

MICROGRID INCENTIVE PROGRAM GRANT AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY

and

Dated:

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MICROGRID INCENTIVE PROGRAM GRANT AGREEMENT

This Microgrid Incentive Program (MIP) Grant Agreement (this “Agreement”) is made by and between Pacific Gas and Electric Company, a California corporation (“PG&E”), with its principal place of business at 300 Lakeside Drive, Oakland, CA 94612 and _____ (“Awardee”), with its principal place of business at _____ as of _____ (“the Execution Date”). Awardee and PG&E are referred to individually as “Party” or collectively as “Parties.” PG&E and Awardee hereby agree to the following:

RECITALS

- A. Whereas PG&E is a public utility providing both wholesale and retail electric power and energy sales and transmission in northern and central California and which owns an extensive electric transmission and distribution system within that area;
- B. Whereas the Awardee is a [Local Government]/[tribal authority]/[an entity or individual acting as a representative for a Local Government/tribal authority], that intends to develop and operate a community microgrid project under PG&E’s Microgrid Incentive Program (“MIP”);
- C. Whereas, pursuant to the MIP, Awardee is eligible for an Incentive Award for MIP Project Resources and Balance of System [of up to \$14M], an Allowance for Interconnection Upgrades and Facilities [of up to \$1M], and an Allowance for Microgrid Special Facilities [of up to \$3M];
- D. Whereas the MIP Project is governed by PG&E’s Community Microgrid Enablement Tariff (“CMET”), which was approved by the California Public Utilities Commission (“CPUC”), and existing rules and tariffs;
- E. Whereas, under the MIP, the MIP Project will require the following: 1) Interconnection Agreement for MIP Project Resources; 2) Microgrid Islanding Study to determine the MIP Project Balance of System and operational requirements; 3) PG&E Microgrid Special Facilities Agreement; and 4) PG&E Microgrid Operating Agreement (“MOA”) to govern the development and operation of the MIP Project; and,
- F. Now, therefore, Awardee wishes to enter into this Agreement with PG&E to govern the issuance of, conditions related to, and accounting for the incentives and allowances provided to the MIP Project.

AGREEMENT

This Agreement shall be binding as of the Effective Date.

1 TERM

1.1 Term

The term of this agreement commences on the Effective Date and shall remain in effect until the earliest of (i) award of the final milestone-based Incentive Payment, pursuant to Section 2.3 of this Agreement, (ii) a period not to exceed two (2) years from execution of MOA, or (iii) five (5) years from the Effective Date, unless sooner terminated in accordance with Section 7.4(A) of this Agreement (the “Term”).

Notwithstanding the foregoing, the terms and conditions of this Agreement shall thereafter remain in effect until both Parties have fulfilled all obligations arising under this Agreement.

2 INCENTIVE AWARD

2.1 Incentive Award

The maximum total Incentive Award payable by PG&E to Awardee for development of the MIP Project under this Agreement, shall be \$_____, as identified in the approved Application Incentive Request (“AIR”) and attached as Appendix II to this Agreement. Awardee agrees that MIP Project development costs that exceed this amount shall be Awardee’s responsibility.

2.2 Eligible Project Costs

Awardee agrees that Incentive Award may be applied exclusively to Eligible Project Costs in accordance with (i) applicable provisions of the law, (ii) the CPUC MIP Order¹, and (iii) as identified in Appendix III, consistent with the AIR and Incentive Milestones.

2.3 Incentive Milestones

Subject to this Section 2.3, PG&E shall disburse to the Awardee the Incentive Award on the schedule and in the amounts set forth in the Incentive Milestones identified in Appendix III of this Agreement.

- A. All disbursements shall be contingent upon the Awardee first satisfying the requisite requirements for the Incentive Milestone and posting any required Development Performance Assurance (as defined in Section 4.3) for each such disbursement.
- B. When Awardee has satisfied the requirements for an Incentive Milestone, Awardee shall provide an Incentive Payment Request using the form as provided in Appendix IV identifying Eligible Project Costs with supporting documentation associated with the Milestone activity in form and substance reasonably satisfactory to PG&E. If such

¹ See CPUC Decision [23-04-034](#) Adopting Implementation Rules For The Microgrid Incentive Program

documentation is insufficient to confirm Awardee's satisfaction of such requirements, PG&E will provide Notice to Awardee describing such insufficiencies, and Awardee will have [thirty (30) days] from receipt of such Notice to remedy such insufficiencies to PG&E's reasonable satisfaction.

- C. If Awardee fails to satisfy the requirements for an Incentive Milestone (including a failure to remedy an insufficient Incentive Payment Request, as provided in Section 2.3(B), or anticipates that it will be unable to meet an Incentive Milestone for any reason: PG&E may declare an Awardee's Event of Default as provided in Section 7.1 of this Agreement, and Awardee may be required to develop a cure or be subject to termination of this Agreement pursuant to Section 7.4.

3 ALLOWANCES

3.1 Microgrid Special Facility Allowance

PG&E shall provide a Microgrid Special Facilities Allowance not to exceed three (3) million dollars as a credit against Awardee's responsibility for PG&E's costs to study and enable the safe islanding of a Community Microgrid as identified in the Microgrid Special Facility Agreement attached to the MOA, subject to this Section 3.1. PG&E's Microgrid Special Facilities Allowance costs may include, but are not limited to, a Microgrid Islanding Study (MIS), isolation devices, fault protection devices, utility microgrid controller, and distribution system hardening, as described in Appendix VI. PG&E rules and procedures for special facilities, as may be modified by the CPUC from time to time, shall apply to MIP projects. At the time the Generator Interconnection Agreement is negotiated for this MIP Project, Awardee shall ensure that the up-front "One-time payment" option for the cost of ownership is selected to be eligible for the Microgrid Special Facilities Allowance; if this option is not selected, Awardee will not be eligible for the Microgrid Special Facilities Allowance.

3.2 MIP Interconnection Allowance

PG&E shall provide a MIP Interconnection Allowance not to exceed one (1) million dollars as a credit against Awardee's responsibility for PG&E's costs for Interconnection Study deposits or fees for eligible In Front of the Meter (IFOM) MIP Project Resources, and for required Interconnection Facilities and Distribution Upgrades identified in the Interconnection Study attached with MOA, subject to this Section 3.2. PG&E rules and procedures for interconnection, as may be modified by the CAISO and/or CPUC from time to time, shall apply to MIP projects. At the time the Generator Interconnection Agreement is negotiated for this MIP Project, Awardee shall ensure that the up-front "One-time payment" option for the cost of ownership is selected to be eligible for the Interconnection Allowance; if this option is not selected, Awardee will not be eligible for the Interconnection Allowance.

