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary governmental action, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in



effect relating to creditors' rights generally).

- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by applicable law and any Governmental Authority or other third-party and necessary for such Party to own its assets, carry on its business and operations and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

**b. Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

- i. **Licenses.** (A) Purchaser has title to and is the fee owner of the Premises such that Purchaser has the full right, power and authority to enter into and perform all of its obligations under this Agreement, (B) this Agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (C) there are no deeds of trust, mortgages or similar security instruments with a lien against the Premises.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (A) the Premises, (B) the Improvements on which the System is to be installed, if applicable, (C) Purchaser's planned use of the Premises and any applicable Improvements, and (D) Purchaser's estimated electricity requirements, is accurate in all material respects.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.

**c. Seller's Warranties.**

- i. If Seller causes to be penetrated the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall provide for a warranty on roof damage caused by these roof penetrations and shall repair such damage at Seller's expense. Seller's roof warranty shall terminate upon the earlier of (A) five (5) years following the Commercial Operation Date and (B) the expiration of the warranty applicable to such roof provided by Purchaser's roofing contractor that is effective as of the Effective Date ("**Existing Roof Warranty**"). If there is an Existing Roof Warranty, Purchaser shall provide it to Seller, and Seller shall ensure that the construction, operation, maintenance and removal of the System conforms to the requirements of the Existing Roof Warranty to the extent such Existing Roof Warranty is in effect.
- ii. If Seller or its agents damage any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties and subject to Section 15.

**d. NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. THE PERFORMANCE GUARANTY SET FORTH IN EXHIBIT 4 REPRESENTS A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

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13. **Insurance.**

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability, employers liability and automobile liability insurance with primary coverage of at least \$1,000,000 per occurrence, an excess liability limit of \$5,000,000, for a total of \$6,000,000 in the aggregate, and (C) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
  - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence.
- b. **Policy Provisions.** The insurance policies referenced in Section 13(a) shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay or cause to be paid its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. **Ownership; Option to Purchase.**

- a. **Ownership of System.**
- i. **Ownership; Personal Property.** System Owner or its assignee shall be the legal and beneficial owner of the System and the System will remain the personal property of System Owner or such assignee and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that System Owner or its assignee is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
  - ii. **Notice to Purchaser Lienholders.** Purchaser shall use reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
  - iii. **Fixture Disclaimer.** Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If, at any point after the Effective Date, Purchaser is not the fee owner of the Premises, Purchaser shall obtain such consent from such fee owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
  - iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form mutually acceptable to Seller and Purchaser, any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
  - v. **Eviction Notice.** Purchaser hereby represents and warrants that it is the legal owner of the Premises. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed after the Effective Date, Purchaser shall provide to Seller immediate written notice of any such change in ownership and receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

**b. Option to Purchase.**

- i. Early Purchase Option. Commencing on the next date after the date that is the sixth (6th) anniversary of the Commercial Operation Date, and continuing for a period of two hundred and seventy (270) days (the “**Early Purchase Option Period**”), so long as Purchaser is not in default under this Agreement, Purchaser may exercise an option to purchase the System from System Owner on any such date within the Early Purchase Option Period for a purchase price equal to the greater of (A) the Fair Market Value of the System, or (B) the year six (6) Termination Payment amount set forth in Section 6 of Exhibit 1. Purchaser shall exercise the option in this Section 4(b)(i) by providing System Owner with written notice.
- ii. Exercise of Option. At the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from System Owner on any such date for a purchase price equal to the Fair Market Value of the System applicable as of the date of the transfer of title to the System (“**End of Term Option to Purchase**”). Purchaser shall notify Seller in writing of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the Initial Term or Additional Term, as applicable. For the avoidance of doubt, the End of Term Option to Purchase shall not apply prior to the expiration of the full Initial Term.
- iii. Fair Market Value. The “**Fair Market Value**” of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a written notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iv. Title Transfer; Warranties; Manuals. If Purchaser exercises a purchase option pursuant to Sections 14(b)(i) or (ii) above, title to the System and manufacturers’ warranties shall transfer to Purchaser upon System Owner’s receipt of the purchase price and execution by System Owner and Purchaser of a written instrument or agreement to effect such transfer to be negotiated between System Owner and Purchaser. The System will be sold “as is, where is, with all faults.” Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), System Owner will have no further liabilities or obligations hereunder for the System.

**15. Indemnification and Limitations of Liability.**

- a. General. Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party’s and its affiliates’ respective directors, officers, shareholders, partners, members, agents and employees (collectively, the “**Indemnified Parties**”), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from (i) any Claim (as defined in Section 15(c)) relating to the Indemnifying Party’s breach of any representation or warranty set forth in Section 12 and (ii) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(d).
- b. Permission to Operate Indemnification. Purchaser shall defend, indemnify and hold harmless Seller Indemnified Parties from and against any Liabilities resulting from Purchaser’s breach of Purchaser’s obligations under Section 5(e).
- c. Notice and Participation in Third-Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any liability asserted by a third-party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the

defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(c) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

**d. Environmental Indemnification.**

- i. Seller Indemnity. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(d)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. Purchaser Indemnity. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except (A) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees or, (B) where the deposit, spill, or existence of the Hazardous Substance is not caused by Seller or any of its contractors or agents, to the extent the condition is known by Seller or any of its contractor or agents and is worsened as a result of the negligent acts or omissions, willful misconduct, or breach of this Agreement by Seller or any of its contractors, agents or employees.
- iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

**e. Limitations on Liability.**

- i. No Consequential Damages. Except with respect to indemnification of third-party claims pursuant to Section 15, fraud or willful misconduct, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment amounts set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(e)(i).
- ii. Actual Damages. Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 12(d), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed \$1,000,000. The provisions of this Section 15(e)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

**f. EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**g. Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party

shall bear the proportionate cost of any liability.

**16. Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and cause the System to be removed and the Premises to be restored in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority that materially alters the financial obligations of Seller under this Agreement.

**17. Assignment and Financing.**

a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System in accordance with prudent solar industry practices in the State of California.
- ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, the assignment does not negatively affect the terms of this Agreement or Seller's ability to perform hereunder or thereunder. Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument.
- iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. **Financing.** The Parties acknowledge that Seller and/or System Owner may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each, a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's and/or System Owner's financing arrangements and in addition to any other rights or entitlements of Seller or System Owner's under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller and/or System Owner or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

- c. **Termination Requires Consent.** Seller and Purchaser agree that any right of Seller to terminate this Agreement is

subject to the prior written consent of any Financing Party.

**18. Confidentiality.**

- a. Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides confidential information (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement.
- b. Permitted Disclosures.** Notwithstanding Section 18(a):
- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates’ respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, “**Representatives**”), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
  - ii. Confidential Information does not include any information that (A) becomes publicly available other than through breach of this Agreement, (B) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (C) is independently developed by the receiving Party, or (D) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party’s efforts to limit the disclosure to the extent permitted by applicable law. Notwithstanding any other provision in this Agreement, Seller and its affiliates are permitted to provide Confidential Information to the Internal Revenue Service and the United States Department of Treasury with respect to Seller satisfying the requirements for and obtaining the Elective Payment Incentive.
  - iii. Each Party hereto acknowledges and agrees that this Agreement and information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of Confidential Information, the recipient of such request or demand shall, to the extent permissible, notify the other Party in writing in advance of any disclosure that the request or demand has been made and shall take all reasonably necessary and customary steps to protect Confidential Information that is the subject of any California Public Records Act request submitted by a third person to Purchaser, including, but not limited to, applicable exceptions described by Cal. Gov’t Code Sections 6254 and 6255.
  - iv. A Party may be required to make this Agreement or portions of this Agreement available to the public in connection with the process of seeking approval from its respective governing board of its entry into this Agreement.
  - v. 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, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.
- c. Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party’s option) after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (i) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (ii) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party which consent shall not be unreasonably withheld. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly, and in any case within fourteen (14) days, review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to publish the name of Purchaser, System location, System size without obtaining the prior, written consent of Purchaser and to place signage on the Premises reflecting its association with the System.

