

34939

**MASTER ENERGY MANAGEMENT SERVICES AGREEMENT  
(WLA 1 Agreement)**

This MASTER ENERGY MANAGEMENT SERVICES AGREEMENT (WLA 1 AGREEMENT) (“Agreement”) is made as of November 30, 2018 (the “Split Agreement Effective Date”), by and between City of Long Beach (“Host”) and Hybrid-Electric Building Technologies West Los Angeles 1, LLC, a Delaware limited liability company (“Provider” or “WLA 1,” and together with Host, the “Parties”, and each a “Party”), with respect to the following terms and conditions. Capitalized terms not otherwise defined shall have the meanings in Schedule 4 (Defined Terms)

WHEREAS, effective as of May 3, 2018, Host and Advanced Microgrid Solutions, Inc., a Delaware corporation (“Original Provider”), entered into that certain Master Energy Management Services Agreement (the “Original Agreement”) and certain WLA 1 Addenda (defined below) in connection therewith;

WHEREAS, pursuant to Section 8.3 of the Original Agreement, Host and Original Provider replaced (the “Replacement,” and the effective time thereof, the “Replacement Time”) the Original Agreement with that certain Master Energy Management Services Agreement (AMS Agreement), and this Agreement;

WHEREAS, effective as of immediately following the Replacement Time, Original Provider desires to assign and transfer to Provider, and Provider desires to accept and assume from Original Provider, all of Original Provider’s right, title, interest, obligations, and liabilities under this Agreement and the WLA 1 Addenda, in accordance with the terms and conditions of this Agreement; and

WHEREAS, for sake of clarity, the following Addenda, each dated as of May 3, 2018, and attached hereto as Schedule 6 (the “WLA 1 Addenda”), shall be governed by this Agreement:

Addenda #	Delivery Account #	Address
1	City of Long Beach / 3-011-3003-57	300 East Ocean Boulevard, Long Beach, CA 90802
2	City of Long Beach / 3-001-4185-88	400 W Broadway, Long Beach, CA 90802
3	City of Long Beach / 3-031-9494-79	3205 Lakewood Blvd, Long Beach, CA 90808

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties hereby agree to the following:

1. Energy Storage System. Provider will install an electric energy storage system, together with all associated meters, switches, conduits, foundations, and other technology, equipment, software, and related components (an “Energy Storage System”), at a Premises to provide Energy Management Services (defined in Section 2 below) to Host at a location owned by Host (as further described in each Addendum (defined in Section 9.1 below), a “Property”). The size and location of each Energy Storage System are defined on each Addendum attached to this Agreement.

2. Energy Management Services. Following the Commercial Operation Date and continuing for the remainder of the Term, Provider will provide the following services (collectively, the “Energy Management Services”) to Host at the Property:

2.1 Cost Savings. Provider will utilize the Energy Storage System to provide Cost Savings, including, as applicable, by capturing the differential between high-cost and low-cost energy prices, reducing demand charges, and other similar services that Provider has agreed to provide using the Energy Storage System;

2.2 Energy Analytics and Portfolio Planning. Using historic, current, and forecasted load data, Provider will use its software platform to analyze energy and equipment data at the Property where the Energy Storage System is in operation to identify opportunities and recommend strategies to (a) improve energy efficiency, (b) optimize energy resources, and (c) reduce greenhouse gas emissions. Provider may implement such recommendations

upon mutual agreement with Host;

2.3 Network Operations Center Monitoring. Provider will provide Host with access to an energy management web portal that will display Host's energy usage, kWh throughput for the Energy Storage System, peak demand reduction enabled by the Energy Storage System, and estimated Cost Savings on a billing period and annual basis; and

2.4 24/7 System Monitoring. Provider will, at its own expense, install an internet connection and/or telephone line for remote monitoring of the Energy Storage System, and will monitor the operation and performance of the Energy Storage System, 24 hours per day and 7 days per week in a manner compliant with Host's IT security policy and standards.

3. Fees and Payments. In consideration for the Energy Management Services, following the Commercial Operation Date and continuing for the remainder of the Term, Host will pay Provider the amounts set forth in the Addendum attached to this Agreement.

4. Term. The initial term of this Agreement ("Initial Term") will commence on the Addendum Effective Date (as defined in each Addendum) and will continue for a period of ten (10) years following the Commercial Operation Date, unless sooner terminated pursuant to the terms and conditions of this Agreement; provided, however, by written notice delivered to Host prior to the expiration of the Initial Term, Provider shall have the right to extend the Initial Term by up to six (6) months (the "Short-Term Extension") as necessary for Provider to align the expiration of the Initial Term with the expiration of the term under any Utility Services Agreement. If Host does not exercise its Purchase Option as provided in Section 7 below, Provider will have two (2) options to extend the term of this Agreement (the "Extension Options") each for (5) years (each an "Extension Term"), which Extension Options may be exercised by written notice to Host no later than thirty (30) days prior to the expiration of the Initial Term or the first Extension Term, as applicable. As used herein, the "Term" means the Initial Term (as may be extended by the Short-Term Extension) together with each applicable Extension Term.

5. Utility Services. In addition to providing the Energy Management Services to Host, Provider will have the right to utilize the Energy Storage System to provide Utility Services to a Local Electric Utility, Control Area Operator, or other Person, with the income from such Utility Services (after deduction of all costs incurred to provide the same) being shared equally between Provider and Host. Provider agrees that the provision of the Utility Services will not unreasonably impact or disrupt the Property, or excuse Provider from its obligation to provide the Energy Management Services, and Host agrees that during the Term, it will not sell, assign, subscribe, pledge, provide, or commit the electrical load of the Property (including by participation in any demand response programs) to any Person other than Provider, sell any Utility Services or participate in any Utility Services programs other than with Provider, or engage or utilize any Person other than Provider to provide services that are the same as or similar to the Energy Management Services. Notwithstanding the foregoing to the contrary, Provider will be solely entitled to all income and benefits from, and will be solely responsible for all costs and obligations for, any Utility Services sold or provided under any Utility Services Agreement entered into by Provider prior to the Addendum Effective Date, including the DRESAs.

6. Incentives. The Parties shall cooperate in applying for any grants, credits, or other Incentives (including, without limitation, SGIP) that Provider elects to pursue and are (or during the Term, may become) available and are applicable to the Energy Storage System (or any part thereof), the electrical load at the Property, or otherwise applicable to the provision of the Energy Management Services. Unless otherwise agreed by the Parties in writing, Provider shall be solely responsible for the cost and expense of applying for, and shall be entitled to all revenue, credits, and benefits from, any Incentives, and to the extent Host or its Affiliates acquires any right, title, interest, or possession in or to such Incentives, Host and/or its Affiliates agree to promptly transfer, assign, and deliver the same to Provider.

7. Purchase Option. (a) If following the expiration of the fifth (5th) Term Year (as defined in the Addendum applicable to such Transaction) of such Transaction, either (i) Host is required to vacate the Property applicable to such Transaction by a Governmental Authority (other than Host), or (ii) following a renovation of the Property applicable to such Transaction, there is no longer a location on such Property acceptable to both Host and Provider (each in its reasonable discretion) for the installation and operation of an Energy Storage System, or (b) effective as of the expiration of the Initial Term, Host may purchase all (and not less than all) of the Energy Storage System by paying the Purchase Option Price to Provider (the "Purchase Option"), provided that in any case, Host shall

provide at least one (1) year prior written notice to Provider of its exercise of the Purchase Option, and Host shall not have the right to exercise the Purchase Option at any time that it is in breach or default of this Agreement. If Host exercises the Purchase Option pursuant to this Section 7, then upon Provider's receipt of the Purchase Option Price, title to the Energy Storage System shall transfer to Host pursuant to a written agreement, separate and apart from this Agreement, on an "as is, where is" basis without any warranty or guaranty for, or obligation to operate or support, the Energy Storage System or the performance of the Energy Storage System from Provider, except that Provider will assign any unexpired manufacturer's warranties associated with the Energy Storage System to Host to the extent assignable. Upon the completion of the purchase of the Energy Storage System by Host, this Agreement shall terminate, and Provider will have no further obligations under this Agreement, except for such obligations arising prior to the date of such termination. Following Host's purchase of the Energy Storage System pursuant to this Section 7, Host may engage Provider to continue to operate and support the Energy Storage System on behalf of Host pursuant to a written agreement, separate and apart from this Agreement, on terms and conditions acceptable to both Host and Provider.

8. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, which such consent shall not be unreasonably withheld, conditioned, or delayed, except that, subject to Section 9.2.3 of this Agreement, no consent shall be required in the following circumstances: (a) Provider assigns its rights and obligations under this Agreement to its Affiliate; (b) Host assigns its rights under this Agreement to any Person that becomes the fee title owner of the Property; (c) Provider assigns any of its rights under this Agreement to any Provider Financing Party; or (d) Provider assigns any of its rights under this Agreement to any Person with the Requisite Experience in connection with a change of control of Provider (or its Affiliates) or any merger, sale of substantially all of Provider's assets, or other similar transaction undertaken by Provider and/or its Affiliates. Any assignment described in the foregoing clauses (a), (b), (c), and (d) of this Section 8 shall be effective only if (i) the assigning Party provides written notice of such assignment to the other Party, (ii) the assignee or transferee agrees in writing to perform and assume all obligations of the assigning Party under this Agreement, and (iii) such assignment complies with Section 9.2.3 of this Agreement. Any attempted assignment in violation of the foregoing shall be null and void. In the event of any assignment undertaken in accordance with this Section 8, the assigning Party will be released from all of its liabilities and other obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

9. Master Agreement.

9.1 Transactions; Addendum. This Agreement is a master agreement pursuant to which the Parties may enter into one or more "Transactions." Each Transaction shall be a single integrated agreement, separate and apart from any other Transaction, and shall be evidenced and governed by (a) this Agreement (which, for sake of clarity, includes all Schedules attached to this Agreement), and (b) an addendum in the form set forth in Schedule 1 (Form of Addendum) (together with such revisions thereto as agreed to by the Parties, each an "Addendum") executed by the Parties in connection with such Transaction. The Parties will enter into an Addendum for each Energy Storage System to be installed by Provider under this Agreement. In the event of any conflict between this Agreement and any Addendum, the provisions of this Agreement shall control, unless the Addendum expressly modifies the terms of this Agreement for such Transaction. The Parties agree that each of the WLA 1 Addenda is an Addendum hereunder and a Transaction governed by this Agreement.

