

First

Amendment to Master City of San José Consultant Agreement

(Non-Capital Projects)

Second

Consultant Name: Energeia USA, Inc.

Third

(Master Agreement AC No. OC-000501-000)

This Amendment to the Master Agreement is made and entered into this 25th day of October, 2022. The City and the Consultant amend the above-referenced agreement as set forth herein.

-
1. Capitalized words in this Amendment have the same meaning as in the Master Agreement.
 2. The provisions of this Master Agreement (including any previous amendments) not modified by this Amendment remain in full force and effect.
 3. The provisions of this Amendment are effective upon execution of the Amendment by both parties.
 4. **Agreement Term:** Section 2 is amended to extend the expiration date from _____ to _____.
 5. **Maximum Total Compensation:** Subsection 10.1 is amended to Increase Decrease the Maximum Total Compensation from \$ _____ to \$ _____.
 6. **Agreement Section(s):** Section(s) 11 is amended and Section 22 is added to read as set forth in Attachment A of the Amendment.
 7. **Schedule of Rates and Charges – Exhibit B:** The original First Revised Second Revised Exhibit B is amended to read as set forth in the attached First Second Third Revised Exhibit B, which is incorporated by reference into this Amendment.
 8. **Schedule of Specific Services – Exhibit D:** The original First Revised Second Revised Exhibit D is amended to read as set forth in the attached First Second Third Revised Exhibit D, which is incorporated by reference into this Amendment.
 9. **Confidentiality Agreement – Exhibit E:** Exhibit E, which is incorporated by reference into this Amendment, is added to the Agreement.
 10. **Non-Disclosure Agreement – Exhibit F:** Exhibit F, which is incorporated by reference into this Amendment, is added to the Agreement.
-

This Amendment is executed by the authorized representatives of the City and Consultant as follows:

City of San José



Email: lori.mitchell@sanjoseca.gov
Date: 10/25/2022 GMT

Consultant



Email: cwalbran@energeia-usa.com
Date: 10/25/2022 GMT

By _____

Name: Lori Mitchell
Title: Director, Community Energy Department

By _____

Name: Ceri Beeman
Title: President & CEO

Approval as to Form (City Attorney):

Form Approved by the Office of the City Attorney.

(The Maximum Total Compensation, as amended, is \$100,000 or less, and the provisions of the form are not altered.)

Approved as to Form:



Email: enrique.fernandez@sanjoseca.gov
Date: 10/25/2022 GMT

Name: Enrique Fernandez
Title: Deputy City Attorney II

First

Attachment A

Second

Agreement Provision Amendment(s)

Third

(Non-Capital Projects)

This Attachment A is an attachment to the First Second Third amendment to Master Agreement.

The Section(s) set forth in the original Master Agreement, or in any previous amendment to the original Master Agreement, is/are amended as follows:

Section 11, entitled "INDEMNIFICATION," is amended to read as follows:

- 11.1 Obligation:** The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:
- The Consultant’s negligent performance of all or any part of the Basic Services and any Additional Services; or
 - Any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or
 - Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City’s use of any services, deliverables or other items provided by the Consultant pursuant to the requirements of this Master Agreement; or
 - Any violation of Consultant’s confidentiality obligations as set forth herein this Master Agreement or Consultant’s use of confidential data delivered to Consultant, in accordance with this Master Agreement, for Consultant’s personal gain; or
 - Any breach of this Master Agreement.
- 11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above shall not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.
- 11.3 Duty to Defend:** The Consultant’s obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City, its officers, employees and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City’s written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4 Insurance:** The City’s acceptance of any insurance in accordance with Section 12 does not relieve the Consultant from its obligations under this Section 11. The Consultant’s obligations under this Section 11 apply whether or not the insurance required by this Master Agreement covers any damages or claims for damages.

11.5 Survival: The Consultant's obligations under this Section 11 survive the expiration or earlier termination of this Master Agreement.