4 PERFORMANCE REQUIREMENTS

4.1 MIP Project Operating Performance Requirements

Awardee, directly or through its contractors and Community Microgrid Aggregator (CMG Aggregator) it engages to satisfy some or all of the performance obligations on its behalf, shall ensure that the MIP Project is designed and constructed to satisfy the following MIP Project Operating Performance Requirements (collectively, the “Operating Performance Requirements”) during commissioning testing to receive Islanding Operation Date (IOD):

- A. The MIP Project resources shall be sized and operated to serve a minimum of 24 consecutive hours of energy in Island Mode as determined by a typical load profile within the Microgrid Boundary as identified in the Microgrid Islanding Study attached with MOA.
- B. The MIP Project Resources must comply with the emissions standards adopted by the California Air Resources Board (CARB), pursuant to the distributed generation certification program requirements of Section 94203 of Title 17 of the California Code of Regulations, or any successor regulation.
- C. The MIP Project, when operating in Island Mode, shall not produce aggregate emissions from MIP Project Resources and non-Project Resources greater than the equivalent emissions from grid power.
- D. The MIP Project must successfully meet the Operating Performance Requirements as specified in Appendix XII of the MOA.

If the MIP Project fails to satisfy all of the Operating Performance Requirements as set forth in this Section 4.1, then PG&E may declare an Awardee’s Event of Default as provided in Section 7.1 of this Agreement, and Awardee may be required to develop a cure or be subject to termination of this Agreement pursuant to Section 7.4 of this Agreement.

4.2 MIP Project Development Performance Assurance

Subject to, and as more particularly described in Appendix IX, Awardee must post and maintain Development Performance Assurance in the amount of 100% of each Incentive Award made under this Agreement as cash or a letter of credit to secure the obligations of Awardee under the MOA through the CMET Project Islanding Operation Date (as such term is defined in the MOA). If there is no outstanding Event of Default by Awardee under this Agreement as of the CMET Project Islanding Operation Date, PG&E will return or release the Development Performance Assurance as provided in Appendix IX.

5 **PROJECT REPORTING AND AUDITING**

During the Term, the Awardee shall furnish to PG&E a MIP Project Progress Report using the form as provided in Appendix VII with supporting documentation in form and substance reasonably satisfactory to PG&E. Progress Reports shall indicate whether Awardee is on target to meet Incentive Milestones, including if Awardee anticipates that it will be unable to meet an Incentive Milestone for any reason. Awardee shall promptly give such other relevant information as may be required by PG&E and/or the CPUC.

5.1 Project Reporting Frequency

- A. Within fifteen (15) days after the close of each quarter from the first quarter following the Execution Date, until the Island Operation Date, provide to PG&E a quarterly

Progress Report and agree to regularly scheduled meetings between representatives of PG&E and Awardee to review such quarterly reports and discuss Awardee's development progress.

- B. Within fifteen (15) days after the close of each month following the execution of the MOA until the Island Operation Date, provide to PG&E a monthly Progress Report and agree to regularly scheduled meetings between representatives of PG&E and Awardee to review such monthly reports and discuss Awardee's development progress.

5.2 CPUC Regulatory Reporting

The Awardee shall comply with all CPUC regulatory reporting requirements (without limitation thereto) by providing PG&E with all required data in a format suitable for submittal to the CPUC as may be reasonably requested by PG&E from time to time. The regulatory reports shall contain all information and be in a format as may be required and/or modified by the CPUC from time to time.

5.3 Audit

PG&E has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the Awardee to the extent reasonably necessary to verify the accuracy of any invoice, Project Report, or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and in the associated Incentive Payment or future Incentive Payment, including return of any incentive overpayments, shall be made as determined by PG&E.

5.4 Final Project Report

The Awardee shall deliver a final Project Report to PG&E at the conclusion of the MIP Project as directed by PG&E no later than 6 (six) months after IOD. The final Project Report shall, at a minimum, provide a discussion addressing each of the following sub-topic:

- a. MIP Project Overview (including total project cost, duration, and any variances);
- b. Summary of MIP Project Accomplishments;
- c. Description of Challenges or Other Issues
- d. MIP Program Improvement Recommendations; and
- e. Other items requested by PG&E.

6 **LIABILITY, INDEMNITY, CONSEQUENTIAL DAMAGES, AND INSURANCE**

6.1 Limitation of Remedies, Liability and Damages

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN

EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION (OTHER THAN IN SECTION 6.2) OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 6.2, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

6.2 Indemnity

- A. Awardee shall indemnify, protect, defend, and hold harmless PG&E from liability incurred to third parties as a result of carrying out the provisions of this Agreement as applicable to the MIP Project. Liability under this provision is exempt from the general limitations on liability found in Section 6.1.
- B. Awardee shall at all times indemnify, defend, and hold PG&E harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the Awardee's action or failure to meet its obligations under this Agreement, except in cases of gross negligence or intentional wrongdoing by PG&E.
- C. If PG&E is entitled to indemnification under this Section 6.2 as a result of a claim by a third party, and Awardee fails, after notice and reasonable opportunity to proceed under this Section 6.2, to assume the defense of such claim, PG&E may at the expense of the Awardee contest, settle or consent to the entry of any judgment with respect to, or pay

in full, such claim.

- D. If Awardee is obligated to indemnify and hold PG&E harmless under this Section 6.2, the amount owing to PG&E shall be the amount of PG&E's actual loss, net of any insurance or other recovery.

Promptly after receipt by PG&E of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article 6 may apply; PG&E shall notify the Awardee of such fact. Any failure of or delay in such notification shall not affect the Awardee's indemnification obligation unless such failure or delay is materially prejudicial to the Awardee.

7 EVENTS OF DEFAULT AND TERMINATION

7.1 Events of Default

- A. Awardee: The Awardee will be deemed a "Defaulting Party" upon the occurrence of any of the following (each an "Event of Default"):
- (a) Any false statement, representation contained in this Agreement, in the Application Incentive Request, or in any other document submitted to PG&E under this Agreement is found by PG&E to be false or misleading.
 - (b) The Awardee fails to satisfy the requirements for an Incentive Milestone as set forth in Section 2.3(C) of this Agreement.
 - (c) Withdrawal of the request for a Microgrid Islanding Study or an interconnection request for the MIP Project.
 - (d) Lack of execution of an MOA for the MIP Project within ninety (90) days of execution of the later of any application Interconnection or Special Facilities Agreements as required by the CMET.
 - (e) Termination of the MOA for the MIP Project, or of any other agreement required for the development and operation of the MIP Project, including, but not limited to the MIP Project Resource Interconnection Agreement.
 - (f) Failure of the MIP Project Resource to achieve commercial operations pursuant to its Interconnection Agreement.
 - (g) Failure of the MIP Project to satisfy all the Operating Performance Requirements as set forth in Section 4.1 of this Agreement.
 - (h) Non-conformance of the MIP Project with the eligibility requirements set forth in the CMET.
 - (i) Requirement by an Order from the CPUC or other Regulatory Authority with jurisdiction over either of the Parties that the Agreement or the MIP Project be terminated.
- B. Either Party: Either Party will be deemed a "Defaulting Party" if a Party fails to perform any of its material obligations or covenants under this Agreement not otherwise addressed in this Section 7.1 when and as required (each an "Event of Default").

