

OVERTON POWER DISTRICT NO 5
FINANCIAL AND STATISTICAL REPORT
FROM 01/24 THRU 10/24

PART A. STATEMENT OF OPERATIONS

LINE NO		YEAR TO DATE			
		LAST YEAR A	THIS YEAR B	BUDGET C	THIS MONTH D
1.0	OPERATING REVENUE & PATRONAGE CAPITAL....	38,981,311.85	42,992,241.64	37,880,185.00	4,255,014.06
2.0	POWER PRODUCTION EXPENSE.....	.00	.00	.00	.00
3.0	COST OF PURCHASED POWER.....	18,009,746.23-	20,668,167.85-	18,110,491.29-	1,910,632.90-
4.0	TRANSMISSION EXPENSE.....	712,466.10-	802,272.81-	747,897.00-	90,810.44-
5.0	REGIONAL MARKET OPERATIONS EXPENSE.....	.00	.00	.00	.00
6.0	DISTRIBUTION EXPENSE-OPERATION.....	726,049.35-	779,548.71-	868,672.11-	111,010.87-
7.0	DISTRIBUTION EXPENSE-MAINTENANCE.....	1,928,781.99-	2,732,185.30-	2,026,901.61-	153,040.58-
8.0	CONSUMER ACCOUNTS EXPENSE.....	1,256,041.79-	1,425,113.21-	1,345,946.89-	132,285.89-
9.0	CUSTOMER SERVICE & INFORMATIONAL EXPENSE.	7,586.31-	25,433.37-	8,333.32-	.00
10.0	SALES EXPENSE.....	.00	.00	.00	.00
11.0	ADMINISTRATIVE & GENERAL EXPENSE.....	2,782,792.35-	3,176,769.10-	3,017,839.00-	278,982.97-
12.0	TOTAL OPERATIONS & MAINTENANCE EXPENSE...	25,423,464.12-	29,609,490.35-	26,126,081.22-	2,676,763.65-
13.0	DEPRECIATION & AMORTIZATION EXPENSE.....	2,258,447.80-	2,462,292.63-	2,448,979.16-	295,459.77-
14.0	TAX EXPENSE - PROPERTY & GROSS RECEIPTS..	.00	.00	.00	.00
15.0	TAX EXPENSE - OTHER.....	.00	.00	.00	.00
16.0	INTEREST ON LONG TERM DEBT.....	1,560,222.89-	1,456,834.95-	1,635,334.16-	143,299.57-
17.0	INTEREST CHARGED TO CONSTRUCTION - CREDIT	.00	.00	.00	.00
18.0	INTEREST EXPENSE - OTHER.....	.00	.00	.00	.00
19.0	OTHER DEDUCTIONS.....	136,765.70-	136,765.70-	136,765.80-	13,676.57-
20.0	TOTAL COST OF ELECTRIC SERVICE.....	29,378,900.51-	33,665,383.63-	30,347,160.34-	3,129,199.56-
21.0	PATRONAGE CAPITAL & OPERATING MARGINS....	9,602,411.34	9,326,858.01	7,533,024.66	1,125,814.50
22.0	NON OPERATING MARGINS - INTEREST.....	1,004,651.95	1,309,985.30	791,666.66	135,180.02
23.0	ALLOW. FOR FUNDS USED DURING CONSTRUCTION	.00	.00	.00	.00
24.0	INCOME (LOSS) FROM EQUITY INVESTMENTS....	.00	.00	.00	.00
25.0	NON OPERATING MARGINS - OTHER.....	5,747.74	2,831.44-	250,000.00-	.00
26.0	GENERATION & TRANSMISSION CAPITAL CREDITS	.00	.00	.00	.00
27.0	OTHER CAPITAL CREDITS & PATRONAGE DIVID..	409,237.07	236,619.29	231,869.00	.00
28.0	EXTRAORDINARY ITEMS.....	.00	.00	.00	.00
29.0	PATRONAGE CAPITAL OR MARGINS.....	11,022,048.10	10,870,631.16	8,306,560.32	1,260,994.52

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PART C. BALANCE SHEET

LINE NO	ASSETS AND OTHER DEBITS		LIABILITIES AND OTHER CREDITS		
1.0	TOTAL UTILITY PLANT IN SERVICE	162,529,057.65	30.0	MEMBERSHIPS	.00
2.0	CONSTRUCTION WORK IN PROGRESS	20,135,679.00	31.0	PATRONAGE CAPITAL	.00
3.0	TOTAL UTILITY PLANT	182,664,736.65	32.0	OPERATING MARGINS-PRIOR YEARS	94,594,716.81-
4.0	ACCUM PROV FOR DEP & AMORT	49,232,506.52-	33.0	OPERATING MARGINS-CURRENT YEAR	9,560,645.86-
5.0	NET UTILITY PLANT	133,432,230.13	34.0	NON-OPERATING MARGINS	1,309,985.30-
6.0	NON-UTILITY PROPERTY (NET)	.00	35.0	OTHER MARGINS & EQUITIES	21,025,504.62-
7.0	INVEST IN SUBSIDIARY COMPANIES	.00	36.0	TOTAL MARGINS & EQUITIES	126,490,852.59-
8.0	INV IN ASSOC ORG - PAT CAPITAL	3,662,055.30	37.0	LONG TERM DEBT - RUS (NET)	.00
9.0	INV IN ASSOC ORG OTHR GEN FND	.00		(PAYMENTS-UNAPPLIED	.00)
10.0	INV IN ASSOC ORG - NON GEN FND	.00	38.0	LNG-TERM DEBT-FFB-RUS GUAR	.00
11.0	INV IN ECON DEVEL PROJECTS	.00	39.0	LONG-TERM DEBT OTHER-RUS GUAR	
			40.0	LONG TERM DEBT - OTHER (NET)	47,619,908.33-
12.0	OTHER INVESTMENTS	.00	41.0	LNG-TERM DEBT-RUS-ECON DEV NET	.00
13.0	SPECIAL FUNDS	.00	42.0	PAYMENTS - UNAPPLIED	.00
14.0	TOT OTHER PROP & INVESTMENTS	3,662,055.30	43.0	TOTAL LONG TERM DEBT	47,619,908.33-
15.0	CASH - GENERAL FUNDS	3,106,718.67	44.0	OBLIGATION UNDER CAPITAL LEASE	.00
16.0	CASH - CONSTRUCTION FUND TRUST	.00	45.0	ACCUM OPERATING PROVISIONS	.00
17.0	SPECIAL DEPOSITS	.00	46.0	TOTAL OTHER NONCURR LIABILITY	.00
18.0	TEMPORARY INVESTMENTS	31,638,036.87	47.0	NOTES PAYABLE	.00
19.0	NOTES RECEIVABLE (NET)	.00	48.0	ACCOUNTS PAYABLE	2,184,107.28-
20.0	ACCTS RECV - SALES ENERGY (NET)	3,458,444.94	49.0	CONSUMER DEPOSITS	371,000.00-
21.0	ACCTS RECV - OTHER (NET)	322,005.92	50.0	CURR MATURITIES LONG-TERM DEBT	.00
22.0	RENEWABLE ENERGY CREDITS	.00	51.0	CURR MATURIT LT DEBT ECON DEV	.00
23.0	MATERIAL & SUPPLIES-ELEC & OTH	4,898,093.60	52.0	CURR MATURITIES CAPITAL LEASES	.00
24.0	PREPAYMENTS	304,425.85	53.0	OTHER CURRENT & ACCRUED LIAB	1,800,283.41-
25.0	OTHER CURRENT & ACCR ASSETS	.00	54.0	TOTAL CURRENT & ACCRUED LIAB	4,355,390.69-
26.0	TOTAL CURRENT & ACCR ASSETS	43,727,725.85	55.0	REGULATORY LIABILITIES	.00
27.0	REGULATORY ASSETS	.00	56.0	OTHER DEFERRED CREDITS	4,551,599.62-
28.0	OTHER DEFERRED DEBITS	2,195,739.95	57.0	TOTAL LIABILITIES & OTH CREDIT	183,017,751.23-
29.0	TOTAL ASSETS & OTHER DEBITS	183,017,751.23			



October-24

			YTD Dividend Received
Beginning Balance	\$	3,841,066	
Bank of Nevada 1.4%	\$	3,092,599	\$ 8,762
America First Credit Union 1.5%	\$	12,974	\$ 47
Bank of Nevada Investment .55%	\$	138,834	
CFC Member Capital Sec 5%	\$	500,000	\$ 30,748
Month Ending Balance	\$	3,744,407	
Net Increase/Decrease Prior Month	\$	(96,659)	

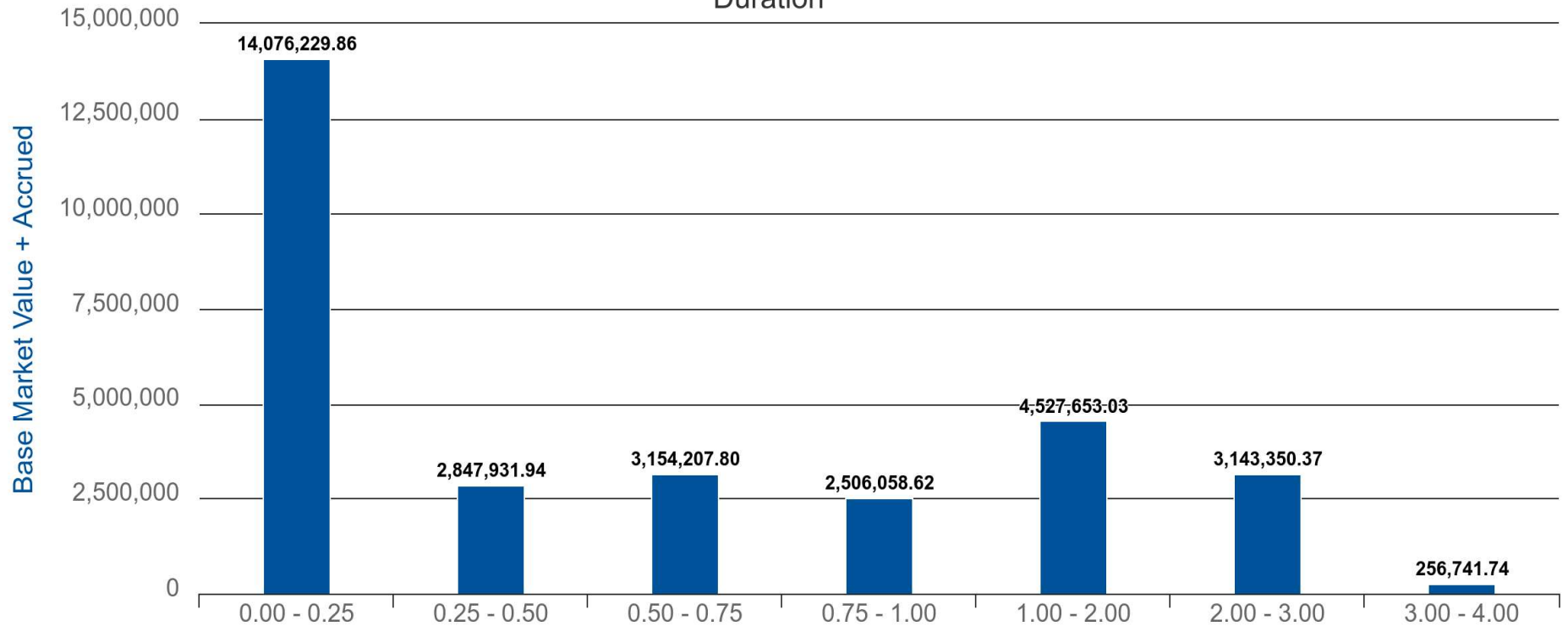
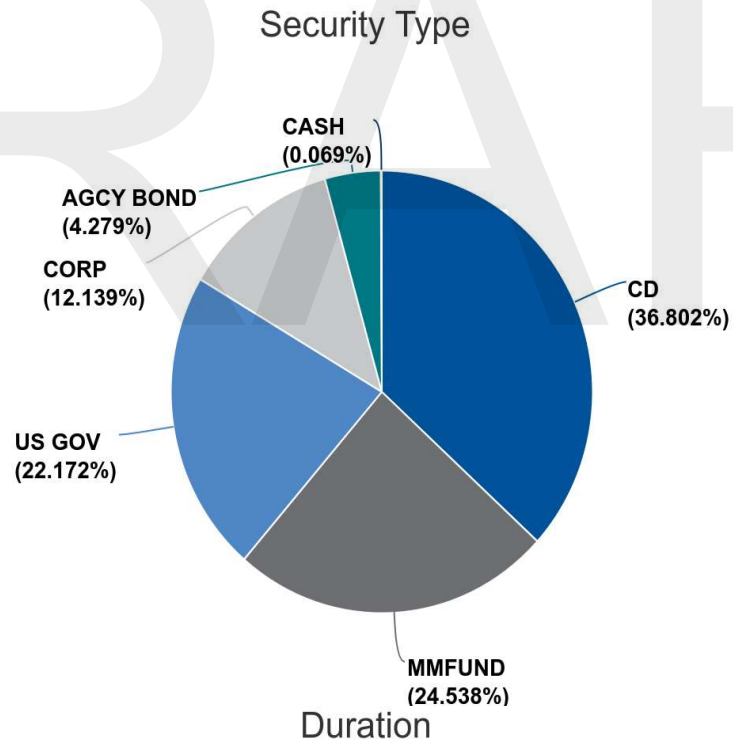


Report:
Account:
Date:

GAAP Financials
Moreton-Overton Power Dist #5 (279263)
10/06/2021 -10/31/2024

		Moreton-Overton Power Dist #5	
		10/31/2024	
Balance Sheet			YTD Dividend Received
Book Value less Due		30,192,784.31	
Due and Accrued		185,616.41	
Book Value + Accrued - 4.57%		\$ 30,378,400.72	\$ 1,193,308
Net Unrealized Carrying Value Gain		133,772.63	
Carrying Value and Accrued		30,512,173.35	
Goldman Sachs Group - 4.78%		\$ 620,442.82	\$ 77,119

DRAFT



NUMBER OF CUSTOMERS SUMMARY BY MONTH

	Change	2024	2023
January	45	18,319	17,931
February	30	18,349	17,972
March	62	18,411	17,980
April	35	18,446	17,994
May	4	18,450	18,016
June	76	18,526	18,037
July	49	18,575	18,103
August	7	18,582	18,110
September	50	18,632	18,077
October	37	18,669	18,136
November			18,214
December			18,274

RATIOS

	Current	Minimum	Goal	Median By Size
MDSC	2.58	1.35	1.85	1.93
EQUITY AS A % OF ASSETS	69.11%	39.50%	57.00%	45.72%
TIER	8.46	1.25	4.00	2.62

DRAFT

CONNECTION FEES

	QUANTITY		AMOUNT
Aug-24	18	\$	17,088
Sep-24	23	\$	33,153
Oct-24	58	\$	68,113

CURRENT BILLING ARRANGEMENTS

		QUANTITY		AMOUNT
Aug-24	Residential	63	\$	16,035
Aug-24	Commercial	10	\$	4,048
Sep-24	Residential	36	\$	8,080
Sep-24	Commercial	3	\$	3,124
Oct-24	Residential	44	\$	7,078
Oct-24	Commercial	3	\$	308

ROUND UP PROGRAM

	VIRGIN VALLEY	MOAPA VALLEY
Oct-24	\$ 253	\$ 85

OVERTON POWER DISTRICT NO. 5

C.F.C. LOAN STATUS

LINE OF CREDIT BALANCE OWED

\$ -

QUARTERLY PAYMENT

December-24

\$ 1,485,606.16

LONG-TERM LOAN

	BEGINNING PRINCIPAL	Interest Rate	Due for Repricing	Effective Interest Rate	
9000001	\$1,119,464.30 *	2.28%		1.83%	Sep-28
9000002	\$1,119,464.30 *	2.28%		1.83%	Sep-28
9000003	\$1,575,723.27 *	2.28%		1.83%	Sep-28
9000004	\$1,595,607.47	4.90%		4.45%	Sep-28
9000006	\$1,404,191.51	2.41%		1.96%	Sep-28
9000007	\$1,397,735.81	5.18%		4.73%	Sep-28
9000008	\$1,477,966.57	5.05%		4.60%	Sep-28
9000009	\$1,496,022.77	4.10%		3.65%	Sep-28
9002001	\$12,251,240.67 *	4.60%		4.15%	Dec-38
9002002	\$40,227.54 *	4.60%		4.15%	Dec-38
9003001	\$15,937,330.09	3.98%		3.53%	Dec-46
9003002	\$8,204,934.04	3.91%		3.46%	Dec-41
	\$47,619,908.34				

Current

Avg Interest Rate After Discounts

3.35%

CFC
FINANCIAL AND STATISTICAL REPORT

PART R. POWER REQUIREMENTS DATA BASE

CLASSIFICATION	CONSUMER SALES & REVENUE DATA	July	August	September	October	Totals	Cents per kWh
		(g)	(h)	(i)	(j)		
1. Residential Sales (excluding seasonal)	a. No. Consumers Served	15,549	15,569	15,592	15,615	15,498	0.1053
	b. KWH Sold	28,152,128	31,020,733	25,524,310	19,091,558	201,185,770	
	c. Revenue	2,846,146	3,116,229	2,606,326	2,022,028	21,178,848	
2. Residential Sales - Seasonal	a. No. Consumers Served					0	
	b. KWH Sold					0	
	c. Revenue					0	
3. Irrigation Sales	a. No. Consumers Served	33	33	33	33	34	0.1045
	b. KWH Sold	87,046	88,170	92,336	80,327	719,963	
	c. Revenue	9,062	9,148	6,604	7,965	75,209	
4. Comm. and Ind. 1000 KVA or Less 500 kW or Less	a. No. Consumers Served	2,465	2,450	2,474	2,488	2,389	0.0989
	b. KWH Sold	9,277,591	10,067,982	8,950,633	7,564,344	73,956,545	
	c. Revenue	888,063	949,197	860,659	752,951	7,316,504	
5. Comm. and Ind. Over 1000 KVA 500 kW or More	a. No. Consumers Served	16	17	17	17	16	0.1088
	b. KWH Sold	10,070,855	10,362,929	10,481,458	9,582,424	91,112,581	
	c. Revenue	1,058,348	1,081,370	1,089,182	1,010,861	9,909,656	
6. Public Street & Highway Lighting	a. No. Consumers Served	255	255	258	258	256	0.1201
	b. KWH Sold	120,983	128,400	139,190	145,730	1,584,889	
	c. Revenue	16,169	16,716	17,580	18,093	190,419	
7. Other Sales to Public Authority	a. No. Consumers Served	257	258	258	258	256	0.0887
	b. KWH Sold	3,599,760	3,865,814	3,792,623	3,224,666	29,734,946	
	c. Revenue	313,147	328,348	327,351	287,072	2,637,496	
8. Sales for Resales-REA Borrowers	a. No. Consumers Served					0	
	b. KWH Sold					0	
	c. Revenue					0	
9. Sales for Resales-Other	a. No. Consumers Served					0	
	b. KWH Sold					0	
	c. Revenue					0	
10. TOTAL No. of Consumers (lines 1a thru 9a)		18,575	18,582	18,632	18,669		
11. TOTAL KWH Sold (lines 1b thru 9b)		51,308,363	55,534,028	48,980,550	39,689,049	398,294,694	
12. TOTAL Revenue Received From Sales of Electric Energy (line 1c thru 9c)		5,130,935	5,501,008	4,907,701	4,098,969	41,308,132	0.1037
13. Other Electric Revenue		132,336	227,778	154,609	156,045	1,686,475	
14. KWH - Own Use		99,583	113,818	103,130	77,353	704,695	
15. TOTAL KWH Purchased		59,352,021	55,556,129	44,579,760	36,793,700	421,608,183	
16. TOTAL KWH Generated						0	
17. Cost of Purchases and Generation		2,824,747	2,644,385	2,215,062	1,910,496	20,692,922	
18. Interchange - KWH - Net						0	
19. Peak - Sum All KW Input (Metered)						0	
Non-coincident <input checked="" type="checkbox"/> Coincident <input type="checkbox"/>		124,764	120,331	106,782	81,227	0	

Monthly Cost	0.0476	0.0476	0.0497	0.0519
Monthly Revenue	0.1000	0.0991	0.1002	0.1033
2024 Avg Cost	0.0491	0.0489	0.0490	0.0493

CFC

FINANCIAL AND STATISTICAL REPORT

PART R. POWER REQUIREMENTS DATA BASE

CLASSIFICATION	CONSUMER SALES & REVENUE DATA	July	August	September	October	Totals	Cents per kWh
		(g)	(h)	(i)	(j)		
10. TOTAL No. of Consumers (lines 1a thru 9a)		18,575	18,582	18,632	18,669		
11. TOTAL KWH Sold (lines 1b thru 9b)		51,308,363	55,534,028	48,980,550	39,689,049	398,294,694	
12. TOTAL Revenue Received From Sales of Electric Energy (line 1c thru 9c)		5,130,935	5,501,008	4,907,701	4,098,969	41,308,132	0.1037
13. Other Electric Revenue		132,336	227,778	154,609	156,045	1,686,475	
14. KWH - Own Use		99,583	113,818	103,130	77,353	704,695	
15. TOTAL KWH Purchased		59,352,021	55,556,129	44,579,760	36,793,700	421,608,183	
16. TOTAL KWH Generated						0	
17. Cost of Purchases and Generation		2,824,747	2,644,385	2,215,062	1,910,496	20,692,922	
18. Interchange - KWH - Net						0	
19. Peak - Sum All KW Input (Metered)						0	
Non-coincident <u> X </u> Coincident <u> </u>		124,764	120,331	106,782	81,227	0	

Monthly Cost	0.0476	0.0476	0.0497	0.0519
Monthly Revenue	0.1000	0.0991	0.1002	0.1033
2024 Avg Cost	0.0491	0.0489	0.0490	0.0493

VOID	CHECK	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
	4434		10/04/24	2395	PUBLIC EMPLOYEES RETIREMENT	142,438.42	EMPLOYEE/BOARD RETIREMENT
	4435		10/09/24	2105	NV ENERGY	2,555.00	NVE AUG 2024 OASIS
	4436		10/11/24	2105	NV ENERGY	141,081.50	NVE AUGUST 2024 POWER
	4437		10/11/24	4953	HSA BANK	7,520.25	EMPLOYEE HSA CONTRIBUTIONS
	4438		10/08/24	4687	BANK OF NEVADA	208,200.00	TRANSFER PR#2421
	4439		10/07/24	5456	EBAY INC	38.00	EBAY SELLING FEE
	4440		10/15/24	549	CITY OF MESQUITE	175,633.85	RIGHT-OF-WAY FEE - 3RD QUARTER
	4441		10/18/24	5020	MORGAN STANLEY CAPITAL GROUP	1,711,400.82	MS SEPTEMBER POWER
	4442		10/22/24	635	COLORADO RIVER COMMISSION	253,256.25	CRC AUG 24 ADJ CRC OCT POWER /CRC PDAF DEC 24
	4443		10/18/24	4687	BANK OF NEVADA	10,884.04	VISA CHARGES
	4444		10/17/24	549	CITY OF MESQUITE	3,340.54	HYDRO POWER - AUG 24/OCT 2024
	4445		10/25/24	4953	HSA BANK	7,470.25	EMPLOYEE HSA CONTRIBUTIONS
	4446		10/22/24	4687	BANK OF NEVADA	206,700.00	TRANSFER PR#2422
	4447		10/22/24	4687	BANK OF NEVADA	9,000.00	TRANSFER PR#2463
	4448		10/28/24	4953	HSA BANK	185.50	HSA DEBIT
	4449		10/30/24	2136	NEVADA STATE TREASURER	2,297.88	NEVADA UNCLAIMED PROPERTY
	59508	*	10/01/24	23	AIRGAS USA LLC	693.48	GLOVES GLOVES
	59509		10/01/24	695	COOPER, MENDIS	69.00	PER DIEM - NREA MEETING
	59510		10/01/24	1082	GRAINGER	602.71	DIELECTRIC ROPE 1/2" 1200#
	59511		10/01/24	1084	HANSEN, KEVEN	69.00	PER DIEM - NREA MEETING
	59512		10/01/24	1586	LIN'S SUPERMARKETS INC.	399.25	CONTRACTORS MEETING EXPENSE HR PROJECT WATER - OVERTON OFFICE BOARD MEETING BOARD MEETING SAFETY MEETING EXPENSE
	59513		10/01/24	1740	GARCIA, MELISA	69.00	PER DIEM - NREA MEETING
	59514		10/01/24	1790	MESQUITE CHAMBER OF COMMERCE	90.00	CHAMBER LUNCHEON - 3 PEOPLE

VOID	CHECK	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
	59515		10/01/24	1805	MESQUITE LUMBER & SUPPLY	769.81	SPRAY PAINT- TRANSFORMERS CHAIN COIL 5/16" SEAT SOFT WHITE 3000WB BURR CYC TUN CARB 3/8", EXTRACTR ROUND OUTLETS, EMT 1HOLE STRAP CRIMPER, CAT5 INLINE WHITE OUTLET BOX, COVER PVC ELBOWS, COUPLERS, TEE PRE-MIX STUCCO PATCH PRE-MIX STUCCO PATCH GALV PIPE 1-1/2" X21' PRE-MIX STUCCO PATCH
	59516		10/01/24	1920	MOAPA VALLEY TELEPHONE	2,655.23	MOAPA PHONES
VOID	59517		10/01/24	1980	MORCON INDUSTRIAL NEVADA INC	244.00	
	59518		10/01/24	2030	MUDDY VALLEY IRRIGATION CO	212.20	2024 ASSESSMENT - COMMON STOCK
	59519		10/01/24	2045	NRECA	103,467.88	2024 INSURANCE PREMIUM
	59520		10/01/24	2173	NORTHERN POWER EQUIPMENT	4,694.50	5/8X16 OVAL EYE BOLT 500 BUSS BARS 7C 12 GAUGE UNSHIELDED
	59521		10/01/24	2234	OVERTON ACE HARDWARE	82.93	PATCH STUCCO PREMIX QT, GREAT ST BAL VLV 600IPS, HEX NIPPLE 3/8"
	59522		10/01/24	3257	VERIZON WIRELESS	78.18	MACHINE TO MACHINE
	59523		10/01/24	3304	VIRGIN VALLEY WATER DISTRICT	899.46	MESQUITE WATER
	59524		10/01/24	3844	LEAVITT, KYLE	69.00	PER DIEM - NREA MEETING
	59525		10/01/24	3873	FULLMAN, SCOTT	69.00	PER DIEM - NREA MEETING
	59526		10/01/24	4259	SHERWIN-WILLIAMS COMPANY	605.52	PAINT - TRANSFORMERS
	59527		10/01/24	4314	OZAKI, RANDALL	69.00	PER DIEM - NREA MEETING
	59528		10/01/24	4380	LAGROW, BECKY	69.00	PER DIEM - NREA MEETING
	59529		10/01/24	4510	VALLEJO, OMAR	69.00	PER DIEM - NREA MEETING
	59530		10/01/24	4618	EAMES, KRISTI	69.00	PER DIEM - NREA MEETING
	59531		10/01/24	4627	HUERTA NICOLAS LOPEZ	16,500.00	TREE TRIMMING
	59532		10/01/24	4708	ROYAL SANITARY SERVICES	180.00	RENTAL-8/13/24 -9/9/24 -220397
	59533		10/01/24	4752	UTILITY LINE DESIGN LLC	1,050.00	UDL ACCESS FEES - SFTW SUPPORT

VOID	CHECK	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
	59534		10/01/24	4825	THE FRONT PORCH FLOWERS	75.00	MISC. GENERAL EXPENSE
	59535		10/01/24	5057	AMSTERDAM PRINTING & LITHO	4,307.15	2025 DESK PLANNERS
	59536		10/01/24	5082	ROBISON SHANE	69.00	PER DIEM - NREA MEETING
	59537		10/01/24	5422	IRBY	162,575.00	DEAD END, OPGW CLAMP 1272 ACSR CREDIT MEMO FUSE END FITTINGS, SMU FUSE UNIT SMU 30E & 40E FUSE UNIT 69KV DC PANEL TORTOISE AL CONNECTING PLUG, GLOVE DUST LINEMAN CLSS 2YEL/BLK 16" MOLD CABLE HORZ TEE. DEADEND MOLD CABLE HORZ TEE 954 AAC COND CONN BRZ PARALLEL MOLD CABLE HORZ X 954 GOLDENROD 500' REEL #8 2C W/G E1 COLOR CODE 1-1/2 45D LT CONNECT, GRY 50CL 1-1/2 45D LT CONNECT P-DIE 1100 MCM 2" PVC SCH 40 CONDUIT 2" PVC SCH 40 CONDUIT
	59538		10/01/24	5504	E&M CONTRACTING LLC	141,930.00	TORTOISE BREAKER FOUNDATION TORT SUB FOUNDATION WORK
	59539		10/01/24	5572	OASIS CHIROPRACTIC CENTER	100.00	PRE EMPLOYMENT PHYSICAL / T.H.
	59540		10/01/24	5584	O'REILLY AUTO ENTERPRISES	143.63	BATTERY
	59541		10/01/24	5585	AGUILAR PABLO	1,495.00	MAINTENANCE OF VEHICLES MAINTENANCE OF VEHICLES
	59542		10/01/24	5666	TREES DONE RIGHT	600.00	AFRICANIZED BEEHIVE REMOVAL
	59543		10/01/24	5704	DENNINGHOFF JONATHAN	69.00	PER DIEM - NREA MEETING
	59544		10/08/24	549	CITY OF MESQUITE	804.19	SANITATION SERVICE / OCT/DEC
	59545		10/08/24	565	CLARK COUNTY RECORDER	168.00	EASEMENTS
	59546		10/08/24	735	DAT MANAGEMENT INC	364.00	RANDOM DRUG TESTING
	59547		10/08/24	1790	MESQUITE CHAMBER OF COMMERCE	995.00	AD BUSINESS / DESTINATION GUIDE
	59548		10/08/24	1805	MESQUITE LUMBER & SUPPLY	42.47	CABLE ASST, SPRYPNT, CATALYST COUPLERS