A new Section 22, entitled "USE OF CONFIDENTIAL INFORMATION AND CONFIDENTIALITY," is added as follows:

22. USE OF CONFIDENTIAL INFORMATION AND CONFIDENTIALITY

22.1 Confidential Information: Consultant will receive and have access to San José Clean Energy customer lists, PG&E customer data, San José Clean Energy usage data, San José Clean Energy procurement cost data, and other proprietary or personal customer information. All customer information and San José Clean Energy proprietary or operational information, including without limitation, names, addresses, electricity usage information, phone numbers, San José Clean Energy data, total load data, and Consultant proprietary information is "Confidential Information" and must be kept confidential and handled in accordance with this Master Agreement. Consultant recognizes and understands that the City operates in an open and transparent manner under the California Public Records Act. Consultant must clearly identify in writing on the document or material it believes to be proprietary information and state the specific provision in the Public Records Act that provides the exemption as well as the factual basis for claiming the exemption.

22.2 Nondisclosure and Nonuse of Confidential Information: The Parties agree to protect Confidential Information, using at least the same degree of care that each Party uses to protect its own confidential and proprietary information of similar importance, but no less than a reasonable degree of care. Consultant agrees to use Confidential Information obtained in performing the work under this Master Agreement for the sole purpose of providing services to the City, San José Clean Energy, and San José Clean Energy customers, to the extent necessary to perform under this Master Agreement. Consultant shall not disclose, publish, or disseminate Confidential Information to anyone other than the City and those of its employees and City's authorized contractors who have a need to know in order to perform the Scope of Services in this Master Agreement and who are bound by a written agreement that prohibits unauthorized disclosure or use of Confidential Information. Consultant will be responsible for any violation of the terms of this Master Agreement by its employees and Subcontractors. Consultant agrees not to use Confidential Information for any other purpose or for its own or any third party's benefit without the prior written consent of the Director and the customer providing the information in each instance. Consultant may disclose Confidential Information to the extent required by law, provided Consultant gives City and customer notice of such requirement prior to any disclosure and takes reasonable steps to obtain protective treatment of the Confidential Information, unless such notice is otherwise prohibited by law.

With respect to information that Consultant has identified as proprietary information pursuant to Section 22.1, above, and although the California Public Records Act recognizes that certain confidential information may be protected from disclosure (e.g. trade secret information), the City may not be in a position to establish that the information that Consultant submits is a trade secret or otherwise may be excluded from release under the California Public Records Act. Prior to any disclosure to a third party of information identified in writing as Confidential Information, "Trade Secret," or "Proprietary", the City will provide Consultant notice of the proposed disclosure with reasonable notice to seek protection from disclosure by a court of competent jurisdiction. Notice under this Section may be given via electronic mail without the requirement for a written notice of receipt. If Consultant does not seek protection from the court, the Parties agree that the City in its independent discretion may release the document(s) in which case, no liability will attach to the City under this Master Agreement and the City will not be deemed in default of the mutual confidentiality obligations in this Section 22.

Notwithstanding any limitations in Section 11, above, in the event of a legal challenge relating to the City's withholding of Consultant Confidential Information from release under the California Public Records Act, Consultant Agrees to indemnify, defend, protect, and hold the City harmless, with counsel reasonably

acceptable to the City, from and against any and all expenses, claims, costs, attorneys' fees, damages, and penalties.

- 22.3. License to Confidential Information:** Except as expressly set forth in this Master Agreement, no license or other rights to Confidential Information are granted or implied and City retains all of its rights therein.
- 22.4 No Warranty:** All information is provided "AS IS," and without any warranty, whether express or implied, as to its accuracy or completeness.
- 22.5 Chain of Custody:** Consultant will document the electronic receipt of all tangible Confidential Information that is specifically identified or marked as such whether received from the City or PG&E. City acknowledges that all City employees granted logins to the Customer Information System or any other database created or utilized by Consultant have access to a log of all Confidential Information received throughout the term of this Master Agreement. City further acknowledges that all City employees granted logins to the Customer Information System have access to a log of all users with access to Confidential Information. This log will include name of user, and time and date of logins during which time a user *may have accessed Confidential Information.*
- 22.6 Disposition of Confidential Information Upon Termination of Master Agreement:** Upon expiration or termination of this Master Agreement, Consultant will give City a description of all Confidential Information it has in its possession. City, in its sole discretion will direct Consultant to return or delete, in whole or in part, all Confidential Information under the control of Consultant, without retaining any electronic or tangible copies thereof.
- 22.7 PG&E Requirements:** Consultant must comply with all PG&E confidentiality requirements respecting PG&E customer data for all Confidential Information that Consultant receives from PG&E.
- 22.8 Intentionally Omitted.**
- 22.9 Equitable Relief:** Consultant agrees that City will have the right to seek and obtain immediate injunctive relief to enforce confidentiality obligations under this Master Agreement in addition to any other rights and remedies it may have.
- 22.10 No Export:** Consultant agrees that no Confidential Information, or any portion thereof, will be exported to any country in violation of the United States Export Administration Act and regulations thereunder, or any other applicable export control laws or regulations.
- 22.11 Exceptions:** The obligations imposed by Section 22 herein do not apply, or will cease to apply, to any Confidential Information if or when, but only to the extent that, such Confidential Information:
- 22.11.1** was known to Consultant prior to the receipt of the Confidential Information;
 - 22.11.2** was, or becomes through no breach of Consultant's obligations hereunder, known to the public;
 - 22.11.3** becomes known to Consultant from sources other than the City under circumstances not involving any breach of any confidentiality obligation;
 - 22.11.4** is independently developed by Consultant, as evidenced by the written records thereof; or
 - 22.11.5** is disclosed through legal process as more fully described in 22.2, above.