9.2 Agreement References. For sake of clarity, and notwithstanding any provision herein to the contrary, the terms and conditions of this Agreement (which, for sake of clarity, includes all Schedules attached to this Agreement) shall be interpreted and construed in accordance with the context applicable to each Transaction on a Transaction-by-Transaction basis, and the rights, benefits, representations, warranties, covenants, and obligations of the Parties with respect to any Transaction shall not be, or give rise to, rights, benefits, representations, warranties, covenants, or obligations under any other Transaction. Without limiting the generality of the foregoing:

9.2.1 With respect to each Transaction, all references in this Agreement to the Energy Storage System, Premises, Property, Licensed Area, Addendum, Addendum Effective Date, Utility Services, Utility Services Agreement, Minimum Guaranteed Cost Savings, Energy Services Fee, Bonus Threshold, Cost Savings, Adjustments, Adjustment Events, Purchase Option Price, Term Year, Commercial Operation Date, Initial Term, Short-Term Extension, Term, Removal Period, Energy Storage System Design, Specifications, Provider Conditions, Adverse Environmental Conditions, Incentives, SGIP, Provider Financing Benefits, Provider Financing Party, Step-In Right, Step-In Notice, Step-Out Notice, Required Financing Documents, Disruption Period, Host Act, and Force Majeure Event shall mean and refer to such terms as applicable to such Transaction;

9.2.2 With respect to each Transaction, all amounts calculated pursuant to the terms and conditions of this Agreement (which, for sake of clarity, includes all Schedules attached to this Agreement), and all amounts owed under this Agreement, shall mean such amounts calculated and owed in connection with such Transaction;

9.2.3 Each Transaction may be assigned in accordance with Section 8 of this Agreement separate and apart from any other Transaction; provided, however, that in connection with any such assignment, the assigning Party shall assign all of its rights and obligations under this Agreement (including all Schedules attached to this Agreement) as applicable to such Transaction, and the Addendum applicable to such Transaction; and

9.2.4 Any breach, default, Default Event, or termination of, and all limitations of liability under, this Agreement with respect to any Transaction shall be a breach, default, Default Event, or termination of, or a limitation of liability under, such Transaction and no other Transaction.

9.3 Split Agreement. Notwithstanding any provision herein to the contrary, upon the request of any Party, the Parties agree to divide this Agreement (together with the applicable Schedules, Exhibits, Addendums, and other related documents and agreements) into two or more separate agreements for the different (or different groups of) Transactions, provided that each such separate agreement shall be on the same terms and conditions set forth herein, with such adjustments as agreed to by the Parties hereto as necessary to reflect the intent of, and preserve the rights and benefits of the Parties under, each Transaction.

10. Schedules. The following schedules are incorporated into this Agreement by this reference: (a) Schedule 1 (Form of Addendum), (b) Schedule 2 (Insurance), (c) Schedule 3 (General Terms and Conditions), (d) Schedule 4 (Defined Terms), (e) Schedule 5 (Backup Generator Certificate), and (f) Schedule 6 (WLA 1 Addenda). To the extent there is any conflict between the terms and conditions of any of the schedules and exhibits, and the terms of the main body of this Agreement, the terms and conditions of the main body of this Agreement shall control.

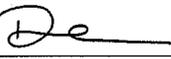
*[Signatures On Following Page]*

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Master Energy Management Services Agreement as of the day and year first above written.

PROVIDER

HYBRID-ELECTRIC BUILDING TECHNOLOGIES WEST LOS ANGELES 1, LLC,  
a Delaware limited liability company,

By:   
Name: Chris Calavitta  
Title: President

By:   
Name: Dan Cary  
Title: Authorized signatory

Address for Notices:

Hybrid-Electric Building Technologies West Los Angeles 1, LLC  
115 Wild Basin Road, Suite 301, Austin, TX 78746  
Attention: Chris Calavitta  
Tel: (512) 712-1932  
Email: Chris.Calavitta@macquarie.com

With a copy (which shall not constitute notice) to:  
Macquarie Capital Legal  
125 West 55th St, New York NY 10019  
Tel: (212) 231-1773  
Email: maccapadvlegalna@macquarie.com

Advanced Microgrid Solutions, Inc.  
c/o Kenzel Hagaman  
986 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103  
Email: notices@advmicrogrid.com

**Tom Modica**  
**Assistant City Manager**

**EXECUTED PURSUANT  
TO SECTION 301 OF  
THE CITY CHARTER**

HOST

City of Long Beach  
a California municipal corporation

By:   
Name: TOM MODICA  
Title: ASST. CITY MANAGER

APPROVED AS TO FORM

11/30, 2018  
CHARLES PARKIN, City Attorney

By:   
LINDA T. VU  
DEPUTY CITY ATTORNEY

Address for Notices:

City of Long Beach  
c/o Bahram Solhjoui  
333 W. Ocean Blvd.  
Long Beach, CA 90802  
Email: Bahram.sohljou@longbeach.gov

**SCHEDULE 1**  
**FORM OF ADDENDUM**

**ADDENDUM NO. \_\_\_\_\_ TO**  
**MASTER ENERGY MANAGEMENT SERVICES AGREEMENT**  
**(WLA 1 Agreement)**

This Addendum No. XXXX (“Addendum”) is attached to, and made a part of, that certain Master Energy Management Services Agreement (WLA 1 Agreement), dated [\_\_\_\_\_, 2018] (the “Agreement”), by and between the City of Long Beach (“Host”), and Hybrid-Electric Building Technologies West Los Angeles I, LLC, a Delaware limited liability company (“Provider”). Capitalized terms used but not otherwise defined in this Addendum shall have the meanings ascribed to them elsewhere in the Agreement.

1. Addendum Effective Date. The “Addendum Effective Date” for this Addendum shall be [\_\_\_\_\_, 2018].

2. Property. The address of the Property is: XXXX .

3. Premises. The address of the Premises is: XXXX, and is depicted on Exhibit A, attached to this Addendum. Prior to the Commercial Operation Date, the Parties may agree to revise Exhibit A attached to this Addendum, by a written amendment to this Addendum.

4. Delivery Service Account Name & Number. The name and account number for the delivery service account at the Property is: XXXX / XXXX.

5. Energy Storage System Size. The nameplate size of the Energy Storage System is approximately: XXXX kW, XXXX kWh.

6. Minimum Guaranteed Cost Savings. The “Minimum Guaranteed Cost Savings” shall mean the amount of [\$\_\_\_\_\_] per Term Year, subject to any applicable Adjustments. Following the conclusion of each Term Year, Provider will calculate the Cost Savings and Adjustments to the Minimum Guaranteed Cost Savings (if any) for the prior Term Year, and provide such calculations (along with reasonable supporting documentation) to Host. If Provider fails to provide Cost Savings in an amount equal to at least the Minimum Guaranteed Cost Savings (subject to any applicable Adjustments) for a Term Year, then within ninety (90) days following the expiration of such Term Year, Provider shall pay Host the amount equal to the difference between the Minimum Guaranteed Cost Savings (subject to any applicable Adjustments) and the Cost Savings for the prior Term Year, provided that the amount payable by Provider to Host shall not exceed the total Energy Services Fee received by Provider for such Term Year. If the Agreement is terminated early, except due to a Default Event by Provider, Provider’s obligations in this section will not apply to the Term Year in which the Agreement is terminated.

7. Energy Services Fee. Commencing on the Commercial Operation Date, and continuing on a monthly basis through the remainder of the Term, Host shall pay Provider an Energy Services Fee in the amount of \$XXXX per month (“Energy Services Fee”).

8. Performance Bonus. If in any Term Year, the aggregate Cost Savings is in excess of \$XXXX (subject to applicable Adjustment, the “Bonus Threshold”), Host shall pay Provider an amount equal to 50% of the amount by which Cost Savings exceeds the Bonus Threshold within ninety (90) days after the end of such Term Year.

9. Additional Defined Terms. As used herein, the following terms have the following meanings:

9.1 “Adjustment” means the proration, reduction, and/or adjustment, as reasonably determined by Provider, of the Minimum Guaranteed Cost Savings and Bonus Threshold, to reflect the effect of any of the following events (the “Adjustment Events”) that limit the ability of Provider to provide Cost Savings or Energy Management Services during some or all of a Term Year:

An Energy Storage System (or any portion thereof) has not been installed and/or has not commenced operations;

Any theft, destruction, or damage affects the Energy Storage System;

The sale, foreclosure, or other transfer of ownership of the Property;

A Disruption Period occurs;

A Change In Law occurs;

- A Default Event occurs with respect to the Host or its Affiliates;
- Host or its Affiliates fails to provide access to any Property as required by the Agreement;
- A Force Majeure Event occurs;
- There is a change in the energy rate, energy delivery rate, and/or tariff or rate schedule applicable to the Property, and/or a deviation in the load profile at the Property, that has a detrimental impact on Provider's ability to provide Cost Savings;
- There is a reduction in the installed capacity of the Energy Storage System; or
- The Energy Storage System or the Property (or the electrical load at the Property) fails to qualify for or obtain some or all of the benefits under any anticipated Incentives and/or Provider Financing Benefit.

9.2 "Billing Period(s)" means each of the consecutive monthly time periods during which Provider calculates Cost Savings for the Property.

