

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**").

Purchaser:		Guarantor:	
Name and Address	City of San Mateo 330 West 20 th Avenue San Mateo, CA 94403 Attention: Andrea Chow, Sustainability Analyst	Name and Address	Peninsula Clean Energy Authority 2075 Woodside Rd. Redwood City, CA 94061 Attention: Rafael Reyes, Director of Programs
Phone	(650) 522-7007	Phone	(650) 260-0087
E-mail	achow@cityofsanmateo.org	E-mail	rreyes@peninsulacleanenergy.com
Project Name	Beresford Rec Center		

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

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

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

Table 1.A, projected production values as measured at a TMY weather station reasonably close to the facility:

Contract Year	Estimated Production (Annual kWh)	Guaranteed Production (Annual kWh)
Year 1	118,033	112,131
Year 2	117,442	111,570
Year 3	116,855	111,012
Year 4	116,271	110,457
Year 5	115,689	109,905
Year 6	115,111	109,355
Year 7	114,535	108,809
Year 8	113,963	108,265
Year 9	113,393	107,723
Year 10	112,826	107,185
Year 11	112,262	106,649
Year 12	111,701	106,116
Year 13	111,142	105,585
Year 14	110,586	105,057
Year 15	110,033	104,532

Year 16	109,483	104,009
Year 17	108,936	103,489
Year 18	108,391	102,972
Year 19	107,849	102,457
Year 20	107,310	101,944

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

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

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

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

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

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

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

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

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

Guarantor:

Signature:

Printed Name: Shawn Marshall

Title: Chief Executive Officer

Date:

Purchaser:

Signature:

Printed Name:

Title:

Date:
