



**AGENDA  
REGULAR MEETING  
CITY COUNCIL OF THE TOWN OF COLMA  
Wednesday, November 8, 2023  
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

**Teleconference Location:**

Main Lobby, Discovery Shores Boracay, Station 1 Barangay Balabag, Boracay Island, Malay, 5608 Aklan, Philippines

**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 [ccorley@colma.ca.gov](mailto:ccorley@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.*

## PLEDGE OF ALLEGIANCE AND ROLL CALL

## ADOPTION OF AGENDA

## PRESENTATION

- Proclamation in Recognition of Arboretum Day
- Proclamation in Recognition of Veterans Day
- Halloween House Decorating Contest Award Recipients
- Annual Employee Appreciation Presentation

## 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

1. Motion to Accept the Minutes from the October 25, 2023 Regular Meeting.
2. Motion to Approve Report of Checks Paid for October 2023.
3. Motion Approving and Authorizing the City Manager to Execute a Cooperative Agreement with the State of California Department of Transportation (Caltrans) for Funding for the Design, Environmental Review, and Construction of the Colma Creek Trash Capture Project Pursuant to CEQA Guideline 15306.

## NEW BUSINESS

### 4. PARTICIPATION IN SECOND SOLAR COLLABORATIVE PROCUREMENT PROCESS

*Consider:* Motion to Adopt a Resolution Approving the Town's Participation in the Second Solar Collaborative Procurement Process Managed by Peninsula Clean Energy (PCE) for Solar Installation at Town Hall and Police Department and Approving and Authorizing the City Manager to Execute Necessary Documents for Participation in the Process 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 Pak Lin, ADA Coordinator, at 650-997-8300 or [pak.lin@colma.ca.gov](mailto:pak.lin@colma.ca.gov). Please allow two business days for your request to be processed.

**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, October 25, 2023**  
**7:00 PM**

**PLEDGE OF ALLEGIANCE AND ROLL CALL**

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

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

Staff Present – City Manager Daniel Barros, City Attorney Christopher Diaz, Police Chief John Munsey, Administrative Services Director Pak Lin, Director of Public Works and Planning Brad Donohue, and City Clerk Caitlin 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 del Rosario asked if there were any changes to the agenda. Vice Mayor Goodwin requested to pull #3. The Mayor asked for a motion to adopt the agenda with the requested changes.

**Action:** Council Member Fiscaro moved to adopt the agenda with the requested changes; the motion was seconded Council Member Slaughter by and carried by the following vote:

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

**PRESENTATIONS**

Administrative Services Director Pak Lin introduced new Accounting Manager Jesse Bradley and new Human Resources Management Analyst Juan Rumayor.

**PUBLIC COMMENTS**

Mayor del Rosario opened the public comment period at 7:05 p.m. Resident Thom Taylor made a comment regarding VinFast Autos’s sign permit. Resident and Member of the San Mateo County Commission on Aging Liz Taylor made a comment regarding a bus stop on Mission Road. The Mayor closed the public comment period at 7:14 p.m.

**CONSENT CALENDAR**

1. Motion to Accept the Minutes from the October 11, 2023 Special Meeting.
2. Motion to Accept the Minutes from the October 11, 2023 Regular Meeting.
3. [Pulled from Consent Calendar]
4. Motion to Adopt a Resolution Reappointing Laura Walsh to the Board of Trustees of the San Mateo County Mosquito and Vector Control District Pursuant to CEQA Guideline 15378.
5. Motion to Adopt a Resolution Adjusting Salary for Part-Time Staff to Meet the Minimum Wage Requirement Set Forth by the State of California and Amending the Salary Schedule, Pursuant to CEQA Guideline 15378.

**Action:** Council Member Gonzalez moved to approve the consent calendar 1, 2, 4 and 5; the motion was seconded by Vice Mayor Goodwin and carried by the following vote:

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

3. Motion Accepting the Electric Vehicle Charging Infrastructure Installation Project at the Colma Community Center as Complete and Directing the Director of Public Works to File a Notice of Completion for the Project with the San Mateo County Recorder’s Office Pursuant to CEQA Guideline 15301 and 15303.

Vice Mayor Goodwin asked several questions. Director of Public Works Brad Donohue answered his questions.

**Action:** Vice Mayor Goodwin moved to accept the Electric Vehicle Charging Infrastructure Installation Project at the Colma Community Center as Complete and Direct the Director of Public Works to File a Notice of Completion for the Project with the San Mateo County Recorder’s Office Pursuant to CEQA Guideline 15301 and 15303; the motion was seconded by Council Member Gonzalez and carried by the following vote:

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

## COUNCIL CALENDARING

The next Regular Meeting will be on Wednesday, November 8, 2023 at 7:00pm at Town Hall.

## REPORTS

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

- Staff has concluded the CCTV investigation of the sink hole on Junipero Serra Boulevard. On October 30, a crew will begin to dig down from the street.
- There will be a Wine and Canvas event on October 26, 2023.
- The annual Trunk of Treat event will be on October 26, 2023.
- There will be a Dia de los Muertos on November 4, 2023.

## ADJOURNMENT

Mayor del Rosario adjourned the meeting at 7:27 p.m.

Respectfully submitted,

Caitlin Corley  
City Clerk



apCkHist  
11/02/2023 6:52AM

**Check History Listing**  
Town of Colma

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Bank code: first

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
57305	10/03/2023	03113 AIRGAS USA, LLC	C	10/06/2023	9141979041	09/12/2023	228.38	228.38
57306	10/03/2023	03615 ALL INDUSTRIAL ELECTRIC	C	10/06/2023	5296802	09/25/2023	2,296.08	2,296.08
57307	10/03/2023	00013 ANDY'S WHEELS & TIRES	C	10/06/2023	66612	09/20/2023	909.50	909.50
57308	10/03/2023	00623 ARAMARK	C	10/06/2023	5180255689	09/25/2023	15.90	15.90
57309	10/03/2023	00004 AT&T	C	10/10/2023	000020525655	09/13/2023	1,587.61	1,587.61
57310	10/03/2023	03545 BUDGET BLINDS OF SF WI	C	10/10/2023	1408	12/10/2022	3,398.04	3,398.04
57311	10/03/2023	00051 CALIFORNIA WATER SERV	C	10/10/2023	1727052702-09/14/23	09/14/2023	435.89	
			C	10/10/2023	5793906861-08/31/23	08/31/2023	36.89	472.78
57312	10/03/2023	01037 COMCAST CABLE	C	10/10/2023	09/11-10/10 601 F ST	09/08/2023	118.72	
			C	10/10/2023	9/17-10/16/23 XFINIT	09/12/2023	51.34	170.06
57313	10/03/2023	00117 DELTA DENTAL OF CALIFOI	C	10/06/2023	BE005706546	10/01/2023	13,681.63	
			C	10/06/2023	BE005660592	09/01/2023	13,324.05	27,005.68
57314	10/03/2023	00112 DEPARTMENT OF JUSTICE	C	10/10/2023	678435	09/06/2023	987.00	987.00
57315	10/03/2023	02793 DITO'S MOTORS	C	10/16/2023	28769	09/20/2023	165.18	165.18
57316	10/03/2023	03268 DAISY ESQUIVIAS	C	10/10/2023	09.22.23 EE REIMB	09/22/2023	59.47	59.47
57317	10/03/2023	03616 FLEXIBLE BENEFIT ADMIN	C	10/13/2023	188675	09/27/2023	126.00	
			C	10/13/2023	188780	09/28/2023	20.00	146.00
57318	10/03/2023	03177 FUNFLICKS SF BAY AREA	C	10/12/2023	18596243 Deposit	08/24/2023	621.97	621.97
57319	10/03/2023	03361 NESTOR M. GATCHALIAN	C	10/26/2023	2002638.003	09/25/2023	275.00	275.00
57320	10/03/2023	03273 HOME DEPOT PRO, THE	C	10/10/2023	763930377	09/06/2023	714.05	714.05
57321	10/03/2023	00226 CINDY LIM ROOT	C	10/11/2023	09/24/2023	09/25/2023	219.26	219.26
57322	10/03/2023	03648 METROPOLITAN PLANNINC	C	10/10/2023	2003929	07/20/2023	32,065.00	
			C	10/10/2023	2003964	08/18/2023	4,565.00	
			C	10/10/2023	2004020	09/12/2023	3,588.75	40,218.75

