

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND CITY OF FOSTER CITY for MEMBER AGENCY ENERGY GRANT PROGRAM

This Agreement is entered into this _____ day of _____, 2024, by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA," and [City of Foster City], hereinafter called "Grantee."

* * *

1. Exhibits and Attachments

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

Exhibit A—Project Description

Exhibit B—Grant Distribution

2. Grant Process

In consideration of the payments set forth in this Agreement and in Exhibit B, Grantee shall implement the Project in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

3. Grant Distribution

In consideration of the Project to be implemented by Grantee in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Grantee in the manner specified in Exhibit B. PCEA reserves the right to withhold final payment if PCEA determines that the quantity or quality of the work performed is unacceptable. In no event shall PCEA's total fiscal obligation under this Agreement exceed five hundred fifty-one thousand two hundred thirty two dollars (\$551,232). In the event that a project does not move forward or is terminated for any reason, Grantee agrees to return any unused grant funds associated with approved project.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from [date], through [date].

5. Relationship of Parties

Grantee agrees and understands that Grantee is not an employee of PCEA and that neither Grantee nor its employees acquire any of the rights, privileges, powers, or advantages of PCEA employees.

6. Hold Harmless

a. General Hold Harmless

Grantee shall indemnify and save harmless PCEA and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Grantee under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

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

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

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

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants. However, Grantee's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which PCEA has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

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

7. Payment of Permits/Licenses

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

8. Insurance

PCEA shall not be responsible for the provision of any insurance policy on behalf of the Grantee.

The parties understand and agree that Grantee shall not commence work using the grant funds without insurance coverage appropriate to its specific project and as reviewed by Grantee's own legal counsel and/or Risk Manager.

9. Compliance With Laws

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

Grantee shall be timely and accurately complete, sign, and submit all necessary documentation of compliance.

10. Retention of Records; Right to Monitor and Audit

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

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

(c) Grantee agrees upon reasonable notice to provide to PCEA, to any Federal or State department having monitoring or review authority, to PCEA's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State,

and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of the Project work.

11. Merger Clause; Amendments

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

12. Controlling Law; Venue

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

13. Notices

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

In the case of PCEA, to:

Name/Title: Shawn Marshall, Chief Executive Officer
Address: 2075 Woodside Road, Redwood City, CA 94061
Telephone: 650-474-5002
Email: smarshall@peninsulacleanenergy.com

In the case of Grantee, to:

Name/Title: Stefan Chatwin, City Manager
Address: 610 Foster City Blvd.
Telephone: 650-286-3388
Email: schatwin@fostercity.org

14. Electronic Signature

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

15. No Recourse Against PCEA's Member Agencies

Grantee acknowledges and agrees that PCEA is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by PCEA in connection with this Agreement are undertaken solely by PCEA and are not debts, liabilities, or obligations of its member agencies. Grantee waives any recourse against PCEA's member agencies.

* * *

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

PENINSULA CLEAN ENERGY
AUTHORITY

CITY OF FOSTER CITY

Chief Executive Officer, Peninsula Clean
Energy Authority

Title: _____

Date: _____

Date: _____

Exhibit A

In consideration of the payments set forth in Exhibit B, Grantee shall execute the following project:

[Complete]

Exhibit B

In consideration of the Project implemented by Grantee described in Exhibit A and subject to the terms of the Agreement, PCEA shall pay Grantee based on the following fee schedule and terms:

[Complete. Payment described in two tranches, first up-front, second post completion with a description of the milestone to be met.]