7.2 Default Notice & Remedy

- A. Upon the occurrence of an Event of Default, the non-defaulting Party shall give written Notice of such default to the Defaulting Party. For Events of Default the Defaulting Party shall otherwise have sixty (60) Calendar Days from receipt of the Default Notice within which to cure such Event of Default; provided however, if such Event of Default is not capable of cure within sixty (60) Calendar Days, the Defaulting Party shall commence such cure within twenty (20) Calendar Days after notice and continuously and diligently complete such cure within six (6) months from receipt of the Event of Default Notice; and, if cured within such time, the Default specified in such Notice shall cease to exist.
- B. If an Event of Default is not cured as provided in this Section 7.2 and is ongoing, the non-Defaulting Party shall have the right to terminate this Agreement by written notice at any time be relieved of any further obligation hereunder. and, whether or not that Party terminates this Agreement, to recover from the Defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled under this Agreement at law or in equity. The provisions of this Section 7.2.(B) will survive termination of this Agreement.
- C. In the event of early termination of this Agreement prior to completion of the MIP Project, any amounts associated with MIP Incentive Award funds that are recovered by the Awardee in connection with the exercise of Awardee's rights under contracts with its contractors and CMG Aggregator, less any costs or expenses incurred by Awardee in connection with such recovery, shall be returned by Awardee to PG&E.

7.3 Waiver

- A. The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.
- B. Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this Agreement. Any waiver of this Agreement shall, if requested, be provided in writing.

7.4 Termination

In the event of a termination of this Grant Agreement pursuant to Sections 7.1 such termination will be effective as of the date designated in writing by the non-Defaulting Party, at its sole discretion, provided that any termination pursuant to Section 7.1.A.(i) will be effective on a date consistent with said Order.

8 **GOVERNMENTAL CHANGES**

8.1 Cooperation

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Governmental Charges

Awardee shall pay or cause to be paid all taxes or fees imposed by any Governmental Authority (Governmental Charges) on or with respect to the MIP Project, by reason of the execution, delivery, performance or enforcement of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Law.

9 COVENANTS

9.1 General Covenants

Each Party covenants throughout the Term of this Agreement as follows:

- A. It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and qualified to conduct business in the State of California and in all jurisdictions where ownership of its properties or its operations require such qualifications, except where the failure to do so would not have a material adverse effect on its financial condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;
- B. It shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;
- C. It shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it;
- D. It shall follow all rules, orders and tariffs approved or established by the CPUC and the CAISO with respect to the MIP Project development and operation, provided that if Awardee is not the CMG Aggregator for the MIP Project, Awardee will ensure that CMG Aggregator shall follow all such rules, orders and tariffs.

9.2 Covenants of Awardee

Awardee covenants to and for the benefit of PG&E throughout the Term:

- A. It shall apply the MIP Incentive Award funds solely towards Eligible Project Costs, in accordance with the requirements of the Incentive Milestones, and
- B. It shall comply, and shall ensure that CMG Aggregator complies, with all applicable Laws, Applicable Rules and Standards, and to the Utility Distribution Company requirements applicable to the MIP Project.

10 ASSIGNMENT

10.1 General Assignment

Neither Party will assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent will not be unreasonably conditioned, delayed, or

withheld so long as (a) the assignee assumes the transferring Party's performance obligations under this Agreement, (b) the assignee agrees in writing to be bound by the terms and conditions hereof, (c) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder, (d) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request, and (e) in the case of Awardee as the transferring Party with a transfer to an assignee that will have operational control of the MIP Project, Awardee delivers to PG&E, upon PG&E's request, documentation to demonstrate the assignee is capable of satisfying and complying with all provisions of this Agreement.

10.2 Assignment in Connection with a Change in Control

Any direct change of control of Awardee or Awardee's Parent (whether voluntary or by operation of Law) is deemed an assignment and shall require the prior written consent of PG&E which consent shall not be unreasonably conditioned, delayed or withheld, provided that the requirements identified in Section 10.1(a) through (e) are met. Awardee shall use commercially reasonable efforts to provide PG&E (a) Notice at least ten (10) days prior to the effectiveness of any indirect change in control, and shall in any event provide such Notice no later than ten (10) Business Days after the indirect change in control, and (b) such other information as PG&E may reasonably request in connection with such change in control.

10.3 Unauthorized Assignment

Any attempted assignment that violates this Article 10 is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the Awardee. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

11 DISPUTE RESOLUTION

The Parties agree to attempt to resolve all disputes associated with this Agreement according to the provisions of this Article 11.

11.1 Notification and Negotiation

- A. In the event of a dispute, the dispute shall be documented in a written Notice by the aggrieved Party to the other Party containing the relevant known facts pertaining to the dispute, the specific dispute and the relief sought, and express Notice by the aggrieved Party that it is invoking the procedures under this Article 11. The Notice shall be sent to the Party's email address and physical address set forth under Notices in Article 13. A copy of the Notice shall also be sent to the Energy Division, Office of the Director, at the CPUC. The receiving Party shall acknowledge the notice within five (5) Calendar Days of its receipt.
- B. Upon the aggrieved Party notifying the other Party of the dispute, each Party must designate a representative with the authority to make decisions for its respective Party

to review the dispute within seven (7) Calendar Days.

- C. Upon receipt of Notice, receiving Party shall provide the aggrieved Party with all relevant regulatory and/or technical details and analysis regarding the MIP Project under dispute within twenty-one (21) Calendar Days.
- D. Within forty-five (45) Calendar Days of the date of the Notice, the Parties' Authorized Representatives will be required to meet and confer to try to resolve the dispute. Parties are expected to operate in good faith and use best efforts to resolve the dispute.
- E. If a resolution is not reached in forty-five (45) Calendar Days from the date of the notice, either 1) a Party may request to continue negotiations for an additional forty-five (45) Calendar Days or 2) the Parties may by mutual agreement make a written request for mediation to the Alternative Dispute Resolution (ADR) Coordinator in the CPUC's Administrative Law Judge (ALJ) Division. The request may be submitted by electronic mail to adr_program@cpuc.ca.gov. Alternatively, both Parties by mutual agreement may request mediation from an outside third-party mediator with costs to be shared equally between the Parties.
- F. At any time, either Party may file a formal complaint before the CPUC pursuant to California PUC section 1702 and Article 4 of the CPUC's Rules of Practice and Procedure. Nothing in this section shall be construed to limit the rights of any Party to exercise rights and remedies under CPUC law.

11.2 Performance During Dispute

- A. Pending resolution of any dispute under this Article 11, the Parties shall proceed diligently with the performance of their respective obligations under this Agreement unless this Agreement has been terminated.
- B. If a dispute for which a Party has provided a Notice pursuant to this Article 11 remains unresolved to the satisfaction of either Party more than sixty (60) days following receipt of the Notice, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

12 GENERAL PROVISIONS

12.1 General

All attached Appendices are hereby incorporated by reference and are made part of this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). The headings used herein are for convenience and reference purposes only.