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Item #2

Check History Listing  
Town of Colma

Bank code: first

Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
57323	10/03/2023	00280 ODP BUSINESS SOLUTION	C	10/10/2023	331807429001	09/19/2023	232.97	
			C	10/10/2023	331807979001	09/19/2023	60.80	293.77
57324	10/03/2023	00307 PACIFIC GAS & ELECTRIC	C	10/06/2023	1918250367-2 14Sep23	09/14/2023	8,049.75	
			C	10/06/2023	0512181543-4 08Sep23	09/08/2023	2,227.62	
			C	10/06/2023	0678090639-9 19Sep23	09/19/2023	85.96	
			C	10/06/2023	9593452526-2 19Sep23	09/19/2023	30.11	10,393.44
57325	10/03/2023	02216 RAMOS OIL CO. INC.	C	10/06/2023	CL040321	09/20/2023	2,055.05	2,055.05
57326	10/03/2023	00786 MARIA RANGEL			2002639.003	09/25/2023	80.00	80.00
57327	10/03/2023	02886 READY REFRESH BY NEST	C	10/10/2023	0310036457661	09/08/2023	29.18	29.18
57328	10/03/2023	03479 ROBERT HALF INTERNATI	C	10/10/2023	62604681	09/26/2023	2,885.72	2,885.72
57329	10/03/2023	00584 SMC DEM	C	10/10/2023	FY23-24JPA005	09/18/2023	5,110.00	5,110.00
57330	10/03/2023	00388 SONITROL	C	10/06/2023	346481	09/07/2023	1,143.11	1,143.11
57331	10/03/2023	02224 STANDARD INSURANCE CO	C	10/06/2023	Oct2023Coverage	09/14/2023	216.82	216.82
57332	10/03/2023	00421 U.S. POSTAL SERVICE	C	10/13/2023	09/27/2023 BULK	09/27/2023	2,000.00	2,000.00
57333	10/03/2023	02946 AMANDA VELASQUEZ	C	10/06/2023	Sept 11 EE REIMB 2	09/25/2023	11.83	11.83
57334	10/03/2023	00432 VISION SERVICE PLAN	C	10/05/2023	818840835	09/19/2023	1,106.39	1,106.39
57335	10/03/2023	02799 WAVE (ASTOUND)	C	10/11/2023	103745301-0010356	09/01/2023	438.26	438.26
57336	10/03/2023	03649 BRIAN YEE	C	10/06/2023	000340	09/27/2023	2,459.27	2,459.27
57337	10/06/2023	01340 NAVIA BENEFIT SOLUTION	C	10/13/2023	10062023 B	10/06/2023	1,337.30	1,337.30
57338	10/06/2023	01375 NATIONWIDE RETIREMEN	C	10/17/2023	10062023 B	10/06/2023	6,201.81	
			C	10/17/2023	10062023 M	10/06/2023	2,100.00	8,301.81
57339	10/10/2023	03622 4IMPRINT, INC	C	10/20/2023	11705109	09/21/2023	460.91	460.91
57340	10/10/2023	01031 A-1 RHINO LININGS, LLC	C	10/16/2023	12600	10/03/2023	888.13	888.13
57341	10/10/2023	03267 ACC BUSINESS	C	10/18/2023	232547358	09/27/2023	679.66	679.66



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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
57342	10/10/2023	03214 PRINCE ADAO	C	10/23/2023	2002640.003	10/02/2023	300.00	300.00
57343	10/10/2023	00522 ALAMEDA COUNTY SHERIF			Dec'23-May'24	10/04/2023	3,888.00	3,888.00
57344	10/10/2023	00020 ASSOCIATED SERVICES IN			123094861	10/01/2023	40.00	
					123094860	10/01/2023	9.00	49.00
57345	10/10/2023	00002 AT&T	C	10/18/2023	09/18/2023	09/18/2023	37.75	37.75
57346	10/10/2023	01355 BANK OF NEW YORK MELL	C	10/19/2023	252-2582459	09/27/2023	1,375.00	1,375.00
57347	10/10/2023	00051 CALIFORNIA WATER SERV	C	10/17/2023	0944444444-08/31/23	08/31/2023	55.34	
			C	10/17/2023	3422893362-08/31/23	08/31/2023	55.34	
			C	10/17/2023	5793906861-08/31/23	10/02/2023	36.89	147.57
57348	10/10/2023	00057 CINTAS CORPORATION #2	C	10/17/2023	4169171792	09/28/2023	202.19	202.19
57349	10/10/2023	00093 CITY OF SOUTH SAN FRAN	C	10/24/2023	519531	09/25/2023	1,839.53	1,839.53
57350	10/10/2023	01037 COMCAST CABLE	C	10/16/2023	9/25-10/24 427 F St	09/20/2023	246.72	
			C	10/16/2023	09/25-10/24 Internet	09/20/2023	246.72	
			C	10/16/2023	09/27-10/26 XFINITY	09/17/2023	10.94	504.38
57351	10/10/2023	00812 COMMUNICATIONS MANAC			08/10/23 Luncheon	10/02/2023	120.00	120.00
57352	10/10/2023	00099 D.C. LOCK & SECURITY SE			80216	07/15/2023	26.69	26.69
57353	10/10/2023	02793 DITO'S MOTORS	C	10/16/2023	28844	10/04/2023	110.72	110.72
57354	10/10/2023	01367 DUO DANCE ACADEMY			September 2023 Roll	10/01/2023	125.00	125.00
57355	10/10/2023	02935 EMCOR SERVICES-MESA E	C	10/16/2023	940016831	09/21/2023	3,404.00	
			C	10/16/2023	940016825	09/21/2023	1,858.00	
			C	10/16/2023	940016824	09/21/2023	1,818.00	
			C	10/16/2023	940016683	09/11/2023	960.00	
			C	10/16/2023	940016565	09/08/2023	725.00	8,765.00
57356	10/10/2023	03459 INC FAST RESPONSE ON-S	C	10/16/2023	158286	09/26/2023	840.00	840.00
57357	10/10/2023	00539 FIREMASTER DEPT 1019	C	10/18/2023	0001111360	09/22/2023	538.00	
			C	10/18/2023	0001111361	09/22/2023	243.00	781.00

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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
57358	10/10/2023	03077 FIRSTTWO, INC.	C	10/18/2023	2138	10/02/2023	3,600.00	3,600.00
57359	10/10/2023	02330 FOREMOST PROMOTIONS	C	10/16/2023	718921	09/29/2023	680.87	680.87
57360	10/10/2023	02499 GE CAPITAL INFORMATION	C	10/17/2023	5068231612	10/01/2023	139.21	139.21
57361	10/10/2023	00433 GRAINGER INC	C	10/18/2023	9858326573	10/03/2023	278.25	278.25
57362	10/10/2023	03651 GRIDLESS POWER CORPC	V	10/26/2023	2023-08-11-COL1	08/11/2023	8,444.07	8,444.07
57363	10/10/2023	02965 HAPPYCAKE FACE PAINTIN	C	10/25/2023	687398	10/04/2023	362.25	362.25
57364	10/10/2023	02149 HDL COREN & CONE	V	10/20/2023	SIN031777	09/28/2023	2,889.18	2,889.18
57365	10/10/2023	03601 HEALTH AND HUMAN RESC	C	10/13/2023	E0303908	10/04/2023	64.80	64.80
57366	10/10/2023	00181 IEDA			24318	10/01/2023	1,685.04	1,685.04
57367	10/10/2023	01813 JON'S FLAGS & POLES INC	C	10/16/2023	F88708	09/28/2023	1,168.02	1,168.02
57368	10/10/2023	03650 JENNY LI	C	10/31/2023	2002643.003	10/04/2023	15.00	15.00
57369	10/10/2023	03571 MARINA LANDSCAPE, INC	C	10/13/2023	452207-RE	08/25/2023	14,581.19	14,581.19
57370	10/10/2023	03607 MARK THOMAS & COMPAN	C	10/18/2023	48591R	09/20/2023	45,167.51	45,167.51
57371	10/10/2023	00254 METRO MOBILE COMMUNI	C	10/17/2023	231023	10/01/2023	602.00	602.00
57372	10/10/2023	02993 VANESSA MOSQUEDA VEL	C	10/16/2023	Sept 14-Oct 5, 2023	10/06/2023	400.00	400.00
57373	10/10/2023	01340 NAVIA BENEFIT SOLUTION	C	10/16/2023	10752348	09/28/2023	200.70	200.70
57374	10/10/2023	03061 NICK BARBIERI TRUCKING	C	10/13/2023	CL26643	09/15/2023	566.01	566.01
57375	10/10/2023	00280 ODP BUSINESS SOLUTION	C	10/18/2023	330156190001	09/26/2023	33.74	
			C	10/18/2023	330495607001	09/26/2023	14.88	48.62
57376	10/10/2023	00307 PACIFIC GAS & ELECTRIC	C	10/17/2023	0092128195-2 22Sep23	09/22/2023	2,625.61	
			C	10/17/2023	9248309814-8 22Sep23	09/22/2023	496.02	
			C	10/17/2023	2039987372-6 22Sep23	09/22/2023	13.48	
			C	10/17/2023	9956638930-2 22Sep23	09/22/2023	2.96	3,138.07
57377	10/10/2023	00563 PETTY CASH	C	10/13/2023	09/29/23 Petty Cash	09/29/2023	34.77	34.77