VOID	CHECK	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
	59549		10/08/24	2490	RELIANCE CONNECTS	1,612.90	MESQUITE PHONES
	59550		10/08/24	3122	UNITED PARCEL SERVICE	9.90	SHIPPING FEES - IML
	59551		10/08/24	3285	VIRGIN VALLEY DISPOSAL	215.93	DISPOSAL SERVICE
	59552		10/08/24	3465	WHEELER'S ELECTRIC, INC.	170.00	ELECTRICIAN, FUEL PUMP STATION
	59553		10/08/24	3722	BOYCE, INC.	150.00	PORTABLE TOLIET RNTL -JOB 210701
	59554		10/08/24	3968	RUESCH MACHINE	11,305.00	69KV BAY TORT SUBSTATION SET CONTROL BLDG - RAPTOR SUBSTA
	59555		10/08/24	4140	CODALE ELECTRIC SUPPLY, INC	52.16	CONDUIT 1-1/2 SEAL TIGHT
	59556		10/08/24	4210	CRONKLETON, KELLY	49.90	REIMB. HR PROJECT
	59557		10/08/24	4333	JANTZ, BENJAMIN	74.32	REIMBURSE TOOL EXPENSE
	59558		10/08/24	4451	QUINONES, SALVADOR	113.62	REIMBURSE TRAINING EXPENSE
	59559		10/08/24	5029	RICH PRINTING, INC	1,953.33	FALL NEWSLETTER
	59560		10/08/24	5223	WESTERN ELITE - DBA:	642.00	TORTOISE 69KV BAY
	59561		10/08/24	5422	IRBY	136,856.35	300KVA 120/208 TRANSFORMER 4/0, 336 & 477 AAC COND, MOLD CABLE HORZ TEE, COUPLER 795 DRAKE, 4/0 OXLIP TERM COPPER COMP, AL WELD COUPLER WELD TUBE2TUBE MOLD CABLE HORX TEE, TUBING 556.5 LILAC CABLE 3" PVC SCH40 CONDUIT 3" PVC SCH40 CONDUIT
	59562		10/08/24	5545	TECHNOLOGY FOR ENERGY CORP	3,648.71	3PHASE METER TESTER, PRM SFT
	59563		10/08/24	5563	DMC POWER INC.	43,733.78	DLT58 POWER UNIT, ATTACHMENTS
	59564		10/08/24	5572	OASIS CHIROPRACTIC CENTER	100.00	PRE EMPLOYMENT PHYSICAL / G.R.
	59565		10/08/24	5615	JUAN CARLOS SANCHEZ LOPEZ	1,050.00	GENERAL MAINT. OF PLANT
	59566		10/08/24	5657	NEVADA BOLT & HOSE	260.71	HEX BOLTS, A325 HX BOLT HDG, SPL
	59567		10/08/24	5736	PROLEC-GE WAUKESHA, INC	1,657.31	INSULATING ARM ASSY REAR
	59568		10/08/24	5743	DIXIE & ANNE LEAVITT	80,022.44	REFUND ADVANCE DEPOSIT BALANCE REFUND ADVANCE DEPOSIT BALANCE
	59569		10/09/24	565	CLARK COUNTY RECORDER	42.00	EASEMENT

VOID	CHECK	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
	59570		10/15/24	1233	INTERMOUNTAIN CONSUMER	88,427.50	DESIGN 138KV LINE TORT TO GILA TORT SUB 69KV BAY ADDITION TORT T5 XFMR REPLACEMENT
	59571		10/15/24	2478	REPUBLIC SERVICES #620	1,630.47	QUARTERLY SERICE
	59572		10/15/24	3775	MESQUITE MATERIAL TESTING	4,378.50	FIELD & LABORATORY TESTING FIELD & LABORATORY TESTING FIELD AND LABORATORY TESTING
	59573		10/15/24	4255	DOI / BLM	2,171.00	N-050503 / NVNV106260032 ROW
	59574		10/15/24	4742	NELSON JACK WILLIAM	509.38	500 DIRECTOR FEE, 9.38 MILEAGE
	59575		10/15/24	4903	BUNKER ROBERT	560.30	500 DIRECTOR FEE, 60.30 MILEAGE
	59576		10/15/24	4904	YOUNG MIKE	500.00	500 DIRECTOR FEE
	59577		10/15/24	4905	METZ JUDITH	500.00	500 DIRECTOR FEE
	59578		10/15/24	5034	LEAVITT CHAD	520.10	500 DIRECTOR FEE, 20.10 MILEAGE
	59579		10/15/24	5046	COASTLINE EQUIPMENT COMPANY	506.94	PIN FASTENER, WASHER, COTTER PIN RETURN - PIN FASTENE PIN FASTENER
	59580		10/15/24	5237	JONES RICHARD A	500.00	500 DIRECTOR FEE
	59581		10/15/24	5623	RUST MORRIS DALE	560.30	500 DIRECTOR FEE, 60.30 MILEAGE
	59582		10/15/24	5704	DENNINGHOFF JONATHAN	239.18	PER DIEM - UREAC FINANCE MEETING REIMBURSE MISC EXP
	59583		10/15/24	5744	B CIVIL ENGINEERING LLC	922.50	RAPTOR SUBSTATION REVISION
	59584		10/16/24	1082	GRAINGER	151.60	10A AMP FUSES
	59585		10/16/24	1920	MOAPA VALLEY TELEPHONE	2,820.00	RE-ROUTE OPD CONDUIT - HWY168
	59586		10/16/24	1980	MORCON INDUSTRIAL NEVADA INC	15.25	KRYLON RED UPSIDE DOWN PAINT RETURN WRONG KRYLON PAINT
	59587		10/16/24	2491	RIO VIRGIN TELEPHONE CO.	648.92	PHONE SERVICE
	59588		10/16/24	3122	UNITED PARCEL SERVICE	240.32	SHIPPING FEES - IML
	59589		10/16/24	3873	FULLMAN, SCOTT	256.00	PER DIEM - CYBER CONFERENCE
	59590		10/16/24	4904	YOUNG MIKE	477.96	REIMB. AIRFARE - REGION 9 MTG
	59591		10/16/24	5125	CMC TIRE INC.	252.69	TIRES

VOID	CHECK	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
	59592		10/16/24	5422	IRBY	17,465.00	SMU 30E FUSE UNITS SMU 50E FUSE UNIT PREDATOR MED LED P5, SINGLE WALL 50K MVOLT, SINGLE WALL BRACKET 200AMP METER PANEL
	59593		10/16/24	5511	BROWN, STEVEN	256.00	PER DIEM - CYBER CONFERENCE
	59594		10/17/24	4942	XTREME STITCH & PRINT	1,652.24	GENERAL MERCHANDISE
	59595		10/22/24	1865	MOAPA VALLEY HIGH SCHOOL	1,698.18	ROUNDUP BALANCE
	59596		10/22/24	3257	VERIZON WIRELESS	78.12	MACHINE TO MACHINE
	59597		10/22/24	3285	VIRGIN VALLEY DISPOSAL	5.00	DISPOSAL SERVICE
	59598		10/22/24	3300	VIRGIN VALLEY HIGH SCHOOL	2,267.36	ROUNDUP BALANCE
	59599		10/22/24	4763	IML NORTH AMERICA, LLC	477.33	ANNUAL SERVICE AND CALIBRATION
	59600		10/22/24	4942	XTREME STITCH & PRINT	285.00	GENERAL MERCHANDISE
	59601		10/22/24	5428	GEN-TECH OF NEVADA INC	6,279.92	ATS CONTROLLER - GENERAC
	59602		10/22/24	5511	BROWN, STEVEN	857.25	REIMBURSE TRAINING EXPENSE
	59603		10/30/24	695	COOPER, MENDIS	207.00	PER DIEM CREDIA
	59604		10/30/24	3764	INTERMOUNTAIN POWER SUPERINT	2,400.00	HOTLINE SCHOOL REGISTRATION
	59605		10/30/24	4517	KOKOPELLI LANDSCAPING INC.	103,375.95	ADD LN OF WALL,GTS,FNC,CMU INSTL LONG DRIVE SWITCH YD BLOCK WALL
	59606		10/30/24	5645	SKYBITZ TANK MONITORING CORP	60.00	TANK MONITORING
	59607		10/31/24	5422	IRBY	4,635.60	COMPRESSION TERMINAL, POLE BAND
			TOTAL CHECKS	116	TOTAL AMOUNT	3,861,851.11	

VOID	ACH	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
		1697	10/01/24	275	AVIS RENT A CAR SYSTEM, INC.	393.37	RENTAL #284436084 - S. QUINONEZ
		1698	10/01/24	605	HOME HARDWARE AND VARIETY	67.97	DUCT TAPE TARP MD DUTY BLUE 20X30
		1699	10/01/24	1175	HUGHES OIL COMPANY	3,578.10	BULK GAS/DIESEL MESQUITE
		1700	10/01/24	1443	L&M WELDING LC	402.50	18"x18"x3/4" BASE PLATES
		1701	10/01/24	2046	NRECA	7,213.02	2024 INSURANCE ADMIN FEE
		1702	10/01/24	2285	ALTEC INDUSTRIES, INC.	15,998.17	HYDRAULIC COUNTERBALANCE CART DIELECTRIC TEST, HYDRAULIC OIL KIT HOSE CARRIER ASSEMBLY, CONTR
		1703	10/01/24	2864	T&R ELECTRIC SUPPLY CO. INC	1,086.00	167 PAD MOUNT TRANSFORMER
		1704	10/01/24	3257	VERIZON WIRELESS	2,587.89	VERIZON CELL PHONES
		1705	10/01/24	3717	COMPUNET, INC.	11,759.20	CISCO SMRTNET RENEWAL 8/30/2025
		1706	10/01/24	3802	GENTRY GIS, LLC	3,300.00	MAPPING, MILSOFT, WINDMIL
		1707	10/01/24	3957	ELECTRICAL CONSULTANTS, INC.	27,131.00	DEVLOP POWER TRANSFRMR SPECS RAPTOR SUB &TRANSMISSION LINE RAPTOR SWTCH YARD
		1708	10/01/24	4608	SAVANIC TRANSPORT	154,184.00	MOVE ROCK - NEW TRANSFORMER 16" DUCTILE PIPE VALVE, FITTINGS BRUSH ,GRADE,WATER LAYDWN YARD
		1709	10/01/24	4744	STAPLES	276.86	OFFICE CHAIR
		1710	10/01/24	4888	WESTERN UNITED ELECTRIC SUPP	26,640.45	2" CUSH CLAMPS 167 SS PAD MNT TRANSFORMER EXTENSION LINK HOTLINE RETURN - EXTENSION LINK HOTLINE
		1711	10/01/24	4899	ROBISON, VERNON A	1,890.00	PUBLIC RELATIONS CONSULTANT
		1712	10/01/24	4925	CREATIVE CLEANING SERVICES	3,983.00	CLEANING SERVICE
		1713	10/01/24	5012	TINKS SUPERIOR AUTO PARTS	647.27	BATTERY BATTERIES TWO BATTERY CORE RETURNS 4A CHARGER MAINTAINER MUD FLAPS FIBERGLASS CLOTH BATTERY
		1714	10/01/24	5297	J7 ENTERPRISES LLC	2,639.00	TRENCHING, MATERIALS, PERMITTING

VOID	ACH	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
		1715	10/01/24	5463	SURVALENT TECHNOLOGY INC	26,844.00	SILVER SCADA YEARLY PLAN
		1716	10/08/24	453	BULLDOG PEST CONTROL INC.	130.00	PEST CONTROL SERVICE
		1717	10/08/24	975	ESCI	2,575.00	SAFETY & TRAINING SERVICES
		1718	10/08/24	2046	NRECA	60.00	REA# 29004 - HRA ACCOUNT - ADMIN
		1719	10/08/24	3957	ELECTRICAL CONSULTANTS, INC.	896.00	CNVRTG SNG PHS TO 3PHS
		1720	10/08/24	4422	STATE OF NEVADA	824.99	PEBP INSURANCE
		1721	10/08/24	4501	INCONTACT, INC.	163.98	MQ LONG DISTANCE OV LONG DISTANCE
		1722	10/08/24	4505	ONLINE INFORMATION SERVICES	593.12	ONLINE UTILITY EXCHANGE BACKGROUND CHECK
		1723	10/08/24	4608	SAVANIC TRANSPORT	35,225.00	MAINTENANCE OF ROADS, LOADER, BL LONG DRIVE SWITCHYARD GRADING ROCK, PIPE, CONCRETE
		1724	10/08/24	4888	WESTERN UNITED ELECTRIC SUPP	13,692.65	100 KVA SINGLE PHS TRANSFORMER 167 SS PAD MNT TRANSFORMER
		1725	10/08/24	4964	ANIXTER INC	21,803.42	12-12 BC TC-ER E2, 10-04 BC TC-E SM20 FUSE END FITTINGS
		1726	10/08/24	4974	HI-TECH AGGREGATE LLC	579.97	TYPE II ROAD BASE. ROCK
		1727	10/08/24	4999	GE-PROLEC TRANSFORMERS, INC	89,968.00	60MVA 60/80/100 TRANSFORMER
		1728	10/08/24	5359	CLARK COUNTY PRINTING & MAIL	60.00	BUSINESS CARDS
		1729	10/08/24	5503	FACIL ENTERPRISES, INC	500.00	HR CONSULTING
		1730	10/08/24	5524	BIGHORN CONSTRUCTION INC	18,470.00	TRENCHING & CONDUIT INSTLL
		1731	10/15/24	1175	HUGHES OIL COMPANY	7,569.65	BULK GAS/DIESEL MESQUITE BULK GAS/DIESEL OVERTON
		1732	10/15/24	1310	JENSEN PRECAST	10,530.00	97 VAULTS 2 PIECE
		1733	10/15/24	1940	MOAPA VALLEY WATER DISTRICT	1,032.91	HYDRANT METER - JOB 200564 HYDRANT METER - TORTOISE SUB MOAPA VALLEY WATER
		1734	10/15/24	2709	MERIDIAN COOPERATIVE, INC	40,688.51	SFTW SUPPORT, PSTG, BILLING, CON
		1735	10/15/24	4714	MILLS & MILLS LAW GROUP	1,215.00	LEGAL FEES
		1736	10/15/24	4888	WESTERN UNITED ELECTRIC SUPP	81,324.87	167 SS PAD MNT TRANSFORMER

VOID	ACH	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
		1737	10/15/24	4964	ANIXTER INC	12,025.83	2000KVA 277/480 TRANSFORMER ARRESTER DISTRIBUTION SM20 FUSE END FITTINGS 2/0 & 4/0 URD TRIPLEX, COUPLING 2/0 & 4/0 URD TRIPLEX
		1738	10/15/24	4971	FUTURA SYSTEMS INC.	4,167.00	MONTHLY CHGS, FLEX, FIELD PRO, G
		1739	10/15/24	4981	PIONEER UTILITY RESOURCES	290.00	WEB HOSTING / MAINTENANCE
		1740	10/15/24	5012	TINKS SUPERIOR AUTO PARTS	110.98	BRAKE MASTER CYLINDER
		1741	10/15/24	5031	ACLARA TECHNOLOGIES LLC	13,600.00	16S CL320 METER
		1742	10/15/24	5042	AMAZON CAPITAL SERVICES	1,165.43	SINGLE MODE FIBER CABLE 3" 3-RING BINDERS, BLACK DOUBLE PENTA WRENCH T HANDLE NON-CONDUCTIVE ELECTRICAL TAPE, HP LARGE FORMAT PAPER, NOTEBOOKS RIGHT SIDE MIRROR ASSMBLY EMPLOYEE ENGAGEMENT 5/16" CHAIN CLEVIS GRAB HOOK SILICONE TAGS, NEOPRENE TAGS
		1743	10/15/24	5203	LADWP -DEPT OF WATER & POWER	9,187.20	MOAPA SOLAR
		1744	10/15/24	5263	ON-HOLD CONCEPTS	125.00	DIGITAL SIGNAGE PROGRAM SERVICE VOICE & VOICE MAIL MESSAGES
		1745	10/15/24	5458	SOUTHLAND GRID STRUCTURS LLC	6,663.00	ANCHOR BOLTS
		1746	10/15/24	5465	SKYMIRA LLC	286.00	UNLIMITED SATELITE PTT SERVICE
		1747	10/15/24	5476	WILLIAMS YARDSCAPES LLC	550.00	GENERAL MAINT. OF PLANT
		1748	10/15/24	5634	TYNDALE USA	601.40	EXPRESS REBATES - CREDIT FR CLOTHING FR CLOTHING FR CLOTHING
		1749	10/16/24	2285	ALTEC INDUSTRIES, INC.	2,147.63	HYDRAULIC VALVE - 50-0090 SYNTHETIC ROPE ASSEMBLY -50-0066
		1750	10/16/24	3957	ELECTRICAL CONSULTANTS, INC.	102.50	RAPTOR SUB & TRANSMISSION LINE
		1751	10/16/24	4888	WESTERN UNITED ELECTRIC SUPP	24,355.55	ELECTRICAL TAPE, TYCO TERM #2-4/ 167KVA PAD MNT TRANSFORMER
		1752	10/16/24	5012	TINKS SUPERIOR AUTO PARTS	495.19	BATTERIES, BATTERY MAINT CHARGER BATTERY CORE DEPOSIT - RETURNS TOWELS

VOID	ACH	SEQ BRK	DATE	VENDOR	NAME	AMOUNT	DESCRIPTION
		1753	10/16/24	5031	ACLARA TECHNOLOGIES LLC	1,800.00	COUPLER COUPLER 13 JAW DEMAND METER - 9S METER
		1754	10/16/24	5463	SURVALENT TECHNOLOGY INC	11,810.00	DNP3 SERVER SFTW
		1755	10/16/24	5621	11:11 SYSTEMS INC	8,529.14	SECURE CLOUD BACKUP, ENCRYPTED S
		1756	10/17/24	4899	ROBISON, VERNON A	2,287.49	PUBLIC RELATIONS CONSULTANT
		1757	10/17/24	5263	ON-HOLD CONCEPTS	40.00	DIGITAL SIGNAGE PROGRAM SERVICE
		1758	10/22/24	396	BORDER STATES ELEC. SUPPLY	1,311.47	2" IMC 5" BUSS 90D ELBOW WELD
		1759	10/22/24	3257	VERIZON WIRELESS	2,258.12	VERIZON CELL PHONES
		1760	10/22/24	3929	RELIABLE EQUIP & SERVICE CO,	1,292.73	8 TON LIFTING EYE
		1761	10/22/24	4619	FITCH RATINGS, INC	2,000.00	RELATIONSHIP FEE - 11/24-10/25
		1762	10/22/24	4974	HI-TECH AGGREGATE LLC	2,959.68	SCREENED SAND / TRUCKING
		1763	10/22/24	5297	J7 ENTERPRISES LLC	1,113.00	MOVE EXISTING 100 AMP METER COM
		1764	10/22/24	5634	TYNDALE USA	1,697.50	FR CLOTHING
		1765	10/22/24	5641	GMES LLC	1,735.20	HOIST 300DHA
		1766	10/22/24	5671	QUALUS, LLC	11,868.00	END TO END RELAY TESTING
		1767	10/23/24	5524	BIGHORN CONSTRUCTION INC	1,800.00	CONDUIT RELOCATION
		1768	10/30/24	1175	HUGHES OIL COMPANY	5,799.25	BULK GAS/DIESEL OVERTON BULK GAS/DIESEL MESQUITE
		1769	10/30/24	1310	JENSEN PRECAST	10,530.00	97 VAULT 2 PIECE
		1770	10/30/24	1443	L&M WELDING LC	1,000.00	4 PLUG STAINLESS HOLDER SWITCH PLATES - 200001
		1771	10/30/24	4083	VIRGINIA TRANSFORMER CORP	397,488.65	138KV DELTA 12-KV 20MVA TRANSFMR FREIGHT CHARGE FOR HB365B
		1772	10/30/24	5524	BIGHORN CONSTRUCTION INC	94,910.50	TRCH, CONDUIT, VAULT, BORE
		TOTAL ACH		76	TOTAL AMOUNT	1,256,628.31	
		GRAND TOTAL		192	GRAND TOTAL AMOUNT	5,118,479.42	



**Overton Power District #5
BOARD OF TRUSTEE'S
NOVEMBER 20, 2024
ACTION ITEM – H**

SUBJECT: Review and Possible Approval to purchase 5.02 acres, adjacent to Glendale Substation. APN: 042-02-101-012
PETITIONER: Staff
RECOMMENDATIONS: Approve the Purchase of Land in Moapa

FISCAL IMPACT:
\$250,000

BACKGROUND:
For future planning in the Moapa area, staff recognizes that growth will likely increase both demand for utilities and the value of surrounding land. Expanding the Glendale Substation early could indeed save on future costs, especially if land prices rise as development progresses. Additionally, securing this land now offers a strategic advantage since part of the investment could be offset by contributions from developers who benefit from the expansion.

This proactive approach can help ensure that infrastructure keeps pace with development and minimizes financial pressure on OPD5 in the long term. The close of escrow will be in January of 2025.

PROPOSED MOTION:
To approve the purchase of 5.02 acres of land adjacent to Glendale Substation for \$250,000 as presented.

Current Tool: Select Property
Coords in State Plane ft. ▾
X: 951608 Y: 26944585
Flight Date: Most Current Flight
Current View: Aerial Imagery Only
1: 2,000





**Overton Power District #5
BOARD OF TRUSTEE'S
NOVEMBER 20, 2024
ACTION ITEM – I**

SUBJECT: Review and Possible Approval of 2025 Capital Projects
PETITIONER: Staff
RECOMMENDATIONS: Approve 2024 Capital Projects

FISCAL IMPACT:
\$3,977,000 for 2025 Capital Projects plus \$30,760,000 for 2025 Reliability and Long-Term Capital Projects.

BACKGROUND:
Each year, the staff presents a Capital Projects list to the Board for approval. Staff presented a list of proposed Capital Projects last month at the October board meeting and as a result of the discussion between the Board and staff members, the list of projects and associated time frames have been adjusted for this meeting.

Some of the 10-year planning projects that are part of the reliability plan, which have been previously discussed with the Board, are also included in the proposed Capital Projects list.

Once the Capital Projects list is approved by the Board, the 2025 Capital Projects will be incorporated into the 2025 Budget which will be presented at the December Board meeting.

PROPOSED MOTION:
To approve the 2025 Capital Projects as presented.

10 YEAR FORECAST OF CAPITAL PROJECTS

	Project or Need	Est. Cost	Est. Start	Est. Comp	Status
1	Paiute Substation	\$ -			Complete
2	Community Solar Project—Mesquite	\$ -			Complete
3	Gila to Dinosaur 138 kV Line	\$ -			Complete
4	New Crane Truck	\$ -			Complete
5	Gila Substation (Phase 1: DE Towers & Ring Bus)				Complete
6	Tortoise Substation 69 kV Bay Expansion	\$ 4,000,000.00	May-23	TBD	Design
7	Tortoise Substation 230 kV Ring Bus	\$ 1,800,000.00	Dec-22	Nov-24	95% Comp
8	Paiute 69 kV Line	\$ -			Complete
9	Community Solar Project—Overton	\$ -			Complete
10	Tortoise 138 kV Connection	\$ 678,000.00	2025		
11	New Large Truck (Replace #54)	\$ 410,000.00	2025		Assembly
12	Tortoise to Gila 138 kV Line	\$ 9,200,000.00	Feb-25		Materials
13	Falcon Ridge Distribution Substation Bay 1	\$ -			Complete
14	Painted Hills Substation 138 kV Cap Bank Phase 1				Postpone
14A	Raptor Substation	\$ 2,500,000.00	2024	2025	Trans Pad
14B	Transmission Line to Raptor Substation	\$ 2,000,000.00	2024	2025	Material
15	Long Drive Switchyard	\$ 2,000,000.00	2024	2025	Dirt / Wall
15A	Security Project	\$ 2,000,000.00	2024	2025	Estimates
16	Utility Scale Solar Project Connection	\$ 1,500,000.00	2023	2024	
17	Rattlesnake Hill 138 kV Build Around/Re-Route	\$ 500,000.00	2026		
17A	Overton Crew Building & Truck Barn	\$ 2,000,000.00	2024	2025	Permits
17B	Expand 138 kV Bus at Tortoise	\$ 1,000,000.00	2028		
17C	Falcon Ridge Distribution Substation Bay 2	\$ 3,000,000.00	2025	2025	
17D	Painted Hills Distribution Bay 4	\$ 1,500,000.00	2026	2026	
17E	New Logandale/Overton Substation	\$ 3,500,000.00	2026	2026	
17F	Acquire Property for New Mesquite Warehouse	\$ 1,000,000.00	2025		Easement
17G	Upgrade Mesquite Sub w/ 20 MVA Transformer	\$ 5,000,000.00	2025		Specs
17H	Security Projects	\$ 1,500,000.00	2026		
18	Gila Substation (Phase 2: 69 kV Bay)	\$ -			Postpone
19	Painted Hills Substation 138 kV Cap Bank Phase 2	\$ -			Postpone
20	New Large Truck (Replace #31)	\$ 550,000.00	2026	2024	Queue
20A	Security Projects	\$ 1,500,000.00	2027		
20B	New Warehouse Mesquite	\$ 3,000,000.00	2027		
20C	New Substation Mesquite	\$ 3,500,000.00	2027		
20D	Security Projects	\$ 1,500,000.00	2028		
21	Tortoise Substation New 230 kV to 138 kV Bay	\$ 2,000,000.00	2030		
22	Tortoise Substation New 230 kV Transformer	\$ 3,000,000.00	2024	2027	Specs
23	69 kV Loop around Moapa Valley	\$ 5,000,000.00	2030		
24	Painted Hills Substation 138 kV Cap Bank Phase 3	\$ -	2034		Postpone
25	Secure Control Room—Mesquite	\$ -	-		Cancel
26	Micro-Grid / Battery Storage Project	\$ 1,500,000.00	2028		
27	Gila Substation (Phase 3: 230-kV Bay)	\$ 4,000,000.00	2034		
Total		\$ 70,638,000.00			

MARGIN	
2025 Anticipated Margin	\$ 5,500,000.00
CAPITAL PROJECTS	
Administration	\$180,000
Engineering	\$2,780,000
Finance	\$0
Line Operations	\$196,000
Substation Operations	\$821,000
Cost of 2025 Capital Projects	\$3,977,000
<hr/>	
2024 Margin Less 2024 Capital Projects	\$ 1,523,000.00
10 YEAR RELIABILITY PROJECTS	
Cost of 2023 Reliability & 10 Yr Projects	\$ 30,760,000.00
<hr/>	
Cost of 10 Yr Reliability Projects Less Margin	\$ 29,237,000.00

MARGIN	
2024 Anticipated Margin	\$ 8,084,000.00
CAPITAL PROJECTS	
Administration	\$ 1,651,000.00
Engineering	\$ 1,316,000.00
Finance	\$ -
Line Operations	\$ 228,500.00
Substation Operations	\$ 127,000.00
Sub-Total	\$ 3,322,500.00
<hr/>	
2022 Margin Less 2022 Capital Projects	\$ 4,761,500.00
<hr/>	
Cost of 2023 Reliability & 10 Yr Projects	\$ 22,975,000.00
<hr/>	
Cost of 10 Yr Reliability Projects Less Margin	\$ 18,213,500.00

LINE OPERATIONS

Project	Purpose	Q1	Q2	Q3	Q4	Total
Capacitor Banks	Install cap banks in multiple locations to reduce system losses	\$ 18,000.00	\$ -	\$ 18,000.00	\$ -	\$ 36,000.00
RTAC Update	Update communication processors in the substations	\$ 30,000.00	\$ -	\$ -	\$ -	\$ 30,000.00
Substation Security	Install Spotter RF to improve substation security	\$ -	\$ 75,000.00	\$ -	\$ -	\$ 75,000.00
138 kV Circuit Breaker	Replace a 30+ year old 138 kV breaker that is starting breakdown	\$ -	\$ -	\$ 180,000.00	\$ -	\$ 180,000.00
Security Fencing	Move guy wires and complete dirt work	\$ 500,000.00	\$ -	\$ -	\$ -	\$ 500,000.00
					\$ -	\$ -
					\$ -	\$ -
					\$ -	\$ -
	Total	\$ 548,000.00	\$ 75,000.00	\$ 198,000.00	\$ -	\$ 821,000.00

RELIABILITY & 10 YEAR PROJECTS

Project	Purpose	Q1	Q2	Q3	Q4	Total
Tortoise to Gila 138 kV Line	138 kV line from Tortoise to Gila	\$ 3,500,000.00	\$ 2,000,000.00	\$ 200,000.00	\$ 3,500,000.00	\$ 9,200,000.00
Tortoise Sub 230 kV Ring Bus	Accommodate new 230 kV line	\$ 300,000.00	\$ 750,000.00	\$ 750,000.00	\$ -	\$ 1,800,000.00
Substation - SCADA	Spare 230 kV Breaker and CMV CT		\$ 35,000.00	\$ 350,000.00		\$ 385,000.00
Falcon Ridge Sub Bay 2	DistributionTransformer 20 MVA Bay 2, payment 1 of 2	\$ -	\$ -	\$ -	\$ 500,000.00	\$ 500,000.00
Long Drive Switchyard	Tap 138 kV line for Raptor Transmission Line, payment1 of 2	\$ 1,000,000.00	\$ 1,000,000.00	\$ -	\$ -	\$ 2,000,000.00
Raptor Substation	138-12.5 kV substation for south industrial park in Mesquite	\$ 1,000,000.00	\$ 1,500,000.00	\$ -	\$ -	\$ 2,500,000.00
Raptor Transmission Line	138 kV line to Raptor Substation for Crown Cork in Mesquite	\$ 1,000,000.00	\$ 1,000,000.00	\$ -	\$ -	\$ 2,000,000.00
Substation Physical Security	Tortoise Substation	\$ 1,000,000.00	\$ 1,000,000.00	\$ -	\$ -	\$ 2,000,000.00
Tortoise Transformer T5	New 200 MVA transformer. Installation in 2026, pay 1 of 3	\$ -	\$ -	\$ 2,000,000.00	\$ -	\$ 2,000,000.00
Bucket Truck	Ordered last yr. to replace Trk #54 in 2025, pay. 3 of 3	\$ 200,000.00		\$ -	\$ -	\$ 200,000.00
Digger Derrick Truck	Down payment to replace Trk #31 in 2026, payment 1 of 3	\$ -	\$ -	\$ -	\$ 75,000.00	\$ 75,000.00
Tortoise 69 kV Bay	New 69 kV transformer and bay at Tortoise	\$ -	\$ 725,000.00	\$ 700,000.00	\$ 75,000.00	\$ 4,000,000.00
Painted Hills Dist Bay 4	Build new distribution bay	\$ -	\$ -	\$ 1,000,000.00	\$ -	\$ 1,000,000.00
Mesquite Sub Upgrade	Rebuild substation with two - 20 MVA transformers		\$ 1,000,000.00			\$ 1,000,000.00
Overton Crew Barn	Build crew barn and add fencing	\$ 100,000.00	\$ -	\$ 1,000,000.00	\$ 1,000,000.00	\$ 2,100,000.00
	Total	\$ 8,100,000.00	\$ 9,010,000.00	\$ 6,000,000.00	\$ 5,150,000.00	\$ 30,760,000.00



**Overton Power District #5
BOARD OF TRUSTEE'S
NOVEMBER 20, 2024
ACTION ITEM – J**

SUBJECT: Review and Possible Approval of Revisions to Escape PV Inc. Purchase Power Agreement (PPA) & Consent & Agreement
PETITIONER: Staff
RECOMMENDATIONS: Approval

FISCAL IMPACT:

0

BACKGROUND:

In November of 2023, the Board of Trustees approved a Purchase Power Agreement (PPA) with Escape Solar LLC, a subsidiary of Estuary Power for 25 MW of generation for a 25-year period. Escape Solar, LLC will be installing 185 MW of PV solar and battery storage at a new site north of Mesquite in Lincoln County. This system will require interconnection with LCPD#1 and then feed into OPD5's system. In November of 2023, the Board of Trustees also approved a System Use Agreement (SUA).