In the event of dispute regarding the use of Confidential Information, Consultant will have the obligation to establish that any of the above exceptions apply.

22.12 Survival of this Provision: The confidentiality obligations in this Section 22, including the indemnity obligations, will survive the expiration or early termination of this Master Agreement.

EXHIBIT E: CONFIDENTIALITY AGREEMENT

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is entered into and made effective as of _____ 2022, (“Effective Date”) by and between Energeia USA, a California corporation (“Energeia”), and the City of San José, a municipal corporation (“Customer”), as administrator of San José Clean Energy (“SJCE”) (Energeia and Customer shall sometimes hereinafter each individually be referred to as “Party” and collectively as the “Parties”).

WHEREAS, Energeia entered into that certain master consulting agreement, dated July 22, 2021, AC No. OC-000501-000 (“Master Agreement”), with Customer to provide certain services, including energy program support on demand response programs (the “Purpose”);

WHEREAS, it will be necessary for Customer to share certain confidential information with Energeia for the sole purpose of enabling the Parties to evaluate confidential information, or participate in the Purpose;

WHEREAS, each Party desires to protect and safeguard the confidential information disclosed by Customer in accordance with the terms of this Agreement; and

WHEREAS, the Parties agree that any use or action taken with respect to the Confidential Information (as hereinafter defined) shared between the Parties, shall be in compliance with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein, and with the intent to be legally bound hereby, the Parties agree as follows:

1. **Confidential Information.** The term “Confidential Information” as used in this Agreement shall mean any and all confidential and proprietary information disclosed to Energeia, in accordance with the Master Agreement or otherwise disclosed to Energeia, and may including but not limited to the following:

(a) All secret, proprietary, confidential, or otherwise nonpublic information of or relating to Customer in any form whether written, electronic, visual, or oral, and all notes, analyses, compilations, studies, reports, interpretations, or other material prepared by Customer, which contain or reflect or are based upon, in whole or in part, the foregoing, that is delivered by the Customer or Customer’s Affiliates (as hereinafter defined) to Energeia. Confidential Information may also include all marketing, technical, engineering, operational, economic, or financial knowledge, information, or data of any nature whatsoever relating to the future, present, or past business, operations, plans or assets of Customer, including any of

Customer's Affiliates (as hereinafter defined), which is disclosed, either directly or through its agents, by Customer or its Affiliates to Energeia the Receiving Party in connection with the Purpose; provided, however, that the Parties shall not share any cost and sales information relevant to competition between the Parties or future plans relating to competition between the Parties.

(b) All SJCE customer information, including: (i) SJCE customer names; (ii) SJCE customer addresses; (iii) SJCE customer telephone numbers or other contact information; (iv) SJCE customer service agreement numbers; (v) SJCE customer meter and other identification numbers; (vi) SJCE-designated customer account numbers; (vii) SJCE customer meter numbers; (viii) SJCE customer electricity and gas usage, including monthly usage, interval usage data, monthly maximum demand, electrical or gas consumption as defined in Public Utilities Code Section 8380, HP load, and other data detailing electricity or gas needs and patterns of usage; (ix) SJCE customer billing information, including rate schedule, baseline zone, California Alternate Rates for Energy participation, end use code (i.e., heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan, and other plans; (x) SJCE customer payment and deposit status; (xi) SJCE customers' number of units; and (xii) other similar information specific to SJCE customers individually or in the aggregate. Confidential Information may also include any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Energeia or its representatives that are derived from or based on Confidential Information disclosed by Customer, regardless of the form of media in which it is prepared, recorded, or retained.