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Check #	Date	Vendor	Status	Clear/Void Date	Invoice	Inv. Date	Amount Paid	Check Total
57378	10/10/2023	00311 PITNEY BOWES INC.	C	10/20/2023	3106301839	09/20/2023	899.64	899.64
57379	10/10/2023	01023 PRIORITY 1	C	10/19/2023	9401	09/25/2023	20,590.96	20,590.96
57380	10/10/2023	02216 RAMOS OIL CO. INC.	C	10/17/2023	CL043038	09/30/2023	1,966.50	
			C	10/17/2023	CL041658	09/20/2023	96.05	2,062.55
57381	10/10/2023	03102 REVEL ENVIRONMENTAL M	C	10/13/2023	58696	08/22/2023	27,753.60	27,753.60
57382	10/10/2023	03479 ROBERT HALF INTERNATIK	C	10/16/2023	62644382	10/04/2023	3,296.50	3,296.50
57383	10/10/2023	00364 SMC FORENSIC LAB	C	10/16/2023	PS-INV104382	10/03/2023	4,146.31	
			C	10/16/2023	PS-INV104360	09/30/2023	1,310.00	5,456.31
57384	10/10/2023	02566 STARVISTA	C	10/13/2023	6983	08/31/2023	3,027.97	3,027.97
57385	10/10/2023	00411 TURBO DATA SYSTEMS	C	10/13/2023	41228	09/30/2023	1,621.04	1,621.04
57386	10/10/2023	01687 UNITED SITE SERVICES OI	C	10/20/2023	INV-02049369	09/28/2023	168.16	168.16
57387	10/10/2023	02637 Z.A.P. MANUFACTURING IN	C	10/16/2023	8063	09/29/2023	220.00	220.00
57388	10/17/2023	01355 BANK OF NEW YORK MELL	C	10/23/2023	10/15/2023 Interest	10/16/2023	79,943.34	79,943.34
57389	10/17/2023	00004 AT&T	C	10/24/2023	000020610287	10/01/2023	35.63	35.63
57390	10/17/2023	03447 NIKOLE AZZOPARDI	C	10/23/2023	Aug, Oct 2023 REIMB	10/10/2023	17.42	17.42
57391	10/17/2023	01565 BAY CONTRACT MAINTEN/	C	10/20/2023	30628	10/04/2023	480.00	480.00
57392	10/17/2023	00051 CALIFORNIA WATER SERV			09/28/2023 Bill Date	09/28/2023	8,177.52	8,177.52
57393	10/17/2023	03539 CLARK PEST CONTROL	C	10/26/2023	34138798	10/04/2023	135.00	135.00
57394	10/17/2023	00507 COLMA FIRE PROTECTION			10/11/2023	10/11/2023	1,145.00	1,145.00
57395	10/17/2023	01037 COMCAST CABLE	C	10/23/2023	10/01-10/31 XFINITY	09/26/2023	15,641.96	
			C	10/23/2023	10/2-11/1 INTERNET	09/27/2023	361.72	16,003.68
57396	10/17/2023	00071 CSG CONSULTANTS, INC.	V	10/18/2023			0.00	0.00
57397	10/17/2023	00071 CSG CONSULTANTS, INC.	C	10/23/2023	07/29-08/25/23	07/29/2023	184,217.51	
			C	10/23/2023	07/01-7/28/23	07/01/2023	166,561.09	350,778.60

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57398	10/17/2023	01472 MARIELA DELATORRE			2002646.003	10/10/2023	300.00	300.00
57399	10/17/2023	02793 DITO'S MOTORS	C	10/23/2023	28849	10/04/2023	311.93	311.93
57400	10/17/2023	01345 JOHN GOODWIN	C	10/26/2023	Sept 28, 2023 Trip	09/28/2023	14.70	
			C	10/26/2023	Oct 4, 2023 Trip	10/04/2023	3.60	18.30
57401	10/17/2023	00174 HOME DEPOT CREDIT SEF	C	10/24/2023	09/29/23 CLOSING	09/29/2023	546.75	546.75
57402	10/17/2023	03273 HOME DEPOT PRO, THE	C	10/23/2023	765748892	09/18/2023	386.80	386.80
57403	10/17/2023	03655 SUSAN E. IACOVOU			16000808-Refund	06/29/2023	303.00	303.00
57404	10/17/2023	01442 INTERSTATE GRADING & F	C	10/20/2023	6499	09/29/2023	3,551.45	3,551.45
57405	10/17/2023	02181 KEVIN KORCZAK	C	10/24/2023	2002647.003	10/10/2023	275.00	275.00
57406	10/17/2023	00307 PACIFIC GAS & ELECTRIC	C	10/23/2023	0567147369-1 28Sep23	09/28/2023	245.92	245.92
57407	10/17/2023	00301 POSITIVE PROMOTIONS, II	C	10/27/2023	07242559	09/27/2023	402.45	402.45
57408	10/17/2023	03560 POWERDMS, INC.	C	10/27/2023	Order #Q-192852	10/10/2023	2,662.50	2,662.50
57409	10/17/2023	02970 PRODUCTIVE PRINTING &			37116	10/11/2023	140.78	140.78
57410	10/17/2023	01816 QUALITY STRIPING, INC.			95212	10/10/2023	6,241.60	6,241.60
57411	10/17/2023	03652 QUANTUM ENERGY SERVI	C	10/27/2023	INV-0321	10/06/2023	94,649.45	94,649.45
57412	10/17/2023	03479 ROBERT HALF INTERNATIK	C	10/23/2023	62679230	10/12/2023	3,461.80	3,461.80
57413	10/17/2023	03392 ROMEO PACKING COMPAN	C	10/24/2023	162822	09/28/2023	1,542.19	1,542.19
57414	10/17/2023	03654 KAY A. ROSS	C	10/23/2023	16001075-Refund	06/29/2023	303.00	303.00
57415	10/17/2023	03588 YOGENDAR DEEP SINGH	C	10/23/2023	2002644.003	10/10/2023	50.00	50.00
57416	10/17/2023	00534 SMC INFORMATION SERVI	C	10/23/2023	1YCL12309	09/30/2023	82.25	82.25
57417	10/17/2023	03656 JOSE L. SOLIMAN III			16000957-Refund	06/29/2023	303.00	303.00
57418	10/17/2023	00830 STAPLES BUSINESS CRED	C	10/25/2023	1651264541	09/25/2023	527.98	527.98
57419	10/17/2023	01030 STEPFORD, INC.	C	10/25/2023	2301565	10/11/2023	1,998.28	

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			C	10/25/2023	2306539	10/05/2023	193.75	2,192.03
57420	10/17/2023	00412 TELECOMMUNICATIONS E	C	10/31/2023	48477	10/10/2023	1,652.50	1,652.50
57421	10/17/2023	01101 TERRYBERRY COMPANY L	C	10/24/2023	P51877	10/09/2023	528.48	528.48
57422	10/17/2023	03653 UNI TRUONG			2002645.003	10/10/2023	30.00	30.00
57423	10/17/2023	03015 U.S. BANK CORPORATE PM	C	10/26/2023	09/22/2023	09/22/2023	23,165.63	23,165.63
57424	10/17/2023	00422 UNDERGROUND SERVICE	C	10/23/2023	2023176278	07/20/2023	300.00	300.00
57425	10/17/2023	03645 WHITLOCK & WEINBERGE	C	10/26/2023	30419	10/05/2023	4,719.07	4,719.07
57426	10/20/2023	00047 C.L.E.A.	C	10/27/2023	10202023 B	10/20/2023	216.00	216.00
57427	10/20/2023	01375 NATIONWIDE RETIREMEN	C	10/27/2023	10202023 B	10/20/2023	6,201.81	6,201.81
57428	10/20/2023	01340 NAVIA BENEFIT SOLUTION	C	10/23/2023	10202023 B	10/20/2023	1,337.30	1,337.30
57429	10/20/2023	02224 STANDARD INSURANCE C			10202023 B	10/20/2023	438.00	438.00
57430	10/24/2023	03546 JUDIT ABARCA			2002656.003	10/16/2023	50.00	50.00
57431	10/24/2023	03634 AMBROSE HOLDINGS INC			20202466P	10/11/2023	602.75	602.75
57432	10/24/2023	00013 ANDY'S WHEELS & TIRES	C	10/27/2023	STMT 09/30/23	09/30/2023	1,628.58	1,628.58
57433	10/24/2023	00623 ARAMARK	C	10/27/2023	5180255690	09/25/2023	15.90	
			C	10/27/2023	5180258410	10/02/2023	15.90	
			C	10/27/2023	5180260905	10/09/2023	15.90	
			C	10/27/2023	5180244457	08/28/2023	15.90	
			C	10/27/2023	5180258411	10/02/2023	15.90	
			C	10/27/2023	5180250013	09/11/2023	15.90	
			C	10/27/2023	5180255683	09/25/2023	15.90	
			C	10/27/2023	5180258404	10/02/2023	15.90	
			C	10/27/2023	5180260898	10/09/2023	15.90	
			C	10/27/2023	5180263302	10/16/2023	15.90	
			C	10/27/2023	5180263269	10/16/2023	15.90	
			C	10/27/2023	5180260904	10/09/2023	7.00	181.90
57434	10/24/2023	03334 LLC AT&T MOBILITY NATIO	C	10/31/2023	287296200335X101023	10/02/2023	2,512.18	2,512.18

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57435	10/24/2023	02337 AXON ENTERPRISES, INC.	C	10/31/2023	INUS195194	10/15/2023	40,152.28	63,082.29
			C	10/31/2023	INUS195614	10/15/2023	21,511.44	
			C	10/31/2023	INUS195499	10/15/2023	1,418.57	
57436	10/24/2023	01565 BAY CONTRACT MAINTEN/			30719	10/10/2023	2,740.50	10,664.53
					30716	10/10/2023	2,661.35	
					30715	10/10/2023	2,661.35	
					30720	10/10/2023	1,552.45	
					30717	10/10/2023	633.64	
					30721	10/10/2023	221.30	
					30718	10/10/2023	193.94	
57437	10/24/2023	01183 BEST BEST & KRIEGER LLF	C	10/27/2023	977594	10/12/2023	21,519.00	30,102.40
			C	10/27/2023	977598	10/12/2023	4,908.60	
			C	10/27/2023	977597	10/12/2023	3,674.80	
57438	10/24/2023	00051 CALIFORNIA WATER SERV	C	10/25/2023	9679761976-09/29/23	09/29/2023	1,447.94	1,447.94
57439	10/24/2023	00057 CINTAS CORPORATION #2	C	10/30/2023	4168451376	09/21/2023	614.86	1,202.23
			C	10/30/2023	4168451338	09/21/2023	375.07	
			C	10/30/2023	4170589263	10/12/2023	212.30	
57440	10/24/2023	03539 CLARK PEST CONTROL	C	10/27/2023	34138804	10/11/2023	145.00	530.00
			C	10/27/2023	34138801	10/12/2023	135.00	
			C	10/27/2023	34138802	10/12/2023	135.00	
			C	10/27/2023	34138803	10/12/2023	115.00	
57441	10/24/2023	02827 CORODATA SHREDDING, II	C	10/26/2023	RS3542744	09/30/2023	202.05	202.05
57442	10/24/2023	02827 CORODATA SHREDDING, II	C	10/26/2023	DN 1436171	09/30/2023	115.69	115.69
57443	10/24/2023	02182 DALY CITY KUMON CENTE	C	10/30/2023	September 2023	10/01/2023	1,500.00	1,500.00
57444	10/24/2023	00112 DEPARTMENT OF JUSTICE	C	10/27/2023	687294	10/04/2023	162.00	162.00
57445	10/24/2023	03450 FLOCK GROUP, INC	C	10/30/2023	INV-23969	10/18/2023	800.00	800.00
57446	10/24/2023	03657 GUADALUPE ALFARO GAR			2002655.003	10/16/2023	30.00	30.00
57447	10/24/2023	00211 KELLY-MOORE PAINTS	C	10/30/2023	112100000221879	09/30/2023	114.29	114.29