9.3 "Cost Savings" means, for each Billing Period, the difference between (a) the imputed electrical energy costs and demand charges at each utility service account where the Energy Storage System is in operation, assuming that the Energy Storage System was *not* operating, and (b) the actual electrical energy costs and demand charges for each utility service account where the Energy Storage System is in operation. Cost Savings shall be calculated by Provider using data from the meter installed in connection with the Energy Storage System, the utility meter at the Property, and the tariffed rates applicable to the Property. Notwithstanding the foregoing, if for any reason Cost Savings are less than zero, Cost Savings shall be deemed to be zero.

9.4 "Term Year" means twelve (12) consecutive Billing Periods beginning with the first Billing Period commencing on or after Commercial Operation Date; provided, however, the last Term Year may not have a full twelve (12) month time period.

10. Backup Generator Certificate. Upon the execution of this Addendum, Host shall provide a Prohibited Resources Attestation with respect to the service account(s) associated with the Property in the form attached as Schedule 5 to the Agreement.

11. SGIP. For purposes of SGIP, the cost of the Energy Storage System is: \$XXXX.

12. Purchase Option Price. The "Purchase Option Price" for each Term Year from and after the sixth (6th) Term Year shall be as follows:

TERM YEAR	PURCHASE OPTION PRICE (\$)
6th Term Year	[\$ _____ .00]
7th Term Year	[\$ _____ .00]
8th Term Year	[\$ _____ .00]
9th Term Year	[\$ _____ .00]
10th Term Year	[\$ _____ .00]

[Signatures On Following Page]

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Addendum as of the day and year first above written.

PROVIDER:

HYBRID-ELECTRIC BUILDING TECHNOLOGIES WEST LOS ANGELES 1, LLC,  
a Delaware limited liability company,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

HOST:

City of Long Beach

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[Signature Page to Addendum No.: ]

## SCHEDULE 2 INSURANCE

This SCHEDULE 2 (Insurance) ("Schedule 2"), is attached to, and made a part of, that certain Master Energy Management Services Agreement (WLA 1 Agreement), dated \_\_\_\_\_, 2018 (the "Agreement"), by and between the City of Long Beach ("Host"), and Hybrid-Electric Building Technologies West Los Angeles 1, LLC, a Delaware limited liability company ("Provider"). Capitalized terms used but not otherwise defined in this Schedule 2 shall have the meanings ascribed to them elsewhere in the Agreement.

1. **Provider Insurance.** Concurrent with and as a condition of obtaining use of the Host's Premises, Provider shall procure and maintain at Provider's expense, or cause to be maintained, for the duration of this Agreement including any extensions, renewals, or holding over thereof, from insurance companies that are admitted to write insurance in the State of California or that have ratings of or equivalent to an A-VIII by A.M. Best and Company (or equivalent rating from another nationally recognized rating agency), the following insurance:

1.1 Commercial general liability insurance equivalent in coverage scope to ISO CG 00 01 04 13, including contractual coverage, and, as may be applicable to Provider's operations, products and completed operations liability, and sudden and accidental pollution and cleanup liability, naming Host, its boards, commissions, officials, employees, and agents as additional insureds from and against claims, demands, causes of action, expenses, costs, or liability for injury to or death of persons, or damage to or loss of property arising out activities performed by or on behalf of the Provider (including its contractors) in an amount not less than One Million Dollars per occurrence and Two Million Dollars in aggregate. Said insurance shall be primary insurance with respect to Host and shall include cross liability, and its insurer shall agree to waive its right of subrogation against the Host.

1.2 Commercial automobile liability insurance equivalent in coverage scope to ISO CA 00 01 10 13, in an amount not less than One Million Dollars combined single limit. Said insurance shall be primary insurance with respect to Host and shall include cross liability.

1.3 All risks property insurance in an amount sufficient to cover the full replacement value, subject to industry sub-limits and policy aggregates, of Provider's personal property (which includes, but is not limited to, the Energy Storage System and all affiliated software), improvements, and equipment on the Host's Premises.

1.4 Workers' compensation insurance in an amount and form as required by all applicable laws. Said insurer of such coverage shall agree to waive its right of subrogation against the Host.

Any self-insurance program, self-insurance retention, or deductibles must be approved separately in writing by Host and shall protect the City of Long Beach, its boards, commissions, officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions.

Each insurance policy shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice to Host, except for ten (10) days' written notice for non-payment of premium, and shall be primary and not contributing to any other insurance or self-insurance maintained by Host.

With respect to damage to property, Provider hereby waive all rights of subrogation, one against the other, but only to the extent that collectible commercial insurance is available for said damage.

Provider shall deliver to Host certificates of insurance and original endorsements for approval as to sufficiency and form prior to occupancy of the new improvements. "Claims-made" policies are not acceptable unless Host's Risk Manager determines that "Occurrence" policies are not available in the market for the risk being insured. In a "Claims-made" policy is accepted, it must provide for an extended reporting period of not less than one hundred eighty (180) days.

2. **Host Insurance.** During the Term, Host shall maintain the following coverages with limits not less than the following amounts:

2.1 Commercial General Liability Insurance or Self-Insurance covering the insured against claims of bodily injury, personal injury, property damage (including loss of use thereof), and sudden and accidental pollution arising out of Provider's operations at the Property with limits of liability not less than the following \$1,000,000 each occurrence, and \$2,000,000 annual aggregate;

2.2 Real Special Perils Property Insurance covering the physical loss or damage (including the loss of use) to the Premises, Property, and any other real property owned or controlled by Host and which is the site on which Provider is installing its Energy Storage System, which shall be written on an "all risks" of physical loss or damage basis for the full replacement cost value; and

2.3 Employer's Liability Self-Insurance with limits of liability not less than the following (provided that such limits may be reached through any combination of primary and excess and/or umbrella coverages): (a) \$1,000,000 each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease-policy limit, and (b) Worker's Compensation Self-Insurance to the extent required by California Law.

The term "Self-Insurance," and any reference to Host's self-insurance program, in this Schedule 2 shall mean a self-insurance program of Host providing the protections and coverages described in this Schedule 2. As a condition to Host's rights to provide self-insurance under this Schedule 2, Host shall promptly furnish to Provider, upon request by Provider, a certificate of self-insurance executed by the Risk Manager or authorized agent of Host, certifying the existence and scope of Host's self-insurance program with respect to the liability and worker' compensation coverage required of Host in this Schedule 2.

Such insurance as required herein shall not be deemed to limit Provider's liability relating to performance under this Agreement. Host reserves the right to require complete certified copies of all said policies at any time. The procuring of insurance shall not be construed as a limitation on liability or as full performance of the indemnification and hold harmless provisions of this Agreement.

Host agrees to waive all rights of recovery or subrogation against Provider under Host's property insurance or self-insurance program.

To the extent that other state or federal insurance or financial responsibility requirements exceed any of these insurance requirements, those requirements shall apply to this Agreement.

Any modification or waiver of the insurance requirements herein shall be made only with the written approval of the Host's Risk Manager or designee.

*[End of Schedule 2, Insurance]*

**SCHEDULE 3  
GENERAL TERMS AND CONDITIONS**

This SCHEDULE 3 (General Terms and Conditions) ("Schedule 3"), is attached to, and made a part of, that certain Master Energy Management Services Agreement (WLA 1 Agreement), dated \_\_\_\_\_, 2018 (the "Agreement"), by and between the City of Long Beach ("Host"), and Hybrid-Electric Building Technologies West Los Angeles 1, LLC, a Delaware limited liability company ("Provider"). Capitalized terms used but not otherwise defined in this Schedule 3 shall have the meanings ascribed to them elsewhere in the Agreement.

1. Property Information. To enable Provider to provide the Energy Management Services, Host agrees to provide Provider with the following information: (a) copies of electric utility bills and invoices for the Property received during the Term and for the twelve (12) months immediately prior to the start of the Term, (b) an executed letter or agreement, in form reasonably acceptable to Provider, allowing Provider (and/or its Affiliates) to access all electric utility bills, utility account information, and other Host information and meter data concerning Host's utility service accounts for the Property, and to act as Host's sole and exclusive agent and aggregator with respect to such accounts for the duration of the Term, and (c) access to the electrical panels and other electrical systems, and associated operating requirements, at the Premises and the Property relevant to the Energy Storage System. During the Term, Provider will be permitted to measure, and Host shall provide Provider with access to, real-time telemetered data associated with the energy usage, energy and utility services, and energy delivery costs at each Property, and Provider or Provider's contractors may use copies of such data for their business purposes, including marketing and publicity, provided that any general public disclosure of such data shall be done in a way that Host's identity is not, and cannot through reasonable efforts, be determined

2. Invoicing. Following the Commercial Operation Date, and continuing through the remainder of the Term, Provider will provide to Host a monthly invoice for the amounts owed by Host under the Agreement. Host shall pay such amounts to Provider, without offset, abatement, or reduction on an agreed day of the month (the "Due Date"), no later than sixty (60) days following receipt of such invoice. Any amounts invoiced that are not paid by the Due Date shall accrue interest at the monthly rate of one and one-half percent (1.5%) (but not to exceed the maximum rate permitted by Applicable Law). At Provider's written request, Host shall pay all amounts owed to Provider hereunder to a Provider Financing Party designated by Provider. If Host in good faith disputes an Invoice, Host shall provide Provider with a written explanation specifying in detail the basis for the dispute. All disputes shall be resolved as provided in Section 16.7 of this Schedule 3, and if any amount disputed by Host is determined not to be owed, Provider shall promptly refund such amount to Host or provide a credit on the Host's next invoice.