2. **Exempt Information.** Confidential Information shall not include the following:

- (a) Information that is known by Energeia prior to the receipt of Confidential Information;
- (b) Information that is, or becomes, through no breach of Energeia's obligations hereunder, known to the public;
- (c) Information that becomes known by Energeia from third-parties under circumstances not involving any breach of any confidentiality obligation of Energeia;
- (d) Information that is independently developed by Energeia, as evidenced by the written records thereof; or
- (e) Information that is disclosed through legal process.

In the event of dispute regarding the use of Confidential Information, Energeia will have the obligation to establish that any of the above exceptions apply.

3. **Access to Confidential Information.** Energeia will receive and will have access to SJCE's proprietary and personal customer information. For clarity's sake, all Confidential Information must be kept confidential by Energeia and handled in accordance with this Agreement.

4. Disclosure and Use of Confidential Information. Energeia agrees to keep confidential all Confidential Information and shall not, without Customer's prior written consent, which consent may be withheld according to Customer's sole and absolute discretion, disclose to any third party, firm, corporation, or entity such Confidential Information. Energeia shall limit the disclosure of such Confidential Information and materials prepared in connection therewith, to those employees and or representatives of Energeia who have a "need to know" such Confidential Information in the course of their duties with respect to the program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement, including the PG&E Community Choice Aggregator Non-Disclosure Agreement, which is attached to this Agreement as Exhibit F ("PG&E CCA NDA"), which Exhibit F is incorporated herein this Agreement by this reference. Prior to disclosing any Confidential Information to its employees or representatives, Energeia shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement.

Energeia shall use the Confidential Information only in furtherance of the Purpose. Except as allowable in this Agreement, Energeia shall not make any other use, in whole or in part, of any such Confidential Information without the prior written consent of Customer, which consent may be withheld according to Customer's sole and absolute discretion.

Energeia shall, at all times and into perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Energeia shall implement and maintain reasonable security procedures and practices appropriate to the nature of the Confidential Information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in connection with this Agreement or the Master Agreement.

Energeia shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Customer directly against such employees or representatives for improper disclosure and/or use of Confidential Information. In no event shall Energeia or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Energeia shall immediately notify Customer, in writing, if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Energeia or any of its employees or representatives. However, nothing in this Agreement shall obligate Customer to monitor or enforce Energeia's compliance with the terms of this Agreement.

5. Consumer Protection. Energeia shall comply with the consumer protections concerning subsequent disclosure and use set forth in CPUC Decision No. 12-08-045, which is attached hereto this Agreement and incorporated herein by this reference as Attachment B. Energeia agrees to require that all its officers, employees, directors, and agents read and execute the PG&E CCA NDA.

6. **Required Disclosure.** In the event that Energeia, or any of its Affiliates (as the case may be) is requested or required by oral questions, interrogatories, requests for information or documents, subpoena, civil investigation, demand or similar court or administrative process or by law or regulation to disclose any Confidential Information of Customer, it is agreed that Energeia will provide immediate notice of such potential disclosure so that a protective order or other remedy from a court may be sought by Customer. If Customer decides to seek a protective order or other remedy from a court, then Energeia shall provide timely and reasonable cooperation to Customer.
7. **Return of Documents.** Upon written request from Customer, or upon expiration, or earlier termination, of the Master Agreement, Energeia shall and shall cause each of its representatives and Affiliates to promptly return any and all tangible and electronic Confidential Information, including copies, reproductions, or information otherwise containing Confidential Information, within five (5) business days of such request, expiration, or termination.
8. **Survival of Obligations.** Energeia's obligations under this Agreement will survive the expiration or earlier termination of the Agreement.
9. **Nature of Information.** Energeia hereby accepts the representations of the Disclosing Party that the Disclosing Party's Confidential Information is of a special, unique, unusual, extraordinary, and/or intellectual character. Energeia and Customer acknowledge that the Disclosing Party's interests in such Confidential Information may be irreparably injured by disclosure of such Confidential Information. Energeia and Customer acknowledge and agree that money damages would not be a sufficient remedy alone for any breach of this Agreement by it, and that in addition to all other remedies, the Disclosing Party shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach, and each further agrees to waive any requirement for the securing or posting of any bond in connection with such remedy; provided that, Customer's liability or payment obligation under this Agreement, if any, extends only to, and in no circumstance will exceed, the Designated Fund for Customer (being the San José Energy Operating Fund established pursuant to City of San José Municipal Code, Title 4, Part 63, Section 4.80.4050 et. seq.).
10. **Affiliate.** The term "Affiliate" shall mean any corporation, partnership, or other entity or association that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, Energeia or Customer.
11. **Governing Law; Venue.** California law governs the construction and performance of this Agreement. Any litigation resulting from this Agreement will be filed in and resolved by either the Superior Court of California for the County of Santa Clara, or the San José Division of the Northern District of California.
12. **Severability.** If a court finds any part of this Agreement unenforceable, all other parts shall remain enforceable.
13. **Notice.** All notices and other communications required by this Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.