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57448	10/24/2023	03160 RYAN KEITH MUIR			2002653.003	10/16/2023	225.00	225.00
57449	10/24/2023	00263 LIVIEN MULIMBAYAN	C	10/27/2023	2002652.003	10/16/2023	200.00	200.00
57450	10/24/2023	03061 NICK BARBIERI TRUCKING	C	10/27/2023	CL27807	09/30/2023	619.63	619.63
57451	10/24/2023	00280 ODP BUSINESS SOLUTION	C	10/30/2023	335731635001	10/13/2023	77.40	77.40
57452	10/24/2023	00307 PACIFIC GAS & ELECTRIC	C	10/26/2023	3007220528-6 06Oct23	10/06/2023	5,113.80	
			C	10/26/2023	0576889222-5 06Oct23	10/06/2023	261.11	5,374.91
57453	10/24/2023	00553 PACIFIC NURSERIES			INV15380	10/03/2023	381.72	
					INV15377	10/03/2023	348.91	
					INV15376	10/03/2023	192.28	
					INV15843	10/11/2023	165.81	1,088.72
57454	10/24/2023	02860 VIVIAN PACIS			2002654.003	10/16/2023	275.00	275.00
57455	10/24/2023	03230 MICAELA PADILLA	C	10/26/2023	2002651.003	10/11/2023	575.00	575.00
57456	10/24/2023	03609 PAYMENTUS CORPORATIC			INV-15-137007	06/30/2023	92.24	
					INV-15-139982	09/30/2023	6.52	98.76
57457	10/24/2023	02216 RAMOS OIL CO. INC.	C	10/26/2023	CL045190	10/10/2023	2,001.93	2,001.93
57458	10/24/2023	03479 ROBERT HALF INTERNATIK	C	10/27/2023	62693423	10/17/2023	2,831.00	2,831.00
57459	10/24/2023	00349 SEGALE & CERINI INC.			17763	09/29/2023	1,263.00	
					17761	09/29/2023	1,090.00	2,353.00
57460	10/24/2023	00343 SMC COUNCIL OF CITIES			10/27/2023 Meeting	10/16/2023	60.00	60.00
57461	10/31/2023	03461 1000BULBS.COM			W03778486	10/04/2023	1,564.81	1,564.81
57462	10/31/2023	00003 A. S. F. ELECTRIC			2659	10/12/2023	1,547.95	1,547.95
57463	10/31/2023	00300 ABILITYPATH			FY 2023-2024 Grant	10/11/2023	6,500.00	6,500.00
57464	10/31/2023	03659 DBA AMERICAN PORTABLE			101936	10/03/2023	575.16	
					M102506	10/17/2023	552.09	1,127.25
57465	10/31/2023	00004 AT&T			000020672437	10/13/2023	1,586.97	1,586.97

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57466	10/31/2023	00057 CINTAS CORPORATION #2			4171296215	10/19/2023	647.97	
					4171296163	10/19/2023	375.07	1,023.04
57467	10/31/2023	01557 CITY OF FOSTER CITY			15474	07/06/2023	3,975.00	3,975.00
57468	10/31/2023	01037 COMCAST CABLE			10/11-11/10 601 F ST	10/07/2023	118.72	118.72
57469	10/31/2023	00082 CSMFO			200019520	10/21/2023	515.00	515.00
57470	10/31/2023	02453 DALY CITY PUBLIC LIBRAR			FY 2023-2024 Grant	10/11/2023	5,220.00	5,220.00
57471	10/31/2023	02491 DALY CITY YOUTH HEALTH			FY 2023-2024 Grant	10/11/2023	6,000.00	6,000.00
57472	10/31/2023	00116 DALY CITY/COLMA CHAMBI			FY 2023-2024 Grant	10/11/2023	37,500.00	37,500.00
57473	10/31/2023	00649 DAVEY TREE EXPERT COM			918073682	10/09/2023	625.00	625.00
57474	10/31/2023	00117 DELTA DENTAL OF CALIFOI			BE005774151	11/01/2023	14,039.21	14,039.21
57475	10/31/2023	00862 LOURDES J. GOMEZ			2002657.003	10/17/2023	1,010.00	1,010.00
57476	10/31/2023	03661 HEALTHRIGHT 360			FY 2023-2024 Grant	10/11/2023	2,500.00	2,500.00
57477	10/31/2023	00201 JEFFERSON UNION HIGH S			FY 2023-2024 Grant	10/11/2023	4,000.00	4,000.00
57478	10/31/2023	02989 LIFEMOVES			FY 2023-2024 Grant	10/11/2023	5,000.00	5,000.00
57479	10/31/2023	02788 MARGARET-ROSE S. LUNA			57	09/25/2023	350.00	
					58	10/21/2023	350.00	
					59	10/17/2023	350.00	1,050.00
57480	10/31/2023	00280 ODP BUSINESS SOLUTION			334258648001	10/10/2023	308.27	
					334559941001	10/10/2023	118.26	426.53
57481	10/31/2023	01586 OMBUDSMAN SERVICES C			FY 2023-2024 Grant	10/11/2023	2,500.00	2,500.00
57482	10/31/2023	03228 OPERATION SANTA CLAUS			FY 2023-2024 Grant	10/11/2023	2,000.00	2,000.00
57483	10/31/2023	00307 PACIFIC GAS & ELECTRIC			1918250367-2 17Oct23	10/17/2023	8,444.39	8,444.39
57484	10/31/2023	00553 PACIFIC NURSERIES			INV16380	10/20/2023	210.98	210.98
57485	10/31/2023	03660 RENAISSANCE ENTREPRE			FY 2023-2024 Grant	10/11/2023	3,500.00	3,500.00



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57486	10/31/2023	03382 SAN BRUNO MOUNTAIN W.			FY 2023-2024 Grant	10/11/2023	2,500.00	2,500.00
57487	10/31/2023	00349 SEGAL & CERINI INC.			17760	09/29/2023	20,780.00	
					17762	09/29/2023	2,062.50	
					17721	08/31/2023	1,153.75	23,996.25
57488	10/31/2023	03528 SILICON VALLEY BICYCLE			FY 2023-2024 Grant	10/11/2023	3,500.00	3,500.00
57489	10/31/2023	00360 SMC COMMUNITY COLLEG			FY 2023-2024 Grant	10/11/2023	4,000.00	4,000.00
57490	10/31/2023	00500 SMC CONTROLLERS OFFIK			September 2023	10/03/2023	3,759.00	3,759.00
57491	10/31/2023	00460 SMC JOBS FOR YOUTH			FY 2023-2024 Grant	10/11/2023	4,000.00	4,000.00
57492	10/31/2023	01291 SMC TAX COLLECTOR			2023-2024 1st & 2nd	10/04/2023	428.26	428.26
57493	10/31/2023	03314 CARLOS SOLORZANO			CRS-002-2023	05/09/2023	600.00	600.00
57494	10/31/2023	00388 SONITROL			348583	10/06/2023	1,143.11	1,143.11
57495	10/31/2023	02224 STANDARD INSURANCE C			Nov2023Coverage	10/16/2023	227.32	227.32
57496	10/31/2023	01030 STEPFORD, INC.			2301687	10/20/2023	7,987.35	
					2301606	09/20/2023	7,918.35	15,905.70
57497	10/31/2023	00391 SUSTAINABLE SAN MATEO			FY 2023-2024 Grant	10/11/2023	1,000.00	1,000.00
57498	10/31/2023	03342 JOVANA TOSCANO			2002659.003	10/23/2023	300.00	300.00
57499	10/31/2023	03658 TRAFFIC CALM SYSTEMS,			213846	10/09/2023	589.53	589.53
57500	10/31/2023	02849 6746050100 U.S. BANK PAR			November 2023 OPEB	11/01/2023	101,073.00	101,073.00
57501	10/31/2023	02468 ULINE, INC.			169527306	10/11/2023	757.00	757.00
57502	10/31/2023	00432 VISION SERVICE PLAN			819052979	10/19/2023	1,157.85	1,157.85
57503	10/31/2023	02635 VOLUNTEERS IN MEDICINE			FY 2023-2024 Grant	10/11/2023	5,000.00	5,000.00
57504	10/31/2023	02799 WAVE (ASTOUND)			103745301-0010409	09/30/2023	438.26	438.26
57505	10/31/2023	02132 JASON WOLLMAN			10/05/23 EE REIMB	10/12/2023	18.00	18.00
94972	10/06/2023	00130 EMPLOYMENT DEVELOPM	C	10/10/2023	10062023 M	10/06/2023	150.00	150.00