3. Provider Conditions. Notwithstanding any provision of the Agreement to the contrary, the obligations of Provider to provide the Energy Management Services pursuant to the Agreement are expressly conditioned upon the satisfaction in full of all of the conditions set forth in this Section 3 (the "Provider Conditions"), and Provider shall have the right to terminate the Agreement if at any time during the Term any of the Provider Conditions are no longer completed or satisfied on terms satisfactory to Provider. Following the Addendum Effective Date, the Parties agree to exercise commercially-reasonable efforts, and work together in good faith, to complete and satisfy the Provider Conditions with respect to the Property, Premises and/or Energy Storage System. The Provider Conditions are:

3.1 The Premises shall be sufficient to accommodate the installation and operation of the Energy Storage System without any unanticipated material increase in the cost of construction or operation;

3.2 Provider shall have determined that there are no conditions (including Adverse Environmental Conditions) or construction requirements that could reasonably be expected to materially increase the cost of installation or operation of the Energy Storage System at the Premises, or damage or adversely affect the safe operation and monitoring of the Energy Storage System or the provision of the Energy Management Services;

3.3 The Parties shall have agreed on a final Energy Storage System Design as provided in Section 4.1 of this Schedule 3;

3.4 Host's interconnection services shall be adequate to support the Energy Storage System, or such interconnection services can be upgraded at a cost satisfactory to Provider;

3.5 The rights of Provider to access, occupy, and use the Premises and the Property pursuant to the terms of the Agreement shall be in full force and effect with no circumstance known to either Party reasonably likely to result in a material default or breach of such rights;

3.6 Host shall have obtained all third-party consents necessary to consummate the transactions contemplated by the Agreement, excluding the Governmental Approvals that Provider will obtain pursuant to Section 4.2 of this Schedule 3;

3.7 Provider shall have obtained commitments sufficient to finance the construction, operation, and removal of the Energy Storage System in accordance with the Agreement;

3.8 Host shall have provided the Required Financing Documents;

3.9 There has been no material adverse change in the electricity rates, rate categories, utility tariffs, load profile at the Property, costs to Host of obtaining electricity at the Property, regulatory environment, Incentives, or Applicable Law (including the expiration of any Provider Financing Benefits) that could reasonably be expected to adversely affect the economics of the Agreement for Provider and its lenders or investors; and

3.10 Fee simple ownership of the applicable Premises or Property has not been transferred to a Person other than an Affiliate of Host, including any transfer by sale, foreclosure, condemnation, or otherwise.

4. Construction of Energy Storage System. Subject to Section 3 (Provider Conditions) of this Schedule 3, Provider shall, at its sole cost and expense, install (or cause a properly licensed contractor to install) and operate an Energy Storage System at the Premises.

4.1 Design. Provider shall deliver to Host a proposed layout and design for the Energy Storage System (the “Energy Storage System Design”), and Host shall have ten (10) business days to provide reasonable approval of, or provide reasonable comments to, such Energy Storage System Design. If applicable, Provider shall prepare a revised Energy Storage System Design addressing Host’s comments, which Host shall approve within five (5) business days of its receipt thereof. At Host’s request following the Commercial Operation Date, Provider agrees to provide Host with one (1) copy of the final “as-built” plans in CAD format for the Energy Storage System, as well as a copy of the site survey and other designs submitted for permitting in the formats used by Provider or its subcontractors.

4.2 Permits. Provider shall be responsible, at its sole cost, for obtaining all Governmental Approvals for (a) the installation, operation, maintenance, and removal of the Energy Storage System at the Premises, and (b) the provision of Utility Services under any Utility Services Agreement, in each case from applicable Governmental Authorities, and from time to time during the Term, Host shall reasonably cooperate with Provider in obtaining all such Governmental Approvals as requested by Provider.

4.3 Specifications; Installation Date. The Energy Storage System shall be installed in compliance with the Energy Storage System Design, Applicable Laws, and applicable Governmental Approvals in all material respects (the “Specifications”). Provider will coordinate construction with Host so as to minimize unreasonable disruption to Host’s business operations at the Property. Host shall provide sufficient space at or near the Premises as is reasonably necessary for the temporary storage and staging of tools, materials, and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary for the installation, construction, maintenance, repair, and removal of the Energy Storage System. Provider will provide notice to Host when the Energy Storage System has been substantially installed, and Host shall have an opportunity to inspect such installation to confirm that the Energy Storage System was installed in accordance with the Specifications.

4.4 Meters. Provider may use the existing meters at the Premises and the Property in connection with the Energy Storage System and providing the Energy Management Services, and Provider may install and maintain one or more additional utility-grade kilowatt-hour (kWh) meters for the measurement of electrical energy to and from the Energy Storage System. Host acknowledges that Provider shall be the sole owner of all data generated

by the meter(s) installed with the Energy Storage System, and Provider will make such data available to Host upon request.

4.5 No Contractor Liens. Provider shall not incur, assume, or suffer to be created by any contractor, subcontractor, materialman, or other supplier of goods or services of or to Provider any lien or encumbrance of any kind against the Premises or Property (generally, a "Contractor Lien"), and in case of any such Contractor Lien, Provider shall cause such Contractor Lien to be discharged of record or bonded over in an amount sufficient to cover such lien within forty-five (45) days after Provider has notice that such Contractor Lien has been filed.

4.6 Operations. Provider shall have the right to operate, maintain, replace, update, upgrade, repair, and remove the Energy Storage System in accordance with the Agreement and Applicable Law. Host shall (a) promptly notify Provider if it becomes aware of any damage to or loss of the use of the Energy Storage System or any event or circumstance that could reasonably be expected to adversely affect the Energy Storage System or the Energy Management Services, including, without limitation, any power outages or computer outages, and (b) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the Energy Storage System, the Property, or the Premises. Provider shall not have any responsibility or liability for any aspect of the electrical system not owned or operated by Provider, including any portion thereof which affects the function or performance of the Energy Storage System. Host shall not interfere with, modify, or disturb the Energy Storage System or any equipment, facilities, or other personal property of Provider without the prior written consent of Provider. Host shall be responsible for maintaining the physical security of the Premises and Energy Storage System. Host will not conduct, allow, or permit activities on, in, or about the Premises, or in close proximity to the Premises or Energy Storage System, that have a reasonable likelihood of causing damage, impairing, or otherwise adversely affecting the Premises and/or Energy Storage System.

4.7 Removal.

4.7.1 Provided Host has not exercised the Purchase Option, within ninety (90) days following the expiration of the Term, or the earlier termination of the Agreement (the "Removal Period"), Provider shall remove the Energy Storage System at no cost to the Host. Prior to entering the Premises to remove the Energy Storage System, Provider shall provide forty-eight (48) hours written notice to the appropriate site administrator or Host liaison, whose name and contact information shall be provide to Provider. In connection with any such removal, Provider shall restore any portions of the Premises damaged or disturbed in connection with such removal, other than (a) incidental and subsurface hardware (all of which may remain at the Premises) and (b) reasonable wear and tear. Provider shall leave the Premises in neat and clean condition. Host shall cooperate with Provider as reasonably necessary to facilitate the removal of the Energy Storage System.

4.7.2 Commencing as of the date that is two (2) years prior to the expiration of the Term, Provider shall provide (or provide evidence of) a bond, letter of credit, parent indemnity, cash in an escrow account, or other form of security reasonably acceptable to Host ("Removal Security"), securing the obligations of Provider to remove the Energy Storage System in accordance with the Agreement. If Provider pays the Removal Security in cash, Provider shall have the right to fund fifty percent (50%) of the Removal Security on an annual basis until fully funded by the end of the Term. Within ten (10) days following the date that the Energy Storage System is removed from the Premises in accordance with the Agreement, Provider shall have no further obligation to provide the Removal Security, and Host agrees to return and deliver to Provider, and/or execute such agreements, instruments, and certificates required to release Provider's obligations with respect to, the Removal Security. Any interest earned in connection with the Removal Security shall be for the benefit of, and shall be paid to, Provider.

4.8 Access. During the Term, Host shall provide access to the Premises and the Property at no cost to Provider as reasonably necessary for Provider (a) to design, construct, install, interconnect, test, operate, inspect, maintain, repair, replace, remove, and decommission the Energy Storage System, (b) to provide the Energy Management Services, (c) to sell, provide, make available, and deliver the Utility Services, (d) obtain the rights and benefits under the Incentives, (e) obtain all Governmental Approvals in connection with the foregoing, and (f) undertake other actions reasonably related to the foregoing.

4.9 Premises. Subject to the terms and conditions of the Agreement, Host hereby leases the Premises to Provider, and Provider hereby leases the Premises from Host. Host hereby grants to Provider, and Provider hereby accepts from Host, a non-exclusive license to access, ingress, egress, occupy, and use the Property (generally, the "Licensed Area") as reasonably necessary for the Permitted Use (defined below), including to interconnect and disconnect the Energy Storage System to the electrical panels and systems at the Property, install meters, run conduits, and such other purposes reasonably related to the foregoing and the Permitted Use. For all purposes set forth in the Agreement, the Licensed Area shall be considered a part of the Premises. Provider may use the Premises only for the purposes set forth in the Agreement (the "Permitted Use"), including, without limitation, (a) to design, construct, install, interconnect, test, operate, inspect, maintain, repair, replace, remove, and decommission the Energy Storage System, (b) to provide the Energy Management Services, (c) to sell, provide, make available, and deliver the Utility Services, (d) obtain the rights and benefits under the Incentives, (e) obtain all Governmental Approvals in connection with the foregoing, and (f) undertake other actions reasonably related to the foregoing. Subject to its compliance with the terms and conditions of the Agreement, Provider shall have quiet possession and enjoyment of the Premises in accordance with the terms and conditions of the Agreement. Provider will comply with all reasonable rules and regulations promulgated from time to time by Host with respect to the Premises and the Property, provided, that such rules and regulations apply to all tenants, licensees, and other occupants of the Property on a non-discriminatory basis, and such rules and regulations do not prohibit or unreasonably interfere with Provider's rights and obligations under the Agreement.