12.2 Severability

If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

12.3 Counterparts

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by e-mail will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by e-mail will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

12.4 Interpretation

The following rules of interpretation apply:

- A. The term “including” means “including without limitation”; the terms “year” and “calendar year” mean the period of months from January 1 through and including December 31; the term “month” means a calendar month unless otherwise indicated, and a “day” means a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a “day” may be 23 or 25 hours on those days on which daylight-saving time begins or ends, respectively.
- B. Unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld, unreasonably conditioned or unreasonably delayed.
- C. Unless otherwise specified herein, all references herein to any Order, tariff, agreement, or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding Order, tariff, agreement or document as then exist at the applicable time to which such construction applies unless otherwise specified.
- D. In the event of any conflict between the terms and conditions of this Agreement and any of the following agreements, the terms and conditions of the following agreements will control: the MOA, any MIP Project Interconnection Agreements under PG&E’s Electric Rule 21 or PG&E’s Wholesale Distribution Tariff, PG&E’s Electric Rule 2, and any Microgrid Special Facilities Agreements.
- E. Capitalized terms used in this Agreement, including the appendices hereto, have the meaning set forth in Appendix I-B, unless otherwise specified.
- F. References in the singular include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons include partnerships, firms, companies, corporations, limited liability companies, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of

defined words or phrases have corresponding meanings.

- G. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. Words referring to market rules, activities and practice have the meaning generally ascribed to such words in California.
- H. References to a particular section, subsection, paragraph, subparagraph, appendix, or attachment will, unless specified otherwise, be a reference to that section, subsection, paragraph, subparagraph, appendix, or attachment in or to this Agreement.
- I. Any reference in this Agreement to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, limited liability company, partnership or other legal entity succeeding to its functions.
- J. All references to dollars or “\$” are to U.S. dollars.
- K. When an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. on such day, Pacific prevailing time, and actions occurring after 5:00 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day.

12.5 Recordings

No conversation between the Parties may be recorded by a Party without the express consent of the other Party.

12.6 Authorized Representatives

Each Party shall provide Notice to the other Party of the persons authorized to make or receive other Notices on behalf of such Party or to represent a Party (“Authorized Representative”) and in connection with such Notices and specify the scope of their individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time in its sole discretion by providing Notice.

12.7 No Dedication

Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any Person not a Party to this Agreement. No undertaking by one Party to the other Party under any provision of this Agreement shall constitute the dedication of that Party’s system or any portion thereof to the other Party or the public, nor affect the status of PG&E as an independent public utility corporation or Awardee as an independent individual or entity.

12.8 Governing Law

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 CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

12.9 Taxes

- A. The Parties agree to follow all applicable tax laws and regulations.
- B. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect PG&E's tax-exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

12.10 Regulatory Oversight

The Agreement shall be subject to changes or modifications by the California Public Utilities Commission, as said Commission may, from time to time, direct in the exercise of its jurisdiction.

[Note: Section 12.11 applicable solely if Awardee is a sovereign Indian tribe]

12.11 Limited Waiver of Sovereign Immunity

Awardee agrees to provide a limited waiver of sovereign immunity as set forth in Appendix VIII. In the event of a conflict between Appendix VIII and any other waivers set forth in this Agreement, Appendix VIII shall control.

13 NOTICES

13.1 Notices

Whenever this Agreement requires or permits delivery of a Notice (or requires a Party to "Notify"), the Party with such right or obligation shall provide a written communication in the manner specified below. Notices may be sent by overnight mail or courier or e-mail. Invoices may be sent by e-mail. A Notice sent by e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Notices shall be addressed as follows:

PG&E:
(Name)
(Title)
(Address)
(email)
(phone)

Awardee:
(Name)
(Title)
(Address)
(email)
(phone)

14 SIGNATURE

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its Authorized Representative as of the dates provided below:

a [Awardee] company

**PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I-A – ACRONYMS

ADR – Alternative Dispute Resolution

AIR – Application Incentive Request

ALJ – Administrative Law Judge

CAISO - California Independent System Operator

CARB – California Air Resource Board

CMET - Community Microgrid Enablement Tariff

CMG - Community Microgrid

CPUC - California Public Utilities Commission

IFOM – In Front of the Meter

IOD - Islanding Operation Date

MIP – Microgrid Incentive Program

MIS – Microgrid Islanding Study

MOA - Microgrid Operating Agreement

PG&E - Pacific Gas and Electric Company

APPENDIX I-B – GENERAL DEFINITIONS

1. **Affiliate.** Affiliate of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control,” when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, through one or more intermediaries, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.
2. **Applicable Rules and Standards.** Electric Rule 2, PG&E’s Wholesale Distribution Tariff, CMET and Electric Rule 21.
3. **Application Incentive Request (AIR).** The amount of funding, excluding the MIP Application Development Grant, requested by the MIP Applicant.
4. **Authorized Representative.** As defined in Section 12.6.
5. **Awardee.** The entity that is counterparty to this Grant Agreement.
6. **Balance of System.** All of the MIP Project tangible and non-tangible assets, facilities, and equipment owned or controlled by the CMG Aggregator, other than the MIP Project Resources and Non-Project Resources, necessary to meet the requirements of the MIP Project as identified in the Microgrid Islanding Study and listed in Appendix V - MIP Project Resources and Balance of System Facilities of MOA.
7. **Blue Sky Mode.** The normal mode of operation when the Community Microgrid is interconnected to and operating in parallel with the Distribution System, is not operating in Island Mode, and PG&E maintains operational coordination of the delivery of electric service.
8. **Business Day.** Monday through Friday, excluding Federal Holidays and the Friday after Thanksgiving
9. **CAISO.** The California Independent System Operator Corporation or any successor entity performing similar functions.
10. **Calendar Day.** Any day, including Saturday, Sunday or a Federal and State Holiday
11. **California Public Utility Commission or Commission or CPUC.** The Public Utilities Commission of the State of California
12. **Community Microgrid (CMG).** As defined in PG&E’s Community Microgrid Enablement Tariff.
13. **Community Microgrid Aggregator (CMG Aggregator).** The entity that is counterparty

to the MOA. The CMG Aggregator coordinates control of MIP Project Resources consistent with relevant provisions of PG&E's Electric Rule 2, PG&E's Wholesale Distribution Tariff Generator Interconnection Procedures, and PG&E's Electric Rule 21 including frequency and voltage and other power quality requirements within PG&E established control parameters to enable the MIP Project to operate in Island Mode.