A portion of the approved PPA obliges OPD5 to provide a consent to collateral assignment. Escape Solar, LLC will borrow money to fund a portion of the project costs and pledge the equity in the project company as collateral for the lenders. The lenders require assurance that if they foreclose on the collateral, OPD5 will not terminate the PPA as long as the bank performs all obligations under the PPA. This is a routine part of project financing. Escape is proceeding with their financing and have presented the Consent and Agreement with the First Citizen Bank and Trust Company.

During the contract negotiations of the PPA it was noted that OPD5 could not take or sell Renewable Energy Credits created from the green energy production. As Escape Solar finalizes their financing of the project they are requesting that OPD5 change verbiage in our contract to allow our Energy Marketer to receive the power on our behalf allowing Escape Solar access to those RECS/PECS for marketing.

PROPOSED MOTION:

To approve revisions to Escape Solar, LLC. Purchase Power Agreement (PPA) and Consent & Agreement as presented.

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AMENDED AND RESTATED
LONG-TERM
POWER PURCHASE AGREEMENT

BY AND BETWEEN

OVERTON POWER DISTRICT NO. 5 ~~AND~~

AND

ESCAPE ~~SOLAR LLC~~ SOLAR LLC

November ~~15, 2023~~ 20, 2024

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EXHIBITS

- EXHIBIT A_ EXPECTED ON-PEAK SUPPLY AMOUNT
- EXHIBIT B ENERGY LOSSES
- EXHIBIT C METERING DIAGRAM

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AMENDED AND RESTATED
LONG-TERM POWER PURCHASE AGREEMENT

This Amended and Restated Long-Term Power Purchase Agreement (this "Agreement") is made and entered into as of November ~~15, 2023~~ 20, 2024 (the "Effective Date") by and between **OVERTON POWER DISTRICT NO. 5**, a Nevada Quasi-Municipal General Improvement District ("Buyer"), and **ESCAPE SOLAR LLC**, a Delaware limited liability company ("Supplier"). Buyer and Supplier are referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Supplier desires to ~~sell to Buyer~~ provide for Buyer's use, and Buyer desires to ~~purchase from Supplier~~ utilize, Product from the Generating Facility upon the terms and conditions set forth herein; ~~and~~

WHEREAS, Buyer shall pay Supplier for such Product in accordance with and subject to the terms and conditions set forth in this Agreement; ~~and~~

WHEREAS, Buyer and Supplier previously executed a Long-Term Power Purchase Agreement dated November 15, 2023 and wish to amend and restate that agreement in its entirety.

NOW, THEREFORE, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 "AC" means alternating current.
- 1.2 "Affiliate" means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.
- 1.3 "Agreement" means this Long-Term Power Purchase Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.4 "Balancing Authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time. For purposes of this Agreement, the Balancing Authority is NV Energy.
- 1.5 "Balancing Authority Area" means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.

- 1.6 “Billing Period” is defined in Section 6.2.1.
- ~~1.1~~ “Business Day” means any day other than Saturday, Sunday and any day that is a holiday observed by the U.S. federal government or the State of Nevada.
- 1.7 “Buyer” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.8 “Buyer Credit Event” means (a) Buyer no longer maintains an Investment Grade Credit Rating, or (b) if Performance Assurance is in place, there is a change to Buyer’s credit rating that requires Buyer to increase the amount of the Performance Assurance.
- ~~1.9~~ “Buyer’s Energy Manager” means the Person engaged by Buyer to procure and schedule energy to serve Buyer’s load and to perform other related services for Buyer, including any successor to Buyer’s Energy Manager.
- ~~1.9.10~~ “Buyer’s Share of the Generating Facility” means the 25 MW (AC) of the Generating Facility’s generating capacity (as measured at the Revenue Meter) that is dedicated to generating and delivering product to Buyer hereunder, as depicted in Exhibit C.
- ~~1.10.11~~ “Cash Collateral” shall mean cash collateral held in a depository account by a Creditworthy Bank for the benefit of the Supplier under a depository and security agreement that allows disbursement to the Supplier upon the terms and conditions hereof.
- ~~1.11.12~~ “Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Generating Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax incentives of any kind existing now or in the future associated with the construction, ownership or operation of the Generating Facility.
- ~~1.2~~ “Change in Control” means the occurrence, whether in a single transaction or in a series of related transactions at any time during the Term of any one or more of the following: (a) a merger or consolidation of a Party, or any upstream equity owner of a Party for which the direct or indirect interest in such Party represents substantially all of the value of such upstream equity owner’s assets (any such upstream entity, an “Upstream Equity Owner”) with or into any other Person or any other reorganization in which the members of such Party or such Upstream Equity Owner immediately prior to such consolidation, merger, or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (b) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of such Party or any Upstream Equity Owner is transferred to another Person, (c) a sale, lease, or other disposition of all or substantially all of the assets of any Upstream Equity Owner, (d) the dissolution or liquidation of any

Upstream Equity Owner, or (e) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing. Notwithstanding the foregoing, a Change in Control ~~by~~of Supplier shall not be deemed to have occurred if, following any of the foregoing transactions, Supplier either is providing, or has contracted for, the operation and maintenance of the Facility with, a Person who ~~4.12.1.13~~ has at least three (3) years' experience in owning or operating solar electric generating facilities with an aggregate capacity of at least 100 MW AC.

~~4.13.1.14~~ "Change in Law" shall mean the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any applicable Laws; (b) any change in any applicable Laws or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any directive (whether or not having the force of law) by Transmission Provider or any Governmental Authority.

~~4.14.1.15~~ "Confidential Information" shall mean all information, written or oral, which has been or is disclosed by a disclosing Party, or which otherwise becomes known to the receiving Party, and which (a) relates to matters such as patents, trade secrets, research and development activities, draft contracts or other business arrangements (including unexecuted drafts of this Agreement), books and records, insulation data and analysis, generation data and analysis, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time, or (b) the disclosing Party expressly designates in writing to be confidential. Notwithstanding the foregoing, the following information does not constitute Confidential Information for purposes of this Agreement: (i) the final executed version of this Agreement; (ii) the final executed version of any other contract or agreement between the Parties to this Agreement; (iii) posting of an unexecuted version of this Agreement prior to acceptance in compliance with open meeting laws; (iv) information that is or becomes generally available to the public other than as a result of a disclosure by the receiving Party in violation of this Agreement; (v) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (vi) information that becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to the receiving Party; (vii) information that the receiving Party develops independently without using the Confidential Information, and (viii) information that the disclosing Party consents to the disclosure of in a writing to the other Party.

~~4.15.1.16~~ "Contract Year" means each year during the Delivery Term beginning on the Delivery Start Date.

~~4.16.1.17~~ "Credit Event" means (a) with respect to any Performance Assurance provided in the form of a Letter of Credit, the bank issuing such Letter of Credit ceases to have the Credit Rating required in the definition of "Creditworthy Bank," (b) with respect to any Performance Assurance provided in the form of Cash Collateral, the bank holding such Cash Collateral ceases to have the Credit Rating required in the

definition of “Creditworthy Bank,” (c) with respect to any Performance Assurance, regardless of form, such Performance Assurance ceases to be in full force and effect at such time, or (d) in the case of Buyer, a Buyer Credit Event occurs.

~~1.17~~1.18 “Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.

~~1.18~~1.19 “Creditworthy Bank” shall mean a U.S. commercial bank, or a U.S. branch of a foreign commercial bank, which U.S. bank, or foreign bank, has and maintains a Credit Rating of “A-” (or better) from S&P or Fitch, or “A3” (or better) from Moody’s.

~~1.19~~1.20 “Daily Delay Damages” means an amount equal to:

- (a) with respect to the first (1st) through and including the sixtieth (60th) day subsequent to the Expected Delivery Start Date, ~~threesix~~ thousand ~~seven~~ hundred fifty U.S. Dollars (~~\$3,000~~6,750.00) per day;
- (b) with respect to the sixty-first (61st) through and including the one-hundred-twentieth (120th) day subsequent to the Expected Delivery Start Date, six thousand ~~twoseven~~ hundred fifty U.S. Dollars (~~\$6,250~~750.00) per day; and
- (c) with respect to the one-hundred twenty-first (121st) through and including the one-hundred-eightieth (180th) day subsequent to the Expected Delivery Start Date, ~~elevensix~~ thousand ~~seven hundred fifty~~ U.S. Dollars (~~\$11,000~~6,750.00) per day.

1.22 “Defaulting Party” is defined in Section 20.1.

~~1.3~~ “Delivery Start Date” means the date upon which ~~Supplier commences delivering Net Energy.~~

1.23 “Delivery Start Date” means the date upon which (a) the Buyer’s Share of the Generating Facility is fully operational, reliable, and interconnected, and fully integrated and synchronized with the Transmission System; and (b) Supplier commences delivery of Net Energy to the Point of Delivery on a consistent basis (taking into account the intermittent nature of the Generating Facility). Supplier shall provide a notice to Buyer and Buyer’s Energy Manager of the Delivery Start Date at least thirty (30) days prior to the Delivery Start Date.

~~1.23~~1.24 “Delivery Term” is defined in Section 2.1.

~~1.24~~1.25 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce its otherwise expected quantity of Net Energy.

~~1.25~~1.26 “Dispute” is defined in Section 16.1.

~~1.26~~1.27 “Effective Date” is defined in the preamble of this Agreement.

4.271.28 “Electric System Authority” means each of NERC, WECC, the Balancing Authority, the Market Operator, a regional transmission organization, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.

4.281.29 “Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Transmission System, or the transmission system of other transmission operators, which is determined or reported by the Transmission Provider or any Electric System Authority to be (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.

4.291.30 “Energy” means energy that is generated by the Generating Facility.

4.301.31 “Energy Imbalance Market” means generation facilities electrically located within the Balancing Authority Area that are, from time to time, bid into or otherwise subject to dispatch instructions issued or originating from the Market Operator.

4.311.32 “Event of Default” is defined in Section 20.1.

4.321.33 “Excused Net Energy” means the amount of POI Energy that Supplier is unable to generate and deliver ~~to Buyer at the Point of Delivery for Buyer’s utilization~~ as a result of (a) Force Majeure, (b) Emergency, (c) curtailment made in accordance with Section 10.1, (d) planned outage, or (e) Buyer’s ~~or Buyer’s Energy Manager’s~~ failure to accept Net Energy or Product in breach of this Agreement.

4.331.34 “Expected Delivery Start Date” means June 30, 2025, as such date may be extended due to events of Force Majeure or acts or failures to act by Buyer in accordance with this Agreement.

4.341.35 “Expected On-Peak Supply Amount” means, with respect to either the Summer Months or Non-Summer Months, the amounts shown in Exhibit A, which represent the expected POI Energy.

4.351.36 “FERC” means the Federal Energy Regulatory Commission and any successor.

4.361.37 “Financing Parties” shall mean lenders and/or equity investors (including any trustee or agent on behalf of such lenders and/or equity investors) providing equity and/or debt financing or refinancing to Supplier or any of its Affiliates, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

4.371.38 “Fitch” means Fitch Ratings Inc., and any successor.

4.381.39 “Force Majeure” is defined in Section 15.2.

1.391.40 “Generating Facility” means Supplier’s solar photovoltaic power plant located in Lincoln County, Nevada (Sections 15, 16, 17, 18, 19, 20, 21 of Township 12 South, 71 East of the Mount Diablo Base and Meridian, Lincoln County, Nevada), which is expected to have a capacity of approximately one hundred and eighty five (185) MW (AC) (as may be revised from time to time in Seller’s sole discretion), measured at the Point of Interconnection

1.401.41 “Generating Facility Interconnection Agreement” means the Generating Facility Interconnection Agreement between Supplier and LCPD pursuant to which the Generating Facility will be interconnected with LCPD’s Transmission System at the Point of Interconnection.

1.441.42 “Good Utility Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States.

1.421.43 “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations, and with respect to Supplier, specifically includes FERC, the PUCN, NERC, and WECC.

1.431.44 “Guarantor” shall mean any Person issuing a Guaranty as Performance Assurance pursuant to this Agreement.

1.441.45 “Guaranty” shall mean a guaranty in a form reasonably acceptable to Buyer issued by a Person that (i) (a) directly or indirectly controls (as defined for purposes of the definition of “Affiliate” above) the Buyer and (b) has and maintains an Investment Grade Credit Rating, or (ii) is otherwise acceptable to the Supplier.

1.451.46 “Indemnified Party” is defined in Article 13.

1.461.47 “Indemnifying Party” is defined in Article 13.

1.471.48 “Investment Grade Credit Rating” shall mean a Credit Rating of “BBB-” or better from S&P or Fitch (if such entity is rated by S&P or Fitch, respectively) and a Credit Rating of “Baa3” or better from Moody’s (if such entity is rated by Moody’s).

~~1.48~~1.49 “Law” means any federal, state, local or other law, common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority which is binding on a Party or any of its property.

~~1.49~~1.50 “LCPD” means Lincoln County Power District No.1.

~~1.50~~1.51 “Letter of Credit” means a letter of credit issued by a Qualified Financial Institution.

~~1.51~~1.52 “Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third party upon an Indemnified Party or incurred in connection with a claim by a third party against an Indemnified Party.

~~1.52~~1.53 “Market Operator” means, if applicable, the California Independent System Operator Corporation or any other entity performing the market operator function for ~~the Energy Imbalance Market~~energy imbalance services utilized under this Agreement.

~~1.53~~1.54 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations or financial condition of such Party.

~~1.54~~1.55 “Measurement Period” means each two (2) consecutive calendar years starting with the first two first two full calendar years during the Term.

~~1.4~~ “Meter” means any of the physical or electronic metering devices described in 6.1.1, data processing equipment and apparatus associated with the meters required for (a) accurate determination of the quantities of Net Energy from the Generating Facility and other related parameters required for the reporting of data to Supplier, ~~1.55~~1.56 (b) the computation of the payment due to Supplier from Buyer and (c) compliance with requirements of any Electric System Authority, any Governmental Authority or Transmission Provider. Meters do not include any check meters Buyer may elect to install as contemplated by Section 6.1.2.

~~1.56~~1.57 “Moody’s” means Moody’s Investor Services, Inc. and any successor.

~~1.57~~1.58 “MW” means megawatts of electrical power in AC.

~~1.58~~1.59 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.

~~1.59~~1.60 “NERC” means the North American Electric Reliability Corporation and any successor.

~~1.60~~1.61 “Net Energy” means all Energy produced by Buyer’s Share of the Generating Facility and delivered to the Point of Delivery, as measured at the Revenue Meter and

adjusted for energy losses incurred to the Point of Delivery in the manner set forth in Exhibit B.

1.61.1.62 “Nevada Power Company” means Nevada Power Company, acting under its legal name and/or otherwise doing business as NV Energy, or any successor thereto.

1.62.1.63 “Non-Defaulting Party” means the Party other than the Defaulting Party.

1.63.1.64 “Non-Summer Months” means all months of a Contract Year, not including the Summer Months.

1.64.1.65 “On-Peak” means hours ending 07:00 through 22:00 PPT of each day.

1.65.1.66 “Operating Representative” of a Party means the individual designated by that Party in Section 25.1 as responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Operating Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 25.1.

1.66.1.67 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.

1.67.1.68 “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.

1.68.1.69 “Performance Assurance” has the meaning set forth in Section 7.1.

1.69.1.70 “Performance Assurance Amount” shall be set based on the following table:

Buyer’s Credit Rating	Performance Assurance Amount*
Investment Grade Credit Rating “BBB-” from S&P (if Buyer is rated by S&P) or Fitch (if Buyer is rated by Fitch), and “Baa3” from Moody’s (if Buyer is rated by Moody’s) or higher	None
“BB+” from S&P (if Buyer is rated by S&P) or Fitch (if Buyer is rated by Fitch), and “Ba1” or lower from Moody’s (if Buyer is rated by Moody’s)	Equal to the present value (using an 8% discount rate) of the following cash flows for the thirty-six months following the calculation date: (1) The expected amount to be paid by Buyer for Product, minus (2) The expected price of the Product to be purchased by Buyer if such Product was sold at Mead (Mead pricing to be

weighted by expected hourly production), plus (1) (3) any charges required wheel Product to Mead.

* If Buyer is rated higher by one agency than the other agencies, the Performance Assurance Amount that Buyer is required to post shall be the amount associated with the lowest of the three ratings. The amount of Performance Assurance shall at no time exceed the aggregate amount remaining to be paid by Buyer for all Product to be delivered by Supplier during the remainder of the Delivery Term.

~~1.70~~1.71 “POI Energy” means all Energy produced by Buyer’s Share of the Generating Facility, as measured at the Revenue Meter and adjusted for energy losses incurred to the Point of Interconnection. For the avoidance of doubt, POI Energy is calculated before any reductions to account for the losses across LCPD’s system.

~~1.74~~1.72 “Point of Delivery” means the point on the Transmission System where ownership changes from LCPD to Buyer.

~~1.72~~1.73 “Point of Interconnection” means the location where the Generating Facility connects to LCPD’s Transmission System in the vicinity of LCPD’s Mesa substation.

~~1.73~~1.74 “Product” means all Net Energy and Capacity Rights, in each case, arising from or relating to Buyer’s Share of the Generating Facility.

~~1.74~~1.75 “Product Rate” means \$34.70/MWh, flat pricing over the Term.

~~1.75~~1.76 “PUCN” means the Public Utilities Commission of Nevada.

~~1.76~~1.77 “Qualified Financial Institution” means a financial institution having an office in the United States, with a total tangible net worth of at least ten billion dollars (\$10,000,000,000) U.S. and whose Credit Rating is at least “A-” by S&P and “A3” by Moody’s.

~~1.77~~1.78 “Relevant Rating Agency” means Moody’s, S&P or Fitch.

~~1.78~~1.79 “Replacement Costs” are defined in Section 3.4.1.3.

~~1.79~~1.80 “Replacement Product” means Product that is delivered to Buyer in accordance with Section 4.6 that not produced by Buyer’s Share of the Generating Facility.

~~1.80~~1.81 “Revenue Meter” means the revenue-quality Meter(s) for the Buyer’s Share of the Generating Facility, which will be located at the connection between the 34.5 kV feeder assigned to Buyer’s Share of the Generating Facility and the Generating Facility’s step-up transformer (as depicted in Exhibit C), which will be used for measuring the Product.

~~1.81~~1.82 “Shortfall” is defined in Section 34.4.1.1 with respect to the Summer Months and Section 34.4.2.1 with respect to the Non-Summer Months.

~~1.5~~ “Shortfall Amount” is defined in Section 3.5.

~~1.83~~ “Shortfall Threshold” is defined in Section 34.4.1.12 with respect to the Summer Months and Section 34.4.2.2 with respect to the Non-Summer Months.

~~1.82~~1.84 “Shortfall Threshold” is defined in Section 4.4.1.1 with respect to the Summer Months and Section 4.4.2.1 with respect to the Non-Summer Months.

~~1.83~~1.85 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc. and any successor.

~~1.84~~1.86 “Summer Months” means the months of June, July, August and September occurring during a Contract Year.

~~1.85~~1.87 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.

~~1.86~~1.88 “Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

~~1.87~~1.89 “Term” means the period between the Effective Date and the last day of the Delivery Term.

~~1.88~~1.90 “Transmission Provider” means (a) up to and including the Point of Delivery, LCPD, and (b) after the Point of Delivery, Buyer in its capacity as owner and operator of its facilities used for the transmission and distribution of electric energy.

~~1.89~~1.91 “Transmission System” means the facilities used for the transmission of electric energy, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.

~~1.90~~1.92 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.

2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Effective Date; Delivery Term. This Agreement shall become effective on the Effective Date. Supplier’s obligation to deliver Product, and Buyer’s obligation to

accept and pay for Product, shall commence on the Delivery Start Date and shall continue for a period of twenty five (25) years from the Delivery Start Date, subject to earlier termination of this Agreement pursuant to the terms hereof (the "Delivery Term").

- ~~1.6~~ Termination. This Agreement may be terminated in accordance with the terms and conditions of this Agreement and at any time by the Non-Defaulting Party upon ten (10) Business Days' prior notice to the Defaulting Party if an Event of Default has occurred and is continuing after the applicable cure period (if any) has expired.
- 2.2 Effect of Termination - Survival of Obligations. Any termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:
- 2.3.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination or breach of this Agreement;
- 2.3.2 Indemnity obligations contained in Article 13, which shall survive to the full extent of the statute of limitations period applicable to any third-party claim;
- 2.3.3 Limitation of liability provisions contained in Article 14;
- 2.3.4 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 16; or
- 2.3.5 The resolution of any Dispute submitted pursuant to Article 16 prior to, or resulting from, termination.

3. CONSTRUCTION; DELIVERY START DATE

- 3.1 Construction. Supplier, at Supplier's sole cost and expense, shall design and construct the Generating Facility in accordance with Good Utility Practice, applicable Laws, applicable permits, and the terms and conditions of this Agreement. Supplier, at its expense, shall timely take all steps necessary to obtain (and shall throughout the Delivery Term maintain) all permits required to construct, maintain, and operate the Generating Facility and to interconnect the Generating Facility to the Transmission System.
- 3.2 Delivery Start Date. Supplier will use commercially reasonable efforts to commence delivery of the Product as of the Expected Delivery Start Date.
- 3.3 Delay in Delivery Start Date.
- 3.3.1 If Supplier does not commence delivery of the Product as of the Expected Delivery Start Date, Supplier shall use commercially reasonable efforts to ensure that the Delivery Start Date occurs as soon as practical thereafter.

3.3.2 If Supplier does not commence delivery of the Product as of the Expected Delivery Start Date, Supplier shall pay Buyer Daily Delay Damages for each day after the Expected Delivery Start Date until the earlier of the one-hundred-eightieth (180th) day after the Expected Delivery Start Date and the occurrence of the Delivery Start Date.

~~1.6.1~~ Subject to the other terms of this Article 3, Supplier's obligations in Section 3.3.3 3.3.2 shall together be Buyer's sole and exclusive remedy, and Supplier's sole and exclusive liability and obligation to Buyer, for any delay in the occurrence of the Delivery Start Date after the Expected Delivery Start Date.

3.4 Early Termination. If the Delivery Start Date has not occurred by one hundred eighty (180) days after Expected Delivery Start Date, then Buyer may elect to terminate this Agreement as Buyer's sole and exclusive remedy.

3.5 Liquidated Damage Amounts. With respect to Section 3.3, the Parties have agreed upon and established the amounts herein because of the difficulty of ascertaining the exact amount of such damages in such event and because otherwise obtaining an adequate remedy would be difficult or inconvenient. Nothing in Section 3.3 amounts to a penalty and such shall be delivered or provided regardless of the actual amount of damages that may be incurred by either Party.

4. PURCHASE AND SALE OF PRODUCT

4.1 Dedication. One hundred percent (100%) of the Product shall be dedicated to Buyer for so long as this Agreement is in force and effect and Supplier shall not sell, divert, grant, transfer or assign Product to any Person other than Buyer.

4.2 Purchase and Sale. For and in consideration of Buyer's payment for the Product and the Replacement Product, Supplier ~~sell~~shall provide and deliver to Buyer ~~(or Buyer's Energy Manager,~~ and Buyer ~~accept~~shall direct Buyer's Energy Manager to acquire from Supplier~~),~~ any right, title and interest that Supplier may have in and to the Product and the Replacement Product~~), and Buyer shall pay Supplier the Product Rate for any Product provided and delivered to Buyer's Energy Manager.~~

4.3 Delivery.

4.3.1 Point of Delivery. Buyer or Buyer's Energy Manager shall take delivery of the Product at the Point of Delivery in accordance with the terms of this Agreement. Supplier shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of the Product up to the Point of Delivery, including transmission costs, transmission line losses, and any operation and maintenance charges imposed by the Transmission Provider. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of the Product after the Point of Delivery, including transmission costs and transmission line losses

and imbalance charges, except for Buyer's Energy Manager's costs (if any) as provided in Section 6.7.

- 4.3.2 Title and Risk of Loss. Title and risk of loss with respect to the Product delivered by Supplier shall pass from Supplier to Buyer or Buyer's Energy Manager at the Point of Delivery. Supplier shall be deemed in exclusive control of the Product, and shall be responsible for any damage or injury caused prior to the Point of Delivery. Buyer or Buyer's Energy Manager shall be deemed in exclusive control and responsible for any damage or injury caused at and after the Point of Delivery. Supplier warrants that the Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- 4.3.3 Generating Facility Interconnection Agreement Requirements. Supplier shall comply with all requirements related to frequency and voltage which are set forth in the Generating Facility Interconnection Agreement between Supplier and LCPD.
- 4.4 Shortfall: Replacement Costs. Supplier shall pay Replacement Costs (defined below) to Buyer in the event of any Shortfall (defined below).
- 4.4.1 Summer Months – On-Peak.
- 4.4.1.1 If, for the Summer Months of any Measurement Period, the POI Energy and Replacement Product delivered during the On-Peak hours of such Summer Months is less than the Shortfall Threshold for such Summer Months, then a shortfall (a “Shortfall”) will be deemed to exist for such Summer Months. “Shortfall Threshold” means, with respect to such Summer Months, the product of (a) 85 percent *multiplied by* (b) the difference between (i) the Expected On-Peak Supply Amount for such Summer Months *minus* (ii) the POI Energy associated with Excused Net Energy (if any) during the On-Peak hours of such Summer Months.
- 4.4.1.2 If a Shortfall exists with respect to the Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. “Shortfall Amount” means, with respect to the Summer Months of such Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for the Summer Months of such Measurement Period *minus* POI Energy and Replacement Product delivered during the On-Peak hours of the Summer Months of such Measurement Period. If the calculation set forth in this Section 4.4.1.2 yields an amount of zero or less for the Summer Months of such Measurement Period, then no Shortfall Amount will be deemed to exist with respect to the Summer Months of such Measurement Period.

4.4.1.3 Buyer's "Replacement Costs" with respect to the Summer Months of any Measurement Period shall equal (a) the Shortfall Amount *multiplied by* (b) the average Mead power price for the Summer Months of the Measurement Period *minus* the Product Rate. If the calculation of Replacement Costs as set forth in this Section 4.4.1.3 yields an amount of zero or less for the Summer Months of such Measurement period, then no Replacement Costs will be payable with respect to the Summer Months of such Measurement Period.

4.4.1.4 Within five (5) Business Days after the end of the Measurement Period in which a Shortfall has occurred with respect to the Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.

4.4.2 Non-Summer Months – On-Peak.

4.4.2.1 If, for the Non-Summer Months of any Measurement Period, the POI Energy delivered during the On-Peak hours of such Non-Summer Months is less than the Shortfall Threshold for such Non-Summer Months, then a shortfall (a "Shortfall") will be deemed to exist for such Non-Summer Months. "Shortfall Threshold" means, with respect to such Non-Summer Months, the product of (a) 85 percent *multiplied by* (b) the difference between (i) the Expected On-Peak Supply Amount for such Non-Summer Months *minus* (ii) the total amount of POI Energy associated with Excused Net Energy (if any) during the On-Peak hours of such Non-Summer Months.

4.4.2.2 If a Shortfall exists with respect to the Non-Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. "Shortfall Amount" means, with respect to the Non-Summer Months of such Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for such Non-Summer Months minus POI Energy and Replacement Product delivered during the On-Peak hours of the Non-Summer Months of such Measurement Period. If the calculation set forth in this Section 4.4.2.2 yields an amount of zero or less for the Non-Summer Months, then no Shortfall Amount will be deemed to exist with respect to the Non-Summer Months of such Measurement Period.

~~4.6.2~~ Buyer's "Replacement Costs" with respect to the Non-Summer Months of any Measurement Period shall equal (a) the Shortfall Amount *multiplied by* (b) the average Mead power price for the Non-Summer Months of the Measurement Period *minus* the applicable Product Rate. If the calculation of Replacement Costs as set forth in this Section 4.4.2.3 yields an amount of zero or less for such Non-Summer Months, then no Replacement Costs will

be payable with respect to the Non-Summer Months of such Measurement Period. Calculation of Shortfall Amount. Within five (5) Business Days after the end of any Measurement Period in which a Shortfall has occurred with respect to the Non-Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated. Calculation of Excused Net Energy. As soon as practicable following any event which has impacted Supplier's ability to deliver the Expected On-Peak Supply Amount, Supplier shall calculate the amount of POI Energy that Supplier was unable to generate and deliver to Buyer solely as a result of such event, by summing for each hour of the period the difference between (i) the POI Energy that Supplier would have been capable of delivering if not for such event and (ii) the

4.4.3 delivered amount. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer.

4.5 Operations and Maintenance. Supplier shall operate, maintain and repair the Generating Facility in accordance with Good Utility Practice and applicable Laws.