A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective three (3) business days after deposit in the United States mail.

14. **Indemnity.** Energeia shall defend, indemnify, and hold harmless Customer and its officers, employees, and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part - arise out of, pertain to, or relate to any of the following:
- (a) Energeia’s negligent performance of all or any part of the obligations provided pursuant to this Agreement;
 - (b) Any negligent act or omission, recklessness, or willful misconduct of Energeia, any of its Affiliates, anyone directly or indirectly employed by either Energeia or any of its Affiliates, or anyone that they control; or
 - (c) Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Customer’s use of any services, deliverables or other items provided by Energeia pursuant to this Agreement; or
 - (d) Any breach of this Agreement.

Energeia’s obligation in this Section 14 applies to the maximum extent allowed by law and includes defending Customer, its officers, employees, and agents as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon Customer’s written request, Energeia, at its own expense, shall defend any suit or action that is subject to the obligation in this Section 14.

Customer’s acceptance of any insurance in accordance with the Master Agreement does not relieve Energeia from its obligations under this Section 14. Energeia’s obligations under this Section 14 apply whether or not the insurance required by the Master Agreement covers any damages or claims for damages arising out of this Agreement.

Energeia’s obligations under this Section 14 survive the expiration or earlier termination of this Agreement.

15. **Compliance with Laws.** Energeia shall perform all services consistent with all applicable federal, state, and local laws, ordinances, codes, and regulations. This obligation is not limited in any way by the Energeia’s obligation to comply with any specific law, ordinance, code, or regulation set forth elsewhere in this Agreement.

16. **Assignability.** Energeia shall not assign any part of this Agreement without Customer’s prior written consent. Customer, at Customer’s sole and absolute discretion, may terminate this Agreement if a violation of this provision occurs.

17. **Headings.** The section and attachment headings are for convenience only and are not to be used in its construction.

18. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by each party in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

19. **Use of Electronic Signatures.** Unless otherwise prohibited by law or Customer policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by Customer.

20. **No Representations or Warranties.** With respect to any information, including but not limited to Confidential Information, which Customer furnishes or otherwise discloses to Energeia in furtherance of the Purpose, it is understood and agreed that Customer does not make any representations or warranties as to the accuracy, completeness, or fitness for a particular purpose thereof. It is further understood and agreed that Customer nor its representatives or Affiliates shall have any liability or responsibility to Energeia or to any person or entity resulting from the use of any information so furnished or otherwise provided.

21. **Modification and Waiver.** The provisions of this Agreement may be modified, amended, or waived only by a separate writing signed by Energeia and Customer expressly so modifying or waiving the same. No failure or delay by Energeia or Customer in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any partial exercise thereof preclude any other or further exercise thereof, or of any other right, power, or privilege.

22. **Affiliates Bound.** Energeia agrees to cause its Affiliates to be bound hereby as if each were a party to this Agreement.

23. **Miscellaneous.** This Agreement constitutes the entire agreement and understanding of the Parties relating to the subject matter hereof. This Agreement supersedes all prior written and oral agreements and all other communications between the Parties with regard to the Purpose. Except as expressly stated herein, each Party intends that this Agreement will not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties hereto, and their successors and permitted assigns.

[Signatures to follow on next page.]
[The remainder of this page is intentionally blank.]

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

Energeia USA

By: _____
Name: Ceri Beeman
Title: President & CEO

Energeia USA
Each employee or representative to whom Confidential Information is to be disclosed
By: _____
Name: _____
Title: _____

EXHIBIT F: NON-DISCLOSURE AGREEMENT



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is entered into by and between Pacific Gas and Electric Company ("Utility") and _____ [name] _____, a _____ [describe political entity] _____ ("CCA") as of _____ ("Effective Date").