19. **General Provisions.**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** 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 conflict of laws. In the event of a dispute, controversy, or claim arising out of or relating to this Agreement, the Parties shall confer and attempt to resolve such matter informally. If such dispute or claim cannot be resolved in this matter, then the dispute or claim shall be referred first to executive officers of the Parties for their review and resolution. If the dispute or claim still cannot be resolved by such officers, then any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Section 6 of **Exhibit 1**, and Sections 3, 4, 5(c), 7(a), (c) and (f), 9, 11, 12(c), 14, 15, 17, 18 and 19 of this **Exhibit 3** shall survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party’s performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with **Section 9**.



- h. Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Code. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties.
- k. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held by such court to be unenforceable for any reason whatsoever, such provision shall not be read to render and shall not have the effect of rendering this Agreement or the other provisions herein unenforceable, inoperative or invalid to any extent whatsoever. In such event, such provision shall be deemed severable from the remaining provisions of this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. Electronic Signatures.** If the Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Party will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After both Parties agree to the use of electronic signatures, both Parties must sign the document electronically.
- o. No Recourse to Members of Seller.** Seller 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. Seller shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Purchaser shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller’s constituent members, or the employees, directors, officers, consultants or advisors of Seller or of its constituent members, in connection with this Agreement.

End of **Exhibit 3**

**Exhibit 4**

**Performance Guaranty**

In consideration for Purchaser's entering into the Solar Power Purchase Agreement between Peninsula Clean Energy Authority ("Seller") and the Purchaser related to the System at the Premises (the "PPA"), this Performance Guaranty (this "Guaranty") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Guarantor below (the "Effective Date").

<b>Purchaser:</b>		<b>Guarantor:</b>	
<b>Name and Address</b>		Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
<b>Phone</b>		Phone	(650) 260-0087
<b>E-mail</b>		E-mail	rreyes@peninsulacleanenergy.com
Project Name	Colma Town Hall		

This Guaranty sets forth the terms and conditions of a guaranty provided by Guarantor in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guaranty will be concurrent with the term of the PPA, except that it will not exceed the Initial Term. This Guaranty will be updated by Guarantor to reflect the as-built specifications of the System.

1. **Guaranty.** Guarantor guarantees that during the Initial Term of the PPA the System will generate not less than ninety five percent (95%) of the estimated generation of the System based on Helioscope or PVSyst ("Estimated Production (Annual kWh)") as set forth in **Table 1.A** below (such guaranteed generation, the "Guaranteed Production (Annual kWh)" set forth on **Table 1.A** below); provided that the Guaranteed Production values are subject to reasonable downward adjustment for extreme weather conditions and to the extent that Purchaser exceeds the Outage Allowance set forth in Exhibit 3, Section 6(d) of the PPA.
  - A. Guarantor will use local weather data to adjust the System's Guaranteed kWh, based on the following methods if available and in descending order of preference: (i) satellite data provided by a third-party vendor of Seller; or (ii) available data from a locally installed weather station at the Premises owned and properly maintained by Purchaser.

**Table 1.A**, projected production values assuming average weather conditions:

<b>Contract Year</b>	<b>Estimated Production (Annual kWh)</b>	<b>Guaranteed Production (Annual kWh)</b>
Year 1	286,626	272,295
Year 2	285,193	270,933
Year 3	283,767	269,579
Year 4	282,348	268,231
Year 5	280,936	266,890
Year 6	279,532	265,555
Year 7	278,134	264,227
Year 8	276,743	262,906
Year 9	275,360	261,592
Year 10	273,983	260,284
Year 11	272,613	258,982
Year 12	271,250	257,687
Year 13	269,894	256,399
Year 14	268,544	255,117
Year 15	267,201	253,841
Year 16	265,865	252,572
Year 17	264,536	251,309

Year 18	263,213	250,053
Year 19	261,897	248,802
Year 20	260,588	247,558

B. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *less* than the Guaranteed kWh for that Contract Year, then Guarantor shall pay Purchaser an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment Rate (as defined in Section 1(E)), in each case with respect to the affected Contract Year.

C. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *more* than the Guaranteed kWh for that Contract Year, then an amount equal to (i) the difference between the Actual kWh and the Guaranteed kWh, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year, shall be credited against and shall reduce by such amount any payments owed by Guarantor to Purchaser in the following Contract Year pursuant to Section 1(B) of this **Exhibit 4**. The amount under Section 1(C)(i) above shall be capped at one hundred and five percent (105%) of the Guaranteed kWh for the applicable Contract Year.

D. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), after subtracting any credits pursuant to Section 1(C), (i) Guarantor will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

E. “**Performance Guarantee Payment Rate**” means the Contract Price.

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

A. a Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility; and (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the Utility or grid operator.

B. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the System. Purchaser hereby disclaims, and any beneficiary of this Guaranty hereby waives, any warranty with respect to any cost savings from using the System.

4. **Incorporation of PPA Provisions.** Section 5(c) (Force Majeure), Section 17 (Assignment and Financing) and Section 19 (General Provisions) of **Exhibit 3** of the PPA and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to “Agreement” were to this Guaranty and any reference to “Parties” were to the Parties to this Guaranty.

**Guarantor:**

**Signature:**

\_\_\_\_\_

Printed Name: Shawn Marshall

\_\_\_\_\_

Title: Chief Executive Officer

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Purchaser:**

**Signature:**

\_\_\_\_\_

**Printed Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_



### Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of **[date]**, 2024 (the “**Effective Date**”).

Purchaser:		Seller:	
<b>Name and Address</b>		Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
	<b>Attention:</b>		
<b>Phone</b>		Phone	(650) 260-0087
<b>E-mail</b>		E-mail	rreyes@peninsulacleanenergy.com
Premises Ownership	Purchaser owns the Premises.		
Tax Status			System Owner
Project Name	Colma Police Department		

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electricity from the solar panel system described in **Exhibit 2** (the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in **Schedule A** to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The System shall initially be owned by Seller. “**System Owner**” means Seller or a subsequent owner of the System in the event that Seller transfers title to the System.

The exhibits listed below are incorporated by reference and made part of this Agreement.