4.6 Replacement Product. During the Delivery Term, if POI Energy in any annual or monthly period is less than the Expected On-Peak Supply Amount for such period, as set forth in Exhibit A, then Supplier may, in Supplier's sole discretion, provide ~~Buyer~~ Replacement Product up to such Expected On-Peak Supply Amount. Supplier must deliver Replacement Product in the same manner it is required to deliver Product to Buyer or Buyer's Energy Manager, as applicable. Notwithstanding anything to the contrary in this Agreement, to the extent Supplier provides Replacement Product in accordance with this Section 4.6, such Replacement Product shall be treated the same as Product for all purposes of this Agreement.

5. PRICE OF PRODUCT

5.1 Product Rate. The Product and Replacement Product shall be paid for by Buyer at the Product Rate.

6. METERING, INVOICING AND PAYMENTS

6.1 Metering.

6.1.1 Meters. Supplier shall provide, install, own, operate and maintain all Revenue Meter(s) in good operating condition, which Revenue Meters shall be used to measure the Product hereunder. The Revenue Meters shall be revenue grade, bi-directional, shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity.

- 6.1.2 Meter Testing. Revenue Meters shall be tested at least once every two calendar years by Supplier. Buyer may request a special test of any Revenue Meter no more frequently than every six (6) months if it has reasonable grounds to suspect the Meters are inaccurate, but Buyer shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case Supplier shall bear the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Supplier shall provide fifteen (15) Business Days prior notice of routine Meter testing to Buyer
- 6.1.3 If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Supplier shall repair and recalibrate or replace the Meters, and Buyer shall adjust payments to Supplier for the Product for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; however, the adjustment period shall not exceed ninety (90) days. If adjusted payments are required, Supplier shall render a statement describing the adjustments to Buyer within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments due to Supplier by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due to Buyer pursuant to this Section 6.1.3 shall accompany Supplier's next Billing Period statement.
- 6.1.4 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon any check meters, if any; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Product calculated using the check meters for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; however, the adjustment period shall not exceed ninety (90) days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Product. In such event, such payments made based upon the Parties' estimate of the amount of Product shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the amount

of Product, the Dispute shall be resolved in accordance with Article 16.

6.2 Invoices.

6.2.1 Monthly Invoicing and Payment. On or before the 10th day of each month, Supplier shall send to Buyer an invoice for the prior month (a "Billing Period"). Supplier shall calculate the invoice based upon Net Energy. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to or by Buyer.

6.2.2 Method of Payment. Buyer or Supplier, as applicable, shall remit the payment of any undisputed amounts by wire or electronic fund transfer or otherwise pursuant to written instructions provided by Buyer. Payment will be made on or before the later of the twentieth (20th) day following the end of each Billing Period (or the next following Business Day, if such twentieth (20th) day does not fall on a Business Day) or ten (10) Business Days from receipt of invoice.

6.2.3 Examination and Correction of Invoices. As soon as practicable either Party shall notify the other Party in writing of any alleged error in an invoice.

6.2.3.1 If a Party notifies the other Party of an alleged error in an invoice, the Parties agree to use good faith efforts to reconcile the billing and mutually agree on the appropriate correction, if any.

6.2.3.2 If a correction is determined to be required, the invoicing Party shall provide an adjusted invoice to the invoiced Party. If such error results in an additional payment to the invoicing Party, the invoiced Party shall pay such invoicing Party the amount of the adjusted invoice within thirty (30) calendar days of the date of receipt of the adjusted invoice. If such error resulted in a refund owed to the invoiced Party, the invoicing Party shall pay the invoiced Party the amount of the adjusted invoice within thirty (30) calendar days of the date of the statement or at the invoiced Party's option, the invoiced Party may net such amount against the subsequent monthly payment to invoicing Party.

6.2.3.3 Any correction or Dispute with respect to an invoice is waived unless a Party is notified within twenty-four (24) months after the invoice is rendered.

6.3 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated at the Prime Rate set forth in *The Wall Street Journal* plus two percent (2%).

- 6.4 Access to Books and Records. Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 6.2.
- 6.5 Parties' Right to Offset. Either Party shall have the right to offset any amounts owed to the other Party under this Agreement.
- 6.6 Taxes. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect any Buyer's tax exempt status. Buyer is responsible for any Taxes imposed on Buyer by state, local, or federal Governmental Authorities or associated with the Product at or after its Point of Delivery. Supplier is responsible for any Taxes imposed on or associated with the Product or its delivery up to or at the Point of Delivery. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall hold harmless the other Party in accordance with Article 13 from and against Taxes imposed on the other Party as a result of such Party's actions or inactions in contravention of this Section 6.6.
- 6.7 Energy Manager Costs. Supplier will reimburse Buyer for all documented costs incurred by Buyer related to provision of Product to Buyer's Energy Manager (if any) which Buyer would not have incurred if Supplier was delivering Product directly to Buyer.

7. PERFORMANCE ASSURANCE

- ~~1.7~~ Performance Assurance. At any time during the period commencing as of the Effective Date and throughout the Term, Buyer shall either (a) maintain an Investment Grade Credit Rating; or (b) deliver to and maintain security (the "Performance Assurance") in the form of (i) Cash Collateral held on Buyer's Balance Sheet, (ii) a Guaranty, or (iii) a Letter of Credit, in the aggregate amount equal to the then-applicable Performance Assurance Amount. Buyer shall deliver such Performance Assurance, or have such Performance Assurance in place, or, if applicable, increase the Performance Assurance Amount, no later than the later of:
- 7.1 (A) if Buyer does not have an Investment Grade Credit Rating as of such date, upon the Effective Date or ten (10) Business Days after the date that Buyer no longer maintains an Investment Grade Credit Rating, or (B) ten (10) Business Days after the date of any Buyer Credit Event. Thereafter, if there is a change to Buyer's credit rating that allows Buyer to reduce the Performance Security Amount, Buyer may, in its sole discretion, reduce the Performance Assurance to the then-required amount. The Performance Assurance Amount shall not be deemed a limitation of damages hereunder.
- 7.2 Posting, Maintenance and Drawing.

- 7.2.1 Security Interest. To secure its obligations under this Agreement, Buyer hereby grants to Supplier, as the secured party, a first priority, present and continuing security interest in, and lien on (and right of setoff against), and assignment of, the Performance Assurance posted in the form of cash and all cash obtained by Buyer resulting from a draw on such Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of the Supplier, and Buyer agrees to take such action as Supplier reasonably requires in order to protect the Supplier's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; provided, however, that the Supplier may exercise its rights as a secured party (including the right of setoff granted pursuant to this sentence) against such cash collateral only upon the terms and conditions in this Section 7.2. Such cash collateral shall constitute Cash Collateral for all purposes of this Agreement (including for the return of such cash collateral to Buyer according to this Section 7.2).
- 7.2.2 Draw in an Event of Default. If an Event of Default has occurred and is continuing, Supplier shall be entitled to draw upon the Performance Assurance for any damages that have not been paid when due and that arise from (i) such Event of Default and/or (ii) any prior Event of Default to the extent that damages arising therefrom have not yet been paid in full to the Supplier.
- 7.2.3 Draw of an Expiring Letter of Credit. In the case of Performance Assurance in the form of a Letter of Credit, Supplier may draw the full amount of such Letter of Credit within thirty (30) days before the expiration of such Letter of Credit if, as of the date of such drawing, Supplier does not receive replacement Performance Assurance meeting the requirements of this Agreement. The proceeds of any such draw shall be held as Cash Collateral unless replaced pursuant to Section 7.2.4 and may be drawn upon only as provided in Section 7.2.2.
- 7.2.4 Replacement. If, at any time during which Performance Assurance is required to be maintained hereunder, a Credit Event occurs with respect to such Performance Assurance, then Buyer shall, within ten (10) Business Days after such Credit Event, replace the affected Performance Assurance with Performance Assurance that complies with the terms of this Agreement, including having an undrawn capacity in the amount required by the definition of such Performance Assurance at such time. In addition to the replacement of the Performance Assurance that may be required pursuant to the preceding sentence, Buyer shall, at any time and from time to time, have the right to replace the Performance Assurance in effect at such time with other Performance Assurance, so long as Buyer maintains the Performance

Assurance with undrawn capacity in the amount required by the definition thereof at such time.

7.2.5 Release Upon Replacement. If any Performance Assurance is replaced in accordance with ~~Section-7.2.4~~, then, if the Performance Assurance being replaced is (A) a Guaranty, the Guarantor shall be deemed released from all obligations under such replaced Performance Assurance, and Supplier shall execute any documents reasonably requested by Buyer or any such Person to confirm such release, (B) a Letter of Credit, the Supplier shall promptly return such Letter of Credit to the bank that issued such Letter of Credit and shall execute any documents reasonably requested by Buyer or issuing bank in order to release the Letter of Credit, (C) Cash Collateral, Supplier shall cause the depository bank to immediately return such Cash Collateral (including any interest earned thereon) to Buyer.

7.2.6 Release Upon Termination. If, upon the date of release of the Performance Assurance, any part of the Performance Assurance being released is (A) a Guaranty, the Guarantor shall be deemed released from all obligations under the Performance Assurance, and Supplier shall execute any documents reasonably requested by Buyer or any such Person to confirm such release, (B) a Letter of Credit, the Supplier shall return such Letter of Credit to the bank that issued such Letter of Credit and shall execute any documents reasonably requested by Buyer or issuing bank in order to release the Letter of Credit.

~~1.7.1~~ Outstanding Claims. Notwithstanding anything to the contrary contained in this Agreement, if upon the date of release of the Performance Assurance, there are any outstanding claims that were validly made prior to such date against the Performance Assurance then being released, then, on such date,

7.2.7 ~~(a)~~ the amount of the applicable Performance Assurance shall be deemed reduced to the amount of such outstanding claims, ~~(b)~~ the date of release of the Performance Assurance shall be extended until the final resolution and (if applicable) full payment of such outstanding claims and ~~(c)~~ at the election of Supplier, the scope of such security may be reduced to secure only such outstanding claims. In the event of a reduction in the amount and/or scope of any Performance Assurance in accordance with clause (a) or clause (c) of the immediately preceding sentence, Supplier shall promptly execute any documents and take any other actions reasonably requested by the Buyer or any Person providing the Performance Assurance to effect and/or confirm such reduction in amount and/or scope, including by executing and delivering an amendment to such Performance Assurance, by exchanging such Performance Assurance or by other reasonable means.

8. PLANNED OUTAGES

On or before October 1 of each Contract Year, Supplier shall provide Buyer and Buyer's ~~scheduling coordinator~~ Energy Manager with a schedule designating the periods during the upcoming Contract Year during which Supplier expects the output of Buyer's Share of the Generating Facility to be reduced in whole or in part. Supplier shall use commercially reasonable efforts to update the schedule as information becomes available.

9. EMERGENCY

Supplier shall promptly comply with any applicable requirements of any Electric System Authority, Governmental Authority, Transmission Provider, or their successors, regarding the reduced or increased generation of the Generating Facility or otherwise in the event of any Emergency. Supplier shall provide prompt oral and written notification to Buyer of any Emergency with a description in reasonable detail of the Emergency and any steps employed to cure it.

10. CURTAILMENT

- 10.1 Compliance. Supplier shall obey all orders for curtailment of Energy by the Transmission Provider or any Electric System Authority. Buyer has no obligation to pay Supplier with respect to Product not delivered due to curtailments made in accordance with this Section 10.1.
- 10.2 Curtailments. Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with the Product if such Product is not delivered to the Point of Delivery because: (a) the interconnection between the Generating Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part, (b) the Transmission Provider, ~~or~~ Electric System Authority ~~or Market Operator~~ directs a general curtailment, reduction, or re-dispatch of generation in the area (which includes the Product) for any reason, (c) the Net Energy is not received because the Generating Facility is not fully integrated or synchronized with the Transmission System or (d) an event of Force Majeure prevents either Party or Buyer's Energy Manager from delivering or receiving Product.
- 10.3 No Economic Curtailment. Buyer shall not be permitted to require curtailment for economic reasons or otherwise refuse to take Product for economic reasons.

11. COMMUNICATIONS

- 11.1 Operating Representatives. Each of Supplier and Buyer shall designate an Operating Representative ("Supplier's Operating Representative" and "Buyer's Operating Representative", respectively) who shall be available to address and make decisions on operational matters under this Agreement on a twenty-four (24) hour per day, seven (7) day per week basis. Supplier shall, at its expense, provide a protocol to Buyer to maintain communications between Seller's Operating Representative and Buyer's Representative, Buyer's ~~scheduling coordinator~~ Energy Manager, and Electric System Authorities at all times.

- 11.2 Communications. In connection with meeting its obligations pursuant to this Article 11, Supplier shall provide at its expense: (a) a readily accessible real-time performance monitoring (e.g. read-only access to a web-based performance monitoring system); and (b) equipment to transmit to and receive emails from Buyer and the Balancing Authority, including cellular telephones.

12. SCHEDULING NOTIFICATION

- 12.1 Scheduling Notification. Supplier shall provide to Buyer's Operating Representative and Buyer's Energy Manager Supplier's good faith daily and hourly forecast of the Net Energy, planned outages, Derating, and similar changes that may affect the Product, in accordance with the procedures in Section 12.2.

12.2 Procedures.

12.2.1 No later than 05:00 PPT each day, Supplier shall deliver to Buyer's Operating Representative and Buyer's Energy Manager a notice that covers WECC scheduling practices for day-ahead energy.

12.2.2 Supplier shall notify Buyer's Operating Representative and Buyer's Energy Manager as soon as practical after becoming aware of an expected Derating.

~~1.7.2~~ In the event of a Derating, Supplier shall provide: (a) the magnitude of the Derating; (b) the hours during which the Derating is expected to apply; and

12.2.3 (c) the cause of the Derating.

13. INDEMNIFICATION

Each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party, its Affiliates, and their respective representatives, members, officers, directors, managers, agents, successors and assigns (together, the "Indemnified Party") harmless from and against any and all damages for (a) ~~personal injury, death or property damage to the Indemnified Party's property or facilities,~~ (b) personal injury, death or property damage to third parties, or (c) other third party claims (whether arising under contract or tort), in each case that arise out of or are connected with the Indemnifying Party's performance of its obligations under this Agreement; provided, however, that the Indemnifying Party shall have no obligation to indemnify the Indemnified Party to the extent such injury, death or damage or other third party claims are attributable to the negligence or willful misconduct or breach of this Agreement by the Indemnified Party or any of its Affiliates.

14. LIMITATION OF LIABILITY

- 14.1 Partial Waiver of Consequential Damages. EXCEPT FOR BREACHES OF ARTICLE 24 AND INDEMNITY CLAIMS UNDER ARTICLE 13(b) or (c), IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RELATED PERSONS BE LIABLE TO THE OTHER PARTY OR ANY OF ITS RELATED PERSONS FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, OR

CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT BE CONSTRUED TO LIMIT A PARTY'S RIGHT TO RECEIVE LIQUIDATED DAMAGES, SUBJECT TO THE OTHER LIABILITY LIMITATIONS, OR TO RECEIVE "COVER" DAMAGES. THE PARTIES INTEND THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE LIABILITY LIMITATIONS SHALL APPLY EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, OR BREACH OF CONTRACT OF THE BENEFICIARY THEREOF AND WHETHER ASSERTED IN CONTRACT, IN WARRANTY, IN TORT, BY STATUTE OR OTHERWISE.

- 14.2 Survival. The provisions of this Article 14 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

15. FORCE MAJEURE

- 15.1 Excuse. Subject to Section 15.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product but excluding any payment obligations) if such delay or failure is due to an event of Force Majeure.

~~1.8~~ Definition. "Force Majeure" or "an event of Force Majeure" means an event that (a) is not within the reasonable control of the Party affected by the event, (b) is not the result of such Party's negligence or failure to act, and (c) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): riot, insurrection, war (declared or not), explosion, labor dispute, supply chain disruptions which are not specific to the individual Generating Facility, fire, flood, earthquake, tornado, hurricane, storm, lightning,

- 15.2 vandalism, act of the public enemy, terrorism, pandemic, epidemic, civil disturbances, strike, work stoppage, blockades, sabotage, national emergency, the amendment, adoption or repeal of or other change in, or the interpretation or application of, any applicable Laws; and any action or inaction by any Governmental Authority, including Transmission Provider and any Electric System Authority (whether valid or invalid).
- 15.3 Exclusions. Notwithstanding the foregoing, none of the following constitute Force Majeure:
- 15.3.1 Economic hardship of either Party, including lack of money;
 - 15.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Generating Facility due to high or low temperatures or climate conditions, except to the extent such conditions are due to a Force Majeure Event;
 - 15.3.3 A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority, unless due to a Force Majeure Event;
 - 15.3.4 The imposition of costs or Taxes on a Party;
 - 15.3.5 Supplier's failure to obtain, or perform under its interconnection agreement or its other contracts with Transmission Provider unless due to a Force Majeure event;
 - 15.3.6 Supplier's ability to sell, or Buyer's ability to purchase energy or capacity at a more advantageous price than is provided hereunder; and
 - 15.3.7 Any breakdown or malfunction of the Generating Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure.
- 15.4 Conditions. In addition to the conditions set forth in Section 15.2, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:
- 15.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement (which notice, in the case of Supplier, shall be provided within ten (10) days following such Force Majeure event);
 - 15.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;
 - ~~1.8.1~~—Expediently takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope

- 15.4.3 and no longer in duration than is dictated by the problem; provided, however, that nothing herein requires a Party to settle a strike or other labor dispute;
- 15.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party; and
- 15.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

16. DISPUTES

- 16.1 Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other arising out of or relating to this Agreement, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.
- 16.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.
- 16.3 Arbitration. If any Dispute between the Parties arises out of this Agreement and if the Parties are unable to resolve such Dispute within ten (10) days after a notice of claim is provided, then such Dispute shall be resolved by binding arbitration by a single arbitrator under the Comprehensive Arbitration Rules of Judicial Arbitration and Mediation Services, Inc. ("JAMS"). This arbitration provision is mandatory. If Supplier gives Buyer notice of Default pursuant to Section 20.1 of this Agreement, and if Supplier in good faith elects to dispute such claimed Default pursuant to the provisions of this Section 16, then any cure period provided in Section 20 as to such claimed Event of Default shall continue during the resolution of such dispute hereunder, and all of the terms and conditions of this Agreement will remain in effect, and the Parties will continue to perform all of their respective obligations under this Agreement, during the resolution of such Dispute. If Buyer gives Supplier notice of a claimed Event of Default pursuant to Section 20 of this Agreement, and if Supplier in good faith elects to dispute such claimed Event of Default pursuant to the provisions of this Section 16, then any cure period provided in Section 20 as to such claimed Event of Default shall continue during the resolution of such dispute hereunder, and all of the terms and conditions of this Agreement will remain in effect, and the Parties will continue to perform all of their respective obligations under this Agreement, during the resolution of such dispute.

As soon as the arbitrator has been appointed, a hearing date shall be set at the Las Vegas office of JAMS (or such other location in Clark County, Nevada agreed to by each of the Parties) within sixty (60) days thereafter. Written submittals shall be presented and exchanged by both Parties no less than twenty (20) days before the hearing date, which submissions shall include any reports prepared by experts upon whom either Party intends to rely, copies of all documentary evidence upon which

they will rely at the hearing, and a list of the witnesses whom they intend to call at the hearing.

There shall be no discovery except as may be permitted by the arbitrator, who shall authorize only such discovery as is shown to be necessary to insure a fair hearing, and no such discovery permitted by the arbitrator shall in any way conflict with the time limits contained herein. The arbitrator shall not be bound by the rules of evidence or civil procedure, but rather may consider such evidence as reasonable businessperson would use in the conduct of their day-to-day affairs. It is the intention of the Parties to limit live testimony and cross-examination to the extent absolutely necessary to insure a fair hearing to the Parties on the matters submitted to arbitration. The Parties have included the foregoing provisions limiting the scope and extent of the arbitration with the intention of providing for prompt, economic, and fair resolution of any dispute submitted to arbitration.

The Parties shall equally split the arbitrator's fees and costs; provided that the arbitrator shall have the discretion to award the costs of arbitration, arbitrator's fees, and the respective reasonable attorneys' fees of each Party as he or she may deem appropriate. Judgment upon the award entered by the arbitrator may be entered in any court having jurisdiction thereof. At the request of either Party, findings of fact and conclusions of law shall be prepared in support of the arbitrator's award. Notwithstanding the Parties' agreement to arbitrate their disputes as provided herein, either Party may seek emergency relief in the state or federal courts of Clark County, Nevada, and any court of competent jurisdiction may enter a judgment reflecting the arbitrator's findings of fact and conclusions of law

By initialing below, Supplier and Buyer each grant and confirm their specific authorization to submit disputes arising under this Agreement to arbitration upon, and subject to the terms and conditions of, this Section 16. Buyer and Supplier each specifically acknowledge that such Party has thoroughly reviewed this Section 16 with counsel of its choosing, and each of Buyer and Supplier voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 16. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 16, and each Party intends that this paragraph, and the specific acknowledgements below, satisfy the requirements of NRS 597.995(1).

Supplier's Initials _____ Buyer's Initials _____

17. NATURE OF OBLIGATIONS

- 17.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 17.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

18. ASSIGNMENT

- 18.1 Permitted Assignment. Neither Party shall be entitled to assign or transfer all or any portion of its interest in this Agreement except as provided herein, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, a Party may make the following assignments without the prior written consent of the other Party, but shall provide written notice of such permissible assignments as soon as practical:
- 18.1.1 Supplier may collaterally assign this Agreement to a Financing Party; provided that the terms of such Assignment are reasonably acceptable to the Buyer as set forth in Section 18.4 below.
- 18.1.2 Either Party may transfer or assign all, but not less than all, of its rights and obligations under this Agreement to an Affiliate, so long as (a) such Affiliate's ability to perform the relevant obligations of this Agreement, directly or through contractors, is equal to or greater than that of such Party at the time of assignment, (b) such Affiliate's Credit Rating is equal to or greater than the Credit Rating of the assigning Party as of the date of the assignment, and (c) such Affiliate either maintains or replaces any Performance Assurance provided by the assigning Party.
- 18.2 Change in Control. Any Change in Control (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Concurrently with any reorganization or financing transaction or transactions constituting any Change in Control in which a Party merges or consolidates with any other Person and ceases to exist, the successor entity to such Party shall execute a written assumption agreement in favor of the other Party pursuant to which any such successor entity shall assume all of the obligations of the Party ceasing to exist under this Agreement and agree to be bound by all the terms and conditions of this Agreement, or the successor entity shall acknowledge the continuing obligations of such Party to perform all of the obligations of Supplier under this Agreement.
- 18.3 Release. In no event shall the assigning Party be released from its liabilities and obligations under this Agreement without the consent of the other Party, in such other Party's reasonable discretion; provided, however, if either Party assigns this

Agreement as permitted by this Article 18, such assigning Party shall, to the extent the assignee assumes the liabilities and obligations of such assigning Party under this Agreement, be released from such liabilities and obligations; provided further that such release shall not apply, and the assigning Party shall not be released from its liabilities and obligations relating to, the period prior to the date of assignment with respect to any Event of Default that has occurred and is continuing at the time of such assignment if such Event of Default is not cured by the assignee in accordance with this Agreement.

18.4 Assignment to Financing Party. If Supplier collaterally assigns this Agreement to a Financing Party pursuant to Section 18.1.1, the following provisions shall apply:

18.4.1 The Financing Parties shall, at any time, have the right, but not the obligation, to perform any act, duty, or obligation required of the Supplier under this Agreement and to cure any of Events of Default by Supplier;

18.4.2 ~~The Buyer shall not terminate or suspend~~ its performance under this Agreement due to an Event of Default by Supplier unless Buyer has first given the Financing Parties (a) notice of such Event of Default, the applicable cure period related thereto as set forth in this Agreement and the action to be taken to cure such Event of Default, and (b) the opportunity to cure such Event of Default during the applicable cure period related to such default as set forth in this Agreement *plus* an additional thirty (30) days; provided, however, that if such default reasonably cannot be cured by the Financing Parties within the period provided and the Financing Parties or an assignee commence and continuously pursue cure of such default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional sixty (60) days;

18.4.3 In the event an Event of Default by Supplier is not susceptible of cure by the Financing Parties, the Buyer shall not exercise its right to terminate ~~or suspend performance under~~ this Agreement so long as the Financing Parties or an assignee (including any purchaser or transferee) assume in writing, prior to the expiration of any cure period, if applicable, Supplier's rights and obligations under this Agreement and thereafter cure all then-existing Events of Default that are susceptible of cure by the Financing Parties or an assignee. Upon completion of the foregoing, Buyer agrees that the Financing Parties or the assignee, as applicable, will no longer be in default under this Agreement, and this Agreement will continue in full force and effect;

18.4.4 If (a) possession or control of the Generating Facility is necessary for the Financing Parties or an assignee to cure any Event of Default by Supplier or to assume Supplier's rights and obligations under this Agreement and the Financing Parties or an assignee have commenced, and are diligently pursuing, proceedings or actions to obtain

possession or control of the Generating Facility or (b) the Financing Parties or an assignee are prohibited by any court order or bankruptcy or insolvency proceedings from taking any actions to cure an Event of Default by Supplier, the Financing Parties' or an assignee's cure period shall be extended by a period of time reasonably necessary to complete such proceedings or actions, or by the period of such prohibition, not to exceed one hundred eighty (180) days in the aggregate;

- 18.4.5 Buyer shall simultaneously deliver to the Financing Parties copies of all material notices delivered by Buyer to Supplier under or pursuant to this Agreement;
- 18.4.6 Buyer shall not enter into any consensual cancellation or termination of this Agreement, or assign or agree to any assignment of this Agreement, without the prior written consent of the Financing Parties; and
- 18.4.7 Upon the receipt of a written request from Supplier or any Financing Party, Buyer shall execute such documents evidencing Buyer's consent and agreement, in form and substance reasonably requested by the Financing Parties and reasonably acceptable to Buyer (such acceptance by Buyer not to be unreasonably withheld, conditioned or delayed) ~~and shall deliver to the Financing Parties and Supplier an opinion of counsel, in form and substance reasonably acceptable to the Financing Parties.~~

19. CHANGE IN LAW; NO CHALLENGE.

19.1 Change in Law.

- 19.1.1 If, after the Effective Date, there is a Change in Law or in any operating standard applicable to Supplier or the Generating Facility, and if such change (a) renders the performance of this Agreement (in whole or in part) illegal or unenforceable, (b) has a Material Adverse Effect on the ability, or cost, of Supplier to comply with any or all of its obligations under this Agreement, or (c) has a Material Adverse Effect on the after-tax proceeds realized by Supplier (or, if Supplier is a pass-through entity for tax purposes, Supplier's owners) from the performance of this Agreement, then the Parties shall meet within ten (10) Business Days of notice from Supplier to discuss, and acting in good faith, agree upon any amendments that may be required to this Agreement in order to: (i) take account of the Change in Law such that the Parties can continue to comply with the terms of this Agreement, and (ii) ~~restore the allocation of risks, rights and obligations of the Parties and the relative economic balance of this Agreement contemplated by the Parties at the Effective Date, including making any changes to Product Rate to account for any increase in Supplier's~~

cost or decrease in Supplier's after-tax proceeds resulting from such Change in Law. If the Parties are unable to agree on any such amendments within thirty (30) days after Supplier's notice, the matter shall be resolved in accordance with the Dispute resolution procedures in Article 16.

19.1.2 No Challenge. Neither Party shall seek (directly or indirectly), nor support any third party in seeking, to revise the prices, fees, rates, terms or conditions set forth in or established according to this Agreement through application or complaint to FERC.

20. DEFAULT AND REMEDIES

20.1 Events of Default. An event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events:

~~1.8.2~~ Failure to comply with any material obligations imposed upon it by this Agreement or failure of any representation or warranty of a Party to be true in any material respect, which is not cured within thirty (30) days from the date of receipt of a written notice of the occurrence of any such failure, provided that that such thirty (30)-day period may be extended for an additional reasonable period of time (but in no event for more than ninety 20.1.1 (90) days);

20.1.2 Failure to make timely payments due under this Agreement which is not cured within ten (10) days from the date of receipt of a written notice of the occurrence of any such failure;

~~1.8.3~~ A Party (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days), (b) makes an assignment for the benefit of creditors, 20.1.3 (c) is unable to pay its debts as they become due or (d) is subject to a similar action or proceeding (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days).

20.2 Duty/Right to Mitigate. Each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

20.3 Remedies. If an Event of Default is not cured by the Defaulting Party during the time periods (including cure periods, if any) specified in Section 20.1, the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement, payment of damages, and drawing upon the Performance Assurance.

21. REPRESENTATIONS AND WARRANTIES OF SUPPLIER

Supplier represents and warrants to Buyer as of the Effective Date as follows, and covenants to Buyer that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

- 21.1 Organization; Qualification. Supplier is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own or lease and operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business as a limited liability company and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 21.2 Authority Relative to this Agreement. Supplier has authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.
- 21.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Supplier shall not (a) conflict with or result in any breach of any provision of the articles of organization (and/or other governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except to the extent not yet required by Law or where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

22. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Supplier as of the Effective Date as follows and covenants to Supplier that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

- 22.1 Organization; Qualification. Buyer is a Quasi-Municipal General Improvement District duly organized, validly existing and in good standing under the Laws of the

State of Nevada and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

- 22.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement to which it is a Party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.
- 22.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Buyer shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

23. INSURANCE

- 23.1 General Requirements. Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If any policy is maintained on a "claims made" form and is converted to an "occurrence form," the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.
- 23.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Nevada and with the equivalent, on a continuous basis, of an "A.M. Best Company Rating" of "A" or better and shall include provisions or endorsements:
- 23.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;

- 23.2.2 Stating that no reduction, cancellation or non-renewal of the policy shall be effective until thirty (30) days from the date notice thereof is actually received by Buyer; provided, that upon Supplier's receipt of any notice of reduction, cancellation or non-renewal, Supplier shall immediately provide notice thereof to Buyer;
 - 23.2.3 Providing Buyer with subrogation waivers on all coverage;
 - 23.2.4 Naming Buyer as an additional insured on the general liability and auto liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 23.3 Certificates of Insurance. Within thirty (30) days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement.
- 23.4 Supplier's Minimum Insurance Requirements.
- 23.4.1 To the extent exposure exists, Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the Laws and regulations of the state in which the Point of Interconnection is located.
 - 23.4.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.
 - 23.4.3 Comprehensive Automobile Liability Insurance for coverage of owned (to the extent exposure exists) and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
 - 23.4.4 Umbrella Insurance Coverage, with a minimum limit of Ten Million Dollars (\$10,000,000) each occurrence/aggregate where applicable to

be excess of the coverages and limits otherwise required in this Article 23.