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94973	10/06/2023	00521 UNITED STATES TREASUR	C	10/10/2023	10062023 M	10/06/2023	1,262.15	1,262.15
94974	10/06/2023	00631 P.E.R.S.	C	10/10/2023	10062023 M	10/06/2023	854.22	854.22
94975	10/06/2023	01360 MISSIONSQUARE RETIREM			10062023 M	10/06/2023	493.26	493.26
94976	10/06/2023	00282 CALIFORNIA PUBLIC EMPL	C	10/04/2023	10062023 M	10/06/2023	4,797.14	4,797.14
94977	10/06/2023	00130 EMPLOYMENT DEVELOPM	C	10/10/2023	10062023 B	10/06/2023	15,048.51	15,048.51
94978	10/06/2023	00521 UNITED STATES TREASUR	C	10/10/2023	10062023 B	10/06/2023	67,118.42	67,118.42
94979	10/06/2023	00282 CALIFORNIA PUBLIC EMPL	C	10/04/2023	10062023 B	10/06/2023	74,419.68	74,419.68
94980	10/06/2023	00631 P.E.R.S.	C	10/10/2023	10062023 B	10/06/2023	53,125.53	53,125.53
94981	10/06/2023	01360 MISSIONSQUARE RETIREM			10062023 B	10/06/2023	6,042.81	6,042.81
94982	10/06/2023	00068 COLMA PEACE OFFICER'S			10062023 B	10/06/2023	652.14	652.14
94986	10/20/2023	00130 EMPLOYMENT DEVELOPM	C	10/24/2023	10202023 B	10/20/2023	15,660.55	15,660.55
94987	10/20/2023	00521 UNITED STATES TREASUR	C	10/24/2023	10202023 B	10/20/2023	66,969.54	66,969.54
94988	10/20/2023	00631 P.E.R.S.	C	10/23/2023	10202023 B	10/20/2023	54,088.60	54,088.60
94989	10/20/2023	01360 MISSIONSQUARE RETIREM			10202023 B	10/20/2023	6,137.70	6,137.70
94990	10/20/2023	00068 COLMA PEACE OFFICER'S			10202023 B	10/20/2023	652.14	652.14
120056	10/03/2023	00282 CALIFORNIA PUBLIC EMPL	C	10/04/2023	100000017293920	09/14/2023	7,111.06	7,111.06

first Total: **1,689,129.40**

218 checks in this report

Total Checks: **1,689,129.40**



# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Brad Donohue, Public Works Director  
 VIA: Daniel Barros, City Manager  
 MEETING DATE: November 8, 2023  
 SUBJECT: Cooperative Funding Agreement for Colma Creek

## RECOMMENDATION

Staff recommends that the City Council make the following motion:

MOTION APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A COOPERATIVE AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) FOR FUNDING FOR THE DESIGN, ENVIRONMENTAL REVIEW, AND CONSTRUCTION OF THE COLMA CREEK TRASH CAPTURE PROJECT PURSUANT TO CEQA GUIDELINE 15306

## EXECUTIVE SUMMARY

The State of California Department of Transportation (Caltrans) will provide funding to the Town for a large trash capture screen device in Colma Creek (the "Project"). The funds will initially be used to design the project and conduct environmental review. After the design and environmental review is completed, staff will return to the City Council to proceed or not proceed with the Project.

The first step in the process is for a consultant to design a device to potentially be installed in the Colma Creek to provide trash capture treatment for portions of the Town of Colma (Town), City of Daly City (Daly City), and portions of unincorporated San Mateo County (County). Execution of a Cooperative Agreement between the Town and Caltrans is required in order to provide the funding to the Town for the initial design and environmental review. The Town anticipates receiving an agreement from Caltrans detailing the financial arrangement between the Town and Caltrans for the Project. The City Council will approve the agreement in concept and authorize the City Manager to execute that agreement assuming it is consistent with the terms outlined in this staff report.

## FISCAL IMPACT

The Cooperative Agreement will cover all costs associated with design of the project, and if the City Council authorizes future construction of the project, after considering the environmental

review conducted, Caltrans will also provide funding for the actual construction with design, environmental review, and construction costs in an amount up to \$7.1Million.

## **BACKGROUND**

The Town of Colma is required to comply with the Municipal Regional Permit for Stormwater (MRP 3.0) adopted by the San Francisco Bay Regional Water Quality Control Board on May 11, 2022 (NPDES Permit No. CAS612008, Order R2-2022-0018). Section C.10 of the MRP 3.0 requires that jurisdictions reduce trash discharge thru storm drains by 90% by June 2023 (the Town has met this requirement) with additional trash reduction to 100% by June 2025.

Caltrans is under a similar requirement to reduce trash from its right-of-way. Caltrans has developed a partnership program with local jurisdictions where it will provide funds for the design and environmental review necessary for a jurisdiction to consider installation of trash capture measures in local drainage systems where those measures also treat runoff from the Caltrans right-of-way. Caltrans will pay for design and environmental review for the Project. If after considering that environmental review, the City Council approves the construction of the Project, Caltrans will also pay for construction costs and other costs associated with the initial installation of the Project, but it will not pay for long term operations and maintenance.

## **ENVIRONMENTAL**

Caltrans will be providing funding to the Town for the design and environmental review necessary to analyze the Project's impacts. After the environmental review is conducted, the City Council will consider that analysis in deciding whether to approve or not approve the actual construction project. As a first step to designing the project and conducting the environmental review, in approving and authorizing the City Manager to execute the funding agreement, the City Council is merely authorizing information collection pursuant to the California Environmental Quality Act (CEQA) Guideline 15306 as the agreement will authorize basic data collection, research, and design, which will not result in a serious or major disturbance to an environmental resource. The information gathered will allow for an environmental review to be conducted and for that to be considered prior to the City Council approving the actual construction project. Further, the agreement will not commit the Town to construct the Project, but will instead, acknowledge that the City Council retains full discretion to not proceed with the Project depending on the results of any environmental analysis conducted.

## **ANALYSIS**

### **Detailed Description of the Project**

Discussions are occurring regarding the installation of a large trash capture device in the Colma Creek drainage channel, based on collaborative discussions between the Town, Daly City, the County of San Mateo, and SMCWPPP. The device could be located in the drainage channel immediately downstream of where the twin box culverts in Mission Road transition to an open channel over the BART subway tunnel right-of-way (Please see attachment "C"). The device could treat approximately 3,000 acres, of which 161 acres are located within Caltrans right-of-way and the remainder of the acreage would be split between the Town, Daly City, the County.

Staff has estimated the cost of design, environmental review, and ultimate construction and construction management, if approved, at \$7.1 million. Caltrans will provide funds in this amount under the Cooperative Agreement, Caltrans will not provide post construction funding for ongoing operation and maintenance costs, those costs will have to be absorbed by the partnering agencies.

Funds would become available after the California Transportation Commission (CTC) approves the co-op agreement in January 2024. Project design and environmental review would commence once the agreement is approved by the CTC. The design schedule allows for coordination with BART and OneShoreline to address potential structural and hydraulic impacts on the existing channel and the BART subway below. Resource agency permits may be required for work in the channel. Staff will then come before the City Council to review and approval all construction-related documents prior to going to bid. It is estimated that construction could begin in Spring 2025 and be constructed by then end of Summer.

The project could result in a 97% reduction of the Town's trash load to Colma Creek. There are isolated properties that discharge to the channel downstream of the device that would require separate trash control measures to meet 100% of the MRP trash reduction requirements by 2025.

The Town currently handles maintenance of the channel under a maintenance agreement with OneShoreline, which in turn has an easement over the BART right-of-way for the channel. It is proposed that the Town would maintain the trash capture device.

It is also proposed that the Town would execute maintenance agreements with the other benefitting jurisdictions (Daly City and County) to allocate ongoing operation and maintenance costs or an agreement with One Shoreline to bare the annual maintenance and operation costs of the proposed trash capture device. Based on discussion to date, the other jurisdictions are agreeable to this.

### **Reasons For the Recommended Action**

Approval of the Cooperative Agreement would provide outside funding that would allow the Town to potentially meet trash reduction requirements of MRP 3.0, depending on the Town's approval of the actual construction project, reducing the need to provide local funds for this work.

### **Council Adopted Values**

**Responsibility** – Decisions based on prudent consideration of financial impacts. Approval of the agreement will provide outside funding to the Town to potentially meet its' stormwater permit requirements.

**Vision** – Promote intelligent and thoughtful innovation. The Agreement will augment funds available for stormwater permit compliance.

### **Sustainability Impact**

The project, if approved in the future by the City Council, will remove trash and other pollutants from the Colma Creek channel, improving the water quality in the channel that flows to the Bay.

### **Alternatives**

The Town could choose to forgo the Caltrans funding. If so, the Town would still be required to meet the MRP 3.0 trash reduction requirements using its' own funds.

### **CONCLUSION**

It is recommended that the Council approve and authorize the City Manager to execute a Cooperative Agreement with Caltrans for the design, environmental review, and construction of the Colma Creek Trash Capture Project.

### **ATTACHMENTS**

- A. Cooperative Agreement
- B. Location Map

## **STORMWATER MITIGATION COOPERATIVE AGREEMENT**

This AGREEMENT, executed on and effective from (     date     ), is between the State of California, acting through its Department of Transportation, referred to as CALTRANS, and:

Town of Colma, a municipal agency, referred to hereinafter as TOWN.

CALTRANS and TOWN are individually referred to as PARTY and collectively referred to as PARTIES.