<b>Exhibit 1</b>	Pricing
<b>Exhibit 2</b>	System Description, Delivery Point and Premises
<b>Exhibit 3</b>	General Terms and Conditions
<b>Exhibit 4</b>	Performance Guaranty

**Purchaser:**

Seller: Peninsula Clean Energy Authority

**Signature:** \_\_\_\_\_  
**Printed Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_  
**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_  
Printed Name: Shawn Marshall  
Title: Chief Executive Officer  
**Date:** \_\_\_\_\_

## Exhibit 1

### Pricing

1. **Initial Term:** Twenty (20) years, beginning on the date that Commercial Operation is achieved (such date, the “**Commercial Operation Date**” and such term, the “**Initial Term**”). “**Commercial Operation**” means that the System is mechanically complete, commences regular, daily operation, complies with all applicable law, has undergone successful system testing, is providing electricity to the Delivery Point at the System Size specified in Exhibit 2 and has obtained all necessary Approvals (as defined in Section 5(b) of Exhibit 3), including permission to operate from the Utility and Seller.
2. **Additional Terms:** Upon mutual written agreement, the Parties may extend the Initial Term for up to two (2) additional terms of up to five (5) years each beginning on the expiration of the Initial Term or on the expiration of the first Additional Term, as applicable (each, an “**Additional Term**”).
3. **Contract Price:** \$0.271 per kilowatt-hour (“**kWh**”) AC at the Delivery Point specified in Exhibit 2.
4. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
  - a. Statutory prevailing wage rates (e.g., Davis-Bacon) do apply.
  - b. A Performance Guaranty is being provided.
5. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:
  - a. Groundwork (including excavation and circumvention of underground obstacles) that is unforeseen despite reasonable efforts to assess existing site conditions. Upgrades or repair to Purchaser or Utility electrical infrastructure (including Purchaser or Utility service, transformers, substations, poles, breakers, reclosers, and disconnects). “**Utility**” means the electric distribution utility serving Purchaser.
  - b. Tree removal, tree trimming, mowing and any landscape improvements.
  - c. Decorative fencing and/or any visual screening materials, decorative enhancements to solar support structures (including painting, paint matching, masonry/stone work, and any lighting not required to meet the minimum code compliance).
  - d. Removal of existing lighting, light poles, or concrete light post bases.
  - e. Roof membrane maintenance or reroofing work.
  - f. Structural upgrades to the Improvements, including Americans with Disabilities Act (“**ADA**”) upgrades.
  - g. Installation of public information screen or kiosk (including accompanying Internet connection, power supply, technical support and ADA access).
  - h. Changes in System design caused by any inaccuracy in information provided by Purchaser, including information regarding Purchaser’s energy use, the Premises and the Improvements, including building plans and specifications.

If such excluded costs will result in an increase to the Contract Price, Seller shall deliver notice to Purchaser of such increase to the Contract Price not less than sixty (60) days prior to commencement of the installation of the System (“**Commencement of Installation**” and such notice, the “**Excluded Costs Notice**”). If excluded costs will result in an increase to the Contract Price such that the revised Contract Price would increase by no more than five percent (5%), Purchaser shall be responsible for such increased Contract Price and the Contract Price shall be amended to reflect the new Contract Price included in the Excluded Costs Notice. If such excluded costs will result in an increase to the Contract Price, such that the revised Contract Price would increase by more than five percent (5%), Purchaser shall have a right to terminate this Agreement without penalty by providing notice of such termination within thirty (30) days of delivery of the Excluded Costs Notice.

6. Termination Payment Schedule:

Contract Year	Termination Payment (\$)
1	\$624,496
2	\$597,145
3	\$569,838
4	\$542,576
5	\$515,359
6	\$488,191
7	\$461,071
8	\$434,002
9	\$406,985
10	\$380,022
11	\$353,114
12	\$326,263
13	\$299,470
14	\$272,738
15	\$246,067
16	\$219,461
17	\$192,921
18	\$166,448
19	\$140,046
20	\$113,715

**Exhibit 2**

**System Description, Delivery Point and Premises**

1. System Location: 1199 El Camino Real, Colma, CA 94014
2. System Size (DC kW): 102.1 (AC kW): 96.2
3. System Description (Expected Structure, etc.): Carport
4. Delivery Point and Premises: **Schedule A** to this **Exhibit 2** contains one or more drawings or images depicting:
  - a. Premises, including the Improvements (as applicable);
  - b. Proposed System location at the Premises;
  - c. Delivery point for electricity generated by the System (the “**Delivery Point**”);
  - d. Access points needed for Seller to cause the System to be installed and serviced (building access, electrical room, stairs, etc.); and
  - e. Construction assumptions (if any).

**Schedule A**

1. Physical building address:
2. Number of Stories:
3. Total Square Footage:
4. Year Built:
5. Year of any mechanical/electrical updates:
6. Type of Construction, (example; wood frame, masonry, steel):
7. Description/ Type of roof structure/system:
8. Confirm whether the building is sprinklered:
9. Describe any additional security measures, (example: video surveillance, etc.):

A Site Plan and Single Line Diagram are attached at the end of this **Schedule A** labeled “Attachment 1 to **Schedule A** of **Exhibit 2**”.



Exhibit 3

General Terms and Conditions

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## Exhibit 3

### General Terms and Conditions

1. **Purchase and Sale of Electricity.** Subject to the terms and conditions of this Agreement, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Seller warrants that it will deliver the electricity to Purchaser at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.
  
2. **Term and Termination.**
  - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 1 of Exhibit 1) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the “**Term**”).
  - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for up to two (2) Additional Terms at a Contract Price to be negotiated by the Parties prior to the expiration of the Initial Term or the first Additional Term, as applicable.
  - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation, (i) Purchaser terminates this Agreement pursuant to Section 5 of Exhibit 1, or (ii) Seller determines that the installation of the System will not be viable for any reason, then either Party may terminate this Agreement by providing ten (10) days’ prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 5 of Exhibit 1 or otherwise.
  - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred within three hundred and sixty-five (365) days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days’ prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller causes to be achieved Commencement of Installation on or before the end of such thirty (30) day notice period or if Commencement of Installation is delayed due to a Force Majeure Event. Purchaser shall not be liable for any damages in connection with such termination. For the avoidance of doubt, such event shall not be deemed a Default Event by Seller and Purchaser’s only remedy shall be the reimbursement by Seller of direct costs reasonably incurred by Purchaser by reason of the termination.
  
3. **Billing and Payment; Taxes.**
  - a. **Monthly Charges.** Purchaser shall pay Seller monthly for the electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 as adjusted by Section 5 of Exhibit 1, if applicable (the “**Contract Price**”). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 10). Additional costs for items differing from the assumptions in Exhibit 1, Section 4 are Purchaser’s responsibility.
  - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly for amounts owed by Purchaser hereunder. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, and (iii) the total amount due from Purchaser.
  - c. **Payment Terms.** All amounts due under this Agreement are due and payable within thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars. “**Prime Rate**” shall mean the annual prime rate of interest published in the Wall Street Journal for the applicable period during which interest is incurred pursuant to the terms of the Agreement.

d. **Taxes.**

- i. **Purchaser's Taxes.** Purchaser is responsible for: (A) payment of, or reimbursement of Seller for, all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the Utility's electricity distribution system; (B) real property taxes; and (C) any sales or use taxes as a result of exercising the options to purchase the System in Section 14(b).
- ii. **Seller's Taxes.** Seller is responsible for: (A) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (B) personal property taxes imposed on the System ("**Seller's Taxes**").

- e. **Budgeting for Contract Price.** Upon execution of this Agreement and prior to the commencement of each subsequent budgetary cycle of Purchaser during the Initial Term (and Additional Term, if any), Purchaser shall take all necessary action to obtain all necessary budgetary approvals and certifications for payment of all of its obligations under this Agreement for such budgetary cycle, including, but not limited to including the maximum amount of its annual payment obligations under this Agreement in its budget submitted to Purchaser's **[City Council / Town Council / Board of Supervisors / Governing Board]** for each year of that budget cycle.

4. **RECs and Incentives.**

a. **Definitions.**

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party.