4.10 Prevailing Wages. The installation of the Energy Storage System (the "Project") is a "public work" for prevailing wage purposes only and subject to the provisions of Labor Code Sections 1720 *et seq.* and the requirements of Title 8 of the California Code of Regulations Sections 16000 *et seq.*, which govern the payment of prevailing wage rates on public works projects. Provider, contractors and subcontractors of any tier shall be governed by and required to comply with these statutes and regulations in connection with the Project. Pursuant to Labor Code Section 1771, Provider, all contractors and subcontractors of any tier shall pay not less than the prevailing wage rates to all workers employed in execution of the Project. Provider, contractors and subcontractors shall comply with applicable statutes and regulations, including but not limited to Labor Code Section 1771, 1775, 1777.5, 1813 and 1815. No contractor or subcontractor may be listed on a bid proposal for a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a). No contractor or subcontractor may be awarded a contract for public work on a public works project unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5. This Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractors are further cautioned that certified payrolls shall be submitted electronically directly to the Department of Industrial Relations.

4.11 Audit. Provider agrees that Host, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement, at no cost or expense to Provider; provided, however, that all such records and supporting documents shall be subject to Section 15 of this Schedule 3. Provider agrees to maintain such records for possible audit for a minimum of three (3) years after final payment. Provider agrees to allow the auditor(s) access to such records during normal business hours after reasonable notice and to allow interviews of any employees who might reasonably have information related to such records. Further, Provider agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement.

5. Taxes; Utilities. Provider shall pay all personal property taxes assessed against or levied upon the Energy Storage System and all other personal property of Provider located on the Premises and/or Property. Provider shall not be responsible for any real property taxes, insurance costs, utilities, or common area maintenance or repair fees, costs, taxes, or expenses associated with the Premises or Property, including, without limitation, any electricity provided to charge the Energy Storage System, electricity discharged from the Energy Storage System, or any sales taxes payable on amounts paid by Host to Provider hereunder. Host will provide electricity (including, without limitation, as necessary to charge, operate, and monitor the Energy Storage System), water, heating, ventilating, and air conditioning, and other utilities to the Premises at the levels reasonably required for Provider's Permitted Use of the Premises at no cost or expense to Provider.

6. Default; Remedies. If any Party commits a Default Event, or a Default Event occurs with respect to any Party (such Party, the "Defaulting Party" and the other Party, the "Non-Defaulting Party"), then subject to the

limitations set forth in this Schedule 3 and the Agreement, the Non-Defaulting Party shall be entitled to terminate this Agreement and exercise any right or remedy available to it under Applicable Law, including, without limitation, the right to specific performance and injunctive relief.

7. Representations and Warranties.

7.1 Mutual Representations. Effective as of the Addendum Effective Date, each Party represents to the other Party that (a) such Party is duly organized, validly existing, and in good standing under the laws of the state of its formation; (b) the execution and delivery by such Party of, and the performance of its obligations under, the Agreement have been duly authorized by all necessary action, and do not and will not require any further consent or approval of any other Person; (c) such Party has full right and authority to enter into the Agreement, and the Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with their terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally; (d) except as disclosed by either Party in writing to the other, there is no litigation, action, proceeding, or investigation pending or, to the best of its knowledge, threatened against such Party before any court or other Governmental Authority by, against, affecting, or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out, satisfy, and complete its obligations under the Agreement; (e) such Party's execution and performance of its obligations under the Agreement do not and will not constitute a material breach of any term or provision of, or a default under (i) any contract, agreement, or Governmental Approval to which it is a party or by which it its or property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; (f) such Party's execution and performance under the Agreement do not and will not require any consent from a third party, including any Governmental Approvals from any Governmental Authority, other than (with respect to Provider) such Governmental Approvals required to construct, operate, repair, maintain, and decommission the Energy Storage System, sell and provide the Energy Management Services and Utility Services, and obtain the rights and benefits under the Incentive programs; and (g) except as set forth in written notice to the other Party, such Party has not had any dealings with any broker or agent in connection with the negotiation of the Agreement, and no broker or agent is entitled to a commission, consultants fee, facilitation fee, or its equivalent in connection with the Agreement.

7.2 Host Representations & Warranties. Effective as of the Addendum Effective Date, Host represents and warrants to Provider that: (a) except as disclosed by Host to Provider prior to the Addendum Effective Date, Host is the owner of, and holds fee title to, the Property and Premises and there are no existing leases, Mortgages or other interests in or liens upon the Property or the Premises that could attach to the Energy Storage System, (b) Host has provided Provider (i) written notice of all Governmental Approvals or other restrictions imposed under Applicable Laws with respect to the use of the Property or the Premises that could adversely affect the construction and operation of the Energy Storage System and the provision of the Energy Management Services, and (ii) copies of all environmental reports, studies, data, or other information relating to the use of the Property or Premises by Provider within the Host's possession or control, (c) except as disclosed to Provider in writing, no Property or Premises contains any Adverse Environmental Condition, and (d) Host has obtained all approvals from any affected tenants and other occupants at the Property or Premises, any Mortgage holder, or any other third party necessary for Host to perform its obligations under the Agreement, including, without limitation, providing Provider with access to, and the use of, the Premises pursuant to the Agreement, and shall maintain such rights and approvals during the Term and any Removal Period.

8. Indemnification. Provider shall indemnify, defend, and hold Host, its Affiliates and their shareholders, members, directors, managers, officers, employees, and agents harmless from and against any and all third-party claims, losses, damages, injuries, liabilities, costs, and expenses (collectively, "Claims") to the extent resulting from or arising out of (a) Provider's breach of the Agreement, (b) any damage caused by the malfunction or misuse by Provider of the Energy Storage System, and (c) the negligence, fraud, or willful misconduct of Provider or its employees, contractors, or agents, except to the extent that such Claims result from the negligence, fraud, or willful misconduct of Host, or its employees, contractors, or agents. A Party's defense obligations in Section 8 are contingent upon the indemnified Party promptly notifying the indemnifying Party in writing of such Claim and promptly tendering the control of the defense of such Claim to the indemnifying Party. Each indemnified Party shall cooperate with the indemnifying Party, at the indemnifying Party's expense, in defending or settling the Claim. Any indemnified Party may join in the defense of such Claim with counsel of its choice at its own expense. An indemnifying Party may not, without the prior written consent (such consent not to be unreasonably withheld, conditioned, or delayed) of

the indemnified Party, settle, compromise, or consent to the entry of any judgment regarding an indemnified Claim, the defense of which has been assumed by the indemnifying Party. No Party shall settle, compromise, or consent to the entry of any judgment regarding any Claim for which it is entitled to indemnification from the other Party hereunder without the prior written consent of the indemnifying Party.

9. LIMITATION OF LIABILITY.

9.1 NO CONSEQUENTIAL DAMAGES. EXCEPT FOR THE INDEMNITY OBLIGATIONS IN SECTION 8 ABOVE AND ANY BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN SECTION 15 (CONFIDENTIALITY) BELOW, AND WITHOUT LIMITING THE AMOUNTS EXPRESSLY OWED BY EITHER PARTY TO THE OTHER HEREUNDER, INCLUDING PURSUANT TO THE ADDENDUM ATTACHED TO THE AGREEMENT AND SECTION 13 OF THIS SCHEDULE 3, NEITHER PARTY, ITS AFFILIATES, CONTRACTORS, AGENTS, OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, OR DAMAGES RELATING TO LOSS OF USE, PROFITS, BUSINESS, REPUTATION, FINANCING, REVENUE, POWER, INFORMATION, OR DATA, OR THE COST OF CAPITAL, OR SUCH DAMAGES BASED ON A PARTY'S THIRD PARTY CONTRACTS ARISING OUT OF THEIR PERFORMANCE OR NON-PERFORMANCE HEREUNDER EVEN IF ADVISED OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, (A) THE LOSS OF THE ENERGY STORAGE SYSTEM AND (B) AMOUNTS PAYABLE BY PROVIDER AND/OR ITS AFFILIATES UNDER ANY UTILITY SERVICES AGREEMENT, OR ANY INCENTIVE NOT RECEIVED BY PROVIDER OR ITS AFFILIATES, WILL BE DEEMED "DIRECT" DAMAGES FOR WHICH RECOVERY WILL NOT BE BARRED BY THE AGREEMENT, INCLUDING THIS SECTION 9.1; PROVIDED, HOWEVER, THAT WITH RESPECT TO AMOUNTS IN THE FOREGOING CLAUSE (B) SUCH AMOUNTS SHALL NOT EXCEED \$386.00 PER KILOWATT OF ENERGY STORAGE SYSTEM INSTALLED AT THE PREMISES PER YEAR THROUGH THE END OF THE TERM, PRORATED ON A DAILY BASIS FOR PARTIAL YEARS.

9.2 DISCLAIMER. PROVIDER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL WARRANTIES, WHETHER EXPRESS (OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT, INCLUDING THIS SCHEDULE 3), IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND TITLE, WITH RESPECT TO THE ENERGY STORAGE SYSTEM AND THE ENERGY MANAGEMENT SERVICES. PROVIDER DOES NOT WARRANT THAT THE ENERGY STORAGE SYSTEM WILL BE ERROR-FREE OR THAT OPERATION OF THE ENERGY STORAGE SYSTEM WILL BE SECURE OR UNINTERRUPTED. HOST ACKNOWLEDGES THAT THE ENERGY STORAGE SYSTEM IS NOT TO BE USED IN CONNECTION WITH ANY APPLICATION WHERE FAILURE COULD LEAD TO A LOSS OF LIFE OR CATASTROPHIC PROPERTY DAMAGE, AND PROVIDER SHALL HAVE NO LIABILITY FOR USE IN SUCH CONTEXTS.