14. **Contractor.** The engineering, procurement, and construction contractor and its subcontractors, as well as Awardee or Awardee's Affiliates and their subcontractors if any such entities are developing, constructing, operating or maintaining the MIP Project during the Term, and any entity or person under contract with Awardee or Awardee's Affiliates for the purpose of developing, constructing, operating or maintaining the MIP Project during the Term.
15. **Defaulting Party.** The Party that is subject to an Event of Default
16. **Development Performance Assurance or DPA.** As defined in Section 4.3 of this Agreement.
17. **Distribution Provider.** PG&E, which owns, controls, and operates facilities used to provide Distribution Service to the customers within the Microgrid Boundary under this MIP.
18. **Distribution System.** PG&E's distribution system broadly consists of the stepdown transformation with substations, the primary distribution circuits, and the secondary distribution system. The secondary distribution system consists of the line transformers that step the primary voltage down to a secondary voltage, and the secondary conductors including service drops and meters.
19. **Distribution Upgrades.** The additions, modifications, and upgrades to PG&E's Distribution System necessary to facilitate construction and microgrid operation of the MIP Project. Distribution Upgrades do not include the CMG Aggregator's Project Balance of System.
20. **Effective Date.** The date upon which both Parties have executed this Agreement.
21. **Eligible Project Cost.** All necessary, reasonable, and directly attributable costs incurred in the execution and completion of the MIP Project, as approved by PG&E in Appendix VI. Any costs incurred outside the parameters set forth in this Agreement or deemed non-essential, extravagant, or unrelated to the Project's primary objectives shall be excluded from the definition of "Eligible Project Cost".. The determination of eligibility for any cost shall be at the sole discretion of PG&E, and such determination shall be final here.
22. **Event of Default.** The failure of a Defaulting Party to cure a default under this Agreement.
23. **Final Project Report.** Is a document submitted by the Awardee to PG&E within six months after the Initial Operation Date (IOD) providing an overview of the project, summarizes accomplishments, recommends improvements, describes challenges, and

includes any additional information requested by PG&E.

24. **Governmental Authorities.** Any federal, State, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory, or administrative body, having jurisdiction as to the matter in question.
25. **Grid Forming Project Resource(s).** Is a MIP Project Resource that, among other features, has the ability to (i) black start the MIP Project when in Island Mode and deenergized, and (ii) provide voltage and frequency stability and control within a range acceptable to PG&E during Island Mode operation.
26. **Incentive Award.** An Incentive Award is the amount of MIP incentive funding allocated to a MIP project by PG&E at its sole discretion. The Incentive Award amount is based on an MIP Applicant's AIR, subject to availability of MIP funds and MIP program requirements per the MIP Handbook.
27. **Incentive Milestone.** The Incentive Award shall be paid to the Awardee through a series of Incentive Payments associated with a successive set of project milestones based on key development activities during the Term. The milestones must be agreed upon completion dates required for the development and operation of the MIP Project and subsequent payment of incentives as set forth in Appendix III of this Agreement.
28. **Incentive Payment.** Incentive Payment refers to the portion of the MIP Incentive Award, allocated to a specific MIP project by PG&E.
29. **Interconnection Agreement.** The agreement and associated documents or any successor agreement and associated documentation governing the terms and conditions of the interconnection of the MIP Project Resource(s) with PG&E's grid, including any description of the plan for interconnecting the MIP Project Resource(s) to the grid.
30. **Interconnection Allowance.** An amount funded by utility ratepayers in addition to the MIP Incentive Award, the MIP Application Development Grant, and the Microgrid Special Facilities Allowance that covers all or a portion of the costs of Interconnection Studies, Interconnection Facility Upgrades, and Distribution Upgrades identified per the applicable interconnection tariff for eligible Project Resources.
31. **Interconnection Facilities.** The electrical wires, switches and related equipment that are required in addition to the facilities required to provide electric Distribution Service to a Customer to allow Interconnection. Interconnection Facilities may be located on either side of the Point of Common Coupling as appropriate to their purpose and design. Interconnection Facilities may be integral to a Generating Facility or provided separately. Interconnection Facilities may be owned by either Producer or PG&E.
32. **Interconnection Study.** A study to establish the requirements for interconnection of a Generating Facility to PG&E's Distribution System or Transmission System, pursuant to WDAT or Electric Rule 21, as applicable.

33. **Island Mode.** Operation of the Microgrid by the Distribution Provider when a Microgrid that normally operates in “Blue Sky” Mode (parallel mode) is disconnected from the Distribution System at the Microgrid Islanding Point. The Distribution Provider will operate the Microgrid in Island Mode by (i) direct dispatch of MIP Project Resources within the Microgrid Boundary, and/or (ii) by authorizing MIP Project Resources to operate within parameters specified by the Distribution Provider for voltage, frequency, and power quality.
34. **Islanding Operation Date (IOD).** Means the date state in the "CMET Project Islanding Operation Date Confirmation Letter" attached as Appendix XI-B has been mutually executed and the CMET Project is placed into service for the purposes of providing energy resiliency for end use customers.
35. **Law.** Any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Effective Date, and which become effective during the Term; or any binding interpretation of the foregoing.
- ~~36.~~
37. **Microgrid.** An interconnected system of loads and energy resources, including, but not limited to, distributed energy resources, energy storage, demand response tools, or other management, forecasting, and analytical tools, appropriately sized to meet customer needs, within a clearly defined microgrid boundary that can act as a single, controllable entity, and can connect to, disconnect from, or run in parallel (Blue Sky Mode) with, larger portions of the electrical grid, or can be managed and isolated to withstand larger disturbances and maintain electrical supply to connected critical infrastructure.
38. **Microgrid Incentive Program (MIP).** A Program to enable community-proposed microgrids that provide enhanced resilience for vulnerable customer groups and/or critical facilities pursuant to California Public Utilities Commission (CPUC) Decision (D.) 21-01-018 in Track 2.
39. **Microgrid Islanding Study (MIS).** An engineering study conducted by PG&E or its agents of the microgrid operation in an Island Mode and operating mode transitions. The study shall determine the required modifications to the PG&E’s Distribution Facilities and associated cost required to support Island Mode operation and microgrid transitions while maintaining voltage, frequency, and power quality within PG&E control parameters in accordance with PG&E’s Electric Rule 2.
40. **Microgrid Operating Agreement (MOA).** An agreement between the PG&E and the MIP Community Microgrid Aggregator that governs MIP Project development and testing, and commercial operations to ensure safety and service quality in compliance with applicable

PG&E rules.