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, including, but not limited to, the election to receive a payment with respect to investment tax credits or production tax credits pursuant to Code Section 6417, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

- b. **RECs.** The Parties hereby agree that Seller is entitled to the benefit of, and will retain all ownership interests in, the RECs. Seller shall not sell, assign or otherwise transfer the RECs to a third party. If necessary, Purchaser shall cooperate with Seller in obtaining, securing and transferring any and all RECs. Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. Purchaser shall not make any filing or statements inconsistent with Seller's ownership interests in the RECs, nor shall Purchaser attempt to sell, assign or transfer such RECs. If any RECs are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.
- c. **Incentives.** The Parties hereby agree that Seller or a subsequent System Owner, if applicable, and not Purchaser, is entitled to the benefit of, and will retain all ownership interests in, the Incentives. If necessary, Purchaser shall cooperate with Seller and any such third-party System Owner in obtaining, securing and transferring any and all Incentives, including cooperating, as requested by Seller, with respect to any challenges as to Seller obtaining any portion or amount of the Incentives. Without limiting the foregoing, Purchaser acknowledges that Seller intends to qualify for the elective payment incentive (the "**Elective Pay Incentive**") and make the elective payment election in Section 6417 of the Internal Revenue Code of 1986, as amended (the "**Code**") with respect to the federal income tax credits (the "**Applicable Credits**") under either Code Sections 45 or 48. Purchaser agrees to cooperate with Seller to the extent requested by Seller, so that Seller can (i) qualify for the Applicable Credits in the context of the Elective Pay Incentive, (ii) make the elective payment election and obtain a payment of applicable proceeds with respect to the Elective Pay

Incentive, (iii) avoid a disallowance, recapture, or reduction of the proceeds with respect to the Elective Pay Incentive, and (iv) prevent an excessive payment as set forth in Code Section 6417(d)(6). Purchaser is not obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller or any such System Owner. Purchaser shall not make any filing or statements inconsistent with Seller's or System Owner's ownership interests in the Incentives, nor shall Purchaser attempt to sell, assign or transfer such Incentives. If any Incentives are delivered directly to Purchaser, Purchaser shall immediately deliver such items or amounts to Seller.

**5. Project Completion.**

- a. **Project Development.** Seller shall use reasonable efforts to pursue or cause to be pursued the development and installation of the System, subject to Section 2(c) and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use reasonable efforts to cause to be obtained the following at its sole cost and expense (each, an "Approval"):
  - i. any zoning, land use and building permits required for Seller to cause the System to be constructed, installed and operated; and
  - ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Utility's electric distribution system.

Purchaser shall reasonably cooperate with Seller's reasonable requests to assist Seller in expeditiously obtaining such Approvals, including, without limitation, the execution of documents required to be provided by Purchaser to the Utility. The Parties acknowledge and agree that Purchaser does not have authority or jurisdiction over any other public agency's ability to grant Approvals or ability to impose limitations that may affect the System, provided, that such acknowledgment and agreement does not apply to joint powers authorities or related agencies over which Purchaser asserts authority.

**c. Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event, up to a maximum of two (2) years.
- ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of three hundred sixty-five (365) days or more, then either Party may elect to terminate this Agreement without either Party having further liability under this Agreement except: (A) liabilities accrued prior to termination, (B) Seller's obligation to cause the System to be removed as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (C) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay Seller a termination payment equal to the amount set forth in Section 6 of Exhibit 1. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the three hundred sixty-five (365) day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
- iii. **Definition of "Force Majeure Event."** "Force Majeure Event" means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation: an act of God; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction, tariff or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; tsunami; storm; tornado; blizzard; heatwave; hurricane; flood; lightning; hail; wind; drought; animals; epidemic; pandemic; action or the failure to act by a Governmental Authority or the Utility, including, but not limited to, a moratorium on any activities related to this Agreement or the delay or a lack of a final Approval based on the California Environmental Quality Act ("CEQA") or other applicable law, provided

that the delay in decision-making is not attributable to the Party claiming a Force Majeure Event and that such Party has exercised its reasonable efforts to cause such Approval to be obtained; delays in interconnection, provided that the delay in obtaining interconnection is not attributable to the Party claiming a Force Majeure Event or its agents; unavailability of electricity from the Utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. For purposes of the definition of "Force Majeure Event," a Party shall not be considered a Governmental Authority if such Party is claiming the presence of a Force Majeure Event as an excuse for its failure to timely perform its obligations under this Agreement.

- d. **Extension of Time**. If Seller is delayed in causing the achievement of Commencement of Installation due to a Force Majeure Event, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- e. **Commercial Operation**. Seller shall notify Purchaser in writing at least one week prior to the Commercial Operation Date. Upon Purchaser's reasonable request, Seller shall provide Purchaser with the "Final Completion Certificate" as executed by the contractor to Seller responsible for installing the System and the "Final Completion Notification" as executed by Seller to evidence that the System is ready to begin Commercial Operation. Purchaser may not turn on, electrify or otherwise operate the System in the absence of prior, written permission from Seller.

6. **Installation, Operation and Maintenance**.

- a. **Seller's General Obligations Regarding the System**. Subject to the terms and conditions of this Agreement, Seller shall use reasonable efforts to cause the System to be designed, engineered, installed, commissioned, monitored, operated and maintained, in each case in a good and workmanlike manner and in accordance with applicable law and prudent solar industry practices in the State of California. The Seller shall ensure that the System complies with all applicable law, rules, regulations and local building codes. In furtherance of the foregoing, Seller shall use reasonable efforts to enforce all of its rights under its agreement or agreements with the installer of the System and with the entity engaged to operate and maintain the System; provided, that Seller shall maintain full discretion with respect to any determinations regarding the nature of such enforcement actions and Seller shall not be obligated pursuant to this Agreement to initiate litigation or other legal process.
- b. **System Design Approval**. Seller has provided Purchaser with a copy of the System design, and Purchaser has approved such design. Should any subsequent changes to the System design be made prior to Commencement of Installation, Purchaser shall be provided with a copy of any such revised System design and any resulting changes to the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, and Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised design and any such resulting changes in writing, such approval not to be unreasonably withheld. Failure by Purchaser to respond within such ten (10) business day period shall be deemed approval of the revised System design and any such resulting changes. If Purchaser disapproves the revised System design and/or any such resulting changes, Seller may either (i) cause the design to be reverted to the original design approved by Purchaser or (ii) terminate this Agreement and such termination shall be without further liability to Purchaser. If changes to the System design or other changes, including new information regarding Purchaser's electricity needs or Seller's selection of equipment for the System, will result in a change to any of the data on Exhibit 2 (including, but not limited to the System Size), the Contract Price, Section 6 of Exhibit 1, any of the data on Exhibit 2 and/or Table 1.A of Exhibit 4, such sections and/or table of this Agreement may be revised if any such changes are approved by both Parties in writing. If changes to the System design are reasonably expected to lower the costs to Seller of engineering, constructing, installing, interconnecting, operating, maintaining, repairing and/or removing the System, Seller may, in its sole discretion, decrease the Contract Price and provide such updated Contract Price to Purchaser in an addendum to this Agreement.
- c. **System Repair and Maintenance**. Seller may cause the suspension of delivery of electricity from the System to the Delivery Point for the purpose of causing the maintenance to and repairs of the System; provided that Seller shall use reasonable efforts to minimize any interruption in service to the Purchaser and shall provide at least thirty (30) business days' advance notice to Purchaser of any scheduled maintenance and repairs. Emergency maintenance and repairs may be performed in the absence of such notice if necessary to prevent harm to persons or property. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **System Outage Allowance**. Upon Purchaser's written request, Seller shall cause the System to be taken off-line for a total of forty-eight (48) daylight hours (as defined by the United States National Weather Service in the area where the System is located) during each Contract Year (each event an "**Outage**" and the forty-eight (48) hour period the

“**Outage Allowance**”). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(c) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser’s request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity that could have been delivered by the System but for an Outage up to the annual Outage Allowance. If the aggregate hours for Outages, including, but not limited to Outages resulting from a temporary disconnection or removal pursuant to Section 6(f), exceed the Outage Allowance in a given Contract Year and Purchaser has opted out of receiving retail electric generation service from Seller, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.

- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local Utility grid at all times; and (ii) shall not permit cessation of delivery of electric service to the Premises from the local Utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser’s side of the Delivery Point, including all of Purchaser’s equipment that utilizes the System’s outputs. Purchaser shall use reasonable efforts to cooperate with Seller to comply with any technical standard of the Utility providing electrical power to the Purchaser.
- f. **Alteration or Repairs to Premises.** Not less than ninety (90) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall cause to be performed such work, and any re-connection of the System, at Purchaser’s cost, subject to Section 6(c), 6(d), and 6(e). To the extent that temporary removal of the System is necessary in order for Purchaser to perform such alterations or repairs, Seller shall use reasonable efforts to cause to be performed such removal work within one hundred and eighty (180) days of Seller’s determination that such temporary removal is required and any such removal and re-installation work shall be at Purchaser’s cost, subject to Section 6(c), 6(d), and 6(e). Purchaser shall cause to be made any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Access Rights.** In consideration of and in order to effectuate the mutual covenants and terms of this Agreement, Purchaser hereby grants to Seller and to Seller’s agents, employees, contractors and subcontractors and the Utility (i) a non-exclusive license running with the Premises (the “**Non-Exclusive License**”) for access to, on, over, under and across the Premises from the Effective Date until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement (the “**License Term**”), for the purposes of performing all of Seller’s obligations and enforcing all of Seller’s rights set forth in this Agreement and otherwise as required by Seller in order to effectuate the purposes of this Agreement, including, but not limited to design, engineering, development, construction, installation, inspection, interconnection, testing, operation, maintenance, repair, replacement and removal of the System and all incidental and related uses connected therewith. In addition to the foregoing, if the System shall be a ground-mounted System to be located within a secure, fenced area on the Premises, Purchaser hereby grants to Seller an exclusive, sub-licensable license running with the Premises (the “**Exclusive License**”, and together with the Non-Exclusive License, the “**Licenses**”) for purposes of the installation, operation, use and maintenance of the System on such exclusively licensed area of the Premises during the License Term. Seller shall provide at least seventy-two (72) hours advance notice to Purchaser of any access required prior to the Commercial Operation Date; after the Commercial Operation Date notice shall be provided subject to Section 6(c). Seller shall use reasonable efforts to ensure that when on the Premises during the License Term, it and its employees, agents, contractors and subcontractors comply with Purchaser’s site safety and security requirements, which are to be provided to Seller in writing within sixty (60) days of the Effective Date. During the License Term, Purchaser shall preserve and protect Seller’s rights under the Licenses and Seller’s access to the Premises and shall not interfere, or permit any third parties under Purchaser’s control to interfere, with such rights or access. Seller may record a customary memorandum of license in the land records respecting the Licenses.
- b. **OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (“**OSHA**”) requirements and other similar applicable safety laws and codes with respect to such Party’s performance under this Agreement.

- c. **Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors. Without limiting the foregoing, Seller shall arrange for security of the System, equipment and tools during the construction of the System and Purchaser shall cooperate with Seller and its contractor with respect to such security measures. The obligations set forth in this Section 7(c) shall survive until the date that is one hundred and eighty (180) days following the date of expiration or earlier termination of this Agreement.
- d. **Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If either Party discovers any activity or condition that could diminish the Insolation of the System, such Party shall immediately notify the other Party and Purchaser shall cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. **Use and Payment of Contractors and Subcontractors.** Seller shall use and shall cause to be used suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by such contractors and subcontractors. Seller shall pay or shall cause to be paid when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. **Liens.**
- i. **Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall immediately notify the other Party in writing of the existence of any such Lien following such Party's discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.
- ii. **Lien Indemnity.** Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).
8. **Relocation of System.** If, during the Term, Purchaser ceases to conduct operations at the Premises or vacates the Premises, the Premises have been destroyed, or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser shall propose in writing the relocation of the System, at Purchaser's cost. Such proposal shall be practically feasible and preserve the economic value of this Agreement for Seller. The Parties shall seek to negotiate in good faith an agreement for the relocation of the System. Pending agreement on relocation of the System, Purchaser shall continue to make payments to Seller pursuant to Section 11(b)(i)(C).
9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not purchase the System pursuant to the terms and conditions of Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), cause to be removed all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than one hundred and eighty (180) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition as is reasonably possible, except for ordinary wear and tear, including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. Seller is required to cause to be repaired any and all damage to the Premises caused by removal of the System. Notwithstanding the foregoing, Seller shall not be obligated to remove

or cause to be removed any support structures for the System which are affixed to and below the exposed surface of Purchaser's structures or any below grade structures, including foundations and conduits, or any roads. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. Purchaser shall comply with Section 7(c) and Section 13 until removal is complete. If Seller fails to cause the removal of the System within one hundred and eighty (180) days after expiration of the Term, Purchaser may, at its option, remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost, *provided* that if Seller pays Purchaser for such costs, Seller shall not be liable to Purchaser for a Default Event by Seller.

## 10. Measurement.

- a. **Meter.** The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the monitoring system caused to be installed and maintained by Seller as part of the System.
- b. **Meter Calibration.** Seller shall cause the Meter to be calibrated in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Seller's cost.
- c. **Internet Connection.** At all times during the Term, Purchaser shall maintain and make available, at Purchaser's cost:
  - i. A hard-wired ethernet port for connection to System equipment located within fifty (50) physical feet of the electrical room of the Premises; or, if such hard-wired port is not feasible, Wi-Fi available seven (7) days per week and twenty-four (24) hours per day;
  - ii. Information technology support services as needed to provide Internet connectivity via the connection described in Section 10(c)(i); and
  - iii. A dedicated IP address for System equipment.

If Purchaser does not maintain such Internet connection described above, Seller will not be able to cause the System to be monitored or provide the performance guaranty set forth on Exhibit 4. Further, if Seller is not able to monitor the System, Seller will be required to estimate the System's power production for purposes of determining the monthly payment(s) for any such month in which the required Internet connection was not available.

## 11. Default, Remedies and Damages.

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":
  - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
  - ii. failure of a Party to perform any material obligation under this Agreement or an act or omission of a Party in violation of the terms and conditions of this Agreement not addressed elsewhere in this Section 11 within sixty (60) days following receipt of written notice from the Non-Defaulting Party demanding such cure; *provided*, that if the Default Event cannot reasonably be cured within sixty (60) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
  - iii. such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) business days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
  - iv. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party



demanding such cure;

- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is (are) not dismissed within sixty (60) days); or,
- vi. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless the Parties agree upon a relocation under Section 8 above; (B) loses its right to provide access to the System or is otherwise in default under Section 7(a); or (C) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (x) permitted under this Agreement, or (y) cured within ten (10) days after written notice thereof from Seller.