### **RECITALS**

1. CALTRANS and TOWN are authorized to enter into a Cooperative Agreement for Stormwater Mitigation hereinafter referred to as AGREEMENT pursuant to California Streets and Highways Code Section 126.1.
2. Section 303(d) of the Federal Clean Water Act (CWA) requires the State of California to establish a priority ranking for impaired waters, referred to as the 303(d) list. The United States Environmental Protection Agency (USEPA) has oversight authority for the 303(d) list. The USEPA approves the State's 303(d) list.
3. CALTRANS must comply with Attachment IV of the Statewide National Pollutant Discharge Elimination System (NPDES) Permit (Order # 2022-033-DWQ effective January 1, 2023, which requires CALTRANS to implement control measures to improve regional stormwater quality. CALTRANS must comply with the California Regional Water Quality Control Board San Francisco Region Cease and Desist Order No. R2-2021-0030 and Order No. R2-2019-0007, collectively referred hereinafter as CDO. CALTRANS and TOWN may collaboratively implement the Trash Reduction requirements in areas that contain Caltrans Significant Trash Generation Area (STGA).
4. TOWN desires, pending receipt of all environmental approvals and resource agency agreements and permits, including California Environmental Quality Act (CEQA) documents and approvals and National Environmental Quality Act (NEPA) documents and approvals, California State Water Resources Control Board permit for PROJECT to design and construct permanent Full Trash Capture (FTC) devices, hereinafter referred to as IMPROVEMENTS, to achieve statewide National Pollutant Discharge Elimination System (NPDES) permit compliance units for trash capture, to which CALTRANS shall contribute to TOWN a Financial Contribution Only (FCO) of \$7,040,600.

5. In the event TOWN receives all environmental approvals and resource agency agreements and permits TOWN desires to be responsible for all management, maintenance and operations, including costs of the constructed PROJECT.
6. PROJECT will receive flows from a total tributary area of 3,083 acres which includes runoff from CALTRANS roadways and impervious surfaces.
7. CALTRANS will contribute an amount, not to exceed, \$7,040,600 to TOWN for PROJECT to satisfy its NPDES requirements, in part.
8. CALTRANS will receive a total of 161 acres of trash load reduction credit
9. CALTRANS will receive a total of 32 acres of TMDL pollutant reduction.
10. PARTIES intend to define herein the terms and conditions under which PROJECT will proceed.
11. CALTRANS share of PROJECT funding is as follows:

<u>FUND TITLE</u>	<u>FUND SOURCE</u>	<u>DOLLAR AMOUNT</u>
SHA	State of California	\$7,040,600



## SECTION I

### CALTRANS AGREES:

1. To reimburse TOWN within forty-five (45) calendar days of receipt of a signed invoice for actual PROJECT costs incurred and paid.
2. The total financial obligation provided by CALTRANS for PROJECT shall not exceed the amount of \$7,040,600.
3. To provide encroachment permits to TOWN and its consultants and contractor for access to CALTRANS right of way, if necessary, to fulfil PROJECT requirements.
4. To review and provide comments to TOWN for the 60% complete plan set and 95% complete plan set and specifications for PROJECT within 5 working days of receipt.

## SECTION II

### IN THE EVENT TOWN RECEIVES ALL ENVIRONMENTAL APPROVALS AND RESOURCE AGENCY AGREEMENTS AND PERMITS FOR THE PROJECT, TOWN AGREES:

1. To prepare, sign and submit monthly billing statements in arrears (invoices) to CALTRANS for actual PROJECT costs incurred and paid by TOWN.
2. All work performed by TOWN, or performed on behalf of TOWN, shall be performed in accordance with state, federal and local laws, regulations, and standards.
3. To be fully responsible for completing and/or obtaining the environmental clearance, right of way requirements, design, and construction of PROJECT.
4. To obtain all necessary property rights (easements, rights of entry, fee, etc.) required to complete and maintain PROJECT. Said rights of entry shall also include rights for CALTRANS and resource agency personnel to access sites at which IMPROVEMENTS are located to monitor PROJECT for a period of five (5) years.
5. To obtain all environmental approvals and resource agency agreements and permits, including California Environmental Quality Act (CEQA) documents and approvals and National Environmental Quality Act (NEPA) documents and approvals, California State Water Resources Control Board permit for PROJECT prior to the commencement of construction.

6. To fully comply with all the terms and conditions expressed in the environmental approvals, agreements and permits.
7. To prepare, or cause to prepare, a complete set of design plans, specifications, and estimate, TMDL waste (or pollutant) reduction calculation and report, and any other necessary technical documents, sufficient to advertise and award a construction contract for PROJECT. All documents shall be signed and sealed by an engineer duly registered in the state of California.
8. To provide CALTRANS with the 60% complete plan set and 95% complete plan set and specifications for PROJECT so that Caltrans can review and provide comments within 5 working days of receipt.
9. To incorporate or resolve all comments submitted by CALTRANS on the 60% complete plan set and 95% complete plan set and specifications for PROJECT.
10. To provide CALTRANS with copies of the final construction plans, specifications, and estimate; applicable environmental approvals, agreements and permits; right of way clearances, hereinafter referred to as PS&E package, prior to advertising the contract for construction.
11. To prepare contract documents, advertise and award a construction contract in accordance with TOWN acquisition processes.
12. To manage all aspects of PROJECT,  
  
TOWN will be responsible for all management, maintenance and operations, including costs of the constructed PROJECT.
13. Provide annual documentation of PROJECT progress to CALTRANS for the storm water compliance files.
14. To prepare and submit a final accounting for all PROJECT costs. Based on the final accounting, CALTRANS will refund or invoice as necessary to satisfy the financial commitments of this AGREEMENT.
15. To conform with the provisions of Labor Code section 1720-1815, and all applicable provisions of the California Code of Regulations found in Title 8, Chapter 8, subchapter 3, articles 1-7 if the PROJECT is a “public works” as defined in the Labor Code section 1720(a)(1), which includes construction, alteration, demolition, installation, repair or maintenance work under Labor Code section 1771.
16. To include prevailing wage requirements in its contracts for public work consistent with the requirements of the Labor Code. Work performed by TOWN own forces is exempt from the Labor Code’s prevailing wage requirements.

17. To require the construction contractors to include prevailing wage requirements in all subcontracts funded by this AGREEMENT when the work to be performed falls within Labor Code sections 1729(a)(1) if the PROJECT is a “public works” as defined in under Labor Code section 1720(a)(1), which includes construction, alteration, demolition, installation, repair or maintenance labor under Labor Code section 1771. Subcontractors shall include all prevailing wage requirements set forth in TOWN’s contracts into any subcontractor contracts entered into by subcontractors.
18. If work performed under this AGREEMENT is paid for in whole or in part with federal funds, and is the type of work subject to federal prevailing wage requirements, TOWN must conform to the provisions of the Davis-Bacon and related acts, 40 U.S.C. 1341 et seq. in addition to Labor Code provisions.
19. To include federal prevailing wage requirements in its contracts for public work. Work performed by TOWN’s own forces is exempt from federal prevailing wage requirements.
20. To retain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred, including support data for cost proposals, and to make such materials available to CALTRANS at all reasonable times for three (3) years after completion and acceptance of PROJECT. CALTRANS, the Federal Highway Administration, or any duly authorized representative of the Federal Government shall have access to any books, records, and documents of TOWN that pertain to this AGREEMENT for audits, examinations, excerpts, transactions, and copies thereof shall be furnished when requested.
21. To maintain and operate PROJECT.
22. Upon request, provide Caltrans with annual maintenance records and/or report after the PROJECT is constructed.

### SECTION III

#### IT IS MUTUALLY AGREED:

1. All portions of this AGREEMENT, including the Recitals Section, are enforceable.
2. If any provision of this AGREEMENT is held invalid, the other provisions shall not be affected thereby.
3. All CALTRANS’ obligations under this AGREEMENT are subject to the appropriation of resources by the Legislature, the State Budget Act authority, and the allocation of funds by the California Transportation Commission (CTC).
4. All applicable laws, regulations, rules, and policies relating to the use of federal or state funds shall apply notwithstanding other provisions of this AGREEMENT.

5. If TOWN fails to complete the PROJECT for any reason, TOWN will refund the full amount of CALTRANS' contribution.
6. TOWN will retain all PROJECT related records for three (3) years after the final voucher.
7. TOWN will accept operation, maintenance and ownership or title to all materials or equipment installed as part of PROJECT.
8. CALTRANS has a total of 5 working days to perform review and return comments to TOWN for each review cycle (60% plans complete and 95% plans and specifications complete).
9. TOWN will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, including, but not limited to, environmental, tortuous, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of the operation and maintenance of PROJECT.
10. HM-1 is hazardous materials (including, but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law, whether it is disturbed by PROJECT or not.
11. HM-2 is hazardous materials (including but not limited to, hazardous waste) that may require removal and disposal pursuant to federal or state law only if disturbed by PROJECT.
12. The management activities related to HM-1 and HM-2, including and without limitation, any necessary manifest requirements and disposal facility designations are referred to herein as HM-1 MANAGEMENT and HM-2 MANAGEMENT respectively.
13. If HM-1 or HM-2 is found, the discovering PARTY will immediately notify the other PARTY.
14. CALTRANS, independent of the PROJECT is responsible for any HM-1 found within the existing state highway system right-of-way. CALTRANS will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the PROJECT schedule.  
  