23.4.4.23.4.5 Failure to Comply. If Supplier fails to comply with the provisions of this Article 23, Supplier shall save harmless and indemnify Buyer from any direct or indirect Loss, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 23, in accordance with the indemnification provisions of Article 13.

24. PUBLIC STATEMENTS; CONFIDENTIALITY

24.1 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and neither Party shall issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, not to be unreasonably withheld, conditioned or delayed, except as may be required by Law.

24.2 Confidentiality.

24.2.1 Non-Disclosure. Except as otherwise provided herein, neither Party nor its respective employees, agents, partners, Affiliates, officers, directors or advisors shall publish, disclose, or otherwise divulge Confidential Information to any Person at any time during or for two (2) years after the end of the Term (during which the Parties' obligations under this Section 24.2.1 shall survive), without the other Party's prior express written consent.

24.2.2 Required Disclosure. A receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or otherwise by applicable Laws, but only after notice to the disclosing Party and, if legally permissible, affording the disclosing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the receiving Party shall reasonably cooperate, at the disclosing Party's expense, in connection with the disclosing Party's efforts to obtain such protective order or other relief. Further, each Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by applicable Laws, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise.

24.2.3 Permitted Disclosure. Notwithstanding anything to the contrary herein, each Party may provide any Confidential Information: (i) to

the Transmission Provider, or any other Governmental Authority or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required for scheduling, billing or otherwise to perform under or administer this Agreement; (ii) to its employees, agents, partners, Affiliates, officers, directors and advisors (including attorneys, accountants, consultants and rating agencies); provided such Persons agree to preserve the confidentiality of the Confidential Information in accordance with the terms and provisions of this Agreement (it being agreed that the receiving Party shall be responsible and liable for any failure of such Persons to comply with the terms and provisions of this Agreement) and (iii) in the case of Supplier, to Financing Parties or potential Financing Parties, Affiliates and lessors, owners of and potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect interests in the Generating Facility (including direct or indirect interests in the equity interests of Supplier) and to any credit rating agency that has issued a Credit Rating for Supplier or any of its Affiliates. Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially and to not disclose it to any other Person in any manner whatsoever. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party. Buyer's posting of this Agreement in compliance with Open Meeting Laws (whether in draft or final, executed or unexecuted form) shall not be deemed to be a breach of Buyer's confidentiality obligations.

25. MISCELLANEOUS

25.1 Notices.

25.1.1 All notices hereunder shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the representatives as set forth below or as modified from time to time by notice to the other Party. Any changes to the notices in this Section 25.1, shall not constitute an amendment to this Agreement.

Notices:

If to Supplier

Escape Solar LLC
c/o Estuary Power LLC
50 W Liberty St Suite 430
Reno, NV 89501

Attention: _Chief Executive Officer
Telephone No.: (415) 254-3419
Email: jill.daniel@estuarypower.comjill.daniel@estuarypower.com

If to Buyer

Overton Power District # 5
PO BOX 395
Overton, NV 89040
Attention: General Manager
Telephone No.: (702) 397-3025
Email: gm@opd5.comgm@opd5.com

Billings and Payments:

If to Supplier

Escape Solar LLC
c/o Estuary Power LLC
50 W Liberty St Suite 430
Reno, NV 89501
Attention: _Accounts Payable
Telephone No.: (415) 254-3419
Email: ap@estuarypower.comap@estuarypower.com

If to Buyer

Overton Power District # 5
PO BOX 395
Overton, NV 89040
Attention: Manager of Finance
Telephone No.: (702) 397-3034
Email: accounting@opd5.comaccounting@opd5.com

Operating Representatives:

If to Supplier

Escape Solar LLC
c/o Estuary Power LLC
50 W Liberty St Suite 430
Reno, NV 89501
Attention: _VP of Development
Telephone No.: (619) 823-3230
Email: kimberly.primerano@estuarypower.com

Email: kimberly.primerano@estuarypower.com

If to Buyer

Overton Power District # 5
PO BOX 395
Overton, NV 89040

Attention: Manager of Substations
Telephone No.: (702) 345-1113
Email: ~~khansen@opd5.com~~khansen@opd5.com

25.1.2 All notices or submittals required by this Agreement shall be sent either by regular first-class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail.

~~1.8.4~~ Notices of Force Majeure or an Event of Default pursuant to Article 15 or pursuant to Article 20, respectively, and notices of a change to this Section

25.1.3 25.1 shall be sent either by registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. If any such notice is sent via electronic mail, then a copy of such notice shall also be sent either by registered or certified U.S. mail (postage paid return receipt requested) or overnight courier delivery.

~~1.8.5~~ Notices or submittals will be effective upon receipt by the addressee; except that notices or submittals transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if

25.1.4 transmitted before 16:00 PPT, and if transmitted after that time, on the following Business Day. If any notice sent by regular first-class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.

25.1.5 Any payments required to be made under this Agreement shall be made pursuant to written instructions provided by Supplier to Buyer, as such instructions may be changed by any Party from time to time by written notice.

25.2 Merger. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter whether written or oral.

25.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

~~1.9~~ Rules of Construction; Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all

accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) including means “including, without limitation” or “including, but not limited to”; (h) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and

- 25.4 (i) the word “or” is not necessarily exclusive. Reference to “days” shall be calendar days, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated.
- 25.5 Headings and Titles. The headings and section titles in this Agreement are for convenience of the Parties only and should not be used to construe this Agreement.
- 25.6 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by Law.
- 25.7 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law.
- 25.8 Amendments. Amendments or modifications to this Agreement must be in writing and executed by an authorized representative of each Party.
- 25.9 Choice of Law. This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of Nevada, except for such Laws that would require the application of the Laws of another jurisdiction.

- 25.10 Further Assurances. The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Without limiting the foregoing, whenever revised or updated exhibits are delivered or generated hereunder for attachment to this Agreement, the Parties will memorialize in a reasonable written instrument, to be executed and delivered by both Parties.
- 25.11 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code.
- 25.12 No Third-Party Beneficiaries. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

DRAFT

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

BUYER:

SUPPLIER:

OVERTON POWER DISTRICT NO. 5

ESCAPE SOLAR LLC

By: ~~AD:0-c~~
~~N:ime ndis 60~~
Title: General Manager

By: ~~(:)YUf9~~
Name: Jill Daniel
Title: Chief Executive Officer

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BUYER:

OVERTON POWER DISTRICT NO. 5

SUPPLIER:

ESCAPE SOLAR LLC

By: _____
Name: Mendis Cooper
Title: General Manager

By: _____
Name: Jill Daniel
Title: Chief Executive Officer

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EXHIBIT A**EXPECTED ON-PEAK SUPPLY AMOUNT**

Contract Year	Expected On-Peak Supply Amount, Summer Months (MWh)	Expected On-Peak Supply Amount, Non-Summer Months (MWh)	Expected On-Peak Supply Amount, All Months (MWh)
1	27,933	37,782	65,715
2	27,807	37,612	65,420
3	27,682	37,443	65,125
4	27,558	37,275	64,832
5	27,434	37,107	64,541
6	27,310	36,940	64,250
7	27,187	36,774	63,961
8	27,065	36,608	63,673
9	26,943	36,443	63,387
10	26,822	36,279	63,101
11	26,701	36,116	62,817
12	26,581	35,954	62,535
13	26,462	35,792	62,253
14	26,342	35,631	61,973
15	26,224	35,470	61,694
16	26,106	35,311	61,417
17	25,988	35,152	61,140
18	25,871	34,994	60,865
19	25,755	34,836	60,591
20	25,639	34,679	60,319
21	25,524	34,523	60,047
22	25,409	34,368	59,777
23	25,295	34,213	59,508
24	25,181	34,059	59,240
25	25,067	33,906	58,974

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EXHIBIT B**ENERGY LOSSES**

The Net Energy will be the energy measured at the Revenue Meter (which will be compensated for losses to the Point of Interconnection) and further reduced by the values in the table below to account for the losses across the LCPD's system.

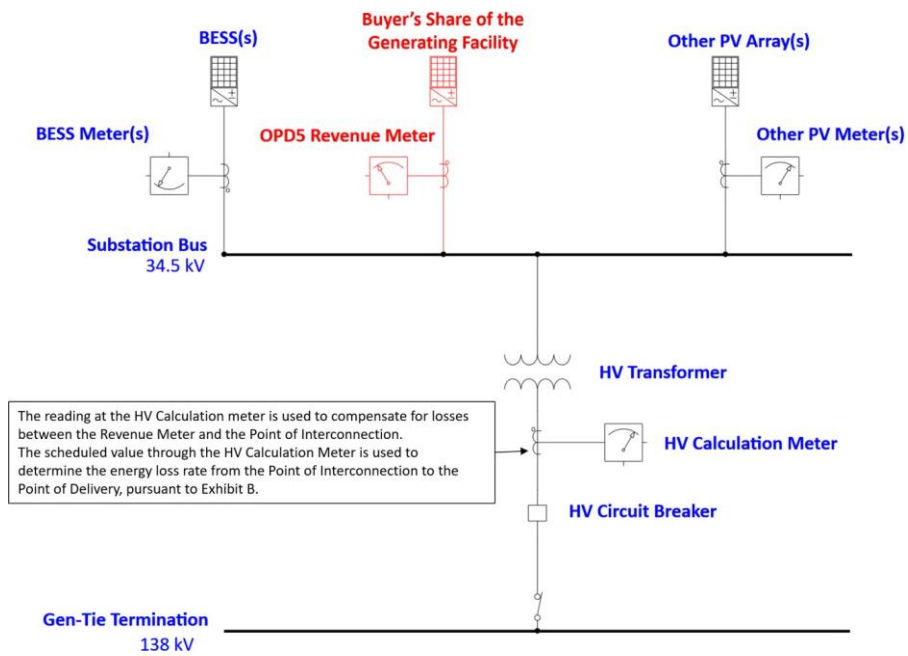
Generating Facility Scheduled Hourly Output to LCPD Grid, P (kW)	Loss Rate
0 < P <= 5,000	0.02%
5,000 < P <= 10,000	0.04%
10,000 < P <= 15,000	0.06%
15,000 < P <= 20,000	0.08%
20,000 < P <= 25,000	0.11%
25,000 < P <= 30,000	0.13%
30,000 < P <= 35,000	0.15%
35,000 < P <= 40,000	0.17%
40,000 < P <= 45,000	0.19%
45,000 < P <= 50,000	0.21%
50,000 < P <= 55,000	0.23%
55,000 < P <= 60,000	0.25%
60,000 < P <= 65,000	0.27%
65,000 < P <= 70,000	0.29%
70,000 < P <= 75,000	0.31%
75,000 < P <= 80,000	0.33%
80,000 < P <= 85,000	0.34%
85,000 < P <= 90,000	0.36%
90,000 < P <= 95,000	0.38%
95,000 < P <= 100,000	0.40%
100,000 < P <= 105,000	0.41%
105,000 < P <= 110,000	0.43%
110,000 < P <= 115,000	0.45%
115,000 < P <= 120,000	0.46%
120,000 < P <= 125,000	0.48%
125,000 < P <= 130,000	0.49%
130,000 < P <= 135,000	0.51%
135,000 < P <= 140,000	0.53%
140,000 < P <= 145,000	0.54%
145,000 < P <= 150,000	0.56%
150,000 < P <= 155,000	0.57%
155,000 < P <= 160,000	0.59%
160,000 < P <= 165,000	0.60%
165,000 < P <= 170,000	0.62%
170,000 < P <= 175,000	0.63%
175,000 < P <= 180,000	0.65%
180,000 < P <= 185,000	0.66%

EXHIBIT C
METERING DIAGRAM

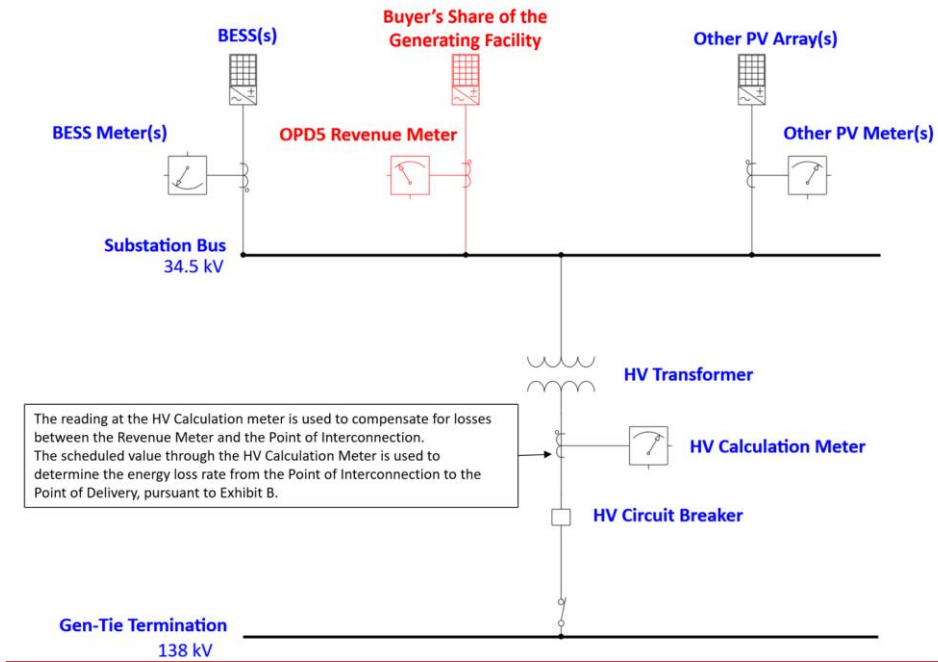
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**AMENDED AND RESTATED
LONG-TERM
POWER PURCHASE AGREEMENT**

BY AND BETWEEN

OVERTON POWER DISTRICT NO. 5

AND

ESCAPE SOLAR LLC

November 20, 2024

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EXHIBITS

- EXHIBIT A EXPECTED ON-PEAK SUPPLY AMOUNT
- EXHIBIT B ENERGY LOSSES
- EXHIBIT C METERING DIAGRAM

**AMENDED AND RESTATED
LONG-TERM POWER PURCHASE AGREEMENT**

This Amended and Restated Long-Term Power Purchase Agreement (this “Agreement”) is made and entered into as of November 20, 2024 (the “Effective Date”) by and between **OVERTON POWER DISTRICT NO. 5**, a Nevada Quasi-Municipal General Improvement District (“Buyer”), and **ESCAPE SOLAR LLC**, a Delaware limited liability company (“Supplier”). Buyer and Supplier are referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, Supplier desires to provide for Buyer’s use, and Buyer desires to utilize, Product from the Generating Facility upon the terms and conditions set forth herein;

WHEREAS, Buyer shall pay Supplier for such Product in accordance with and subject to the terms and conditions set forth in this Agreement, and

WHEREAS, Buyer and Supplier previously executed a Long-Term Power Purchase Agreement dated November 15, 2023 and wish to amend and restate that agreement in its entirety.

NOW, THEREFORE, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 “AC” means alternating current.
- 1.2 “Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.
- 1.3 “Agreement” means this Long-Term Power Purchase Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.4 “Balancing Authority” means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority Area, and supports interconnection frequency in real time. For purposes of this Agreement, the Balancing Authority is NV Energy.

- 1.5 “Balancing Authority Area” means the collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.
- 1.6 “Billing Period” is defined in Section 6.2.1.
- 1.7 “Business Day” means any day other than Saturday, Sunday and any day that is a holiday observed by the U.S. federal government or the State of Nevada. “Buyer” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.8 “Buyer Credit Event” means (a) Buyer no longer maintains an Investment Grade Credit Rating, or (b) if Performance Assurance is in place, there is a change to Buyer’s credit rating that requires Buyer to increase the amount of the Performance Assurance.
- 1.9 “Buyer’s Energy Manager” means the Person engaged by Buyer to procure and schedule energy to serve Buyer’s load and to perform other related services for Buyer, including any successor to Buyer’s Energy Manager.
- 1.10 “Buyer’s Share of the Generating Facility” means the 25 MW (AC) of the Generating Facility’s generating capacity (as measured at the Revenue Meter) that is dedicated to generating and delivering product to Buyer hereunder, as depicted in Exhibit C.
- 1.11 “Cash Collateral” shall mean cash collateral held in a depository account by a Creditworthy Bank for the benefit of the Supplier under a depository and security agreement that allows disbursement to the Supplier upon the terms and conditions hereof.
- 1.12 “Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Generating Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax incentives of any kind existing now or in the future associated with the construction, ownership or operation of the Generating Facility.
- 1.13 “Change in Control” means the occurrence, whether in a single transaction or in a series of related transactions at any time during the Term of any one or more of the following: (a) a merger or consolidation of a Party, or any upstream equity owner of a Party for which the direct or indirect interest in such Party represents substantially all of the value of such upstream equity owner’s assets (any such upstream entity, an “Upstream Equity Owner”) with or into any other Person or any other reorganization in which the members of such Party or such Upstream Equity Owner immediately prior to such consolidation, merger, or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to

have the power to control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (b) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of such Party or any Upstream Equity Owner is transferred to another Person, (c) a sale, lease, or other disposition of all or substantially all of the assets of any Upstream Equity Owner, (d) the dissolution or liquidation of any Upstream Equity Owner, or (e) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing. Notwithstanding the foregoing, a Change in Control of Supplier shall not be deemed to have occurred if, following any of the foregoing transactions, Supplier either is providing, or has contracted for, the operation and maintenance of the Facility with, a Person who has at least three (3) years' experience in owning or operating solar electric generating facilities with an aggregate capacity of at least 100 MW AC.

- 1.14 “Change in Law” shall mean the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any applicable Laws; (b) any change in any applicable Laws or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any directive (whether or not having the force of law) by Transmission Provider or any Governmental Authority.
- 1.15 “Confidential Information” shall mean all information, written or oral, which has been or is disclosed by a disclosing Party, or which otherwise becomes known to the receiving Party, and which (a) relates to matters such as patents, trade secrets, research and development activities, draft contracts or other business arrangements (including unexecuted drafts of this Agreement), books and records, insulation data and analysis, generation data and analysis, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time, or (b) the disclosing Party expressly designates in writing to be confidential. Notwithstanding the foregoing, the following information does not constitute Confidential Information for purposes of this Agreement: (i) the final executed version of this Agreement; (ii) the final executed version of any other contract or agreement between the Parties to this Agreement; (iii) posting of an unexecuted version of this Agreement prior to acceptance in compliance with open meeting laws; (iv) information that is or becomes generally available to the public other than as a result of a disclosure by the receiving Party in violation of this Agreement; (v) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (vi) information that becomes available to the receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to the receiving Party; (vii) information that the receiving Party develops independently without using the Confidential Information, and (viii) information that the disclosing Party consents to the disclosure of in a writing to the other Party.

- 1.16 “Contract Year” means each year during the Delivery Term beginning on the Delivery Start Date.
- 1.17 “Credit Event” means (a) with respect to any Performance Assurance provided in the form of a Letter of Credit, the bank issuing such Letter of Credit ceases to have the Credit Rating required in the definition of “Creditworthy Bank,” (b) with respect to any Performance Assurance provided in the form of Cash Collateral, the bank holding such Cash Collateral ceases to have the Credit Rating required in the definition of “Creditworthy Bank,” (c) with respect to any Performance Assurance, regardless of form, such Performance Assurance ceases to be in full force and effect at such time, or (d) in the case of Buyer, a Buyer Credit Event occurs.
- 1.18 “Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.
- 1.19 “Creditworthy Bank” shall mean a U.S. commercial bank, or a U.S. branch of a foreign commercial bank, which U.S. bank, or foreign bank, has and maintains a Credit Rating of “A-” (or better) from S&P or Fitch, or “A3” (or better) from Moody’s.
- 1.20 “Daily Delay Damages” means an amount equal to:
- (a) with respect to the first (1st) through and including the sixtieth (60th) day subsequent to the Expected Delivery Start Date, six thousand seven hundred fifty U.S. Dollars (\$6,750.00) per day;
 - (b) with respect to the sixty-first (61st) through and including the one-hundred-twentieth (120th) day subsequent to the Expected Delivery Start Date, six thousand seven hundred fifty U.S. Dollars (\$6,750.00) per day; and
 - (c) with respect to the one-hundred twenty-first (121st) through and including the one-hundred-eightieth (180th) day subsequent to the Expected Delivery Start Date, six thousand seven hundred fifty U.S. Dollars (\$6,750.00) per day.
- 1.22 “Defaulting Party” is defined in Section 20.1.
- 1.23 “Delivery Start Date” means the date upon which (a) the Buyer’s Share of the Generating Facility is fully operational, reliable, and interconnected, and fully integrated and synchronized with the Transmission System; and (b) Supplier commences delivery of Net Energy to the Point of Delivery on a consistent basis (taking into account the intermittent nature of the Generating Facility). Supplier shall provide a notice to Buyer and Buyer’s Energy Manager of the Delivery Start Date at least thirty (30) days prior to the Delivery Start Date.
- 1.24 “Delivery Term” is defined in Section 2.1.

- 1.25 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce its otherwise expected quantity of Net Energy.
- 1.26 “Dispute” is defined in Section 16.1.
- 1.27 “Effective Date” is defined in the preamble of this Agreement.
- 1.28 “Electric System Authority” means each of NERC, WECC, the Balancing Authority, the Market Operator, a regional transmission organization, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.
- 1.29 “Emergency” means any circumstance or combination of circumstances or any condition of the Generating Facility, the Transmission System, or the transmission system of other transmission operators, which is determined or reported by the Transmission Provider or any Electric System Authority to be (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.
- 1.30 “Energy” means energy that is generated by the Generating Facility.
- 1.31 “Energy Imbalance Market” means generation facilities electrically located within the Balancing Authority Area that are, from time to time, bid into or otherwise subject to dispatch instructions issued or originating from the Market Operator.
- 1.32 “Event of Default” is defined in Section 20.1.
- 1.33 “Excused Net Energy” means the amount of POI Energy that Supplier is unable to generate and deliver for Buyer’s utilization as a result of (a) Force Majeure, (b) Emergency, (c) curtailment made in accordance with Section 10.1, (d) planned outage, or (e) Buyer’s or Buyer’s Energy Manager’s failure to accept Net Energy or Product in breach of this Agreement.
- 1.34 “Expected Delivery Start Date” means June 30, 2025, as such date may be extended due to events of Force Majeure or acts or failures to act by Buyer in accordance with this Agreement.
- 1.35 “Expected On-Peak Supply Amount” means, with respect to either the Summer Months or Non-Summer Months, the amounts shown in Exhibit A, which represent the expected POI Energy.
- 1.36 “FERC” means the Federal Energy Regulatory Commission and any successor.
- 1.37 “Financing Parties” shall mean lenders and/or equity investors (including any trustee or agent on behalf of such lenders and/or equity investors) providing equity and/or debt financing or refinancing to Supplier or any of its Affiliates, whether

that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

- 1.38 “Fitch” means Fitch Ratings Inc., and any successor.
- 1.39 “Force Majeure” is defined in Section 15.2.
- 1.40 “Generating Facility” means Supplier’s solar photovoltaic power plant located in Lincoln County, Nevada (Sections 15, 16, 17, 18, 19, 20, 21 of Township 12 South, 71 East of the Mount Diablo Base and Meridian, Lincoln County, Nevada), which is expected to have a capacity of approximately one hundred and eighty five (185) MW (AC) (as may be revised from time to time in Seller’s sole discretion), measured at the Point of Interconnection
- 1.41 “Generating Facility Interconnection Agreement” means the Generating Facility Interconnection Agreement between Supplier and LCPD pursuant to which the Generating Facility will be interconnected with LCPD’s Transmission System at the Point of Interconnection.
- 1.42 “Good Utility Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States.
- 1.43 “Governmental Authority” means, as to any Person, any federal, state, local, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations, and with respect to Supplier, specifically includes FERC, the PUCN, NERC, and WECC.
- 1.44 “Guarantor” shall mean any Person issuing a Guaranty as Performance Assurance pursuant to this Agreement.
- 1.45 “Guaranty” shall mean a guaranty in a form reasonably acceptable to Buyer issued by a Person that (i) (a) directly or indirectly controls (as defined for purposes of the definition of “Affiliate” above) the Buyer and (b) has and maintains an Investment Grade Credit Rating, or (ii) is otherwise acceptable to the Supplier.

- 1.46 “Indemnified Party” is defined in Article 13.
- 1.47 “Indemnifying Party” is defined in Article 13.
- 1.48 “Investment Grade Credit Rating” shall mean a Credit Rating of “BBB-” or better from S&P or Fitch (if such entity is rated by S&P or Fitch, respectively) and a Credit Rating of “Baa3” or better from Moody’s (if such entity is rated by Moody’s).
- 1.49 “Law” means any federal, state, local or other law, common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority which is binding on a Party or any of its property.
- 1.50 “LCPD” means Lincoln County Power District No.1.
- 1.51 “Letter of Credit” means a letter of credit issued by a Qualified Financial Institution.
- 1.52 “Loss” means any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third party upon an Indemnified Party or incurred in connection with a claim by a third party against an Indemnified Party.
- 1.53 “Market Operator” means, if applicable, the California Independent System Operator Corporation or any other entity performing the market operator function for energy imbalance services utilized under this Agreement.
- 1.54 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate, or on the business, operations or financial condition of such Party.
- 1.55 “Measurement Period” means each two (2) consecutive calendar years starting with the first two first two full calendar years during the Term.
- 1.56 “Meter” means any of the physical or electronic metering devices described in 6.1.1, data processing equipment and apparatus associated with the meters required for (a) accurate determination of the quantities of Net Energy from the Generating Facility and other related parameters required for the reporting of data to Supplier, (b) the computation of the payment due to Supplier from Buyer and (c) compliance with requirements of any Electric System Authority, any Governmental Authority or Transmission Provider. Meters do not include any check meters Buyer may elect to install as contemplated by Section 6.1.2.
- 1.57 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.58 “MW” means megawatts of electrical power in AC.

- 1.59 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.60 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.61 “Net Energy” means all Energy produced by Buyer’s Share of the Generating Facility and delivered to the Point of Delivery, as measured at the Revenue Meter and adjusted for energy losses incurred to the Point of Delivery in the manner set forth in Exhibit B.
- 1.62 “Nevada Power Company” means Nevada Power Company, acting under its legal name and/or otherwise doing business as NV Energy, or any successor thereto.
- 1.63 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.64 “Non-Summer Months” means all months of a Contract Year, not including the Summer Months.
- 1.65 “On-Peak” means hours ending 07:00 through 22:00 PPT of each day.
- 1.66 “Operating Representative” of a Party means the individual designated by that Party in Section 25.1 as responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Operating Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 25.1.
- 1.67 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.68 “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.69 “Performance Assurance” has the meaning set forth in Section 7.1.
- 1.70 “Performance Assurance Amount” shall be set based on the following table:

Buyer’s Credit Rating	Performance Assurance Amount*
Investment Grade Credit Rating “BBB-” from S&P (if Buyer is rated by S&P) or Fitch (if Buyer is rated by Fitch), and “Baa3” from Moody’s (if Buyer is rated by Moody’s) or higher	None
“BB+” from S&P (if Buyer is rated by S&P) or Fitch (if Buyer is rated by Fitch), and “Ba1” or lower from Moody’s (if Buyer is rated by Moody’s)	Equal to the present value (using an 8% discount rate) of the following cash flows for the thirty-six months following the calculation date:

	<p>(1) The expected amount to be paid by Buyer for Product, minus</p> <p>(2) The expected price of the Product to be purchased by Buyer if such Product was sold at Mead (Mead pricing to be weighted by expected hourly production), plus</p> <p>(3) any charges required wheel Product to Mead.</p>
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* If Buyer is rated higher by one agency than the other agencies, the Performance Assurance Amount that Buyer is required to post shall be the amount associated with the lowest of the three ratings. The amount of Performance Assurance shall at no time exceed the aggregate amount remaining to be paid by Buyer for all Product to be delivered by Supplier during the remainder of the Delivery Term.

- 1.71 “POI Energy” means all Energy produced by Buyer’s Share of the Generating Facility, as measured at the Revenue Meter and adjusted for energy losses incurred to the Point of Interconnection. For the avoidance of doubt, POI Energy is calculated before any reductions to account for the losses across LCPD’s system.
- 1.72 “Point of Delivery” means the point on the Transmission System where ownership changes from LCPD to Buyer.
- 1.73 “Point of Interconnection” means the location where the Generating Facility connects to LCPD’s Transmission System in the vicinity of LCPD’s Mesa substation.
- 1.74 “Product” means all Net Energy and Capacity Rights, in each case, arising from or relating to Buyer’s Share of the Generating Facility.
- 1.75 “Product Rate” means \$34.70/MWh, flat pricing over the Term.
- 1.76 “PUCN” means the Public Utilities Commission of Nevada.
- 1.77 “Qualified Financial Institution” means a financial institution having an office in the United States, with a total tangible net worth of at least ten billion dollars (\$10,000,000,000) U.S. and whose Credit Rating is at least “A-” by S&P and “A3” by Moody’s.
- 1.78 “Relevant Rating Agency” means Moody’s, S&P or Fitch.
- 1.79 “Replacement Costs” are defined in Section 3.4.1.3.
- 1.80 “Replacement Product” means Product that is delivered to Buyer in accordance with Section 4.6 that not produced by Buyer’s Share of the Generating Facility.