41. **Microgrid Special Facilities.** Modifications to the PG&E's Distribution Facilities required to operationalize the Microgrid Boundary and Island Mode such that the Microgrid is capable of maintaining voltage, frequency, and power quality within the PG&E's control parameters in accordance with Electric Rule 2.
42. **Microgrid Special Facilities Agreement or "Microgrid SFA."** The agreement that describes the upgrades on the Distribution System, and at the MIP Project Site to be installed under the terms and conditions regarding Microgrid Special Facilities (or added facilities) on file with the CPUC, pursuant to PG&E's Electric Rule 2, and incorporated in Appendix IV-B of MOA.
43. **Microgrid Special Facilities Allowance.** An amount funded by utility ratepayers in addition to the MIP Incentive Award, the MIP Application Development Grant, and the Interconnection Allowance to cover all or a portion of the costs of the Microgrid Special Facilities cost and the MIS.
44. **MIP Application Development Grant.** A one-time, optional, limited, MIP-funded grant to MIP Applicants who submit an eligible MIP application and request such reimbursement.
45. **MIP Project.** Tangible and non-tangible assets, facilities, and equipment needed to create and operate a Community Microgrid, including the MIP Project Resources, Microgrid Special Facilities, MIP Project Balance of System, contract rights, easements, rights of way, licenses and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the Community Microgrid subject to the CMET.
46. **MIP Project Resource(s).** Electric generation, storage technology, and/or load management technology that the CMG Aggregator has control over consistent with relevant provisions in the MOA to enable the MIP Project to safely and reliably operate in Island Mode. The CMG Aggregator must have at least one Grid-Forming Project Resource that has a resource controller and has grid-forming capability sufficient to allow acceptable frequency and voltage during Island Mode operation. Project Resources must comply with the emissions standards adopted by the State Air Resources Board pursuant to the distributed generation certification program requirements of Section 94203 of Title 17 of the California Code of Regulations, or any successor regulation, and must be interconnected to the Distribution System within the Microgrid Boundary (either directly as front-of-the-meter Project Resources or indirectly as behind-the-meter Project Resources) pursuant to the Wholesale Distribution Tariff or PG&E's Electric Rule 21.
47. **Notice.** Unless otherwise specified in this Agreement, means a written communication which is delivered by overnight mail or courier service or electronic messaging (email), and in the manner required by Section 13, as applicable to a given communication.

48. **Operating Performance Requirements or OPA.** As defined in Section 4.1 of this Agreement.
49. **Operating Term Performance Assurance.** As defined in the MOA.
50. **Permit.** Any waiver, exemption, variance, franchise, permit, authorization, consent, ruling, certification, license, or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that authorizes, approves, limits, or imposes conditions upon a specified activity.
51. **State.** The State of California
52. **Term.** As defined in Section 1.1 of the Agreement

APPENDIX II – APPLICATION INCENTIVE REQUEST (AIR)

The Awardee's AIR with proposed Project Development Plan including proposed scheduled and estimated costs will be appended here.

APPENDIX III – INCENTIVE MILESTONES

An Incentive Milestone Payment schedule as illustrated below shall be completed for each MIP Project. The Incentive Milestone Payment schedule will be derived from the estimated project costs in the Awardee's Project Development Plan and the total amount of incentive awarded. The Incentive Milestone schedule will describe each milestone, the proposed completion date, total estimated cost to complete, the estimated Incentive Request anticipated for each Milestone, and the percentage each milestone payment is in relation to the total MIP Award.

Illustrative Example of an Incentive Milestone Payment Schedule

MIP Incentive Payment Milestones						
Milestone*	Description	Proposed Completion Date*	Estimated Cost to Complete*	Estimated MIP Incentive Request**	% of MIP Award	Comments
1	Project Engineering Design					
2	Project Site Acquisition & Permitting					
3	Project Site Preparation					
4	Project Resource/s Delivered to Site					
5	Project Resources Installed w/PTO Received					
6	Microgrid Balance of System Installed					
7	Islanding Operation Date Confirmation Letter issued					
		Totals:	(Total PDP Cost)	[Amount Awarded]	100%	

*Milestones based on MIP Project Development Plan tasks, schedule and estimated costs to complete

** Estimated MIP incentive payment request at each milestone based on MIP Project Development Plan

APPENDIX IV – INCENTIVE PAYMENT REQUEST COVER SHEET

Pursuant to Section 2.3 of the Grant Agreement dated as of (insert date) between the Awardee and the PG&E, Awardee hereby submits an Incentive Payment Request as follows:

Incentive Milestone Number (per Appendix III): _____

Incentive Payment Request: \$ _____

Total Incentive Requests to Date: \$ _____

MIP Incentive Award (per Section 2.1): \$ _____

Incentive Award Amount Remaining: \$ _____

Awardee certifies that:

- A. To the best of their knowledge and belief, all payments requested are correct, accurate, and complete, that payment therefore has not been received and that all amounts requested are for the appropriate purposes and in accordance with this Agreement.
- B. After giving effect to the disbursement requested pursuant to this Incentive Payment Request, the total Incentive Payments disbursed will not exceed the maximum amount set forth in Section 2.1.
- C. The representations and warranties made in the Agreement are true and correct in all material respects as if made on the date hereof.
- D. No Event of Default has occurred and is continuing under the Agreement [or the MOA]
- E. The undersigned is authorized to execute this Incentive Payment Request on behalf of Awardee.

Signature of Authorized Requestor

Title

Date

APPENDIX V – SCHEDULE 1 TO INCENTIVE PAYMENT REQUEST COVER SHEET

The following sample schedule shall be used to support the Incentive Payment Request. This sample schedule should be used to itemize the Eligible Project Costs associated with the Milestone tasks associated with an Incentive Payment Request. Awardee shall verify that costs are eligible for incentive payment and the status of the activity. If the activity and related cost element is not complete, the estimated cost to complete shall be provided.

Task *	Cost Element & Description**	Incentive Amount Requeste d	MIP Eligible Cost (Y/N)	Activity Complete (Y/N)	Estimated Cost to Complete** *	Comment s
Total:						

* MIP Project Development Plan tasks identified in the Project Development Plan at Work Breakdown Structure (WBS) Level 2.

** Identify the specific cost element associated with a task for which an incentive payment is requested.

*** Only needs to be filled in if task is not fully completed at the Milestone

APPENDIX VI – ELIGIBLE PROJECT COSTS

Eligible Project Costs include the following:

- The costs for purchasing IFOM MIP Project Resources and their grid-forming and grid-following inverters. To be eligible, none of these resources can be part of an Interconnection Agreement with PG&E executed before the close of the Application Window used for your Microgrid Application.
- The costs for purchasing IFOM MIP Project Resource's controller, protection, and communications equipment.
- Permitting and licensing expenses incurred for IFOM MIP Project Resource(s) and Balance of System prior to a microgrid's Islanding Operation Date.
- Expenses related to reconfiguring behind-the-meter (BTM) electric service equipment so specific customer or facility loads can be isolated and served when the microgrid is in Island Mode.
- Project management costs, including costs related to engineering, studies, system integration, and construction activities for IFOM MIP Project Resource and Balance of System. Includes site preparation, civil, electrical, and mechanical work.
- Expenses associated with purchasing or leasing property for the IFOM MIP Project Resources and Balance of Systems Leasing property expenses should reflect the present value of the lease for the property needed for the IFOM MIP Project Resources and Balance of System.
- Costs related to community outreach activities conducted for the microgrid.
- Costs associated with developing a microgrid proposal and MIP Application, to the extent not covered in the optional MIP Application Development Grant.
- Related legal costs.
- Taxes to the extent applicable on any of the above.
- Costs related to providing a Letter of Credit as Development Performance Assurance, provided that such costs do not exceed five percent (5%) of the total amount of the AIR.