CALTRANS will pay the cost of HM-1 MANAGEMENT for HM-1 found within the existing state highway system right-of-way with funds that are independent of the funds obligated in this AGREEMENT.
15. TOWN is responsible for HM-2 MANAGEMENT for PROJECT and shall be paid from funds obligated in this AGREEMENT, or in TOWN's sole discretion, from TOWN's general fund.
16. CALTRANS' acquisition or acceptance of title to any property on which any HM-1 or HM-2 is found will proceed in accordance with CALTRANS' policy on such acquisition.

17. TOWN is responsible for any HM-1 found within the PROJECT limits and outside the existing State Highway System right-of-way. TOWN will undertake, or cause to be undertaken, HM-1 MANAGEMENT with minimum impact to the CALTRANS PROJECT schedule.

TOWN will pay, or cause to be paid, the cost of HM-1 MANAGEMENT for HM-1 found within the PROJECT limits and outside of the existing State Highway System right-of-way with funds that are independent of the funds obligated in this AGREEMENT.

18. Neither CALTRANS nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by TOWN, its contractors, sub-contractors and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon TOWN or under this AGREEMENT. It is understood and agreed that TOWN, to the extent permitted by law, will defend, indemnify, and save harmless CALTRANS and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by TOWN, its contractors, sub-contractors and/or its agents under this AGREEMENT.
19. Neither TOWN nor any officer or employee thereof is responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon CALTRANS or under this AGREEMENT. It is understood and agreed that CALTRANS, to the extent permitted by law, will defend, indemnify, and save harmless City of Colma and all of its officers and employees from all claims, suits, or actions of every name, kind and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CALTRANS, its contractors, sub-contractors and/or its agents under this AGREEMENT.
20. This AGREEMENT will terminate upon execution of a Cooperative Agreement Closure Statement (CLOSURE STATEMENT) by PARTIES. The CLOSURE STATEMENT is a document that verifies all commitments of this AGREEMENT have been met and PROJECT is fully complete.

However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, hazardous material, operation, maintenance, and ownership articles will remain in effect until terminated or modified in writing by mutual agreement.

## **CONTACT INFORMATION**

The information provided below indicates the primary contact information for each PARTY to this AGREEMENT. PARTIES will notify each other in writing of any personnel or location changes. Contact information changes do not require an amendment to this AGREEMENT.

Town of Colma

Project Manager: Daniel Barros

Phone Number: 650-997-8300

E-mail: dbarros@colma.ca.gov

Billing Address: 1198 El Camino Real, Colma, CA 94014

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CALTRANS

Project Manager: Rommel Pardo

Phone Number: (510)714-5474

E-mail: rommel.pardo@dot.ca.gov

Billing Address: 111 Grand Avenue, Oakland Ca 94612

**SIGNATURES**

PARTIES are authorized to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

The PARTIES acknowledge that executed copies of this AGREEMENT may be exchanged by facsimile or email, and that such copies shall be deemed to be effective as originals.

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

TOWN OF COLMA

By: \_\_\_\_\_  
Robert Effinger  
Acting Deputy District Director, Project Delivery

By: \_\_\_\_\_  
Daniel Barros  
City Manager

VERIFIED OF FUNDS & AUTHORITY:

Attest: \_\_\_\_\_  
[Title]

By: \_\_\_\_\_  
Jeffrey Kuehnel  
District Budget Manager

APPROVED AS TO FORM & PROCEDURE:

APPROVED AS TO FORM & PROCEDURE:

By: \_\_\_\_\_  
Christopher Diaz  
City Attorney

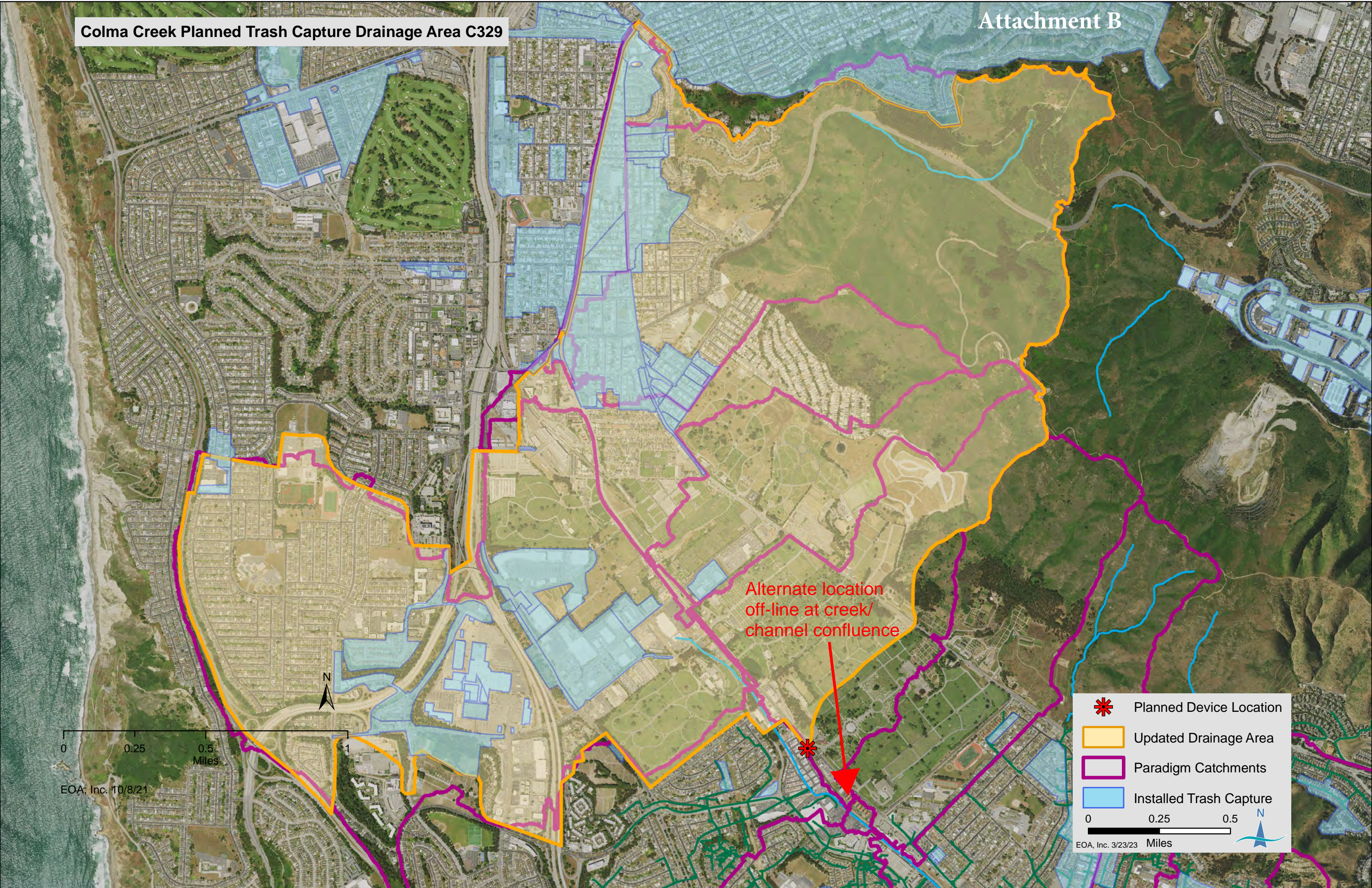
By: \_\_\_\_\_  
Attorney  
Department of Transportation

CERTIFIED AS TO FINANCIAL TERMS &  
POLICIES:


By: \_\_\_\_\_  
Nadine Karavan  
HQ Accounting Supervisor










Alternate location  
off-line at creek/  
channel confluence

 Planned Device Location

 Updated Drainage Area

 Paradigm Catchments

 Installed Trash Capture

0 0.25 0.5 Miles

EOA, Inc. 3/23/23

0 0.25 0.5 Miles

EOA, Inc. 10/8/21





# STAFF REPORT

TO: Mayor and Members of the City Council  
 FROM: Kathleen Gallagher, Sustainability Manager  
 VIA: Dan Barros, City Manager  
 MEETING DATE: November 8, 2023  
 SUBJECT: Participation in Second Solar Collaborative Procurement Process

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## RECOMMENDATION

Staff recommends the City Council adopt the following:

RESOLUTION APPROVING THE TOWN'S PARTICIPATION IN THE SECOND SOLAR COLLABORATIVE PROCUREMENT PROCESS MANAGED BY PENINSULA CLEAN ENERGY (PCE) FOR SOLAR INSTALLATION AT TOWN HALL AND POLICE DEPARTMENT AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS FOR PARTICIPATION IN THE PROCESS PURSUANT TO CEQA GUIDELINES 15301 AND 15303

## EXECUTIVE SUMMARY

On November 10, 2021, the City Council authorized participation in the first solar collaborative procurement process managed by Peninsula Clean Energy (PCE) and approved and authorized the City Manager to execute the Power Purchase Agreement (PPA) with PCE for solar installation at the Colma Community Center. Per the PPA, PCE manages the solar procurement process, design, installation, operation, and solar array system maintenance. The Town's new solar installation at the Community Center will result in \$608,000 cost savings over the 20-year PPA term, generate renewable energy at no upfront costs to the Town, and implement one of the Town's Climate Action Plan 2030 programs. Installation of this system will be completed in Q1 2024. PCE developed a second solar procurement process in early 2023 (Round 2 Solar PPA) and the City Manager authorized a solar analysis of Town Hall and Police Department (PD). PCE staff completed engineering evaluations, preliminary solar sizing, cost savings estimates and met with Town staff to discuss resulting estimated total savings of \$1,400,000 estimate over the 20-year PPA term from solar installations at Town Hall and PD. On June 29, 2023, the City Manager authorized preliminary participation by signing PCE's Customer Participation Agreement. At the present time, PCE requested jurisdictions' legal review of the preliminary PPA and requested that jurisdictions inform PCE of its intention to participate no later than November 30. A separate final PPA contract will be provided in February 2024 with pricing and total cost savings resulting from PCE's competitive procurement. Staff will return to City Council to discuss and present the final pricing, cost savings and the draft solar layout for Town Hall and PD in February. Similar to the previous PPA process, by Council approving this resolution,

Council authorizes the City Manager to execute necessary documents to participate in this second solar procurement process.