- 1.81 “Revenue Meter” means the revenue-quality Meter(s) for the Buyer’s Share of the Generating Facility, which will be located at the connection between the 34.5 kV feeder assigned to Buyer’s Share of the Generating Facility and the Generating Facility’s step-up transformer (as depicted in Exhibit C), which will be used for measuring the Product.
- 1.82 “Shortfall” is defined in Section 4.4.1.1 with respect to the Summer Months and Section 4.4.2.1 with respect to the Non-Summer Months.
- 1.83 “Shortfall Amount” is defined in Section 4.4.1.2 with respect to the Summer Months and Section 4.4.2.2 with respect to the Non-Summer Months.
- 1.84 “Shortfall Threshold” is defined in Section 4.4.1.1 with respect to the Summer Months and Section 4.4.2.1 with respect to the Non-Summer Months.
- 1.85 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc. and any successor.
- 1.86 “Summer Months” means the months of June, July, August and September occurring during a Contract Year.
- 1.87 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.88 “Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.89 “Term” means the period between the Effective Date and the last day of the Delivery Term.
- 1.90 “Transmission Provider” means (a) up to and including the Point of Delivery, LCPD, and (b) after the Point of Delivery, Buyer in its capacity as owner and operator of its facilities used for the transmission and distribution of electric energy.
- 1.91 “Transmission System” means the facilities used for the transmission of electric energy, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.

1.92 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.

2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

2.1 Effective Date; Delivery Term. This Agreement shall become effective on the Effective Date. Supplier’s obligation to deliver Product, and Buyer’s obligation to accept and pay for Product, shall commence on the Delivery Start Date and shall continue for a period of twenty five (25) years from the Delivery Start Date, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Delivery Term”).

2.2 Termination. This Agreement may be terminated in accordance with the terms and conditions of this Agreement and at any time by the Non-Defaulting Party upon ten (10) Business Days’ prior notice to the Defaulting Party if an Event of Default has occurred and is continuing after the applicable cure period (if any) has expired.

2.3 Effect of Termination - Survival of Obligations. Any termination of this Agreement or expiration of the Term shall not release either Party from any applicable provisions of this Agreement with respect to:

2.3.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination or breach of this Agreement;

2.3.2 Indemnity obligations contained in Article 13, which shall survive to the full extent of the statute of limitations period applicable to any third-party claim;

2.3.3 Limitation of liability provisions contained in Article 14;

2.3.4 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 16; or

2.3.5 The resolution of any Dispute submitted pursuant to Article 16 prior to, or resulting from, termination.

3. CONSTRUCTION; DELIVERY START DATE

3.1 Construction. Supplier, at Supplier’s sole cost and expense, shall design and construct the Generating Facility in accordance with Good Utility Practice, applicable Laws, applicable permits, and the terms and conditions of this Agreement. Supplier, at its expense, shall timely take all steps necessary to obtain (and shall throughout the Delivery Term maintain) all permits required to construct, maintain, and operate the Generating Facility and to interconnect the Generating Facility to the Transmission System.

3.2 Delivery Start Date. Supplier will use commercially reasonable efforts to commence delivery of the Product as of the Expected Delivery Start Date.

3.3 Delay in Delivery Start Date.

3.3.1 If Supplier does not commence delivery of the Product as of the Expected Delivery Start Date, Supplier shall use commercially reasonable efforts to ensure that the Delivery Start Date occurs as soon as practical thereafter.

3.3.2 If Supplier does not commence delivery of the Product as of the Expected Delivery Start Date, Supplier shall pay Buyer Daily Delay Damages for each day after the Expected Delivery Start Date until the earlier of the one-hundred-eightieth (180th) day after the Expected Delivery Start Date and the occurrence of the Delivery Start Date.

3.3.3 Subject to the other terms of this Article 3, Supplier's obligations in Section 3.3.2 shall together be Buyer's sole and exclusive remedy, and Supplier's sole and exclusive liability and obligation to Buyer, for any delay in the occurrence of the Delivery Start Date after the Expected Delivery Start Date.

3.4 Early Termination. If the Delivery Start Date has not occurred by one hundred eighty (180) days after Expected Delivery Start Date, then Buyer may elect to terminate this Agreement as Buyer's sole and exclusive remedy.

3.5 Liquidated Damage Amounts. With respect to Section 3.3, the Parties have agreed upon and established the amounts herein because of the difficulty of ascertaining the exact amount of such damages in such event and because otherwise obtaining an adequate remedy would be difficult or inconvenient. Nothing in Section 3.3 amounts to a penalty and such shall be delivered or provided regardless of the actual amount of damages that may be incurred by either Party.

4. **PURCHASE AND SALE OF PRODUCT**

4.1 Dedication. One hundred percent (100%) of the Product shall be dedicated to Buyer for so long as this Agreement is in force and effect and Supplier shall not sell, divert, grant, transfer or assign Product to any Person other than Buyer.

4.2 Purchase and Sale. For and in consideration of Buyer's payment for the Product and the Replacement Product, Supplier shall provide and deliver to Buyer (or Buyer's Energy Manager, and Buyer shall direct Buyer's Energy Manager to acquire from Supplier), any right, title and interest that Supplier may have in and to the Product and the Replacement Product, and Buyer shall pay Supplier the Product Rate for any Product provided and delivered to Buyer's Energy Manager.

4.3 Delivery.

- 4.3.1 Point of Delivery. Buyer or Buyer's Energy Manager shall take delivery of the Product at the Point of Delivery in accordance with the terms of this Agreement. Supplier shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of the Product up to the Point of Delivery, including transmission costs, transmission line losses, and any operation and maintenance charges imposed by the Transmission Provider. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of the Product after the Point of Delivery, including transmission costs and transmission line losses and imbalance charges, except for Buyer's Energy Manager's costs (if any) as provided in Section 6.7.
- 4.3.2 Title and Risk of Loss. Title and risk of loss with respect to the Product delivered by Supplier shall pass from Supplier to Buyer or Buyer's Energy Manager at the Point of Delivery. Supplier shall be deemed in exclusive control of the Product, and shall be responsible for any damage or injury caused prior to the Point of Delivery. Buyer or Buyer's Energy Manager shall be deemed in exclusive control and responsible for any damage or injury caused at and after the Point of Delivery. Supplier warrants that the Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- 4.3.3 Generating Facility Interconnection Agreement Requirements. Supplier shall comply with all requirements related to frequency and voltage which are set forth in the Generating Facility Interconnection Agreement between Supplier and LCPD.
- 4.4 Shortfall; Replacement Costs. Supplier shall pay Replacement Costs (defined below) to Buyer in the event of any Shortfall (defined below).
- 4.4.1 Summer Months – On-Peak.
- 4.4.1.1 If, for the Summer Months of any Measurement Period, the POI Energy and Replacement Product delivered during the On-Peak hours of such Summer Months is less than the Shortfall Threshold for such Summer Months, then a shortfall (a "Shortfall") will be deemed to exist for such Summer Months. "Shortfall Threshold" means, with respect to such Summer Months, the product of (a) 85 percent *multiplied by* (b) the difference between (i) the Expected On-Peak Supply Amount for such Summer Months *minus* (ii) the POI Energy associated with Excused Net Energy (if any) during the On-Peak hours of such Summer Months.
- 4.4.1.2 If a Shortfall exists with respect to the Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. "Shortfall Amount" means, with

respect to the Summer Months of such Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for the Summer Months of such Measurement Period *minus* POI Energy and Replacement Product delivered during the On-Peak hours of the Summer Months of such Measurement Period. If the calculation set forth in this Section 4.4.1.2 yields an amount of zero or less for the Summer Months of such Measurement Period, then no Shortfall Amount will be deemed to exist with respect to the Summer Months of such Measurement Period.

4.4.1.3 Buyer's "Replacement Costs" with respect to the Summer Months of any Measurement Period shall equal (a) the Shortfall Amount *multiplied by* (b) the average Mead power price for the Summer Months of the Measurement Period *minus* the Product Rate. If the calculation of Replacement Costs as set forth in this Section 4.4.1.3 yields an amount of zero or less for the Summer Months of such Measurement period, then no Replacement Costs will be payable with respect to the Summer Months of such Measurement Period.

4.4.1.4 Within five (5) Business Days after the end of the Measurement Period in which a Shortfall has occurred with respect to the Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated.

4.4.2 Non-Summer Months – On-Peak.

4.4.2.1 If, for the Non-Summer Months of any Measurement Period, the POI Energy delivered during the On-Peak hours of such Non-Summer Months is less than the Shortfall Threshold for such Non-Summer Months, then a shortfall (a "Shortfall") will be deemed to exist for such Non-Summer Months. "Shortfall Threshold" means, with respect to such Non-Summer Months, the product of (a) 85 percent *multiplied by* (b) the difference between (i) the Expected On-Peak Supply Amount for such Non-Summer Months *minus* (ii) the total amount of POI Energy associated with Excused Net Energy (if any) during the On-Peak hours of such Non-Summer Months.

4.4.2.2 If a Shortfall exists with respect to the Non-Summer Months in any Measurement Period, then a Shortfall Amount will be calculated in accordance with the following. "Shortfall Amount" means, with respect to the Non-Summer Months of such Measurement Period, an amount expressed in MWh equal to the Shortfall Threshold for such Non-Summer Months *minus* POI Energy and Replacement Product delivered during the On-Peak hours of the Non-Summer Months of such Measurement Period. If the calculation set forth in

this Section 4.4.2.2 yields an amount of zero or less for the Non-Summer Months, then no Shortfall Amount will be deemed to exist with respect to the Non-Summer Months of such Measurement Period.

4.4.3 Buyer's "Replacement Costs" with respect to the Non-Summer Months of any Measurement Period shall equal (a) the Shortfall Amount *multiplied by* (b) the average Mead power price for the Non-Summer Months of the Measurement Period *minus* the applicable Product Rate. If the calculation of Replacement Costs as set forth in this Section 4.4.2.3 yields an amount of zero or less for such Non-Summer Months, then no Replacement Costs will be payable with respect to the Non-Summer Months of such Measurement Period. Calculation of Shortfall Amount. Within five (5) Business Days after the end of any Measurement Period in which a Shortfall has occurred with respect to the Non-Summer Months, Supplier will calculate the Replacement Costs with respect to such Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Replacement Costs are calculated. Calculation of Excused Net Energy. As soon as practicable following any event which has impacted Supplier's ability to deliver the Expected On-Peak Supply Amount, Supplier shall calculate the amount of POI Energy that Supplier was unable to generate and deliver to Buyer solely as a result of such event, by summing for each hour of the period the difference between (i) the POI Energy that Supplier would have been capable of delivering if not for such event and (ii) the delivered amount. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer.

4.5 Operations and Maintenance. Supplier shall operate, maintain and repair the Generating Facility in accordance with Good Utility Practice and applicable Laws.

4.6 Replacement Product. During the Delivery Term, if POI Energy in any annual or monthly period is less than the Expected On-Peak Supply Amount for such period, as set forth in Exhibit A, then Supplier may, in Supplier's sole discretion, provide Replacement Product up to such Expected On-Peak Supply Amount. Supplier must deliver Replacement Product in the same manner it is required to deliver Product to Buyer or Buyer's Energy Manager, as applicable. Notwithstanding anything to the contrary in this Agreement, to the extent Supplier provides Replacement Product in accordance with this Section 4.6, such Replacement Product shall be treated the same as Product for all purposes of this Agreement.

5. PRICE OF PRODUCT

5.1 Product Rate. The Product and Replacement Product shall be paid for by Buyer at the Product Rate.

6. METERING, INVOICING AND PAYMENTS

6.1 Metering.

6.1.1 Meters. Supplier shall provide, install, own, operate and maintain all Revenue Meter(s) in good operating condition, which Revenue Meters shall be used to measure the Product hereunder. The Revenue Meters shall be revenue grade, bi-directional, shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity.

6.1.2 Meter Testing. Revenue Meters shall be tested at least once every two calendar years by Supplier. Buyer may request a special test of any Revenue Meter no more frequently than every six (6) months if it has reasonable grounds to suspect the Meters are inaccurate, but Buyer shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case Supplier shall bear the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Supplier shall provide fifteen (15) Business Days prior notice of routine Meter testing to Buyer

6.1.3 If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Supplier shall repair and recalibrate or replace the Meters, and Buyer shall adjust payments to Supplier for the Product for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the Meters; however, the adjustment period shall not exceed ninety (90) days. If adjusted payments are required, Supplier shall render a statement describing the adjustments to Buyer within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments due to Supplier by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due to Buyer pursuant to this Section 6.1.3 shall accompany Supplier's next Billing Period statement.

6.1.4 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon any check meters, if any; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier for the Product calculated using the check meters for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; however, the adjustment period shall not exceed ninety (90) days. If no such metering is available, payments shall be based upon the Parties' best estimate of the Product. In such event, such payments made based upon the Parties' estimate of the amount of Product shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the amount of Product, the Dispute shall be resolved in accordance with Article 16.

6.2 Invoices.

6.2.1 Monthly Invoicing and Payment. On or before the 10th day of each month, Supplier shall send to Buyer an invoice for the prior month (a "Billing Period"). Supplier shall calculate the invoice based upon Net Energy. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to or by Buyer.

6.2.2 Method of Payment. Buyer or Supplier, as applicable, shall remit the payment of any undisputed amounts by wire or electronic fund transfer or otherwise pursuant to written instructions provided by Buyer. Payment will be made on or before the later of the twentieth (20th) day following the end of each Billing Period (or the next following Business Day, if such twentieth (20th) day does not fall on a Business Day) or ten (10) Business Days from receipt of invoice.

6.2.3 Examination and Correction of Invoices. As soon as practicable either Party shall notify the other Party in writing of any alleged error in an invoice.

6.2.3.1 If a Party notifies the other Party of an alleged error in an invoice, the Parties agree to use good faith efforts to reconcile the billing and mutually agree on the appropriate correction, if any.

6.2.3.2 If a correction is determined to be required, the invoicing Party shall provide an adjusted invoice to the invoiced Party. If such error results in an additional payment to the invoicing Party, the invoiced Party shall pay such invoicing Party the amount of the adjusted invoice within thirty (30) calendar days of the date of receipt of the

adjusted invoice. If such error resulted in a refund owed to the invoiced Party, the invoicing Party shall pay the invoiced Party the amount of the adjusted invoice within thirty (30) calendar days of the date of the statement or at the invoiced Party's option, the invoiced Party may net such amount against the subsequent monthly payment to invoicing Party.

6.2.3.3 Any correction or Dispute with respect to an invoice is waived unless a Party is notified within twenty-four (24) months after the invoice is rendered.

- 6.3 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated at the Prime Rate set forth in *The Wall Street Journal* plus two percent (2%).
- 6.4 Access to Books and Records. Supplier agrees to make available for inspection upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 6.2.
- 6.5 Parties' Right to Offset. Either Party shall have the right to offset any amounts owed to the other Party under this Agreement.
- 6.6 Taxes. Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect any Buyer's tax exempt status. Buyer is responsible for any Taxes imposed on Buyer by state, local, or federal Governmental Authorities or associated with the Product at or after its Point of Delivery. Supplier is responsible for any Taxes imposed on or associated with the Product or its delivery up to or at the Point of Delivery. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall hold harmless the other Party in accordance with Article 13 from and against Taxes imposed on the other Party as a result of such Party's actions or inactions in contravention of this Section 6.6.
- 6.7 Energy Manager Costs. Supplier will reimburse Buyer for all documented costs incurred by Buyer related to provision of Product to Buyer's Energy Manager (if any) which Buyer would not have incurred if Supplier was delivering Product directly to Buyer.

7. PERFORMANCE ASSURANCE

- 7.1 Performance Assurance. At any time during the period commencing as of the Effective Date and throughout the Term, Buyer shall either (a) maintain an

Investment Grade Credit Rating; or (b) deliver to and maintain security (the “Performance Assurance”) in the form of (i) Cash Collateral held on Buyer’s Balance Sheet, (ii) a Guaranty, or (iii) a Letter of Credit, in the aggregate amount equal to the then-applicable Performance Assurance Amount. Buyer shall deliver such Performance Assurance, or have such Performance Assurance in place, or, if applicable, increase the Performance Assurance Amount, no later than the later of: (A) if Buyer does not have an Investment Grade Credit Rating as of such date, upon the Effective Date or ten (10) Business Days after the date that Buyer no longer maintains an Investment Grade Credit Rating, or (B) ten (10) Business Days after the date of any Buyer Credit Event. Thereafter, if there is a change to Buyer’s credit rating that allows Buyer to reduce the Performance Security Amount, Buyer may, in its sole discretion, reduce the Performance Assurance to the then-required amount. The Performance Assurance Amount shall not be deemed a limitation of damages hereunder.

7.2 Posting, Maintenance and Drawing.

7.2.1 Security Interest. To secure its obligations under this Agreement, Buyer hereby grants to Supplier, as the secured party, a first priority, present and continuing security interest in, and lien on (and right of setoff against), and assignment of, the Performance Assurance posted in the form of cash and all cash obtained by Buyer resulting from a draw on such Performance Assurance, and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of the Supplier, and Buyer agrees to take such action as Supplier reasonably requires in order to protect the Supplier’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof; provided, however, that the Supplier may exercise its rights as a secured party (including the right of setoff granted pursuant to this sentence) against such cash collateral only upon the terms and conditions in this Section 7.2. Such cash collateral shall constitute Cash Collateral for all purposes of this Agreement (including for the return of such cash collateral to Buyer according to this Section 7.2).

7.2.2 Draw in an Event of Default. If an Event of Default has occurred and is continuing, Supplier shall be entitled to draw upon the Performance Assurance for any damages that have not been paid when due and that arise from (i) such Event of Default and/or (ii) any prior Event of Default to the extent that damages arising therefrom have not yet been paid in full to the Supplier.

7.2.3 Draw of an Expiring Letter of Credit. In the case of Performance Assurance in the form of a Letter of Credit, Supplier may draw the full amount of such Letter of Credit within thirty (30) days before the expiration of such Letter of Credit if, as of the date of such drawing, Supplier does not receive replacement Performance

Assurance meeting the requirements of this Agreement. The proceeds of any such draw shall be held as Cash Collateral unless replaced pursuant to Section 7.2.4 and may be drawn upon only as provided in Section 7.2.2.

7.2.4 Replacement. If, at any time during which Performance Assurance is required to be maintained hereunder, a Credit Event occurs with respect to such Performance Assurance, then Buyer shall, within ten (10) Business Days after such Credit Event, replace the affected Performance Assurance with Performance Assurance that complies with the terms of this Agreement, including having an undrawn capacity in the amount required by the definition of such Performance Assurance at such time. In addition to the replacement of the Performance Assurance that may be required pursuant to the preceding sentence, Buyer shall, at any time and from time to time, have the right to replace the Performance Assurance in effect at such time with other Performance Assurance, so long as Buyer maintains the Performance Assurance with undrawn capacity in the amount required by the definition thereof at such time.

7.2.5 Release Upon Replacement. If any Performance Assurance is replaced in accordance with Section 7.2.4, then, if the Performance Assurance being replaced is (A) a Guaranty, the Guarantor shall be deemed released from all obligations under such replaced Performance Assurance, and Supplier shall execute any documents reasonably requested by Buyer or any such Person to confirm such release, (B) a Letter of Credit, the Supplier shall promptly return such Letter of Credit to the bank that issued such Letter of Credit and shall execute any documents reasonably requested by Buyer or issuing bank in order to release the Letter of Credit, (C) Cash Collateral, Supplier shall cause the depository bank to immediately return such Cash Collateral (including any interest earned thereon) to Buyer.

7.2.6 Release Upon Termination. If, upon the date of release of the Performance Assurance, any part of the Performance Assurance being released is (A) a Guaranty, the Guarantor shall be deemed released from all obligations under the Performance Assurance, and Supplier shall execute any documents reasonably requested by Buyer or any such Person to confirm such release, (B) a Letter of Credit, the Supplier shall return such Letter of Credit to the bank that issued such Letter of Credit and shall execute any documents reasonably requested by Buyer or issuing bank in order to release the Letter of Credit.

7.2.7 Outstanding Claims. Notwithstanding anything to the contrary contained in this Agreement, if upon the date of release of the Performance Assurance, there are any outstanding claims that were

validly made prior to such date against the Performance Assurance then being released, then, on such date, (a) the amount of the applicable Performance Assurance shall be deemed reduced to the amount of such outstanding claims, (b) the date of release of the Performance Assurance shall be extended until the final resolution and (if applicable) full payment of such outstanding claims and (c) at the election of Supplier, the scope of such security may be reduced to secure only such outstanding claims. In the event of a reduction in the amount and/or scope of any Performance Assurance in accordance with clause (a) or clause (c) of the immediately preceding sentence, Supplier shall promptly execute any documents and take any other actions reasonably requested by the Buyer or any Person providing the Performance Assurance to effect and/or confirm such reduction in amount and/or scope, including by executing and delivering an amendment to such Performance Assurance, by exchanging such Performance Assurance or by other reasonable means.

8. PLANNED OUTAGES

On or before October 1 of each Contract Year, Supplier shall provide Buyer and Buyer's Energy Manager with a schedule designating the periods during the upcoming Contract Year during which Supplier expects the output of Buyer's Share of the Generating Facility to be reduced in whole or in part. Supplier shall use commercially reasonable efforts to update the schedule as information becomes available.

9. EMERGENCY

Supplier shall promptly comply with any applicable requirements of any Electric System Authority, Governmental Authority, Transmission Provider, or their successors, regarding the reduced or increased generation of the Generating Facility or otherwise in the event of any Emergency. Supplier shall provide prompt oral and written notification to Buyer of any Emergency with a description in reasonable detail of the Emergency and any steps employed to cure it.

10. CURTAILMENT

10.1 Compliance. Supplier shall obey all orders for curtailment of Energy by the Transmission Provider or any Electric System Authority. Buyer has no obligation to pay Supplier with respect to Product not delivered due to curtailments made in accordance with this Section 10.1.

10.2 Curtailments. Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with the Product if such Product is not delivered to the Point of Delivery because: (a) the interconnection between the Generating Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part, (b) the Transmission Provider or Electric System Authority directs a general curtailment, reduction, or re-dispatch of generation in the area (which includes the

Product) for any reason, (c) the Net Energy is not received because the Generating Facility is not fully integrated or synchronized with the Transmission System or (d) an event of Force Majeure prevents either Party or Buyer's Energy Manager from delivering or receiving Product.

- 10.3 No Economic Curtailment. Buyer shall not be permitted to require curtailment for economic reasons or otherwise refuse to take Product for economic reasons.

11. COMMUNICATIONS

- 11.1 Operating Representatives. Each of Supplier and Buyer shall designate an Operating Representative ("Supplier's Operating Representative" and "Buyer's Operating Representative", respectively) who shall be available to address and make decisions on operational matters under this Agreement on a twenty-four (24) hour per day, seven (7) day per week basis. Supplier shall, at its expense, provide a protocol to Buyer to maintain communications between Seller's Operating Representative and Buyer's Representative, Buyer's Energy Manager, and Electric System Authorities at all times.
- 11.2 Communications. In connection with meeting its obligations pursuant to this Article 11, Supplier shall provide at its expense: (a) a readily accessible real-time performance monitoring (e.g. read-only access to a web-based performance monitoring system); and (b) equipment to transmit to and receive emails from Buyer and the Balancing Authority, including cellular telephones.

12. SCHEDULING NOTIFICATION

- 12.1 Scheduling Notification. Supplier shall provide to Buyer's Operating Representative and Buyer's Energy Manager Supplier's good faith daily and hourly forecast of the Net Energy, planned outages, Derating, and similar changes that may affect the Product, in accordance with the procedures in Section 12.2.
- 12.2 Procedures.
- 12.2.1 No later than 05:00 PPT each day, Supplier shall deliver to Buyer's Operating Representative and Buyer's Energy Manager a notice that covers WECC scheduling practices for day-ahead energy.
- 12.2.2 Supplier shall notify Buyer's Operating Representative and Buyer's Energy Manager as soon as practical after becoming aware of an expected Derating.
- 12.2.3 In the event of a Derating, Supplier shall provide: (a) the magnitude of the Derating; (b) the hours during which the Derating is expected to apply; and (c) the cause of the Derating.

13. INDEMNIFICATION

Each Party (the “Indemnifying Party”) shall indemnify, defend and hold the other Party, its Affiliates, and their respective representatives, members, officers, directors, managers, agents, successors and assigns (together, the “Indemnified Party”) harmless from and against any and all damages for (a) personal injury, death or property damage to the Indemnified Party’s property or facilities, (b) personal injury, death or property damage to third parties, or (c) other third party claims (whether arising under contract or tort), in each case that arise out of or are connected with the Indemnifying Party’s performance of its obligations under this Agreement; provided, however, that the Indemnifying Party shall have no obligation to indemnify the Indemnified Party to the extent such injury, death or damage or other third party claims are attributable to the negligence or willful misconduct or breach of this Agreement by the Indemnified Party or any of its Affiliates.

14. LIMITATION OF LIABILITY

14.1 Partial Waiver of Consequential Damages. EXCEPT FOR BREACHES OF ARTICLE 24 AND INDEMNITY CLAIMS UNDER ARTICLE 13(b) or (c), IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RELATED PERSONS BE LIABLE TO THE OTHER PARTY OR ANY OF ITS RELATED PERSONS FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, EXEMPLARY, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOSS OF PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THIS LIMITATION SHALL NOT BE CONSTRUED TO LIMIT A PARTY’S RIGHT TO RECEIVE LIQUIDATED DAMAGES, SUBJECT TO THE OTHER LIABILITY LIMITATIONS, OR TO RECEIVE “COVER” DAMAGES. THE PARTIES INTEND THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, THE LIABILITY LIMITATIONS SHALL APPLY EVEN IN THE EVENT OF THE FAULT, NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, OR BREACH OF CONTRACT OF THE BENEFICIARY THEREOF AND WHETHER ASSERTED IN CONTRACT, IN WARRANTY, IN TORT, BY STATUTE OR OTHERWISE.

14.2 Survival. The provisions of this Article 14 shall survive any termination, cancellation, expiration, or suspension of this Agreement.

15. FORCE MAJEURE

15.1 Excuse. Subject to Section 15.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product but excluding any payment obligations) if such delay or failure is due to an event of Force Majeure.

15.2 Definition. “Force Majeure” or “an event of Force Majeure” means an event that (a) is not within the reasonable control of the Party affected by the event, (b) is not the result of such Party’s negligence or failure to act, and (c) could not be overcome

by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): riot, insurrection, war (declared or not), explosion, labor dispute, supply chain disruptions which are not specific to the individual Generating Facility, fire, flood, earthquake, tornado, hurricane, storm, lightning, vandalism, act of the public enemy, terrorism, pandemic, epidemic, civil disturbances, strike, work stoppage, blockades, sabotage, national emergency, the amendment, adoption or repeal of or other change in, or the interpretation or application of, any applicable Laws; and any action or inaction by any Governmental Authority, including Transmission Provider and any Electric System Authority (whether valid or invalid).

15.3 Exclusions. Notwithstanding the foregoing, none of the following constitute Force Majeure:

15.3.1 Economic hardship of either Party, including lack of money;

15.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Generating Facility due to high or low temperatures or climate conditions, except to the extent such conditions are due to a Force Majeure Event;

15.3.3 A Party's failure to obtain any permit, license, consent, agreement or other approval from a Governmental Authority, unless due to a Force Majeure Event;

15.3.4 The imposition of costs or Taxes on a Party;

15.3.5 Supplier's failure to obtain, or perform under its interconnection agreement or its other contracts with Transmission Provider unless due to a Force Majeure event;

15.3.6 Supplier's ability to sell, or Buyer's ability to purchase energy or capacity at a more advantageous price than is provided hereunder; and

15.3.7 Any breakdown or malfunction of the Generating Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure.

15.4 Conditions. In addition to the conditions set forth in Section 15.2, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:

15.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement

(which notice, in the case of Supplier, shall be provided within ten (10) days following such Force Majeure event);

15.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

15.4.3 Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that nothing herein requires a Party to settle a strike or other labor dispute;

15.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party; and

15.4.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

16. DISPUTES

16.1 Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other arising out of or relating to this Agreement, including, but not limited to, the interpretation of the terms hereof or any Laws or regulations that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof (“Dispute”) shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.

16.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.

16.3 Arbitration. If any Dispute between the Parties arises out of this Agreement and if the Parties are unable to resolve such Dispute within ten (10) days after a notice of claim is provided, then such Dispute shall be resolved by binding arbitration by a single arbitrator under the Comprehensive Arbitration Rules of Judicial Arbitration and Mediation Services, Inc. (“JAMS”). This arbitration provision is mandatory. If Supplier gives Buyer notice of Default pursuant to Section 20.1 of this Agreement, and if Supplier in good faith elects to dispute such claimed Default pursuant to the provisions of this Section 16, then any cure period provided in Section 20 as to such claimed Event of Default shall continue during the resolution of such dispute hereunder, and all of the terms and conditions of this Agreement will remain in effect, and the Parties will continue to perform all of their respective obligations under this Agreement, during the resolution of such Dispute. If Buyer gives Supplier notice of a claimed Event of Default pursuant to Section 20 of this Agreement, and if Supplier in good faith elects to dispute such claimed Event of Default pursuant to the provisions of this Section 16, then any cure period provided

in Section 20 as to such claimed Event of Default shall continue during the resolution of such dispute hereunder, and all of the terms and conditions of this Agreement will remain in effect, and the Parties will continue to perform all of their respective obligations under this Agreement, during the resolution of such dispute.

As soon as the arbitrator has been appointed, a hearing date shall be set at the Las Vegas office of JAMS (or such other location in Clark County, Nevada agreed to by each of the Parties) within sixty (60) days thereafter. Written submittals shall be presented and exchanged by both Parties no less than twenty (20) days before the hearing date, which submissions shall include any reports prepared by experts upon whom either Party intends to rely, copies of all documentary evidence upon which they will rely at the hearing, and a list of the witnesses whom they intend to call at the hearing.

There shall be no discovery except as may be permitted by the arbitrator, who shall authorize only such discovery as is shown to be necessary to insure a fair hearing, and no such discovery permitted by the arbitrator shall in any way conflict with the time limits contained herein. The arbitrator shall not be bound by the rules of evidence or civil procedure, but rather may consider such evidence as reasonable businessperson would use in the conduct of their day-to-day affairs. It is the intention of the Parties to limit live testimony and cross-examination to the extent absolutely necessary to insure a fair hearing to the Parties on the matters submitted to arbitration. The Parties have included the foregoing provisions limiting the scope and extent of the arbitration with the intention of providing for prompt, economic, and fair resolution of any dispute submitted to arbitration.