10. Provider Financing-Related Provisions.

10.1 Ownership. Provider shall be the sole owner of (and Host hereby disclaims any ownership in) all right, title, and interest in and to (a) the Energy Storage System (including all alterations, additions, or improvements made thereto, and to all personal property of Provider used in connection with the installation, operation, maintenance, repair, and monitoring of the Energy Storage System) and the Provider Financing Benefits, and (b) except as otherwise expressly provided in the Agreement, the Utility Services, the Utility Service Agreements, and the Incentives. Host agrees to reasonably cooperate with Provider to secure the benefits of the foregoing and shall, at the request of Provider, execute such documents or agreements and take such actions as are reasonably necessary to fulfill this intent. Each of Host and Provider agree that Provider (or its permitted assignee) shall be the tax owner of the Energy Storage System and all tax filings and reports will be filed in a manner consistent with the Agreement, and Host will not take the position on any tax return or in any other filings suggesting that it is anything other than a recipient of the Energy Management Services hereunder. Host acknowledges and agrees that (i) the Parties intend that the Energy Storage System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and shall not be, and shall not be deemed to be, real property or any fixture to real property, and (ii) Provider will have the right to make (and Host hereby consents, and agrees to

cooperate, with the making and perfecting of) any filings to defend and protect Provider's right, title, and interest in and to the Energy Storage System, including any precautionary fixture filings and financing statements in each case solely with respect to the Energy Storage System. If there is any mortgage or fixture filing against the Premises or the Property which could reasonably be construed as attaching to the Energy Storage System as a fixture of the Premises, Host agrees to provide, at Provider's request, a disclaimer or release from such lien holder.

10.2 No Liens. Host shall not directly or indirectly do or permit any act or omission that gives rise to any lien, encumbrance, or security interest on or with respect to any Energy Storage System, or with respect to any equipment, materials, or other assets of Provider, or any interest therein. For purposes of clarity, subject to Provider's rights of quiet enjoyment with respect to the Premises, nothing herein shall restrict Host from granting or maintaining a lien, mortgage, deed of trust, or other collateral interest (generally, a "Mortgage," and the holder thereof, a "Mortgagee") with respect to the Premises or Property (other than with respect to the Energy Storage System or any equipment, materials, or other assets of Provider). Within ten (10) days following Provider's request, Host shall disclose to Provider any existing ground or underlying leases (or occupancy agreements), Mortgages, security interests, or other similar liens upon the Property or the Premises, and within thirty (30) days following Provider's request, Host shall obtain and provide the Required Financing Documents.

10.3 No Electric Utility; Forward Contract. Host is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company. Neither Party shall assert that Provider is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of Provider's obligations or performance under the Agreement. If at any time as a result of any change in Applicable Laws, Provider would be subject to regulation as an electric utility or public service company (or its equivalent) by any Governmental Authority by virtue of the Agreement, the Parties will use best efforts to restructure the Agreement so that Provider will not be subject to such regulation, while preserving for both Parties the substantive economic benefits conferred hereunder. The transaction contemplated under the Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

10.4 Host as Governmental Authority. If Host is a Governmental Authority, Host represents that it has fully complied with all procurement, public bidding, and public agency contracting requirements under Applicable Law applicable to the Agreement. The obligation of the Host to make payments hereunder shall constitute a current operating expense of the Host and shall not in any way be construed to be a debt of the Host, or the State of California, or any political subdivision thereof, nor shall anything contained herein constitute a pledge of general revenues, funds or moneys of the Host beyond the fiscal year for which the Host has appropriated funds to make payments hereunder. Due to the constitutional limitations on cities pertaining to multiple year contracts, a "budget non-appropriation event" may occur in which Host's appropriation for any year covered in this Agreement does not appropriate funds for the procurement of any services for Host. During the continuation of a budget non-appropriations event as defined above, if Host does not otherwise have other funds available to make payments otherwise due on this Agreement, Host may not be in a position to pay for services provided under this Agreement until the budget non-appropriation event has terminated. Host agrees that it shall use its best efforts to seek appropriations for the amounts owed by Host under this Agreement during the Term of this Agreement, and if funds to effect such continued payment are not appropriated, Provider may at its sole discretion (a) agree to delay payment by Host of amounts due to Provider until such time as funds are appropriated for such payments, or (b) terminate the Agreement. Host is not entitled to claim governmental immunity in a breach of contract action initiated by Provider in connection with the Agreement.

10.5 Taking; Damage. Host shall promptly provide written notice to Provider of any commencement, or notice of commencement, of any proceeding in respect of any foreclosure by a Mortgagee of any Premises or Property, or a temporary or permanent condemnation or taking (or private purchase in lieu thereof) by any Governmental Authority in its exercise of the right of condemnation or eminent domain of any Premises or Property. If any portion of the Premises or an Energy Storage System is damaged, lost, impaired, or destroyed, in whole or in part, by reason of fire, flood, or other casualty (a "Casualty"), Host shall give prompt notice of such Casualty to Provider. If Host decides, in its reasonable discretion, to restore the Premises, and such restoration requires the removal, re-installation or repair of the Energy Storage System, Provider shall, at Host's expense, perform such removal, re-installation, or repair of the Energy Storage System and continue to perform the Energy Management

Services through the remainder of the Term in accordance with the Agreement. In the event the Premises are not, or will not be, restored within six (6) months after the date of such Casualty, Provider may terminate the Agreement upon written notice to Host.

10.6 Notice to Provider Financing Parties. Concurrently with its delivery to Provider, Host will deliver copies of all notices of breach, default, termination, and Default Events to any Provider Financing Party that Provider has theretofore provided the name and address to Host. No such notice will be effective absent delivery to the Provider Financing Parties. Host will not mutually agree with Provider to cancel, modify, or terminate the Agreement without the written consent of the Provider Financing Parties.

10.7 Step-In Rights. Each Provider Financing Party shall be a third party beneficiary to Provider's rights under the Agreement. Upon a Default Event by Provider under the Agreement, or a breach or default by Provider under any agreement with a Provider Financing Party that is not cured within the applicable time period as provided therein, the Provider Financing Party thereof shall have the right, but not the obligation, by written notice to Provider and Host (a "Step-In Notice") to enforce all of the rights and assume all of the obligations of Provider under the Agreement ("Step-In Right"), and Host hereby consents to the same. The Step-In Notice shall specify the date on which management of the rights and obligations shall transfer to the Provider Financing Party. Host and Provider shall reasonably cooperate with the Provider Financing Party and provide all reasonable assistance to the Provider Financing Party to give effect to the terms of this Section 10.7, provided such reasonable cooperation will be at no material cost or expense to Host. If a Provider Financing Party exercises its Step-In Right, Provider shall no longer have the rights or obligations under the Agreement to the extent assumed by such Provider Financing Party. At any time after exercising the Step-In Right, a Provider Financing Party may, at its sole discretion, issue a written "Step-Out Notice" to Provider and Host reinstating the rights and obligations to Provider and the date on which such rights shall be reinstated. For the time period during which a Provider Financing Party is exercising its Step-In Right, Host agrees to send all written notices required under the Agreement to such Provider Financing Party at the address specified in the Step-In Notice. In the event a Provider Financing Party forecloses on, and directly or indirectly has taken ownership and control of, the Agreement, at the request of such Provider Financing Party within ninety (90) days of such foreclosure, Host shall enter into a new or amended agreement with such Provider Financing Party to reflect the change in counterparty but which agreement shall otherwise have the same terms and conditions as the Agreement.

11. Estoppel Certificates. Within ten (10) business days following a request in writing by either Party, Host and Provider shall execute, acknowledge, and deliver to the requesting Party an estoppel certificate, in the form submitted by the requesting Party, indicating therein any exceptions thereto that may exist at that time, and which shall also contain any other information reasonably requested by either Party or either Party's actual or potential purchasers, assignees, successors, mortgagees, lenders, investors, creditors, or Provider Financing Parties.

12. Contractors; Affiliates. Provider and Host shall each be permitted to use one or more Affiliates and/or contractors to perform any of its obligations under the Agreement; provided, however, each of Provider and Host shall continue to be responsible for all of its obligations under the Agreement, and the quality of the work performed by its Affiliates and contractors.

13. Disruption Period. In the event of a Disruption Period, in addition to any Supplemental Services Fee or other amounts owed by Host hereunder, Host shall (a) pay Provider for all work required by Provider to disassemble or move the Energy Storage System and to re-install, repair, and test the Energy Storage System, (b) if applicable, continue to pay the Energy Services Fee, and (c) reimburse Provider for any lost or reduced revenue or benefits from Utility Services, Incentives, and Provider Financing Benefits that are not delivered or received during the Disruption Period due to the reduced or non-operation of the Energy Storage System.

14. Force Majeure. If a Party is rendered wholly or partly unable to perform its obligations under the Agreement because of Force Majeure Event, it shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected and the time for performing such excused obligations shall be extended as reasonably necessary, provided that (a) the Party affected by such Force Majeure Event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure Event, gives the other Party prompt written or oral notice describing the event; (b) the suspension or extension of time for performance is of no greater scope and of no longer duration than is required as a result of the Force Majeure Event; and (c) the Party

affected by such Force Majeure Event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably practicable. Provider shall not be liable for any damage to the Property or Premises resulting from a Force Majeure Event. The Term shall be extended on a day for day basis to the extent the Energy Management Services and/or the provision of the Utility Services are suspended due to a Force Majeure Event. Notwithstanding anything herein to the contrary, the obligation to make any payment due under the Agreement shall not be excused by a Force Majeure Event.

15. Confidentiality.

15.1 Each Party agrees (a) not to disclose the Confidential Information of the disclosing Party to any other Person, (b) to protect such Confidential Information from unauthorized use and disclosure with the same degree of care accorded to its own confidential and proprietary information (but no less than reasonable care), and (c) to refrain from using such Confidential Information, except in connection with the exercise of rights or performance of obligations under the Agreement. Notwithstanding the foregoing, (x) a Party may provide the other Party's Confidential Information to (i) its officers, directors, members, managers, employees, agents, counsel, contractors, consultants, and Affiliates, in each case whose access is reasonably necessary to performance of the Agreement, and (ii) existing or prospective investors, lenders, and assignees of the Agreement; provided that any such Person under clauses (i) or (ii) be bound by a written agreement or legal obligation restricting the use and disclosure of such Confidential Information at least as restrictive as provided herein, and (y) Host may disclose Provider's Confidential Information to the extent required under the PRA (defined below), subject to compliance by Host with its obligations in Section 15.2 of this Schedule 3. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any Person to whom that Party discloses the Confidential Information of the other Party. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by Applicable Law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party with its efforts to limit the disclosure to the maximum extent permitted by Applicable Law.