## **ENVIRONMENTAL**

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

## **FISCAL IMPACT**

Participation in the PPA results in a total cost savings estimate of \$1,400,000 over the 20-year PPA term once the new solar installations are completed at Town Hall and PD. Because PCE staff manages the solar procurement process, design, installation, operation, and solar array system maintenance, the Town also realizes cost savings related to Town staff resources, solar contractors, structural engineers, and consultant time to install solar at the Town facilities.

## **BACKGROUND AND ANALYSIS**

The City Council authorized approval of the first Power Purchase Agreement (PPA) with PCE on November 10, 2021, for solar installation at the Community Center and joined fourteen other jurisdictions to install solar at no upfront costs in the collaborative procurement. PCE managed the procurement process, solar array design, installation, and maintenance of the system. The City Manager signed the first PPA on February 6, 2023, which will result in \$608,500 cost savings to the Town over the 20-year PPA term. Beyond the \$608,500 cost savings, additional benefits include installing solar at no upfront costs to the Town, and meeting one of the Town's Climate Action Plan 2030 programs to generate renewable energy. This project also benefits Colma residents by providing a safe and operational resiliency location where residents can go during power outages, high heat days and other emergency events once the future battery storage system is installed. The future battery storage system is optional, and staff will return to council regarding consideration of this option in the coming months after the collaborative procurement process is complete.

PCE introduced the second solar procurement process (Round 2 Solar PPA) in early 2023 and the City Manager authorized solar installation analysis of Town Hall and Police Department (PD). PCE staff completed engineering evaluations, preliminary solar sizing with cost savings estimates and met with Town staff to discuss resulting total savings of \$1,400,000 estimate over the 20-year PPA term from solar installations at Town Hall and PD. On June 29, 2023, the City Manager authorized preliminary participation by signing PCE's Customer Participation Agreement. The Round 2 Solar PPA is very similar to what the City Council approved with the first PPA. Similar to the first solar installation process, at the Community Center, staff will return to Council for the Design Review permit consideration to review the solar installation layout at Town Hall and PD. Also similar to the first solar installation layout, the intent is for the solar panels to be installed on carports and not rooftops in consideration of prior City Council feedback.

At this time, PCE is requesting that jurisdictions conduct legal review of the preliminary PPA and PCE also requests that jurisdictions inform PCE of their intent to participate by November 30. Resolution commitments are needed by jurisdictions to aid in achieving the best available pricing from solar vendors by providing a high level of confidence regarding jurisdictions' intentions to participate in collaborative procurement.

Similar to the previous PPA process, by Council approving this resolution, Council is approving and authorizing the City Manager to execute necessary documents to participate in this second solar procurement process. The final PPA contract with specific pricing resulting from PCE's competitive procurement will be provided in February 2024 for City Council review and consideration for approval.

### **Council Adopted Values**

The adoption of the Resolution is consistent with the Council value of *vision* and *responsibility* because it enables the Town to generate renewable energy, reduce greenhouse gas emissions (GHG) and provide community benefit and community resiliency.

### **Sustainability Impact**

Adoption of the Resolution will improve sustainability by reducing GHG, generating renewable energy and assisting the Town in meeting the Climate Action Plan 2030 programs approved by City Council and the GHG reduction targets.

### **ATTACHMENT**

- A. Resolution
- B. Power Purchase Agreement



**RESOLUTION 2023-\_\_  
OF THE CITY COUNCIL OF THE TOWN OF COLMA**

**RESOLUTION APPROVING THE TOWN'S PARTICIPATION IN THE SECOND SOLAR COLLABORATIVE PROCUREMENT PROCESS MANAGED BY PENINSULA CLEAN ENERGY (PCE) FOR SOLAR INSTALLATION AT TOWN HALL AND POLICE DEPARTMENT AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE NECESSARY DOCUMENTS FOR PARTICIPATION IN THE PROCESS 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 to realize 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 reviewed the Power Purchase Agreement (PPA) for the second solar collaborative procurement program 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 the Town's participation in the Second Solar Collaborative Procurement Process and hereby approves and authorizes the City Manager to execute all documents to participate in the procurement process, with the understanding that staff will return to the City Council in February 2024 with the final Power Purchase Agreement that includes final pricing.

**Certification of Adoption**

I certify that the foregoing Resolution No. 2023-\_\_ was duly adopted at a regular meeting of said City Council held on November 8, 2023, by the following vote:

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

Dated \_\_\_\_\_  
\_\_\_\_\_  
Joanne F. del Rosario, Mayor

Attest: \_\_\_\_\_  
Caitlin Corley, City Clerk



### 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]**, 2023 (the “**Effective Date**”).

Purchaser:		Seller:	
<b>Name and Addresses</b>		Name and Addresses	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
<b>Project Name</b>			

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: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Printed Name: Shawn Marshall

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

Title: Chief Executive Officer

Date: \_\_\_\_\_

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:** \$[ ] per kilowatt-hour (“**kWh**”) in the first Contract Year, increasing by [ ] percent ([ ]%) each subsequent Contract Year. The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
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 [ ] percent ([ ]%), 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 [ ] percent ([ ]%), 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. Purchaser Termination Payment Schedule:

Contract Year	Termination Payment (\$)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
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20	

**Exhibit 2**

**System Description, Delivery Point and Premises**

1. System Location:
2. System Size (DC kW):
3. System Description (Expected Structure, etc.):
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 document 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 Schedule 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 (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 option 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]** 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**") in Section 6417 of the Internal Revenue Code of 1986, as amended (the "**Code**") with respect to the federal income tax credits under either (the "**Applicable Credits**") 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) obtain a payment of applicable proceeds with respect to Elective Pay Incentive, (iii) avoid a disallowance, recapture, or reduction of the proceeds with respect to the Elective Pay Incentive, and (iv) prevent an excess 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," 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.
- 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 Purchaser shall have ten (10) business days after receipt to approve or disapprove the revised design 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. If Purchaser disapproves the revised System design, 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), **Exhibit 2** may be revised if any such changes are approved by both Parties in writing.
- 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 from the System for Outages 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 use reasonable efforts to ensure that it and its employees, agents, contractors and subcontractors comply with Purchaser's site safety and security requirements which have been provided to Seller in writing within sixty (60) days of the Effective Date when on the Premises [(other than in respect of the fenced area governed by the Exclusive License)] during the License Term. 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.
- 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 Insulation. If either Party discovers any activity or condition that could diminish the Insulation of the System, such Party shall immediately notify the other Party and Purchaser shall cooperate with Seller in preserving and restoring the System's Insulation 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 pay Seller at the Contract Price for all electricity that Seller reasonably estimates it would have been able to deliver to Purchaser in accordance with this Agreement but for the applicable circumstance described in the first sentence of this paragraph.

9. **Removal of System upon Termination or Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under 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 Purchaser'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 (I) the Parties agree upon a relocation under Section 8 above; (B) loses its right to provide or is in default under Section 7(a); or (C) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (I) permitted under this Agreement, or (II) 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 the date (A) that Purchaser cures the Default Event in full, including making payment in full as provided in Section 11(b)(i)(C). 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 Agreement, 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 Purchase, 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)(i) and 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 (1) 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 five (5) years or the remainder of the Initial Term or the then current Additional Term, as applicable; (2) all direct costs reasonably incurred by Purchaser by reason of the termination; and (3) 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) and Section 11(b)(ii), 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 Seller; 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 Purchaser 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 Agreement 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 pursuant to 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. This 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.
  - 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. 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 and it is beyond the date that is the sixth (6<sup>th</sup>) anniversary of the Commercial Operation Date, 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. Purchaser shall notify Seller 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.
- ii. 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 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.
- iii. Title Transfer; Warranties; Manuals. If Purchaser exercises its purchase option pursuant to Section 14(b)(i) 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 15(c).
- 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 Contract 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 Purchaser Termination Payment 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. Subject to Section 18(b)(iii), the Parties hereby agree to treat Sections 3 and 6 of Exhibit 1 as Confidential Information of each Party for

purposes of this Section 18 and to redact the numbers set forth in such Sections from any publication or disclosure 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.
- 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 6250 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information, 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 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. Such Party shall provide prior, written approval of the other Party prior to such disclosure, and shall provide such other Party the opportunity to review any redacted version of this Agreement to be so disclosed.
- 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 (A) 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 (B) 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 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), 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>	
Name and Address		Name and Address	
Phone		Phone	
E-mail		E-mail	
Project Name			

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 term of the PPA the System will generate not less than [ ] percent ([ ]%) of the estimated generation of the System based on PVSyst (“**Estimated PVSyst 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.

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 PVSyst Production (Annual kWh)</b>	<b>Guaranteed Production (Annual kWh)</b>
Year 1		
Year 2		
Year 3		
Year 4		
Year 5		
Year 6		
Year 7		
Year 8		
Year 9		
Year 10		
Year 11		
Year 12		
Year 13		
Year 14		
Year 15		
Year 16		

Year 17		
Year 18		
Year 19		
Year 20		

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 Guaranteed 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:**

**Purchaser:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_



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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