Costs that are not eligible for MIP incentive award include but may not be limited to:

- Costs related to behind-the-meter resources associated with a MIP Project, including interconnection studies and distribution upgrades as may be applicable.
- Expenses associated with the operation and maintenance of the MIP Project.
- Other ineligible costs as identified in the CPUC's Decision 23-04-034, as may from time to time be modified by the CPUC.

APPENDIX VII – MIP PROJECT REPORTING FORM

MIP Project Reports shall include a summary description of project development status, including a discussion of any actual and forecast schedule and cost variances, and corrective actions being undertaken to address variances. MIP Project Reports shall also include supporting project status detail in a similar form to the sample table below.

Project Tasks		Project Schedule							Project Costs (\$K)			
		Planned		Forecast		Actual		Schedule				
Task*	Description	Start Date	Completion Date	Start Date	Completion Date	Start Date	Completion Date	Variance (days)	Planned	Actual to Date	Forecast to Completion	Cost Variance
1												
2												
3												
4												
5												
6												
7												
8												
9												
Totals:												

APPENDIX VIII – LIMITED WAIVER OF SOVEREIGN IMMUNITY

- (a) The Parties acknowledge that Awardee is a sovereign Indian tribe, and that, as such, Awardee, its officers, agents and assigns possess sovereign immunity from unconsented suits and other legal proceedings. Nothing in this Agreement shall be deemed to be a waiver of Awardee's sovereign immunity, except as expressly provided in this Appendix VIII. PG&E and Awardee agree that this Agreement is fully enforceable between the Parties. Therefore, Awardee hereby provides this limited express unconditional and irrevocable waiver of Awardee's sovereign immunity, for the limited purpose of enforcing this Agreement (including each and all of the terms and conditions of this Agreement), and in accordance with, and as limited by, the express terms of this Agreement. Awardee provides this limited waiver of its sovereign immunity solely for disputes arising between the parties under this Agreement pursuant to Article 11. This limited waiver shall not apply to any other party or to disputes that do not arise out of this Agreement. PG&E hereby expressly unconditionally and irrevocably agrees that this limited waiver of sovereign immunity provided by Awardee shall be strictly and narrowly construed in favor of Awardee.
- (b) With respect to all actions, suits, claims, proceedings or counterclaims (each, a "Claim"), Awardee and each of its officers, agents and assigns hereby expressly, unequivocally, unconditionally and irrevocably waives its sovereign immunity, and all defenses based thereon, from any Claim brought to enforce or interpret this Agreement, to resolve any controversy arising from this Agreement, or otherwise related to this Agreement, in each case of any nature, whether such Claim is brought in or arises under law, equity, contract, tort or statute (inclusive of Claims for equitable or provisional relief and to compel arbitration, and whether through service of notice, attachment prior to judgment, exercise of contempt powers, or otherwise) (an "Action"), for the limited purpose of resolving Claims and the judicial enforcement thereof, to resolve any controversy arising from this Agreement, to enforce or interpret the express terms and conditions of this Agreement, or otherwise related to this Agreement, as provided for in this Agreement.
- (c) Awardee expressly, unequivocally, unconditionally and irrevocably waives any and all governmental immunities, including sovereign immunity, solely in connection with any Claim brought to enforce or interpret this Agreement, to resolve any controversy arising from this Agreement, or otherwise related to this Agreement and all defenses based thereon as provided for herein for the enforcement of any arbitration award, or judgment to enforce such an award, any form of relief, or order related thereto. Awardee further irrevocably and unconditionally consents to the jurisdiction of the arbitrators and/or specified courts described in Article 11 of this Agreement, including each Party's consent to be bound by a lawful order or judgment, to the extent provided for herein.

- (d) With respect to any Action between PG&E and Awardee, each of the Parties expressly consents and agrees to the dispute resolution provisions set forth in Article 11 of this Agreement, and, without limiting the generality of this Appendix VIII, Awardee hereby agrees that the limited waivers of sovereign immunity described in this Appendix VIII apply and waive Awardee's sovereign immunity (to the extent described in this Appendix VIII in connection with any arbitration under Article 11 of this Agreement and any judgment or award described in Article 11 of this Agreement. Awardee specifically expressly, unequivocally, and irrevocably waives sovereign immunity for the limited jurisdictional purposes set forth in this Appendix VIII and in Article 11 of this Agreement. The Parties specifically agree that the arbitrators and courts set forth in Article 11 of this Agreement shall have jurisdiction to enter judgments enforcing rights and remedies provided for in this Agreement, which shall be binding and enforceable on each Party. Awardee shall not contest jurisdiction or venue to the extent selected in accordance with Article 11 of this Agreement. Awardee hereby waives any argument that a tribal forum has jurisdiction over the limited waiver of sovereign immunity and this Agreement, that it shall not plead or invoke the doctrine of exhaustion of tribal or other administrative or tribal judicial remedies, defenses of tribal immunity or that Awardee is an indispensable party, and Awardee hereby waives any and all such requirements.
- (e) The Parties agree that to the extent any provisions of this Agreement are rendered ineffective by any later changes in tribal law, any such change shall constitute a breach of the terms of this Agreement and be actionable by PG&E under the terms of this Agreement. Awardee waives any benefits, rights, immunities, privileges or limitations in applicable tribal law that would otherwise foreclose any remedy or relief permitted by this Agreement. Awardee hereby consents to injunctive relief, where the standards for such relief are proven, in the forums enumerated in Section 12.8 of this Agreement should Awardee ever attempt to revoke, limit or restrict the limited waiver of sovereign immunity, where the legal standards for such relief are satisfied.
- (f) In any Action as to which Awardee has waived its sovereign immunity as provided herein, Awardee consents and agrees that process against Awardee shall be effective if served by sending a copy of the process in accordance with the notice provisions set forth in Section 13.1 of this Agreement.

APPENDIX IX

DEVELOPMENT TERM PERFORMANCE ASSURANCE REQUIREMENTS

1. Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent the Awardee delivers the Development Performance Assurance hereunder, Awardee hereby grants to PG&E, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such DPA posted with PG&E in the form of cash collateral and cash-equivalent collateral and any proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, PG&E. Within thirty (30) days of the delivery of DPA, Awardee agrees to take such action as PG&E reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such DPA and any proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence, and during the continuation, of a Awardee's Event of Default, PG&E, as the non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all DPA, including any such rights and remedies under the Law then in effect; (b) draw on any outstanding Letter of Credit issued for its benefit; and (c) liquidate all DPA, then held by or for the benefit of PG&E free from any claim or right of any nature whatsoever of Awardee, including any equity or right of purchase or redemption by Awardee. PG&E shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Awardee's obligations under this Agreement (Awardee remains liable for any amounts owing to PG&E after such application), subject to PG&E's obligation to return any surplus proceeds remaining after such obligations are satisfied in full. "Letter of Credit" means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix IX-A to this Agreement, issued by an issuer that is an Eligible LC Bank on the date of delivery to PG&E (including any amendments or renewals, pursuant to Section 3 below); provided, that if the issuer is a U.S. branch of a foreign commercial bank, PG&E may require changes to such form.