15.2 The Parties acknowledge that Host is a public entity and is subject to the California Public Records Act, Gov. Code § 6250, et seq., and the regulations promulgated thereunder (the "PRA"). Host acknowledges that Provider considers certain of its Confidential Information to be market sensitive utility procurement related information (including power purchase agreements), which are required to remain confidential pursuant to Cal. Pub. Util. Code § 454.5, Cal. Pub. Util. Comm., General Order 66-C, and Cal. Pub. Util. Comm. Decision 06-06-066, and certain of Provider's Confidential Information contains Provider's trade secrets, including, without limitation, the pricing, terms, conditions, and structure of the Agreement. In light of the foregoing, Host agrees to provide prompt written notice to Provider of any public records requests received by Host seeking the disclosure of Provider's Confidential Information and authorize and permit Provider to oppose any such public records requests prior to any such disclosure as permitted under the PRA or other Applicable Law.

16. Miscellaneous.

16.1 Integration. Without limiting the provisions set forth in Section 9 of the Agreement, the Agreement, including all schedules and exhibits attached thereto (which are incorporated into the Agreement by this reference) and the Addendum constitute the complete agreement between the Parties with respect to the Transaction, and supersedes all prior negotiations, representations, or agreements, whether oral or written, with respect to the Transaction. The Agreement and the Addendum may only be modified and/or amended by written instrument signed by both Parties. The captions or headings in the Agreement are strictly for convenience and shall not be considered in interpreting the Agreement.

16.2 Notices. All notices, demands, statements, designations, approvals, or other communications (collectively, "Notices") given or required to be given by either Party to the other hereunder or by law shall be in writing and (a) sent by United States certified or registered mail, postage prepaid, return receipt requested ("Mai"), (b) delivered by electronic mail, (c) delivered by a nationally recognized overnight courier, or (d)

delivered personally. Any Notice shall be sent, transmitted, or delivered, as the case may be, to the Parties at the appropriate address set forth on the signature page hereof, or to such other place as either Party may from time to time designate in a Notice delivered pursuant hereto. Any Notice will be deemed given (i) three (3) days after the date it is posted if sent by Mail, (ii) when an acknowledgement of receipt is received, if sent by electronic mail, (iii) the date the overnight courier delivery is made, or (iv) the date personal delivery is made.

16.3 Publicity. The Parties share a common desire to generate favorable publicity regarding the Energy Storage System and their association with it. The Parties acknowledge that they each may, from time to time, issue press releases or other public statements regarding the Energy Storage System and that they shall reasonably cooperate with each other, subject to each Party's reasonable exercise of discretion, in connection with the issuance of such releases.

16.4 Invalidity of Particular Provisions. If any provisions of the Agreement, or the application thereof to any circumstances are held to be invalid or unenforceable, then the remaining provisions of the Agreement or the application thereof to other circumstances will not be affected thereby and will be valid and enforceable to the fullest extent permitted by Applicable Law. The failure of either Party to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

16.5 Cooperation; Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments, estoppels, certificates, and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof, including, but not limited to, disclosure of information, access to the Premises and the Property, or submission of permit applications. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this section.

16.6 Relationship of the Parties. The Parties have entered into the Agreement for the limited purpose set out herein and agree that Provider and Host (and their Affiliates) are acting solely as independent contractors to each other. Nothing contained in the Agreement, nor any act of a Party in pursuing its rights or fulfilling its obligations pursuant to the Agreement are or will be construed as to create a partnership or joint venture relationship between the Parties (and/or their Affiliates).

16.7 Disputes; Arbitration. If a dispute arises between the Parties relating to the Agreement, and despite their good faith efforts, the Parties have not succeeded in negotiating a resolution of the dispute through an in-person meeting of the representatives of both Parties, the Parties may elect to appoint a mutually acceptable neutral Person not affiliated with either of the Parties to act as a mediator. In the event the mediation does not result in resolution of the dispute, or the Parties do not elect mediation, then, upon written notice to the other Party, either Party may file a request for binding arbitration to be governed by the then-current commercial arbitration rules of the Judicial Arbitration and Mediation Service ("JAMS") in effect at that time.

16.8 Intentionally Omitted.

16.9 Governing Law. The Agreement, and any dispute concerning the Agreement, shall be governed by the laws of the State of California, without resort to its conflicts of law principles.

16.10 Counterparts. The Agreement, and each of the schedules and exhibits attached thereto, may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement, schedule, or exhibit, as applicable.

16.11 No Third Party Beneficiaries. Except as otherwise expressly provided herein, the Agreement, and all rights hereunder and thereunder are intended for the sole benefit of the Parties hereto, and shall not imply or create any rights on the part of, or obligations to, any other Person.

*[End of Schedule 3, General Terms and Conditions]*

**SCHEDULE 4**  
**DEFINED TERMS**

This SCHEDULE 4 (Defined Terms) ("Schedule 4"), is attached to, and made a part of, that certain Master Energy Management Services Agreement (WLA 1 Agreement), dated \_\_\_\_\_, 2018 (the "Agreement"), by and between the City of Long Beach ("Host"), and Hybrid-Electric Building Technologies West Los Angeles 1, LLC, a Delaware limited liability company ("Provider"). Capitalized terms used but not otherwise defined in this Schedule 4 shall have the meanings ascribed to them elsewhere in the Agreement.

1. Definitions. As used in the Agreement, the following terms shall have the following meanings:

1.1 "Adverse Environmental Conditions" means (a) any violation of, breach of, or non-compliance with any Environmental Laws affecting the Premises, other than a violation, breach, or non-compliance caused by Provider, and (b) any presence or release of, or exposure to, any Hazardous Substances at, to, on, in, under, or from the Property in violation of any Environmental Law, other than the presence, release, or exposure caused by Provider.

1.2 "Affiliate" as applied to either Party shall mean any Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party.

1.3 "Applicable Laws" means, with respect to any Person, the Property, the Premises, or the Energy Storage System, any laws, statutes, rules, regulations, ordinances, or requirements of any Governmental Authority having jurisdiction over such Person, Property, Premises, or Energy Storage System.

1.4 "Bankruptcy Event" means a Party (a) applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator with respect to itself or of all or a substantial part of its assets; (b) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (c) makes a general assignment for the benefit of its creditors; (d) commences a voluntary case under any bankruptcy law; (e) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (f) fails to controvert in a timely and appropriate manner, or acquiesced in writing, to any petition filed against such Party (or such Party's Affiliates) in an involuntary case under any bankruptcy law; or (g) takes any corporate or other action for the purpose of effecting any of the foregoing.

1.5 "Change In Law" means an amendment, modification, nullification, suspension, repeal, or other change of any Applicable Law (or any interpretation thereof) related to the Energy Storage System, the Energy Management Services, the Utility Services, the Incentives, the Provider Financing Benefits, the Agreement, and/or the rights and obligations of the Parties herein.

1.6 "Commercial Operation Date" means the date that Provider identifies in a written notice to Host that the Energy Storage System has been installed and constructed, all required Governmental Approvals for the commercial operation of such Energy Storage System have been obtained, and Provider has commenced, or will commence, the commercial operation of such Energy Storage System.

1.7 "Confidential Information" means any information (a) which is disclosed in written form regarding the Property, Premises, Energy Storage System, Utility Services, Energy Management Services, or Incentives, or the, financing, financial statements, rent rolls, policies, procedures, and/or other matters or details with respect to any of the foregoing, or (b) based on the content of the information and the circumstances of disclosure would be considered confidential by a reasonable person. Notwithstanding the foregoing, Confidential Information shall not include information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under Applicable Law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by Applicable Law), (iii) is independently developed by the receiving Party without use or reference to disclosing Party's Confidential Information, as shown by contemporaneous evidence, or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

1.8 “Control Area Operator” means a regional transmission operator or an entity responsible for managing the bulk power grid, including, without limitation, the California Independent System Operator.

1.9 “Default Event” shall mean the occurrence of any of the following: (a) the failure of a Party to pay any amount owed by such Party under the Agreement by the date due, and such failure continues for ten (10) business days after written notice from the other Party (a “Payment Failure”); (b) a material breach by a Party of any of its representations or warranties, or a failure of a Party to substantially perform any material obligation (other than a Payment Failure), under the Agreement, which such breach or failure is not remedied within thirty (30) days following receipt of notice thereof from the other Party; provided, however, that if such breach or failure cannot be reasonably cured within the said thirty (30) day period notwithstanding good faith efforts to do so, such time period shall be extended for the time period required to reasonably cure such breach or failure, but not to exceed ninety (90) days; or (c) a Bankruptcy Event occurs with respect to a Party.

1.10 “Disruption Period” means the time period during which the operation, monitoring, or usage of the Energy Storage System is disrupted in whole or in part, or the Energy Storage System cannot be operated or monitored in whole or in part, as a result of a Host Act.

1.11 “DRESAs” means those certain (a) Demand Response Energy Storage Agreement, by and between Hybrid-Electric Building Technologies West Los Angeles 1, LLC, and Southern California Edison Company, dated November 3, 2014 (as amended, amended and restated, or otherwise modified from time to time), and/or (b) Demand Response Energy Storage Agreement, by and between Hybrid-Electric Building Technologies West Los Angeles 2, LLC, and Southern California Edison Company, dated November 3, 2014 (as amended, amended and restated, or otherwise modified from time to time).