The Parties shall equally split the arbitrator's fees and costs; provided that the arbitrator shall have the discretion to award the costs of arbitration, arbitrator's fees, and the respective reasonable attorneys' fees of each Party as he or she may deem appropriate. Judgment upon the award entered by the arbitrator may be entered in any court having jurisdiction thereof. At the request of either Party, findings of fact and conclusions of law shall be prepared in support of the arbitrator's award. Notwithstanding the Parties' agreement to arbitrate their disputes as provided herein, either Party may seek emergency relief in the state or federal courts of Clark County, Nevada, and any court of competent jurisdiction may enter a judgment reflecting the arbitrator's findings of fact and conclusions of law

By initialing below, Supplier and Buyer each grant and confirm their specific authorization to submit disputes arising under this Agreement to arbitration upon, and subject to the terms and conditions of, this Section 16. Buyer and Supplier each specifically acknowledge that such Party has thoroughly reviewed this Section 16 with counsel of its choosing, and each of Buyer and Supplier voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 16. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 16, and

each Party intends that this paragraph, and the specific acknowledgements below, satisfy the requirements of NRS 597.995(1).

Supplier's Initials _____ Buyer's Initials _____

17. NATURE OF OBLIGATIONS

- 17.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 17.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the service provided under this Agreement to the public.

18. ASSIGNMENT

- 18.1 Permitted Assignment. Neither Party shall be entitled to assign or transfer all or any portion of its interest in this Agreement except as provided herein, without the prior written consent of the non-assigning Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, a Party may make the following assignments without the prior written consent of the other Party, but shall provide written notice of such permissible assignments as soon as practical:
- 18.1.1 Supplier may collaterally assign this Agreement to a Financing Party provided that the terms of such Assignment are reasonably acceptable to the Buyer as set forth in Section 18.4 below.
- 18.1.2 Either Party may transfer or assign all, but not less than all, of its rights and obligations under this Agreement to an Affiliate, so long as (a) such Affiliate's ability to perform the relevant obligations of this Agreement, directly or through contractors, is equal to or greater than that of such Party at the time of assignment, (b) such Affiliate's Credit Rating is equal to or greater than the Credit Rating of the assigning Party as of the date of the assignment, and (c) such Affiliate either maintains or replaces any Performance Assurance provided by the assigning Party.
- 18.2 Change in Control. Any Change in Control (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Concurrently with any reorganization or financing transaction or transactions constituting any Change in Control in which a Party merges or consolidates with any other Person and ceases to exist, the successor entity to such Party shall execute a written assumption agreement in favor of the other Party pursuant to which any such successor entity shall assume all of the obligations of the Party ceasing to exist under this Agreement and agree to be bound by all the terms and conditions of this Agreement, or the successor entity shall acknowledge

the continuing obligations of such Party to perform all of the obligations of Supplier under this Agreement.

18.3 Release. In no event shall the assigning Party be released from its liabilities and obligations under this Agreement without the consent of the other Party, in such other Party's reasonable discretion; provided, however, if either Party assigns this Agreement as permitted by this Article 18, such assigning Party shall, to the extent the assignee assumes the liabilities and obligations of such assigning Party under this Agreement, be released from such liabilities and obligations; provided further that such release shall not apply, and the assigning Party shall not be released from its liabilities and obligations relating to, the period prior to the date of assignment with respect to any Event of Default that has occurred and is continuing at the time of such assignment if such Event of Default is not cured by the assignee in accordance with this Agreement.

18.4 Assignment to Financing Party. If Supplier collaterally assigns this Agreement to a Financing Party pursuant to Section 18.1.1, the following provisions shall apply:

18.4.1 The Financing Parties shall, at any time, have the right, but not the obligation, to perform any act, duty, or obligation required of the Supplier under this Agreement and to cure any of Events of Default by Supplier;

18.4.2 Buyer shall not terminate its performance under this Agreement due to an Event of Default by Supplier unless Buyer has first given the Financing Parties (a) notice of such Event of Default, the applicable cure period related thereto as set forth in this Agreement and the action to be taken to cure such Event of Default, and (b) the opportunity to cure such Event of Default during the applicable cure period related to such default as set forth in this Agreement *plus* an additional thirty (30) days; provided, however, that if such default reasonably cannot be cured by the Financing Parties within the period provided and the Financing Parties or an assignee commence and continuously pursue cure of such default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional sixty (60) days;

18.4.3 In the event an Event of Default by Supplier is not susceptible of cure by the Financing Parties, the Buyer shall not exercise its right to terminate this Agreement so long as the Financing Parties or an assignee (including any purchaser or transferee) assume in writing, prior to the expiration of any cure period, if applicable, Supplier's rights and obligations under this Agreement and thereafter cure all then-existing Events of Default that are susceptible of cure by the Financing Parties or an assignee Upon completion of the foregoing, Buyer agrees that the Financing Parties or the assignee, as

applicable, will no longer be in default under this Agreement, and this Agreement will continue in full force and effect;

- 18.4.4 If (a) possession or control of the Generating Facility is necessary for the Financing Parties or an assignee to cure any Event of Default by Supplier or to assume Supplier's rights and obligations under this Agreement and the Financing Parties or an assignee have commenced, and are diligently pursuing, proceedings or actions to obtain possession or control of the Generating Facility or (b) the Financing Parties or an assignee are prohibited by any court order or bankruptcy or insolvency proceedings from taking any actions to cure an Event of Default by Supplier, the Financing Parties' or an assignee's cure period shall be extended by a period of time reasonably necessary to complete such proceedings or actions, or by the period of such prohibition, not to exceed one hundred eighty (180) days in the aggregate;
- 18.4.5 Buyer shall simultaneously deliver to the Financing Parties copies of all material notices delivered by Buyer to Supplier under or pursuant to this Agreement;
- 18.4.6 Buyer shall not enter into any consensual cancellation or termination of this Agreement, or assign or agree to any assignment of this Agreement, without the prior written consent of the Financing Parties; and
- 18.4.7 Upon the receipt of a written request from Supplier or any Financing Party, Buyer shall execute such documents evidencing Buyer's consent and agreement, in form and substance reasonably requested by the Financing Parties and reasonably acceptable to Buyer (such acceptance by Buyer not to be unreasonably withheld, conditioned or delayed).

19. CHANGE IN LAW; NO CHALLENGE.

19.1 Change in Law.

- 19.1.1 If, after the Effective Date, there is a Change in Law or in any operating standard applicable to Supplier or the Generating Facility, and if such change (a) renders the performance of this Agreement (in whole or in part) illegal or unenforceable, (b) has a Material Adverse Effect on the ability, or cost, of Supplier to comply with any or all of its obligations under this Agreement, or (c) has a Material Adverse Effect on the after-tax proceeds realized by Supplier (or, if Supplier is a pass-through entity for tax purposes, Supplier's owners) from the performance of this Agreement, then the Parties shall meet within ten (10) Business Days of notice from Supplier to discuss, and acting in good faith, agree upon any

amendments that may be required to this Agreement in order to: (i) take account of the Change in Law such that the Parties can continue to comply with the terms of this Agreement, and (ii) restore the allocation of risks, rights and obligations of the Parties and the relative economic balance of this Agreement contemplated by the Parties at the Effective Date, including making any changes to Product Rate to account for any increase in Supplier's cost or decrease in Supplier's after-tax proceeds resulting from such Change in Law. If the Parties are unable to agree on any such amendments within thirty (30) days after Supplier's notice, the matter shall be resolved in accordance with the Dispute resolution procedures in Article 16.

19.1.2 No Challenge. Neither Party shall seek (directly or indirectly), nor support any third party in seeking, to revise the prices, fees, rates, terms or conditions set forth in or established according to this Agreement through application or complaint to FERC.

20. **DEFAULT AND REMEDIES**

20.1 Events of Default. An event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events:

20.1.1 Failure to comply with any material obligations imposed upon it by this Agreement or failure of any representation or warranty of a Party to be true in any material respect, which is not cured within thirty (30) days from the date of receipt of a written notice of the occurrence of any such failure, provided that that such thirty (30)-day period may be extended for an additional reasonable period of time (but in no event for more than ninety (90) days);

20.1.2 Failure to make timely payments due under this Agreement which is not cured within ten (10) days from the date of receipt of a written notice of the occurrence of any such failure;

20.1.3 A Party (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days), (b) makes an assignment for the benefit of creditors, (c) is unable to pay its debts as they become due or (d) is subject to a similar action or proceeding (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) days).

20.2 Duty/Right to Mitigate. Each Party has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance.

20.3 Remedies. If an Event of Default is not cured by the Defaulting Party during the time periods (including cure periods, if any) specified in Section 20.1, the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement, payment of damages, and drawing upon the Performance Assurance.

21. REPRESENTATIONS AND WARRANTIES OF SUPPLIER

Supplier represents and warrants to Buyer as of the Effective Date as follows, and covenants to Buyer that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

21.1 Organization; Qualification. Supplier is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own or lease and operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business as a limited liability company and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.

21.2 Authority Relative to this Agreement. Supplier has authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of this Agreement. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.

21.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Supplier shall not (a) conflict with or result in any breach of any provision of the articles of organization (and/or other governing documents) of Supplier; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority, except to the extent not yet required by Law or where the failure to obtain such consent, approval, authorization or permit, or to make such filing or notification, could not reasonably be expected to have a Material Adverse Effect or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

22. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Supplier as of the Effective Date as follows and covenants to Supplier that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

- 22.1 Organization; Qualification. Buyer is a Quasi-Municipal General Improvement District duly organized, validly existing and in good standing under the Laws of the State of Nevada and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business as a corporation and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not have a Material Adverse Effect.
- 22.2 Authority Relative to this Agreement. Buyer has full corporate authority to execute and deliver this Agreement to which it is a Party and to consummate the transactions contemplated herein. The execution and delivery of this Agreement has been duly and validly authorized by Buyer and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by applicable bankruptcy, insolvency or similar Laws affecting the enforcement of rights generally.
- 22.3 Consents and Approvals; No Violation. The execution, delivery and performance of this Agreement by Buyer shall not (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any consent, approval, authorization or permit of, or filing with or notification to, any Governmental Authority; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.

23. INSURANCE

- 23.1 General Requirements. Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth herein from the Effective Date of this Agreement. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If any policy is maintained on a "claims made" form and is converted to an "occurrence form," the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.

- 23.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Nevada and with the equivalent, on a continuous basis, of an “A.M. Best Company Rating” of “A” or better and shall include provisions or endorsements:
- 23.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
 - 23.2.2 Stating that no reduction, cancellation or non-renewal of the policy shall be effective until thirty (30) days from the date notice thereof is actually received by Buyer; provided, that upon Supplier’s receipt of any notice of reduction, cancellation or non-renewal, Supplier shall immediately provide notice thereof to Buyer;
 - 23.2.3 Providing Buyer with subrogation waivers on all coverage;
 - 23.2.4 Naming Buyer as an additional insured on the general liability and auto liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 23.3 Certificates of Insurance. Within thirty (30) days of the Effective Date, Supplier shall provide to Buyer, and shall continue to provide to Buyer within thirty (30) days of each anniversary of the Effective Date until the expiration of this Agreement, upon any change in coverage, or at the request of Buyer not to exceed once each year, properly executed and current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement.
- 23.4 Supplier’s Minimum Insurance Requirements.
- 23.4.1 To the extent exposure exists, Employers’ Liability and Workers’ Compensation Insurance providing statutory benefits in accordance with the Laws and regulations of the state in which the Point of Interconnection is located.
 - 23.4.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars (\$1,000,000) per occurrence/One Million Dollars (\$1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

- 23.4.3 Comprehensive Automobile Liability Insurance for coverage of owned (to the extent exposure exists) and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars (\$1,000,000) per occurrence for bodily injury, including death, and property damage.
- 23.4.4 Umbrella Insurance Coverage, with a minimum limit of Ten Million Dollars (\$10,000,000) each occurrence/aggregate where applicable to be excess of the coverages and limits otherwise required in this Article 23.
- 23.4.5 Failure to Comply. If Supplier fails to comply with the provisions of this Article 23, Supplier shall save harmless and indemnify Buyer from any direct or indirect Loss, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 23, in accordance with the indemnification provisions of Article 13.

24. PUBLIC STATEMENTS; CONFIDENTIALITY

- 24.1 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and neither Party shall issue any such public announcement, statement or other disclosure without having first received the written consent of Buyer, not to be unreasonably withheld, conditioned or delayed, except as may be required by Law.
- 24.2 Confidentiality.
- 24.2.1 Non-Disclosure. Except as otherwise provided herein, neither Party nor its respective employees, agents, partners, Affiliates, officers, directors or advisors shall publish, disclose, or otherwise divulge Confidential Information to any Person at any time during or for two (2) years after the end of the Term (during which the Parties' obligations under this Section 24.2.1 shall survive), without the other Party's prior express written consent.
- 24.2.2 Required Disclosure. A receiving Party may use and disclose Confidential Information where required to do so in litigation, administrative, regulatory or other legal proceedings or otherwise by applicable Laws, but only after notice to the disclosing Party and, if legally permissible, affording the disclosing Party an opportunity to seek a protective order or other relief to prevent or limit disclosure of the Confidential Information. In such event, the receiving Party shall reasonably cooperate, at the disclosing Party's expense, in connection with the disclosing Party's efforts to obtain such protective order or other relief. Further, each Party shall use all

reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by applicable Laws, and shall promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise.

24.2.3 Permitted Disclosure. Notwithstanding anything to the contrary herein, each Party may provide any Confidential Information: (i) to the Transmission Provider, or any other Governmental Authority or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required for scheduling, billing or otherwise to perform under or administer this Agreement; (ii) to its employees, agents, partners, Affiliates, officers, directors and advisors (including attorneys, accountants, consultants and rating agencies); provided such Persons agree to preserve the confidentiality of the Confidential Information in accordance with the terms and provisions of this Agreement (it being agreed that the receiving Party shall be responsible and liable for any failure of such Persons to comply with the terms and provisions of this Agreement) and (iii) in the case of Supplier, to Financing Parties or potential Financing Parties, Affiliates and lessors, owners of and potential bidders and bidders for, and potential purchasers and purchasers of, direct or indirect interests in the Generating Facility (including direct or indirect interests in the equity interests of Supplier) and to any credit rating agency that has issued a Credit Rating for Supplier or any of its Affiliates. Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially and to not disclose it to any other Person in any manner whatsoever. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party. Buyer's posting of this Agreement in compliance with Open Meeting Laws (whether in draft or final, executed or unexecuted form) shall not be deemed to be a breach of Buyer's confidentiality obligations.

25. MISCELLANEOUS

25.1 Notices.

25.1.1 All notices hereunder shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the representatives as set forth below or as modified from time to time by notice to the other Party. Any changes to the notices in this Section 25.1, shall not constitute an amendment to this Agreement.

Notices:

If to Supplier

Escape Solar LLC
c/o Estuary Power LLC
50 W Liberty St Suite 430
Reno, NV 89501
Attention: Chief Executive Officer
Telephone No.: (415) 254-3419
Email: jill.daniel@estuarypower.com

If to Buyer

Overton Power District # 5
PO BOX 395
Overton, NV 89040
Attention: General Manager
Telephone No.: (702) 397-3025
Email: gm@opd5.com

Billings and Payments:

If to Supplier

Escape Solar LLC
c/o Estuary Power LLC
50 W Liberty St Suite 430
Reno, NV 89501
Attention: Accounts Payable
Telephone No.: (415) 254-3419
Email: ap@estuarypower.com

If to Buyer

Overton Power District # 5
PO BOX 395
Overton, NV 89040
Attention: Manager of Finance
Telephone No.: (702) 397-3034
Email: accounting@opd5.com

Operating Representatives:

If to Supplier

Escape Solar LLC
c/o Estuary Power LLC
50 W Liberty St Suite 430
Reno, NV 89501
Attention: VP of Development
Telephone No.: (619) 823-3230
Email: kimberly.primerano@estuarypower.com

If to Buyer

Overton Power District # 5

PO BOX 395

Overton, NV 89040

Attention: Manager of Substations

Telephone No.: (702) 345-1113

Email: khansen@opd5.com

- 25.1.2 All notices or submittals required by this Agreement shall be sent either by regular first-class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail.
- 25.1.3 Notices of Force Majeure or an Event of Default pursuant to Article 15 or pursuant to Article 20, respectively, and notices of a change to this Section 25.1 shall be sent either by registered or certified U.S. mail (postage paid return receipt requested), overnight courier delivery, or electronic mail. If any such notice is sent via electronic mail, then a copy of such notice shall also be sent either by registered or certified U.S. mail (postage paid return receipt requested) or overnight courier delivery.
- 25.1.4 Notices or submittals will be effective upon receipt by the addressee; except that notices or submittals transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 PPT, and if transmitted after that time, on the following Business Day. If any notice sent by regular first-class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), or overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender.
- 25.1.5 Any payments required to be made under this Agreement shall be made pursuant to written instructions provided by Supplier to Buyer, as such instructions may be changed by any Party from time to time by written notice.
- 25.2 Merger. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter whether written or oral.
- 25.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

- 25.4 Rules of Construction; Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” are to articles, sections, schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity’s or index’s successors; (d) ”herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) ”including” means “including, without limitation” or “including, but not limited to”; (h) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (i) the word “or” is not necessarily exclusive. Reference to “days” shall be calendar days, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. References to Articles and Sections herein are cross-references to Articles and Sections, respectively, in this Agreement, unless otherwise stated.
- 25.5 Headings and Titles. The headings and section titles in this Agreement are for convenience of the Parties only and should not be used to construe this Agreement.
- 25.6 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable provisions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by Law.
- 25.7 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law.

- 25.8 Amendments. Amendments or modifications to this Agreement must be in writing and executed by an authorized representative of each Party.
- 25.9 Choice of Law. This Agreement and the rights and obligations of the Parties shall be construed and governed by the Laws of the State of Nevada, except for such Laws that would require the application of the Laws of another jurisdiction.
- 25.10 Further Assurances. The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Without limiting the foregoing, whenever revised or updated exhibits are delivered or generated hereunder for attachment to this Agreement, the Parties will memorialize in a reasonable written instrument, to be executed and delivered by both Parties.
- 25.11 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder constitute a “forward contract” within the meaning of the United States Bankruptcy Code.
- 25.12 No Third-Party Beneficiaries. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

BUYER:

SUPPLIER:

OVERTON POWER DISTRICT NO. 5

ESCAPE SOLAR LLC

By: _____

Name: Mendis Cooper
Title: General Manager

By: _____

Name: Jill Daniel
Title: Chief Executive Officer

DRAFT

EXHIBIT A

EXPECTED ON-PEAK SUPPLY AMOUNT

Contract Year	Expected On-Peak Supply Amount, Summer Months (MWh)	Expected On-Peak Supply Amount, Non-Summer Months (MWh)	Expected On-Peak Supply Amount, All Months (MWh)
1	27,933	37,782	65,715
2	27,807	37,612	65,420
3	27,682	37,443	65,125
4	27,558	37,275	64,832
5	27,434	37,107	64,541
6	27,310	36,940	64,250
7	27,187	36,774	63,961
8	27,065	36,608	63,673
9	26,943	36,443	63,387
10	26,822	36,279	63,101
11	26,701	36,116	62,817
12	26,581	35,954	62,535
13	26,462	35,792	62,253
14	26,342	35,631	61,973
15	26,224	35,470	61,694
16	26,106	35,311	61,417
17	25,988	35,152	61,140
18	25,871	34,994	60,865
19	25,755	34,836	60,591
20	25,639	34,679	60,319
21	25,524	34,523	60,047
22	25,409	34,368	59,777
23	25,295	34,213	59,508
24	25,181	34,059	59,240
25	25,067	33,906	58,974

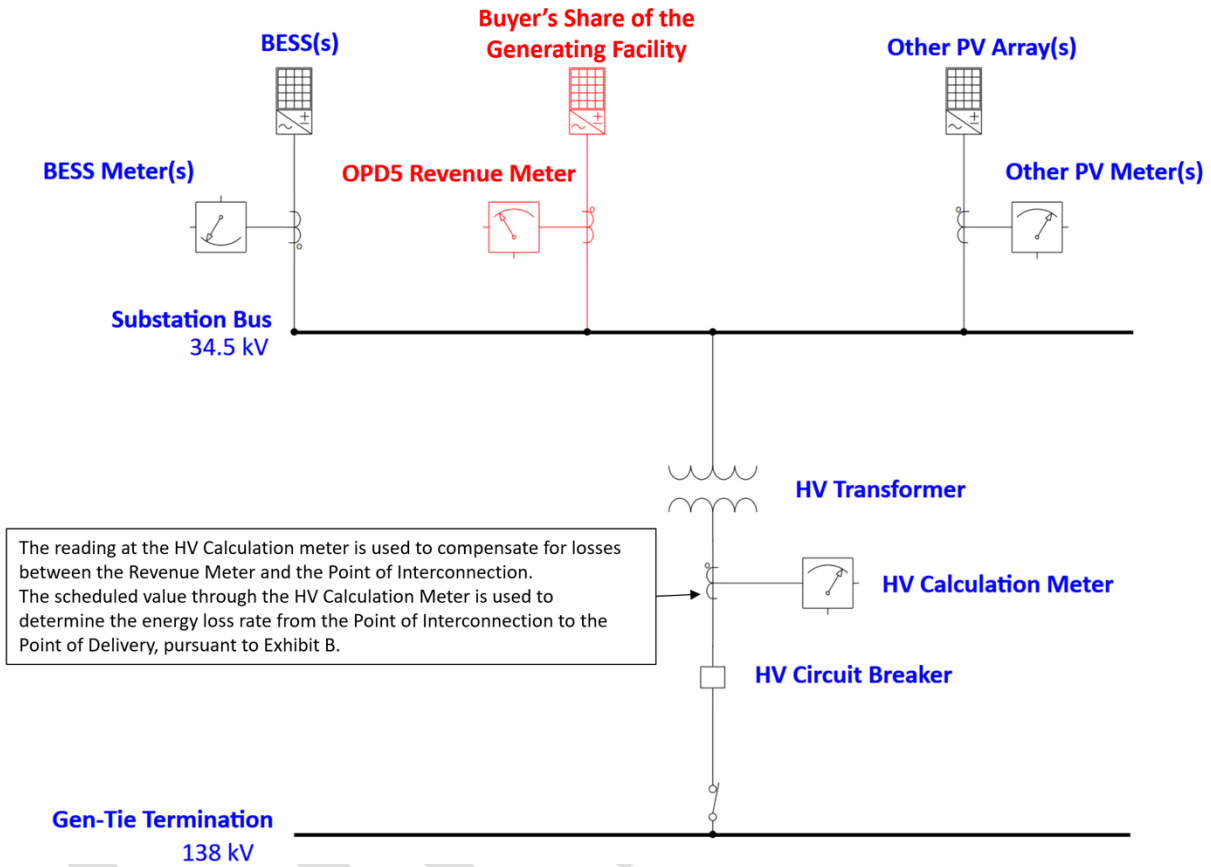
EXHIBIT B

ENERGY LOSSES

The Net Energy will be the energy measured at the Revenue Meter (which will be compensated for losses to the Point of Interconnection) and further reduced by the values in the table below to account for the losses across the LCPD's system.

Generating Facility Scheduled Hourly Output to LCPD Grid, P (kW)	Loss Rate
0 < P <= 5,000	0.02%
5,000 < P <= 10,000	0.04%
10,000 < P <= 15,000	0.06%
15,000 < P <= 20,000	0.08%
20,000 < P <= 25,000	0.11%
25,000 < P <= 30,000	0.13%
30,000 < P <= 35,000	0.15%
35,000 < P <= 40,000	0.17%
40,000 < P <= 45,000	0.19%
45,000 < P <= 50,000	0.21%
50,000 < P <= 55,000	0.23%
55,000 < P <= 60,000	0.25%
60,000 < P <= 65,000	0.27%
65,000 < P <= 70,000	0.29%
70,000 < P <= 75,000	0.31%
75,000 < P <= 80,000	0.33%
80,000 < P <= 85,000	0.34%
85,000 < P <= 90,000	0.36%
90,000 < P <= 95,000	0.38%
95,000 < P <= 100,000	0.40%
100,000 < P <= 105,000	0.41%
105,000 < P <= 110,000	0.43%
110,000 < P <= 115,000	0.45%
115,000 < P <= 120,000	0.46%
120,000 < P <= 125,000	0.48%
125,000 < P <= 130,000	0.49%
130,000 < P <= 135,000	0.51%
135,000 < P <= 140,000	0.53%
140,000 < P <= 145,000	0.54%
145,000 < P <= 150,000	0.56%
150,000 < P <= 155,000	0.57%
155,000 < P <= 160,000	0.59%
160,000 < P <= 165,000	0.60%
165,000 < P <= 170,000	0.62%
170,000 < P <= 175,000	0.63%
175,000 < P <= 180,000	0.65%
180,000 < P <= 185,000	0.66%

EXHIBIT C
METERING DIAGRAM



CONSENT AND AGREEMENT

among

Overton Power District No. 5,
a Nevada Quasi-Municipal General Improvement District
(Contracting Party),

Escape Solar LLC,
a Delaware limited liability company
(Project Company)

and

First Citizens Bank & Trust Company
(Collateral Agent)

Dated as of [●]

CONSENT AND AGREEMENT

(Long-Term Power Purchase Agreement and System Use Agreement)

This CONSENT AND AGREEMENT (this “Consent”), dated as of [●], is entered into by and among Overton Power District No. 5, a Nevada Quasi-Municipal General Improvement District (together with its permitted successors and assigns, “Contracting Party”), Escape Solar LLC, a Delaware limited liability company (the “Project Company”), and First Citizens Bank & Trust Company, in its capacity as Collateral Agent for the Secured Parties referred to below (together with its successors, and permitted designees and assigns in such capacity, “Collateral Agent”).

RECITALS

A. The Project Company owns and intends to develop, construct, install, test, own and operate an approximately 185 MW solar plus co-located 400 MWh battery energy storage system facility located in Lincoln County, Nevada (the “Project”).

B. In order to finance the development, construction, installation, testing, operation and use of the Project, the Project Company’s affiliates, Escape Borrower LLC, a Delaware limited liability company (“Initial Borrower”) and Escape Solar Class B MM LLC, a Delaware limited liability company (“Subsequent Borrower” and with Initial Borrower, each a “Borrower”) have entered into that certain (i) Financing Agreement, dated as of the date hereof (as may be amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), with Norddeutsche Landesbank Girozentrale, New York Branch and First Citizens Bank & Trust Company, as lenders (collectively, the “FA Lenders”), the financial institutions from time to time party thereto as issuing banks, First Citizens Bank & Trust Company, as administrative agent and as the collateral agent thereunder, and each other person from time to time party thereto, and (ii) Loan Agreement, dated as of the date hereof (as amended, amended and restated, supplemented, refinanced, replaced, extended or otherwise modified from time to time, the “Loan Agreement”), with Denham Sustainable Infrastructure Credit, as lender (the “DSIC”, and together with the FA Lenders, the “Lenders”), First Citizens Bank & Trust Company, as the Collateral Agent, and each other person from time to time party thereto pursuant to which, among other things, the Lenders have extended commitments to make loans to, and the Issuing Banks have extended commitments to issue letters of credit for the account of, the Project Company with respect to the development, construction, installation, testing, operation and use of the Project in the amounts specified and on the terms and subject to the conditions set forth therein.

C. (i) Contracting Party and the Project Company have entered into that certain Long-Term Power Purchase Agreement, dated as of November 15, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “PPA”) and (ii) Contracting Party and the Project Company have entered into that certain System Use Agreement, dated as of November 15, 2023 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “System Use Agreement” and together with the PPA, each an “Assigned Agreement” and collectively, the “Assigned Agreements”). Capitalized terms used and

not otherwise defined in this Consent shall have the meanings set forth in the in the applicable Assigned Agreement.

D. Pursuant to that certain Security Agreement, dated as of the date hereof, by and between the Project Company and the Collateral Agent (as the same may be amended, amended and restated, supplemented, replaced or otherwise modified from time to time, the “Security Agreement”), the Project Company has agreed, among other things, to assign all of the Project Company’s right, title and interest in, to and under the Assigned Agreements to Collateral Agent for the benefit of the Collateral Agent and the other Secured Parties (collectively, the “Assignment”) as collateral security for the Project Company’s obligations under the Financing Agreement, Loan Agreement and the other related financing documents (the “Financing Documents”).

E. It is a condition precedent to the obligations of the Lenders and the other Secured Parties under the Financing Documents that the Project Company shall have entered into this Consent with Contracting Party and Collateral Agent.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

SECTION 1. CONSENT TO ASSIGNMENT.

Contracting Party acknowledges and consents to the Assignment and, notwithstanding anything to the contrary in the Assigned Agreement, agrees as follows:

(a) Notices. Contracting Party shall deliver duplicates or copies of all notices of the occurrence or non-occurrence of any event or condition that would immediately or with the passage of any applicable grace period or the giving of notice, or both, give rise to an Event of Default (as defined in the PPA) under the PPA or a Default (as defined in the System Use Agreement) under the System Use Agreement (such default, breach, event or condition, a “Default”) delivered by Contracting Party under or pursuant to an Assigned Agreement to Collateral Agent, simultaneously with delivery thereof to the Project Company under such Assigned Agreement.

(b) Required Consents. Contracting Party shall not, without the prior written consent of Collateral Agent, (i) cancel or terminate an Assigned Agreement to which Contracting Party is a party (collectively, the “Applicable Agreements” and each, an “Applicable Agreement”), except as provided in the Applicable Agreement and in accordance with Section 1(c) hereof, or consent to any cancellation or termination of the Applicable Agreement by the Project Company except as provided in the Applicable Agreement and in accordance with Section 1(c) hereof, (ii) assign or otherwise transfer (by operation of law or otherwise) of any part of its interest in the Applicable Agreement,

except as provided in the Applicable Agreement, (iii) except as permitted by the Financing Documents, amend, novate or modify the Applicable Agreement in any material respect (provided, that, unless Contracting Party has received notice from Collateral Agent that an Event of Default has occurred and is continuing, Contracting Party is entitled to rely on a certification in writing delivered to it (with a copy to the Collateral Agent) by Project Company as to whether any such amendment, novation or modification of the Applicable Agreement is permitted by the terms of the Financing Documents), or (iv) consent to any assignment or other transfer by the Project Company of its rights under the Applicable Agreement (other than the Assignment).