This Agreement is executed pursuant to California Public Utilities Commission ("CPUC") Order Instituted Rulemaking ("OIR") 03-10-003, California Public Utilities Code ("PU Code") Section 366.2 et seq., and applicable Utility tariffs (as modified hereafter from time to time). As used herein Utility and CCA may each be referred to individually as a "Party" and collectively as "Parties."

The CPUC has determined that CCA may obtain specified confidential customer information from Utility pursuant to Tariff Schedules E-CCAINFO-Information (as modified hereafter from time to time) ("E-CCAINFO") as a community choice aggregator, as defined by PU Code Section 331.1, solely in order to investigate, pursue or implement community choice aggregation pursuant to PU Code Section 366.2, et seq. or confidential customer electric and gas consumption data to implement energy efficiency programs pursuant to PU Code section 381.1. The provisions of this Agreement and E-CCAINFO govern the disclosure of Utility's confidential customer information to CCA ("Disclosure Provisions") under Schedules E-CCAINFO and E-CCA.

The Parties hereby mutually agree that:

1. Subject to the terms and conditions of this Agreement, current proprietary and confidential information of Utility regarding customers of Utility ("Utility Customers") may be disclosed to CCA from time to time in connection herewith as provided by the Disclosure Provisions and solely for the purpose of investigating, pursuing or implementing community choice aggregation pursuant to PU Code Section 366.2, et seq. as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1. Such disclosure is subject to the following legal continuing representations and warranties by CCA:
 - (a) CCA represents and warrants that, pursuant to PU Code Section 331.1,
 - (1) it is either (i) a city, county, or other entity as defined in PU Code Section 331.1 whose governing board has elected to combine the loads of its residents, businesses, and municipal facilities in a community wide electricity buyers program or (ii) a city, county, or other entity as defined in PU Code Section 331.1 that intends to actively investigate or pursue delivery of electric service to customers located within the geographic territory of the CCA, and
 - (2) that to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq., or to implement energy efficiency programs pursuant to PU Code section 381.1;



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

- (b) CCA represents and warrants that it has all necessary authority to enter into this Agreement, and that it is a binding enforceable Agreement according to its terms;
 - (c) CCA represents and warrants that the authorized representative(s) executing this Agreement is authorized to execute this Agreement on behalf of the CCA; and
 - (d) CCA confirms its understanding that the information of Utility Customers is of a highly sensitive confidential and proprietary nature, and that such information will be used as contemplated under the Disclosure Provisions solely for the purposes of investigating, pursuing or implementing Community Choice Aggregation under PU Code Section 366.2 as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1, and that any other use of the information may permit Utility to suspend providing further information hereunder.
 - (e) CCA represents and warrants that it will implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure, and prohibits the use of the data for a secondary commercial purpose not related to community choice aggregation or energy efficiency purposes without the customer's prior consent to that use.
2. The confidential and proprietary information disclosed to CCA in connection herewith may include, without limitation, the following billing information about Utility Customers: Customer-specific information from the current billing periods as well as prior 12 months consisting of: service agreement number, name on agreement, service address with zip code, mailing address with zip code, telephone number, meter number, monthly kWh usage, monthly maximum demand where available, electrical or gas consumption data as defined in PU Code Section 8380, other data detailing electricity or gas needs and patterns of usage, Baseline Zone, CARE participation, End Use Code (Heat Source) Service Voltage, Medical Baseline, Meter Cycle, Bill Cycle, Balanced Payment Plan and other plans, HP Load and Number of Units and monthly rate schedule for all accounts within the CCA's territory. In addition, PG&E will provide the CCA the following additional information regarding customers currently enrolled in its CCA service: current and historical billing information for non-CCA services provided by PG&E or other electric service providers (collectively, "Confidential Information"). Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by CCA or its representatives that are derived from or based on Confidential Information disclosed by Utility, regardless of the form of media in which it is prepared, recorded or retained.