**b. Remedies.**

- i. **Purchaser Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where the Purchaser is the Defaulting Party, including a Payment Default:
  - A. Seller may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Seller's rights against the Purchaser, including rights to any payments due hereunder in an action for damages, and to compel the Purchaser to perform and carry out its duties and obligations under the law and its covenants and agreements with the Seller as provided herein.
  - B. Seller may suspend performance of its obligations under this Agreement, including, but not limited to, turning off the System, until the earlier to occur of (x) the date that Purchaser cures the Default Event in full, including making payment in full as provided in Section 11(b)(i)(C), or (y) the termination date of this Agreement. Seller's rights under this Section 11(b)(i)(B) are in addition to any other remedies available to it under this Agreement, at law or in equity.
  - C. Except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Purchaser shall continue to pay, and Seller shall be entitled to recover payment for: (x) all electricity delivered by Seller pursuant to Section 3 of this **Exhibit 3**, and (y) all electricity that Seller reasonably estimates it would have been able to deliver to Purchaser in accordance with this Agreement but for the Default Event by Purchaser, in each case at the Contract Price, together with (z) any other amounts due and payable pursuant to this Agreement.
- ii. **Seller Default Event Remedies.** Upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party:
  - A. Purchaser may exercise any and all remedies available or granted to it pursuant to law or hereunder, including seeking by mandamus or other suit, action or proceeding at law or in equity to enforce the Purchaser's rights against the Seller, including rights to any payments due hereunder in an action for damages, and to compel the Seller to perform and carry out its duties and obligations under the law and its covenants and agreements with the Purchaser as provided herein.
  - B. except as otherwise provided herein, this Agreement shall not terminate as a result of such Default Event and shall continue in full force and effect, and Seller and Purchaser shall continue to pay all amounts due and payable pursuant to this Agreement.
- iii. **Optional Termination by Purchaser.** In addition to the remedies provided for in Section 11(b)(ii), upon the occurrence and during the continuation of a Default Event where Seller is the Defaulting Party, the Purchaser may terminate this Agreement as further set forth in this Section 11(b)(iii) by providing thirty (30) days prior written notice to the Seller; provided, that, in the case of a Default Event under Section 11(a)(v) where the Seller is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iii), Seller shall pay to Purchaser an amount equal to the sum of (A) the present value of the excess, if any, of the reasonably expected cost of electricity delivered by the Utility over the Contract Price for the reasonably expected production of the System for a period of the lesser of five (5) years or the remainder of the Initial Term or the then current Additional Term, as applicable; (B) all direct costs reasonably incurred by Purchaser by reason of the termination; and (C) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser (the "**Seller Termination Payment**"). The Seller Termination Payment determined under

this Section 11(b)(iii) cannot be less than zero.

- iv. **Optional Termination by Seller.** In addition to the remedies provided for in Section 11(b)(i), upon the occurrence and during the continuation of a Default Event where Purchaser is the Defaulting Party, the Seller may terminate this Agreement as further set forth in this Section 11(b)(iv) by providing thirty (30) days prior written notice to the Purchaser; provided, that, in the case of a Default Event under Section 11(a)(v) where the Purchaser is the Defaulting Party, no such notice period shall be required. Upon termination pursuant to this Section 11(b)(iv), Purchaser shall pay to Seller an amount equal to the sum of (1) the applicable amount set forth in the Termination Payment Schedule of Section 6 of Exhibit 1, and (2) any other amounts previously accrued under this Agreement and then owed by Purchaser to Seller (collectively, the “**Purchaser Termination Payment**” and, together with the Seller Termination Payment, the “**Termination Payment**”). The Purchaser Termination Payment determined under this Section 11(b)(iv) cannot be less than zero.
  - v. **Severability of Remedies.** If any remedy in Section 11(b) is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other remedies herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in Section 11(b) of this Exhibit 3 shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Section 11(b) and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Parties hereby declare that they each would have executed this Agreement and each and every other section hereof irrespective of the fact that any one or more sections of this Section 11(b) may be held illegal, invalid or unenforceable.
  - vi. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(iv), actual damages would be difficult to ascertain, and the Purchaser Termination Payment determined in accordance with Section 11(b)(iv) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.
- c. **Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(iii), or Section 11(b)(iv), then following such termination, Seller shall cause and shall have the right to cause the equipment constituting the System to be removed in compliance with Section 9 at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to cause the System to be removed following the occurrence of a Default Event by Purchaser, unless Purchaser has paid the Purchaser Termination Payment to Seller or pre-pays the cost of removal and restoration reasonably estimated by Seller.
- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(iii) or Section 11(b)(iv) and payment of a Termination Payment, if any, determined as provided therein, nothing in this Section 11 limits either Party’s right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
  - ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser’s obligation to pay the full Purchaser Termination Payment set forth in Section 6 of Exhibit 1 following a Default Event by Purchaser.
  - iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party’s obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

## 12. **Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
  - i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary governmental action, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in

effect relating to creditors' rights generally).

- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by applicable law and any Governmental Authority or other third-party and necessary for such Party to own its assets, carry on its business and operations and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

**b. Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

- i. **Licenses.** (A) Purchaser has title to and is the fee owner of the Premises such that Purchaser has the full right, power and authority to enter into and perform all of its obligations under this Agreement, (B) this Agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (C) there are no deeds of trust, mortgages or similar security instruments with a lien against the Premises.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (A) the Premises, (B) the Improvements on which the System is to be installed, if applicable, (C) Purchaser's planned use of the Premises and any applicable Improvements, and (D) Purchaser's estimated electricity requirements, is accurate in all material respects.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.
- v. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.

**c. Seller's Warranties.**

- i. If Seller causes to be penetrated the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall provide for a warranty on roof damage caused by these roof penetrations and shall repair such damage at Seller's expense. Seller's roof warranty shall terminate upon the earlier of (A) five (5) years following the Commercial Operation Date and (B) the expiration of the warranty applicable to such roof provided by Purchaser's roofing contractor that is effective as of the Effective Date ("**Existing Roof Warranty**"). If there is an Existing Roof Warranty, Purchaser shall provide it to Seller, and Seller shall ensure that the construction, operation, maintenance and removal of the System conforms to the requirements of the Existing Roof Warranty to the extent such Existing Roof Warranty is in effect.
- ii. If Seller or its agents damage any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties and subject to Section 15.

**d. NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT. THE PERFORMANCE GUARANTY SET FORTH IN EXHIBIT 4 REPRESENTS A SEPARATE CONTRACT BETWEEN PURCHASER AND THE ISSUER OF THE PERFORMANCE GUARANTY. IF THE ISSUER OF THE PERFORMANCE GUARANTY (OR ANY SUBSEQUENT ASSIGNEE) AND THE SELLER ARE NOT THE SAME PERSON, NO RIGHTS PROVIDED TO PURCHASER BY THE PERFORMANCE GUARANTY MAY BE ASSERTED UNDER THIS AGREEMENT, AND NO CLAIM UNDER THE PERFORMANCE GUARANTY WILL AFFECT PURCHASER'S OBLIGATIONS UNDER THIS AGREEMENT.