1.12 “Environmental Law” means any Applicable Law now or hereafter in effect and in each case as amended, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, or judgment, relating to the environment, health, safety, or Hazardous Materials, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq.; the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; the Atomic Energy Act, 42 U.S.C. §§ 2011 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.;

1.13 “Force Majeure Event” means the occurrence of any event or circumstance beyond the reasonable control of a Party which results in the failure or delay by such Party of the performance of its obligations under the Agreement (in full or in part), or the failure or reduced performance of the Energy Storage System, including as a result of any of the following: an act of God, war (declared or undeclared), sabotage, riot, insurrection, civil unrest or disturbance, military or guerilla action, banditry, terrorist activity or a threat of terrorist activity which, under the circumstances, would be considered a precursor to actual terrorist activity, acts of public enemy, economic sanction or embargo, epidemic, civil strike, work stoppage, slow-down, or lock-out or labor dispute, explosion, fire, volcanic activity, earthquake or seaquake, abnormal weather condition, action of the elements, hurricane, flood, lightning, wind, drought, peril of the sea, any action or order by a Governmental Authority, the delay of or failure to act on the part of any Governmental Authority, failure or unavailability of equipment, supplies, or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence), or Change In Law.

1.14 “Governmental Approvals” means all approvals, consents, franchises, permits, certificates, licenses, attestations, authorizations, studies, agreements, or other documentation required by any Governmental Authority, or required under any Utility Services Agreement, for the provision of the Energy Management Services and/or Utility Services, obtaining the Incentives, and/or the installation, operation, maintenance, monitoring, and removal of the Energy Storage System, including, without limitation, with respect to the interconnection of the Energy Storage System to the electric utility grid serving the Property and/or the Premises.

1.15 “Governmental Authority” means all applicable federal, state, county, or municipal government or other public, administrative, or regulatory body, including, any Local Electric Utility, any Control Area

Operator, and the California Public Utilities Commission, and excluding Host and its Affiliates to the extent applicable.

1.16 “Hazardous Substances” means (a) petroleum or petroleum products, natural or synthetic gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, and radon gas; and (b) any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants” or “pollutants,” or words of similar import, under any Applicable Law

1.17 “Host Act” means (a) Host repairs, modifies, or alters the Property or Premises for any reason not directly related to damage caused by the Energy Storage System, and such repair, modification, or alteration requires the partial or complete disassembly, repair, modification, alteration, or removal of the Energy Storage System, (b) any act or omission of Host or Host’s employees, Affiliates, tenants, licensees, agents, or contractors results in a disruption or outage of the Energy Storage System or denies Provider or its employees, contractors, or agents access to the Premises, Property, or Energy Storage System, or (c) a breach or default of the Agreement, or Default Event, by or with respect to Host or its Affiliates that is not cured following notice and within the time periods provided herein.

1.18 “Incentives” means any and all grants, credits, accelerated or bonus depreciation, installation or production-based incentives, investment tax credits, production tax credits, ancillary services or capacity products and subsidies, including, without limitation, SGIP, and all other storage or energy subsidies, incentives, tax credits, grants, accelerated rights and benefits under Applicable Law related to the construction, ownership, generation, storage, capacity, or production of energy or other ancillary services or benefits from the Energy Storage System, performance of the Energy Management Services, and providing Cost Savings.

1.19 “Local Electric Utility” means local electric distribution owner and operator providing energy or electric distribution and interconnection services to Host at the Property.

1.20 “Person” means any utility, transmission, or distribution provider, individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

1.21 “Premises” means that certain real property owned by Host where the Energy Storage System will be installed, and includes the location of the interconnection facilities required to connect the Energy Storage System to the Property. The agreed-upon location of the Premises is set forth on the Addendum, which may be modified and amended from time to time upon the mutual, written agreement of the Parties.

1.22 “Provider Financing Benefits” means all rights, deductions, credits (including depreciation, installation, or production-based incentives, and investment tax credits), grants, rebates, subsidies, payments, other benefits, reductions, offsets, and allowances and entitlements of any kind, however entitled or named, whether existing now or in the future, related to the installation, ownership, and operation of the Energy Storage System.

1.23 “Provider Financing Party” means a lender, creditor, lessor, lessee, investor, any party to the DRESAs, or other financing party of Provider.

1.24 “Purchase Option Price” means the amount set forth in each Addenda.

1.25 “Required Financing Documents” means (a) with respect to any ground or underlying lease, Mortgage, security interest, or other similar lien encumbering the Property or the Premises, either of the following as requested by Provider (i) a commercially-reasonable subordination, non-disturbance, and attornment agreement (“SNDA”) containing a non-disturbance covenant for the benefit of Provider, or (ii) a commercially-reasonable access and equipment lien waiver agreement (“Lien Waiver”) containing a right to access the Property and the Premises and remove the Energy Storage System following a termination, foreclosure or other enforcement event, in each case, executed by, and in form and content reasonably acceptable to, Host, Provider, and the applicable lessor, grantor, Mortgagee, or lien holder, and in each case confirming that the applicable lessor, grantor, Mortgagee, or lien

holder has no right, title, or interest in or to the Energy Storage System, (b) an estoppel certificate from Host, as provided in Section 11 of Schedule 3 attached to the Agreement, and (c) if Host is not the fee owner of the Property (or the Premises which is a part thereof), (i) a commercially-reasonable SNDA or Lien Waiver, in the form and content submitted by Provider, executed by the fee owner thereof, containing a non-disturbance covenant for the benefit of Provider and confirming that the fee owner has no right, title, or interest in or to the Energy Storage System, and (ii) as requested by Provider, an SNDA or Lien Waiver with respect to any Mortgage, security interest, or other similar lien encumbering the Property made by such fee owner.

1.26 “Requisite Experience” means, with respect to any Person, that such Person has, or one or more of such Person’s Affiliates have, or such Person is managed by individuals who have, or such Person has engaged or employed such other Persons (including, without limitation, such asset managers) who have, at least three (3) years of experience in the operation or management of power generation systems and/or energy storage systems. For clarity, and notwithstanding the foregoing, Advanced Microgrid Solutions, Inc. and its Affiliates have the Requisite Experience.

1.27 “SGIP” means the Self Generation Incentive Program, as described in the California Public Utilities Commission Decision 14-12-033.

1.28 “Utility Services” means any products or services that the Energy Storage System can provide from time to time, including, without limitation, in connection with demand response programs, grid support, energy or capacity sales, frequency regulation, ancillary services, reactive power support, and capacity and resource adequacy benefits.

1.29 “Utility Services Agreement” means an agreement between Provider and a Local Electric Utility, Control Area Operator, or any other Person for the sale and provision of Utility Services, including the DRESAs.

*[End of Schedule 4, Defined Terms]*

**SCHEDULE 5**

**FORM OF PROHIBITED RESOURCES ATTESTATION**

**Hybrid Electric Building Technologies West Los Angeles 1, LLC (“Provider”)**

**Prohibited Resources in Demand Response Programs**

The California Public Utilities Commission has issued rules limiting certain benefits for companies such as Provider that are aggregators of demand response systems where program host customers use prohibited resources for back-up generation during demand response events. Prohibited resources include distributed generation technologies using diesel, natural gas, gasoline, propane or liquefied petroleum gas, in topping cycle CHP or non-CHP configuration. More information regarding restrictions on the use of prohibited resources in demand response programs can be found in CPUC Decision 16-09-056 and Resolution E-4838.

Under CPUC Rules and under the demand response energy services agreements between Provider and Southern California Edison Company, Provider is required to obtain this form from all of their customers. Compliance will be verified. Customer must provide documentation upon request for verification and audit purposes. Noncompliance due to inaccurate or incomplete information in this form or other errors of an administrative or clerical nature must be remedied within 60 days of notice. If such error is not remedied within 60 days or if the noncompliance involves the use of prohibited resources during a demand response event or the intentional submission of an invalid nameplate capacity for the prohibited resource, then the customer will be removed from participation in demand response programs for one year (in the case of a single instance of such noncompliance) or three years (in the case of two or more instances of noncompliance). Use of prohibited resources to reduce load during a demand response dispatch event is prohibited. This form will supplement the existing leases, demand response agreements or other agreements currently in place among the parties.

**Attestation**

The undersigned representative hereby agrees to the requirements herein and attests on behalf of the Customer to the accuracy of the information set forth on Exhibit A.

Customer:

City of Long Beach

Signature		Date	
Printed Name		Title	

**Exhibit A – Prohibited Resources**

1.	I do not have a prohibited resource on-site.				
--	<b>Customer</b>	<b>Service Address</b>	<b>SCE Service Account #</b>		
*2.	I do have a prohibited resource on-site and I will not use the resource to reduce load** during any demand response event.				
--	<b>Customer</b>	<b>Service Address</b>	<b>SCE Service Account #</b>	<b>Type and Number of Prohibited Resources</b>	<b>Total Nameplate Capacity (kW) of Prohibited Resource(s)</b>
***3.	I do have a prohibited resource on-site and I may have to run the resource(s) during demand response events for safety reasons, health reasons, or operational reasons. I understand that this value will be used as the Default Adjustment Value (DAV) to adjust the demand response incentives / charge for my account.				
--	<b>Customer</b>	<b>Service Address</b>	<b>SCE Service Account #</b>	<b>Type and Number of Prohibited Resources</b>	<b>Total Nameplate Capacity (kW) of Prohibited Resource(s)</b>

\*For clarity, please note that if a Service Account has elected Attestation #2 above, such Service Account shall not be prohibited from using a prohibited resource during an interruption of SCE's electric service even if the interruption occurs at the same time as a battery storage system dispatch.

\*\*I do have the following baseload resource on-site which cannot or will not be ramped up beyond its normal baseload operations to further reduce the net, baseline load during a demand response event:

Customer	Service Address	SCE Service Account #	Type and Number of Baseload Resource	Total Nameplate Capacity (kW) of Baseload Resource(s)

\*\*\*Default Adjustment Value (DAV) is the nameplate capacity value of the Customer's prohibited resource provided at the time of attestation. If a customer has multiple prohibited resources at the same site, then the DAV is the sum of the nameplate capacity values from all prohibited resources electing to be used to reduce load during a Demand Response event on the same site for the same service account.

**Received**

By: [_____]			
Signature		Date	
Printed Name		Title	

**SCHEDULE 6  
WLA 1 ADDENDA**