"Eligible LC Bank" means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) "A-, with a stable designation" from S&P and "A3, with a stable designation" from Moody's, if such bank is rated by both S&P and Moody's; or (b) "A-, with a stable designation" from S&P or "A3, with a stable designation" from Moody's, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

"Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is

rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

2. Development Performance Assurance. Awardee shall maintain in full force and effect during the Term all DPA required under this Agreement. No later than ten (10) Business Days prior to an Incentive Milestone date, Awardee will deliver to PG&E DPA in an amount equal to 100% of the MIP Incentive Award related to such Incentive Milestone as collateral to secure its obligations under this Agreement, either in the form of a Letter of Credit issued with an Eligible LC Bank, or cash via wire transfer to PG&E (all such amounts, the "Development Performance Assurance" or "DPA"). The aggregate amount of DPA required under this Agreement shall not be deemed a limitation of damages.
3. Letter of Credit. Development Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:
 - 3.1. If Awardee has provided a Letter of Credit pursuant to any of the applicable provisions in this Appendix IX, then Awardee shall renew or cause the renewal of any such outstanding Letter of Credit on a timely basis in accordance with this Agreement.
 - 3.2. In the event the issuer of any such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor PG&E's properly documented request to draw on such Letter of Credit, Awardee shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of PG&E's Notice to CMG Aggregator of an occurrence listed in this subsection (Awardee's compliance with either (A) or (B) below is considered the "Cure"):
 - A. providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of PG&E's Notice to Awardee in this Section 3.2 of Appendix IX, or
 - B. posting cash.

If Awardee fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by PG&E, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Awardee shall have failed to meet the DPA requirements in Section 4.2 of this Agreement.

- 3.3 Notwithstanding Section 3.2 of this Appendix IX, if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then PG&E may make a demand to Awardee by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). The Parties shall have

thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit (“Substitute Bank Period”).

- 3.4 If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then PG&E shall provide Awardee with Notice within five (5) Business Days following the expiration of the Substitute Bank Period (“Ineligible LC Bank Notice Period”) that either:
- A. PG&E agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank (“Ineligible LC Bank”) and PG&E will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or
 - B. The bank that is the subject of the LC Notice is an Ineligible LC Bank and Awardee shall then have thirty (30) days from the date of PG&E’s Notice to Cure and, if Awardee fails to Cure, then PG&E may declare an Awardee’s Event of Default pursuant to Article 7 of this Agreement.

If the Parties have not agreed to a Substitute Letter of Credit and PG&E fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Awardee may continue providing the Letter of Credit posted immediately prior to the LC Notice.

- 3.5 In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Awardee.
4. Use of Development Performance Assurance. PG&E may draw upon the DPA if there is an Awardee Event of Default under Article 7 of this Agreement that is not timely cured as provided in Section 7.2 of this Agreement, up to the full amount of any MIP Incentive Award funds disbursed to Awardee and through the date of such Event of Default to the extent not otherwise returned to PG&E by Awardee, subject only to adjustment for costs and expenses related to recovery by Awardee as provided Section 7.2(C) of this Agreement. Each Party agrees that (i) the damages that PG&E would incur due to an Awardee Event of Default would be difficult or impossible to predict with certainty and (ii) the retention of DPA as provided in this Section 4 is an appropriate approximation of such damages.
5. Payment and Transfer of Interest. PG&E shall pay interest on cash held as DPA, at the Interest Rate and on the Interest Payment Date. PG&E will transfer to Awardee all accrued Interest Amount on the unused cash DPA in the form of cash by wire transfer to the bank account specified by Awardee. “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of DPA in the form of cash held by PG&E during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360. “Interest

Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication. “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month. “Interest Payment Date” means the date of returning unused DPA held in the form of cash.

6. Return of Performance Assurance. PG&E shall return the unused portion of any DPA, including the payment of any Interest Amount due thereon pursuant to Section 5 of this Appendix IX above, to Seller as follows:
 - (A) Provided no default is occurring, the unused portions of the DPA amount posted by the Awardee will be released after the Islanding Operation Date (IOD) within ten (10) Business Days of PG&E’s receipt of all required Operating Term Performance Assurance from CMG Aggregator pursuant to the MOA;
 - (B) the Term has ended, or this Agreement has been terminated pursuant to Section 7.4, as applicable; and
 - (B) any payment obligations of Awardee arising under this Agreement, including indemnification payments or other damages, are paid in full.

APPENDIX IX-A – FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXX

Date: *[insert issue date]*

Beneficiary: Pacific Gas and Electric
Company
300 Lakeside Dr.,
Oakland, CA 94612
Attention: Credit Risk
Management

Applicant: [Insert name and address
of Applicant]

Letter of Credit Amount: *[insert amount]*

Expiry Date: *[insert expiry date]*

Ladies and Gentlemen:

By order of *[insert name of Applicant]* (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. *[insert number of letter of credit]* (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ *[insert amount in figures followed by (amount in words)]* (“Letter of Credit Amount”). This Letter of Credit is available with *[insert name of issuing bank, and the city and state in which it is located]* by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on *[insert expiry date]* (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents (which may be presented by overnight courier or by facsimile or email):

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. *[insert number]* and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:

- A. “Pursuant to the terms of that certain *[insert name of Agreement]* (the “Agreement”), dated *[insert date of the Agreement]*, between Beneficiary and *[insert name of Seller under the Agreement]*, Beneficiary is entitled to draw under Letter of Credit No. *[insert number]* amounts owed by *[insert name of Seller under the Agreement]* under the Agreement; or
- B. “Letter of Credit No. *[insert number]* will expire in thirty (30) days or less and *[insert name of Seller under the Agreement]* has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment hereto for a period of one (1) year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry

Date in case of an interruption of our business as stated below), at our offices at *[insert issuing bank's address for drawings]*.

All demands for payment shall be made by presentation of copies or original documents, or by facsimile, e-mail, or other electronic transmission of documents to *[Insert fax number, email or other electronic transmission]*, Attention: *[Insert name of issuing bank's receiving department] or [Insert email or other electronic transmission address]*. If a demand is made by facsimile, e-mail or other electronic transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at *[Insert phone number]* to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit, if they are presented within thirty (30) days after the resumption of our business, and will effect payment accordingly. The electronic copy of this Letter of Credit shall be the operative instrument until such time as the original is received. This Letter of Credit can be amended or terminated by facsimile, e-mail or other electronic transmission.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at *[insert number and any other necessary details]*.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____
[print or type name]

Title: _____
[print or type title]

[Note: All pages must contain the Letter of Credit number and page number for identification purposes.]

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