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

3. Except for electric and gas usage information provided to CCA pursuant to this Agreement, Confidential Information does not include information that CCA proves (a) was properly in the possession of CCA at the time of disclosure; (b) is or becomes publicly known through no fault of CCA, its employees or representatives; or (c) was independently developed by CCA, its employees or representatives without access to any Confidential Information.
4. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by CCA, or used for any purpose other than to investigate, pursue or implement community choice aggregation under PU Code Section 366.2 et seq. as a community choice aggregator or to implement energy efficiency programs pursuant to PU Code section 381.1 as permitted under this Agreement and the Disclosure Provisions.
5. CCA shall, at all times and in perpetuity, keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. CCA shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for a secondary commercial purpose not related to community choice aggregation or energy efficiency. Specifically, CCA shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of CCA who have a "need to know" such Confidential Information in the course of their duties with respect to the CCA program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement, provided, however, that, an Energy Service Provider, agent, or any other entity, including entities that provide both direct access (as codified in Assembly Bill No. 1890, Stats. 1996, ch. 854) and community choice aggregation services shall limit their utilization of the information provided to the purposes for which it has been provided and shall not utilize such information, directly or indirectly, in providing other services, including but not limited to Direct Access services, in order to effectuate the obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, CCA shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree in writing to be bound by the terms of this Agreement by signing the "Non-Disclosure Agreement for CCA Employees or Representatives" form attached as Exhibit A hereto. CCA shall provide Utility with copies of the signed Exhibit A forms at Utility request. CCA shall also provide Utility with a list of the names, titles, and addresses for all persons or entities to which Confidential Information is disclosed in connection herewith ("Disclosure List"). This Disclosure List shall be updated by CCA on a regular basis, and will be provided to Utility once each quarter at a minimum.



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

6. CCA shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Utility directly against such employees or representatives for improper disclosure and/or use. In no event shall CCA or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. CCA shall immediately notify Utility in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by CCA or any of its employees or representatives. However, nothing in this Agreement shall obligate the Utility to monitor or enforce the CCA's compliance with the terms of this Agreement.
7. CCA shall comply with the consumer protections concerning subsequent disclosure and use that are in Attachment B to CPUC Decision No. 12-08-045.
8. CCA acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Utility and/or Utility Customers, the amount of which may be difficult to assess. Accordingly, CCA hereby confirms that the Utility shall be entitled to apply to a court of competent jurisdiction or the CPUC for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by CCA or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to the Utility, in law or equity.
9. In addition to all other remedies, CCA shall indemnify and hold harmless Utility, its affiliates, subsidiaries, parent company, officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of CCA and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
10. If, at any time, CCA ceases its investigation, pursuit or implementation of community choice aggregation pursuant to PU Code Section 366.2 et seq., CCA shall promptly return or destroy (with written notice to Utility itemizing the materials destroyed) all Confidential Information then in its possession at the request of Utility. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.
11. This Agreement shall be binding on and inure to the benefit of the successors and permitted assigns of the Parties hereto. This Agreement shall not be assigned, however, without the prior written consent of the non-assigning Party, which consent



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

may be withheld due to the confidential nature of the information, data and materials covered.

12. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and supersedes all prior discussions, negotiations, understandings, communications, correspondence and representations, whether oral or written. This Agreement shall not be amended, modified or waived except by an instrument in writing, signed by both Parties, and, specifically, shall not be modified or waived by course of performance, course of dealing or usage of trade. Any waiver of a right under this Agreement shall be in writing, but no such writing shall be deemed a subsequent waiver of that right, or any other right or remedy.
13. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without reference to its principles on conflicts of laws.
14. This Agreement shall, at all times, be subject to such changes or modifications by the CPUC as it may from time to time direct in the exercise of its jurisdiction.

IN WITNESS WHEREOF, the authorized representatives of the Parties have executed this Agreement as of the Effective Date.

PACIFIC GAS AND ELECTRIC COMPANY

(Customer)

(Signature)

(Type/Print Name)

(Title)

(Date)

(Signature)

(Type/Print Name)

(Title)

(Date)



COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT

EXHIBIT A NON-DISCLOSURE AGREEMENT FOR CCA EMPLOYEES OR REPRESENTATIVES

I, _____, declare under penalty of perjury that

(1) I am employed as _____ (title) at _____
_____ (employer and address); and

(2) I have personally reviewed the attached **COMMUNITY CHOICE AGGREGATOR NON-DISCLOSURE AGREEMENT** relating to disclosure and use of Confidential Information (as defined therein) and I agree to be bound by its provisions.

Signed: _____

Print Name: _____

Dated: _____