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13. **Insurance.**

- a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:
- i. **Seller's Insurance.** Seller shall maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability, employers liability and automobile liability insurance with primary coverage of at least \$1,000,000 per occurrence, an excess liability limit of \$5,000,000, for a total of \$6,000,000 in the aggregate, and (C) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
  - ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$2,000,000 per occurrence.
- b. **Policy Provisions.** The insurance policies referenced in Section 13(a) shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.
- c. **Certificates.** Upon the other Party's request, each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.
- d. **Deductibles.** Each Party shall pay or cause to be paid its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. **Ownership; Option to Purchase.**

- a. **Ownership of System.**
- i. **Ownership; Personal Property.** System Owner or its assignee shall be the legal and beneficial owner of the System and the System will remain the personal property of System Owner or such assignee and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that System Owner or its assignee is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
  - ii. **Notice to Purchaser Lienholders.** Purchaser shall use reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
  - iii. **Fixture Disclaimer.** Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If, at any point after the Effective Date, Purchaser is not the fee owner of the Premises, Purchaser shall obtain such consent from such fee owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
  - iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form mutually acceptable to Seller and Purchaser, any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
  - v. **Eviction Notice.** Purchaser hereby represents and warrants that it is the legal owner of the Premises. To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed after the Effective Date, Purchaser shall provide to Seller immediate written notice of any such change in ownership and receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

**b. Option to Purchase.**

- i. Early Purchase Option. Commencing on the next date after the date that is the sixth (6th) anniversary of the Commercial Operation Date, and continuing for a period of two hundred and seventy (270) days (the “**Early Purchase Option Period**”), so long as Purchaser is not in default under this Agreement, Purchaser may exercise an option to purchase the System from System Owner on any such date within the Early Purchase Option Period for a purchase price equal to the greater of (A) the Fair Market Value of the System, or (B) the year six (6) Termination Payment amount set forth in Section 6 of Exhibit 1. Purchaser shall exercise the option in this Section 4(b)(i) by providing System Owner with written notice.
- ii. Exercise of Option. At the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from System Owner on any such date for a purchase price equal to the Fair Market Value of the System applicable as of the date of the transfer of title to the System (“**End of Term Option to Purchase**”). Purchaser shall notify Seller in writing of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the Initial Term or Additional Term, as applicable. For the avoidance of doubt, the End of Term Option to Purchase shall not apply prior to the expiration of the full Initial Term.
- iii. Fair Market Value. The “**Fair Market Value**” of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a written notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iv. Title Transfer; Warranties; Manuals. If Purchaser exercises a purchase option pursuant to Sections 14(b)(i) or (ii) above, title to the System and manufacturers’ warranties shall transfer to Purchaser upon System Owner’s receipt of the purchase price and execution by System Owner and Purchaser of a written instrument or agreement to effect such transfer to be negotiated between System Owner and Purchaser. The System will be sold “as is, where is, with all faults.” Upon purchase of the System, Purchaser shall assume complete responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), System Owner will have no further liabilities or obligations hereunder for the System.

**15. Indemnification and Limitations of Liability.**

- a. General. Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party’s and its affiliates’ respective directors, officers, shareholders, partners, members, agents and employees (collectively, the “**Indemnified Parties**”), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from (i) any Claim (as defined in Section 15(c)) relating to the Indemnifying Party’s breach of any representation or warranty set forth in Section 12 and (ii) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(d).
- b. Permission to Operate Indemnification. Purchaser shall defend, indemnify and hold harmless Seller Indemnified Parties from and against any Liabilities resulting from Purchaser’s breach of Purchaser’s obligations under Section 5(e).
- c. Notice and Participation in Third-Party Claims. The Indemnified Party shall give the Indemnifying Party written notice with respect to any liability asserted by a third-party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the

defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15(c) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(c) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.

**d. Environmental Indemnification.**

- i. Seller Indemnity. Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(d)(iii)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. Purchaser Indemnity. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except (A) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees or, (B) where the deposit, spill, or existence of the Hazardous Substance is not caused by Seller or any of its contractors or agents, to the extent the condition is known by Seller or any of its contractor or agents and is worsened as a result of the negligent acts or omissions, willful misconduct, or breach of this Agreement by Seller or any of its contractors, agents or employees.
- iii. Notice. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. "**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

**e. Limitations on Liability.**

- i. No Consequential Damages. Except with respect to indemnification of third-party claims pursuant to Section 15, fraud or willful misconduct, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment amounts set forth in Section 6 of Exhibit 1 shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(e)(i).
- ii. Actual Damages. Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 12(d), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed \$1,000,000. The provisions of this Section 15(e)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.

**f. EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

**g. Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party

shall bear the proportionate cost of any liability.

**16. Change in Law.**

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and cause the System to be removed and the Premises to be restored in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority that materially alters the financial obligations of Seller under this Agreement.

**17. Assignment and Financing.**

a. **Assignment.**

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain solar photovoltaic systems such as the System in accordance with prudent solar industry practices in the State of California.
- ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i), Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)), (B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, the assignment does not negatively affect the terms of this Agreement or Seller's ability to perform hereunder or thereunder. Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument.
- iii. **Successors and Permitted Assignees.** This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

- b. **Financing.** The Parties acknowledge that Seller and/or System Owner may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each, a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's and/or System Owner's financing arrangements and in addition to any other rights or entitlements of Seller or System Owner's under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller and/or System Owner or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

- c. **Termination Requires Consent.** Seller and Purchaser agree that any right of Seller to terminate this Agreement is



subject to the prior written consent of any Financing Party.

**18. Confidentiality.**

- a. Confidential Information.** To the maximum extent permitted by applicable law, if either Party provides confidential information (“**Confidential Information**”) to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement.
- b. Permitted Disclosures.** Notwithstanding Section 18(a):
- i. A Party may provide such Confidential Information to its affiliates and to its and its affiliates’ respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, “**Representatives**”), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.
  - ii. Confidential Information does not include any information that (A) becomes publicly available other than through breach of this Agreement, (B) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (C) is independently developed by the receiving Party, or (D) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party’s efforts to limit the disclosure to the extent permitted by applicable law. Notwithstanding any other provision in this Agreement, Seller and its affiliates are permitted to provide Confidential Information to the Internal Revenue Service and the United States Department of Treasury with respect to Seller satisfying the requirements for and obtaining the Elective Payment Incentive.
  - iii. Each Party hereto acknowledges and agrees that this Agreement and information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 7920.000 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of Confidential Information, the recipient of such request or demand shall, to the extent permissible, notify the other Party in writing in advance of any disclosure that the request or demand has been made and shall take all reasonably necessary and customary steps to protect Confidential Information that is the subject of any California Public Records Act request submitted by a third person to Purchaser, including, but not limited to, applicable exceptions described by Cal. Gov’t Code Sections 6254 and 6255.
  - iv. A Party may be required to make this Agreement or portions of this Agreement available to the public in connection with the process of seeking approval from its respective governing board of its entry into this Agreement.
  - v. 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, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.
- c. Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party’s option) after the receiving Party’s need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.

- d. **Goodwill and Publicity.** Neither Party may (i) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (ii) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party which consent shall not be unreasonably withheld. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly, and in any case within fourteen (14) days, review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to publish the name of Purchaser, System location, System size without obtaining the prior, written consent of Purchaser and to place signage on the Premises reflecting its association with the System.

19. **General Provisions.**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, “dollar” and the “\$” sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** 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 conflict of laws. In the event of a dispute, controversy, or claim arising out of or relating to this Agreement, the Parties shall confer and attempt to resolve such matter informally. If such dispute or claim cannot be resolved in this matter, then the dispute or claim shall be referred first to executive officers of the Parties for their review and resolution. If the dispute or claim still cannot be resolved by such officers, then any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys’ fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Section 6 of **Exhibit 1**, and Sections 3, 4, 5(c), 7(a), (c) and (f), 9, 11, 12(c), 14, 15, 17, 18 and 19 of this **Exhibit 3** shall survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party’s facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party’s performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with **Section 9**.

- h. Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Code. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidation, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties.
- k. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be in conflict with any statute, constitutional provision, regulation or other rule of law, or is otherwise held by such court to be unenforceable for any reason whatsoever, such provision shall not be read to render and shall not have the effect of rendering this Agreement or the other provisions herein unenforceable, inoperative or invalid to any extent whatsoever. In such event, such provision shall be deemed severable from the remaining provisions of this Agreement and such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. Electronic Signatures.** If the Parties agree, electronic signatures may be used in place of original signatures on this Agreement. Each Party intends to be bound by the signatures on the electronic document, is aware that the other Party will rely on the electronic signatures, and hereby waives any defenses to the enforcement of the terms of this Agreement based on the use of an electronic signature. After both Parties agree to the use of electronic signatures, both Parties must sign the document electronically.
- o. No Recourse to Members of Seller.** Seller 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. Seller shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Purchaser shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller’s constituent members, or the employees, directors, officers, consultants or advisors of Seller or of its constituent members, in connection with this Agreement.

End of **Exhibit 3**

**Exhibit 4**  
**Performance Guaranty**

In consideration for Purchaser’s entering into the Solar Power Purchase Agreement between Peninsula Clean Energy Authority (“Seller”) and the Purchaser related to the System at the Premises (the “PPA”), this Performance Guaranty (this “Guaranty”) is entered into by the parties listed below (each a “Party” and collectively the “Parties”) as of the date signed by Guarantor below (the “Effective Date”).

<b>Purchaser:</b>		<b>Guarantor:</b>	
<b>Name and Address</b>		Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
<b>Phone</b>		Phone	(650) 260-0087
<b>E-mail</b>		E-mail	rreyes@peninsulacleanenergy.com
Project Name	Colma Police Department		

This Guaranty sets forth the terms and conditions of a guaranty provided by Guarantor in conjunction with the PPA. Capitalized terms not otherwise defined herein have the meanings given such terms in the PPA. The term of this Guaranty will be concurrent with the term of the PPA, except that it will not exceed the Initial Term. This Guaranty will be updated by Guarantor to reflect the as-built specifications of the System.

1. **Guaranty.** Guarantor guarantees that during the Initial Term of the PPA the System will generate not less than ninety five percent (95%) of the estimated generation of the System based on Helioscope or PVSyst (“**Estimated Production (Annual kWh)**”) as set forth in **Table 1.A** below (such guaranteed generation, the “**Guaranteed Production (Annual kWh)**” set forth on **Table 1.A** below); provided that the Guaranteed Production values are subject to reasonable downward adjustment for extreme weather conditions and to the extent that Purchaser exceeds the Outage Allowance set forth in Exhibit 3, Section 6(d) of the PPA.

A. Guarantor will use local weather data to adjust the System’s Guaranteed kWh, based on the following methods if available and in descending order of preference: (i) satellite data provided by a third-party vendor of Seller; or (ii) available data from a locally installed weather station at the Premises owned and properly maintained by Purchaser.

**Table 1.A, projected production values assuming average weather conditions:**

<b>Contract Year</b>	<b>Estimated Production (Annual kWh)</b>	<b>Guaranteed Production (Annual kWh)</b>
Year 1	158,286	150,372
Year 2	157,495	149,620
Year 3	156,707	148,872
Year 4	155,924	148,127
Year 5	155,144	147,387
Year 6	154,368	146,650
Year 7	153,596	145,917
Year 8	152,828	145,187
Year 9	152,064	144,461
Year 10	151,304	143,739
Year 11	150,547	143,020
Year 12	149,795	142,305
Year 13	149,046	141,593
Year 14	148,300	140,885
Year 15	147,559	140,181
Year 16	146,821	139,480
Year 17	146,087	138,783

Year 18	145,357	138,089
Year 19	144,630	137,398
Year 20	143,907	136,711

B. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *less* than the Guaranteed kWh for that Contract Year, then Guarantor shall pay Purchaser an amount equal to (i) the difference between the Guaranteed kWh and the Actual kWh, multiplied by (ii) the Performance Guarantee Payment Rate (as defined in Section 1(E)), in each case with respect to the affected Contract Year.

C. If at the end of each successive Contract Year the AC electricity produced by the System as measured and recorded by Seller (the “**Actual kWh**”) is *more* than the Guaranteed kWh for that Contract Year, then an amount equal to (i) the difference between the Actual kWh and the Guaranteed kWh, multiplied by (ii) the Performance Guarantee Payment Rate, in each case with respect to the affected Contract Year, shall be credited against and shall reduce by such amount any payments owed by Guarantor to Purchaser in the following Contract Year pursuant to Section 1(B) of this **Exhibit 4**. The amount under Section 1(C)(i) above shall be capped at one hundred and five percent (105%) of the Guaranteed kWh for the applicable Contract Year.

D. If a payment of greater than fifty dollars (\$50) is due under Section 1(B), after subtracting any credits pursuant to Section 1(C), (i) Guarantor will deliver a statement to Purchaser detailing the Guaranteed kWh and the calculation of the payment due; and (ii) the payment shall be due within ninety (90) days after the end of the Contract Year. If no payment is due, then no statement or payment will be issued.

E. “**Performance Guarantee Payment Rate**” means the Contract Price.

2. **Exclusions.** The Guaranty set forth in Section 1 does not apply to the extent of any reduced generation from the System due to the following (including the downtime required for repair, replacement or correction):

A. a Force Majeure Event, which includes (i) destruction or damage to the System or its ability to safely produce electricity not caused by Seller or its approved service providers while servicing the System (e.g., vandalism); (ii) a power or voltage surge caused by someone other than Seller, including a grid supply voltage outside of the standard range specified by the Utility; and (iii) theft of the System; and (iv) curtailment or reduction of energy production required by the Utility or grid operator.

B. Purchaser’s failure to perform, or breach of, Purchaser’s obligations under the PPA.

3. **Liquidated Damages; Waiver of Cost Savings.** The Parties agree that the payment described in Section 1(B) is a reasonable approximation of the damages suffered by Purchaser as a result of underperformance of the System, is bargained-for by the Parties, and shall be the Purchaser’s sole and exclusive remedy hereunder for underperformance of the System. Purchaser hereby disclaims, and any beneficiary of this Guaranty hereby waives, any warranty with respect to any cost savings from using the System.

4. **Incorporation of PPA Provisions.** Section 5(c) (Force Majeure), Section 17 (Assignment and Financing) and Section 19 (General Provisions) of **Exhibit 3** of the PPA and any Sections referenced therein are incorporated into this Guaranty as if any reference therein to “Agreement” were to this Guaranty and any reference to “Parties” were to the Parties to this Guaranty.

**Guarantor:**

**Signature:**

\_\_\_\_\_

Printed Name: Shawn Marshall

\_\_\_\_\_

Title: Chief Executive Officer

\_\_\_\_\_

**Date:**

\_\_\_\_\_

**Purchaser:**

**Signature:**

\_\_\_\_\_

**Printed Name:**

\_\_\_\_\_

**Title:**

\_\_\_\_\_

**Date:**

\_\_\_\_\_