(c) Defaults under the Assigned Agreements. Contracting Party will not cancel or terminate its performance under the Applicable Agreement as a result of any Default of the Project Company thereunder without prior written notice to Collateral Agent and first providing to Collateral Agent (i) if such Default is the failure to pay amounts to Contracting Party which are due and payable by the Project Company under the Applicable Agreement, forty-five (45) days from the date notice of Default or breach is delivered to Collateral Agent to cure such Default or (ii) if such Default cannot be cured by the payment of money to Contracting Party, a reasonable opportunity (which shall be deemed to be the cure period provided in the Applicable Agreement plus sixty (60) days) to cure such Default so long as the Project Company or Collateral Agent continues to perform any monetary obligations under the Applicable Agreement, and all other material obligations under the Applicable Agreement are performed by the Project Company or Collateral Agent. If such Default cannot be cured by the payment of money to Contracting Party and possession of the Project is necessary to cure such Default, and Collateral Agent declares an Event of Default under any Financing Document and promptly commences foreclosure proceedings and diligently pursues the same to completion, Collateral Agent shall have a reasonable period, not to exceed one hundred eighty (180) days, to complete such proceedings prior to commencing such cure, provided that Project Company or Collateral Agent continues to perform any monetary obligations under the Applicable Agreement, and all other material obligations under the Applicable Agreement are performed by the Project Company or Collateral Agent (other than obligations Collateral Agent cannot cure without taking possession of the Project Company). If such Default cannot be cured by the payment of money to Contracting Party and Collateral Agent is prohibited by any process, stay, injunction or court order issued by any governmental authority or any bankruptcy or insolvency proceedings from curing such Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition, not to exceed one hundred eighty (180) days, provided that Project Company or Collateral Agent continues to perform any monetary obligations under the Applicable Agreement, and all other material obligations under the Applicable Agreement are performed by the Project Company or Collateral Agent. For the avoidance of doubt, nothing herein shall be deemed to preclude Contracting Party from or delay Contracting Party's right to terminate the PPA under Section 3.4 (Early Termination) of the PPA.

(d) Events of Default under the Financing Documents. Upon written notice by Collateral Agent to Contracting Party that an Event of Default under and as defined in either the Financing Agreement or Loan Agreement (an “Event of Default”) has occurred and is continuing, Collateral Agent shall be entitled, but not obligated, to exercise its rights and remedies under the Financing Documents and to make all demands, give all notices, take all actions and to exercise all or any portion of the rights of the Project Company under and pursuant to the terms of the Assigned Agreements. Contracting Party agrees to accept such exercise and cure by Collateral Agent and to render to the Collateral Agent all performance (or, if the Collateral Agent or its designee(s) or assignee(s) has exercised only a portion of its rights, then all performance related to such portion) due by Contracting Party to the Project Company under the Applicable Agreement and this Consent.

(e) Subsequent Owner. If Collateral Agent notifies Contracting Party that Collateral Agent has elected to exercise its rights and remedies pursuant to the Financing Documents with respect to the foreclosure (whether judicial or nonjudicial) or sale of the Applicable Agreement or any direct or indirect equity interests in the Project Company, then Contracting Party (i) hereby consents to the transfer of the Project Company’s interest under the Applicable Agreement, or such direct or indirect equity interests in the Project Company, to Collateral Agent, the other Secured Parties or their designee(s) or assignee(s) or a purchaser or grantee (in each case, a “Subsequent Owner”), (ii) shall recognize the Subsequent Owner as the applicable party under the Applicable Agreement, provided such Subsequent Owner, in the case of any such foreclosure, sale or conveyance of the Project Company’s interest under the Applicable Agreement, assumes the Applicable Agreement in writing, in form and substance reasonably satisfactory to Contracting Party, (iii) shall continue to perform its obligations under the Applicable Agreement in favor of Collateral Agent, the other Secured Parties or the Subsequent Owner, as applicable and (iv) agrees that any foreclosure by or sale of any direct or indirect equity interests of the Project Company pursuant to the Financing Documents shall not constitute a change of control or default under the Applicable Agreement.

(f) Bankruptcy. Without limiting the generality of the foregoing provisions, Contracting Party agrees that it will not terminate the Applicable Agreement solely by reason of the commencement or pendency of bankruptcy, insolvency, reorganization, or similar proceedings in respect of the Project Company. In the event that an Assigned Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if an Assigned Agreement is terminated for any reason other than a Default which could have been but was not cured by Collateral Agent as provided in Section 1(c), and if, within thirty (30) days after such rejection or termination, the Secured Parties or their successors, assigns or designees shall so request, Contracting Party will execute and deliver to the Collateral Agent and the other Secured Parties (or their designee(s) or assignee(s)) a new contract, which contract shall be on the same terms and conditions as the original Applicable Agreement for the remaining term of the original Applicable Agreement before giving effect to such termination. References in this Consent

to the “Applicable Agreement” or “Assigned Agreement” shall be deemed to also refer to any new Applicable Agreement or new Assigned Agreement in replacement thereof pursuant to this Section 1(f).

(g) Liability of Collateral Agent and Secured Parties. In the event Collateral Agent, the other Secured Parties or their designee(s) or assignee(s) elects to perform the obligations of the Project Company under an Assigned Agreement, solely through the exercise of its rights to the equity interests in the Project Company and not in its individual capacity (and not as counterparty to an Assigned Agreement), Collateral Agent, the other Secured Parties or their designee(s) and assignee(s), as applicable, shall not have any personal liability to Contracting Party for the performance of such obligations, and the sole recourse of Contracting Party in seeking the enforcement of such obligations shall be to the Project Company as counterparty to the Assigned Agreement, provided that any performance taken by the Collateral Agent, the other Secured Parties or their designee(s) and assignee(s), as applicable, in their individual capacity shall entitle the Contracting Party to recourse against such person solely to the extent of actions actually performed. In the event Collateral Agent, the other Secured Parties or their designee(s) or assignee(s) succeed to the Project Company’s interest under an Assigned Agreement, Collateral Agent, the other Secured Parties or their designee(s) or assignee(s), as applicable, shall cure any defaults for failure to pay amounts owed under such Assigned Agreement and all other defaults under such Assigned Agreement, except that Collateral Agent, the other Secured Parties or their designee(s) or assignee(s), as applicable, shall not be required to perform or be subject to any defenses or offsets by reason of any default personal to the Project Company under such Assigned Agreement for which Collateral Agent, the other Secured Parties or their designee(s) or assignee(s), as applicable, are unable to cure due to the personal nature of such default. Collateral Agent, the other Secured Parties and their designee(s) or assignee(s) shall have the right to assign all or a portion of its interest in each Assigned Agreement or the new contract entered into pursuant to Section 1(f) and, if applicable, the credit support, performance security or other collateral posted in connection with either of the foregoing, to a person or entity to whom the Project Company’s interest in the Project is transferred, provided such transferee assumes the obligations of the Project Company (or Collateral Agent or the other Secured Parties or their designee(s) or assignee(s)) under such Assigned Agreement. Upon such assignment, Collateral Agent and the other Secured Parties and their designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder, to the extent of the interest assigned. This Section 1(g) shall survive the termination of this Consent.

(h) Warranties. Without limiting anything herein, any warranties provided by Contracting Party in the applicable Assigned Agreement shall continue in full force and effect (until the expiration of the applicable warranty periods set forth in the applicable Assigned Agreement) in the event that Collateral Agent, the other Secured Parties or their designee(s) or assignee(s) succeed to all or any portion of the Project Company’s right, title and interest in the applicable Assigned Agreement (including, for

the avoidance of doubt, through execution of a new contract in accordance with Section 1(f) hereof).

(i) Continuing Performance. Except as otherwise provided in this Consent, Contracting Party (i) shall look only to the Project Company for the performance of the Project Company's obligations under the Applicable Agreement and (ii) shall be and remain obligated to the Project Company to perform all of Contracting Party's obligations and agreements as set forth in the Applicable Agreement. Except as otherwise provided in this Consent, any cure or attempt to cure by Collateral Agent or its designee(s) or assignee(s) shall not be construed as an assumption by Collateral Agent or its designee(s) or assignee(s), the other Secured Parties, or any of their respective designee(s) or assignee(s) of any covenants, agreements or obligations of the Project Company under or in respect of either Assigned Agreement.

SECTION 2. ARRANGEMENTS REGARDING PAYMENTS.

(a) Commencing on the date of this Consent until the later of the (i) [TEBL Maturity Date] (as defined in the Financing Agreement) and the (ii) [Term Conversion Date] (as defined in the Loan Agreement), such date to be notified in writing by the Project Company and the Collateral Agent to Contracting Party promptly upon the occurrence thereof, (the "Maturity Date"), all payments to be made by Contracting Party to the Project Company under the Applicable Agreement or for any other purpose shall be made in lawful money of the United States directly to the following account:¹

Bank Name: [____]
Bank Address: [____]
Swift: [____]
ABA: [____]
Account Number: [____]
Account Name: [____]

or, if the Collateral Agent has given written notice to Contracting Party that an Event of Default has occurred and is continuing, to such other person or entity and/or at such other address as the Collateral Agent may from time to time specify in writing to Contracting Party.

(b) All payments to be made by Contracting Party to the Project Company under the Applicable Agreement from and after the Maturity Date shall be made in lawful money of the United States to the account of the Project Company as directed by the Project Company in writing.

(c) All payments by Contracting Party shall be accompanied by a notice from Contracting Party stating that such payments are made under the Applicable

¹ NTD: Details of Construction Account to be included.

Agreement and identifying the relevant provisions thereof under which such payment was made.

SECTION 3. REPRESENTATIONS AND WARRANTIES.

Contracting Party hereby represents and warrants as to or with respect to itself or the Applicable Agreement, as of the date hereof, that:

(a) Existence; Qualification; and Power. Contracting Party (i) is a quasi-municipal general improvement district duly organized and validly existing under the laws of the State of Nevada (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Applicable Agreement and this Consent, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Applicable Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by Contracting Party of this Consent and the Applicable Agreement have been duly authorized by all necessary corporate or other action on the part of Contracting Party.

(c) Approvals. (i) Contracting Party has obtained all permits, licenses, approvals, consents, exemptions and governmental approvals ("Approvals") with respect to or necessary for the execution, delivery and performance of its obligations under this Consent and the Applicable Agreement, except to the extent not yet required; (ii) Contracting Party is in compliance with all of the terms and conditions of such Approvals and all such Approvals remain in full force and effect; and (iii) Contracting Party has no reason to believe that any such Approval that is not yet required will not be obtainable when required without delay.

(d) Execution and Delivery; Enforceability. This Consent and the Applicable Agreement are in full force and effect, have been duly executed and delivered on behalf of Contracting Party by the applicable officers of Contracting Party, and constitute the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law). The Applicable Agreement has not been amended, supplemented or modified (whether by change order or by oral or written waiver, consent or otherwise).

(e) No Conflict. The execution, delivery and performance by Contracting Party of this Consent and the Applicable Agreement, and the consummation of the transactions contemplated hereby and thereby, did not and will not result in any violation of, breach of or default or the creation or imposition of (or the obligation to create or impose) any lien, security interest, charge or encumbrance upon any of the properties or

assets of Contracting Party under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it.

(f) Litigation. There is no litigation, action, suit, proceeding or investigation pending or (to Contracting Party's knowledge) threatened against Contracting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could reasonably be expected to adversely affect the performance by Contracting Party of its obligations hereunder or under the Applicable Agreement, or which could reasonably be expected to modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could reasonably be expected to have an adverse effect on the condition (financial or otherwise), business or operations of Contracting Party or (iii) questions the validity, binding effect or enforceability hereof or of the Applicable Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

(g) Assigned Agreements. (i) To Contracting Party's actual knowledge, neither Contracting Party nor the Project Company, is in default of any of its respective obligations under the Applicable Agreement, (ii) each of Contracting Party and, to Contracting Party's knowledge, the Project Company, has complied with all conditions precedent to the respective obligations of such party under the Applicable Agreement, (iii) to Contracting Party's actual knowledge, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable Contracting Party or the Project Company to terminate or suspend any of its obligations under the Applicable Agreement, (iv) to Contracting Party's actual knowledge, no Force Majeure (as such term is defined in the Applicable Agreement) exists, (v) Contracting Party has not made any indemnity, liquidated damages or warranty payments to the Project Company under the Applicable Agreement and (vi) to Contracting Party's actual knowledge, there are no material legal disputes between Contracting Party or its affiliates and the Project Company or its affiliates.

(h) Other Agreements. The Applicable Agreement and this Consent are the only agreements between the Project Company and Contracting Party with respect to the Project.

(i) Other Assignments. (i) Contracting Party has not assigned, transferred or hypothecated the Applicable Agreement or this Consent or any interest herein or therein and (ii) Contracting Party has no notice of any assignment relative to the right, title and interest of the Project Company in, to and under the Applicable Agreement other than the Assignment.

SECTION 4. ACKNOWLEDGEMENTS.

(a) Notwithstanding anything to the contrary set forth in the Assigned Agreements, the Contracting Party and the Project Company hereby acknowledge and agree as follows:

(1) A “Change of Control” under the PPA shall not include any transaction or series of related transactions in which an equity interest in or asset of Project Company or any parent of Project Company is issued or transferred to another person for the purpose of a tax equity financing; provided that Project Company’s affiliates maintain managerial control over the Project Company.

SECTION 5. MISCELLANEOUS.

(a) Notices. All notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or email as follows (or, in each case, to such other address as a party may notify to the other parties by not less than five (5) business days’ prior written notice):

If to Contracting Party:

Overton Power District # 5
PO BOX 395
615 N. Moapa Valley Blvd.
Overton, NV 89040
Attention: General Manager and Engineering Services Manager
Telephone No.: (702) 397-3025
Email: gm@opd5.com

If to the Project Company:

Escape Solar LLC
c/o Estuary Power LLC
Attn: Jill Daniel
50 West Liberty Street, Suite 430
Reno, NV 8901
Attention: Chief Executive Officer
Telephone No.: (415) 254-3419
Email: Jill.Daniel@estuarypower.com

If to Collateral Agent:

First Citizens Bank & Trust Company
75 N. Fair Oaks Avenue
(CLAS PAS-04-02)
Pasadena, CA 91103

Attention: Melinda Wooden
Commercial Loan and Agency Services
Email:Melinda.wooden@firstcitizens.com

With a copy to:
11 West 42nd Street, 11th Floor
New York, NY 10036
Attention: Stephanie Franco, Joshua Musicant
Telephone: 973-214-3863 and (310) 592-4920
Email:Stephanie.franco@firstcitizens.com;
Joshua.Musicant@firstcitizens.com,
PEIPortfolioManagement@firstcitizens.com

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient); and notices and other communications sent to an e-mail address shall be deemed received upon the earlier of (i) the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) two (2) business days after the date on which it was transmitted; provided that, if such email is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(b) Assignments and Beneficiaries. The provisions of this Consent shall be binding upon and inure to the benefit of Contracting Party, the Project Company, and the Collateral Agent for the further benefit of the Secured Parties and their respective successors and assigns permitted hereby, provided, that Contracting Party may not assign or otherwise transfer any of its rights or obligations hereunder, except to a permitted assignee or transferee under the Applicable Agreement without the prior written consent of the Collateral Agent and Contracting Party shall cause any successor-in-interest to Contracting Party with respect to its interest in the Applicable Agreement to assume, in writing in form and substance reasonably satisfactory to Collateral Agent and the other Secured Parties, the obligations of Contracting Party hereunder (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Consent, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby) any legal or equitable right, remedy or claim under or by reason of this Consent. Any entity into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any entity resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any entity to which all or substantially all of the corporate trust business of the Collateral Agent may be sold or otherwise transferred, shall be the successor collateral

agent hereunder without any further act. This Consent may be assigned by the Collateral Agent to any persons succeeding to the role of "Collateral Agent" under the Financing Documents, without further consent by any party hereto.

(c) Refinancing, Replacement or Supplement. Contracting Party acknowledges that all or any portion of the obligations or indebtedness under the Financing Agreement or Loan Agreement may be refinanced, renewed, replaced or supplemented and agrees that (i) this Consent shall apply to the Applicable Agreement in connection with any such refinancing, replacement or supplement, (ii) this Consent will remain in full force and effect and continue to apply in favor of the Collateral Agent or any replacement collateral agent and secured parties under such refinancing, renewal, replacement or other arrangements, including, as applicable, any additional or replacement credit or security documents entered into in connection therewith and (iii) the terms "Collateral Agent", "FA Lenders", "Loan Agreement", "Financing Agreement", "Lenders", "Financing Documents", and "Security Agreement", as used hereunder shall in each case be deemed to refer to such parties or agreements, as may be the case, under or in connection with the applicable refinancing, renewal, replacement or other arrangements; provided that the Collateral Assignor shall deliver notice to Contracting Party of the identity of such new parties and new payment instructions within fifteen days of such refinancing. If requested by the Project Company, Contracting Party shall enter into a new consent on substantially similar terms as this Consent in connection with such refinancing, replacement or supplement.

(d) Termination. The parties hereto hereby agree that, subject to any refinancing or replacement contemplated by clause (c), the rights and obligations of each of Collateral Agent, Contracting Party and the Project Company under this Consent shall automatically, without any further action of any person, be terminated immediately on the Term Conversion Date under (and as defined in) the Financing Agreement and the Loan Agreement.

(e) No Waiver; Remedies Cumulative; Enforcement. No failure or delay by the Contracting Party or the Collateral Agent or any other Secured Party in exercising any right, remedy, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, remedy, power or privilege, or any abandonment or discontinuance of steps to enforce such a right remedy, power or privilege, preclude any other or further exercise thereof or the exercise of any other right remedy, power or privilege. The rights, remedies, powers and privileges of the Collateral Agent and the other Secured Parties hereunder are cumulative and are not exclusive of any rights, remedies, powers or privileges that any such person would otherwise have.

(f) Amendment. Except as otherwise expressly set forth in this Consent, no termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by the parties hereto.

(g) Severability. If any provision of this Consent or the other Financing Documents is held to be illegal, invalid or unenforceable in any jurisdiction, (i) the legality, validity and enforceability of the remaining provisions of this Consent and the other Financing Documents shall not be affected or impaired thereby, (ii) the legality, validity and enforceability of such provisions shall not invalidate or render unenforceable in any other jurisdiction and (iii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.

(h) Integration; Conflict. This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings between the parties hereto in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument (including, without limitation, either Assigned Agreement), the terms, conditions and provisions of this Consent shall prevail.

(i) Counterparts; Effectiveness; Electronic Signature. This Consent may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Consent shall become effective when it shall have been executed by each party hereto. The words “execution,” “signed,” “signature,” and words of like import in this Consent shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

(j) Collateral Agent and Contracting Party. In the performance of its obligations hereunder, as between Collateral Agent on the one hand and the Project Company and Borrower on the other hand, shall be entitled to all of the rights, privileges, powers, benefits, protections, indemnities and immunities afforded to it pursuant to the Financing Documents (including, for the avoidance of doubt, those rights, privileges, powers, benefits, protections, indemnities and immunities provided under the Financing Documents on behalf of the Secured Parties thereunder). In the performance of its obligations hereunder, Contracting Party shall be entitled to all of the rights, privileges, powers, benefits, protections, indemnities and immunities afforded to it pursuant to this Consent and the PPA.

(k) Headings. Headings used herein are for convenience of reference only, are not part of this Consent and shall not affect the construction of, or be taken into consideration in interpreting, this Consent.

(l) Governing Law. This Consent and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Consent and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(m) Jurisdiction. Each party hereto hereby submits to the nonexclusive jurisdiction of the United States District Court sitting in Las Vegas, Nevada, for the purposes of all legal proceedings relating to the execution, validity or enforcement of this Consent. Each party hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(n) Waiver of Venue. Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Consent in any such court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(o) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 5(a). Nothing in this Consent will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

(p) WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS CONSENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5(P).

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IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

CONTRACTING PARTY:

Overton Power District No. 5,
a Nevada Quasi-Municipal General Improvement
District

By: _____

Name:

Title:

DRAFT

PROJECT COMPANY:

Escape Solar LLC,
a Delaware limited liability company

By: _____
Name:
Title:

DRAFT

COLLATERAL AGENT:

First Citizens Bank & Trust Company,
as Collateral Agent

By: _____

Name:

Title:

DRAFT



**Overton Power District #5
BOARD OF TRUSTEE'S
NOVEMBER 20, 2024
ACTION ITEM – K**

SUBJECT: Review and Possible Approval of a Non-Disclosure Agreement with Monarch Power Inc.
PETITIONER: Staff
RECOMMENDATIONS: Approval

FISCAL IMPACT:

\$0

BACKGROUND:

Monarch Power Inc. (MPI) is seeking to locate a Hydrogen facility in OPD5's service territory. They have requested a non-disclosure agreement to facilitate an information exchange.

The non-disclosure agreement (NDA) allows staff to negotiate with Monarch on details relating to future projects and client information. These negotiations are designed to establish pricing, develop contractual details, and to agree on terms that may be brought to the board for possible approval and action in the future. Staff cannot enter into an agreement without board approval.

PROPOSED MOTION:

To approve a Non-Disclosure Agreement with Monarch Power Inc as presented and authorize the General Manager/CEO to execute the Agreement.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “*Agreement*”) is made and entered into on October __, 2024 (“*Effective Date*”), by and between Overton Power District No. 5 (“OPD5”) and Monarch Power Inc. (“Monarch”), referred to herein each individually as a “*Party*”, and collectively as the “*Parties*”.

WHEREAS, Parties are contemplating entering into discussions to explore potential opportunities to site power generation and new industrial load in OPD5’s service area. (the “*Potential Transaction*”);

WHEREAS, Disclosing Party is willing to provide certain confidential and proprietary information to Recipient to assist Recipient in its independent consideration and evaluation of the Potential Transaction, subject to the terms and conditions of this Agreement; and

WHEREAS, as a condition to Disclosing Party furnishing the Confidential Information to Recipient, Disclosing Party requires that the Confidential Information be treated confidentially.

NOW, THEREFORE, in consideration of the premises hereof and the promises set forth below, the Parties hereby agree as follows:

1. Definitions.

a. “*Affiliate*” and/or “*Affiliates*” means any Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. “*Control*”, as used in this definition, means the ability to direct the management or policies of a Person through ownership of voting securities or other securities, pursuant to a written contract, or otherwise.

b. “*Confidential Information*” means all confidential and/or proprietary written, oral, recorded or electronic information, whether tangible or intangible and in whatever form or

medium, including documents, records and data (including, but not limited to, any business, operational, administrative, economic, commercial, technical, marketing, financial or other information; business plans; customers; suppliers; pricing; contractual relationships; methods; techniques; historical data; computer programs; ideas; marketing; intellectual property; know-how; trade secrets; budgets; research; development; engineering or technical data; photographs; plans; and drawings), whether or not such confidentiality or proprietary status is indicated orally or whether or not the specific words “confidential” or “propriety” are used, that Disclosing Party and/or its Representatives furnish or otherwise disclose to Recipient and/or any of its Representatives (whether or not such information is owned by the Disclosing Party or regarding the Disclosing Party), together with all analyses, compilations, studies, memoranda, notes or other documents, records or data (in whatever form maintained, whether documentary, computer or other electronic storage or otherwise) prepared by Recipient and/or any of its Representatives which contain or otherwise reflect or are generated from such confidential and/or proprietary information, documents, records and data. The term “Confidential Information” does not include any information that (a) at the time of disclosure or thereafter is generally available to and known by the public; (b) is or was made available to Recipient or its Representatives on a non-confidential basis from a source other than the Disclosing Party who is not known by the Recipient to be prohibited from transmitting the information to Recipient by a contractual, legal or fiduciary obligation; (c) already known to the Recipient or its Representatives as shown by proper documentation, (d) is or was independently developed by Recipient or its Representatives without the use of the Confidential Information, or (e) is otherwise approved for disclosure by authorization of the Disclosing Party.

c. “**Person**” shall be interpreted broadly to include, without limitation, any corporation, limited liability company or other legal entity, trust, group, partnership, governmental authority or individual.

d. “**Disclosing Party**” shall mean any person or Representative delivering, providing, or making available, Confidential Information to another. “Recipient” or “Receiving Party” shall mean any Person or Representative that receives Confidential Information.

e. “**Representatives**” shall mean as to any Person, its directors, officers, managers, members, employees, agents, consultants, attorneys, accountants, potential financing

sources, advisors and Affiliates, and their respective directors, officers, managers, members, employees, agents, consultants, attorneys, accountants and advisors.

2. Non-Use, Protection and Dissemination of Confidential Information. Recipient agrees not to use the Confidential Information for any purpose other than evaluating the Potential Transaction. Except to the extent required by law, regulation or stock exchange rule or as otherwise provided herein, Recipient shall not, without the prior consent of Disclosing Party, disclose the Confidential Information to any third party and shall protect the confidentiality of such Confidential Information using the same standard of care that it accords its own proprietary and confidential information, but in no event less than a commercially reasonable standard of care; *provided, however*, that Recipient may furnish Confidential Information to those Representatives who are actively participating in the evaluation of the Potential Transaction or otherwise need to have access to such Confidential Information for purposes of participating in the Potential Transaction.

In addition, Recipient agrees that, without the prior consent of Disclosing Party, Recipient and its Representatives will not disclose to any other Person (i) the fact that the Parties are evaluating and considering the Potential Transaction; (ii) that the Confidential Information has been made available to Recipient; or (iii) that discussions or negotiations are taking place concerning the Potential Transaction or any of the terms, conditions or other facts with respect thereto (including the status thereof), except in accordance with the procedures set forth in the immediately succeeding paragraph.

3. Required Disclosure of Information. If Recipient or any of its Representatives to whom Recipient has transmitted Confidential Information shall be requested or required to disclose the same by law, order, decree, regulation or rule (including without limitation, those of any regulatory agency, securities commission or stock exchange) or if any Person seeks to legally compel (by interrogatories, document requests, subpoena or otherwise) Recipient or any of its Representatives to whom Recipient has transmitted Confidential Information to disclose any Confidential Information, Recipient shall provide Disclosing Party with notice (if legally permissible) so Disclosing Party may in its sole discretion: (a) seek a protective order or other remedy, or (b) waive compliance with this Agreement. Recipient and its Representatives shall reasonably cooperate with Disclosing Party (at the sole cost and expense of the Disclosing Party) with respect to the timing, manner and content of any such disclosure and any action Disclosing Party may wish to take to prevent or limit such disclosure. The Disclosing Party shall promptly reimburse Recipient for its reasonable out-of-pocket expenses incurred to so assist the Disclosing Party in preventing or limiting any such disclosure, and if prompt reimbursement is not made, Recipient may refuse

to provide assistance until incurred expenses are reimbursed and reasonable provision is made for reasonably anticipated expenses to provide such assistance. If, in the absence of the protective order or other remedy or the receipt of a waiver by the Disclosing Party with respect to such specific disclosure, Recipient or any of its Representatives are nonetheless, in the opinion of legal counsel, legally compelled to disclose Confidential Information to any tribunal, Recipient or any of its Representatives may, without liability hereunder, disclose to such tribunal only that portion of the Confidential Information which such counsel advises Recipient it is legally required to disclose.

4. Remedies. Recipient acknowledges that its breach of this Agreement could irreparably harm Disclosing Party and that money damages may not be a sufficient remedy for its breach. In addition to all other remedies, Disclosing Party shall be entitled to seek injunctive or other equitable relief as a remedy for any such breach. However, in no case shall either Party be liable for any consequential, indirect, incidental, punitive, exemplary, special or similar damages, including but not limited to, any for loss of profit, loss of business opportunity or other business interruption damages. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final, non-appealable order in favor of a Party, the non-prevailing Party shall be liable and shall pay to the prevailing Party, as part of such judgment all costs and expenses, including reasonable attorney's fees, incurred by the prevailing Party in connection with such litigation.

5. Relationship and No Obligation. It is not the intention of the Parties and nothing contained in this Agreement shall be deemed or construed to create the relationship of partnership, association, principal and agent or joint venture between the Parties. This Agreement and the disclosure of the Confidential Information hereunder shall create no obligation on the part of Disclosing Party to enter into any further agreement with Recipient. Unless and until a definitive agreement has been fully executed and delivered, no contract or agreement providing for a transaction or arrangement between the Parties shall be deemed to exist and neither Party will be under any legal obligation of any kind whatsoever with respect to such transaction or arrangement by virtue of this Agreement or any written or oral expression thereof, except, in the case of this Agreement, for the matters specially agreed to herein. For purposes of this Agreement, the term "definitive agreement" means a definitive written agreement executed by the Parties or their respective Affiliates and/or Representatives with respect to the Potential Transaction, but does not include an executed letter of intent, negotiations between the Parties, exchanges of drafts or documents relating to a Potential Transaction or any other preliminary written agreement or offer, unless specifically so designated in writing and executed by both Parties.

6. Return of Information. Upon written request of the Disclosing Party, the Recipient and its Representatives shall promptly return, permanently delete, or destroy all Confidential Information and all documents and other materials which constitute, contain, or are derived from such Confidential Information. Notwithstanding the foregoing, it is agreed that Recipient and its Representatives will be entitled to retain Confidential Information to the extent it is (1) incorporated into internal analyses, assessment memoranda or similar documents, (2) existing in electronic data back-ups or archives, or (3) required to be retained under applicable law or regulation or pursuant to such party's record compliance, evidentiary or retention policies.

7. Entire Agreement and Amendments. This Agreement comprises the full and complete agreement of the Parties with respect to disclosure of Confidential Information and replaces and supersedes all prior communications, understandings and agreements between the Parties, whether written or oral, express or implied relating to the Confidential Information and the subject matter of this Agreement. Any purported future modification or amendment hereto shall be binding on the Parties only if same is in writing, is executed by an authorized representative of the Parties and expressly refers to this Agreement.

8. Choice of Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND INTERPRETED UNDER THE LAWS OF THE STATE OF TEXAS (EXCLUDING ANY CHOICE OF LAW PROVISION WHICH WOULD REFER TO THE LAWS OF ANOTHER STATE). THE PARTIES HEREBY EXCLUSIVELY SUBMIT TO THE JURISDICTION OF, AND HEREBY AGREE THAT VENUE IS PROPER WITHIN HARRIS COUNTY, TEXAS IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED IN ANY WAY TO THIS AGREEMENT.

9. Electronic Mail Transmission. The electronic mail transmission of any signed original document, and transmission or retransmission of any signed electronic mail transmission, shall be the same as delivery of an original. At the request of either Party, the Parties hereto will confirm electronic mail transmitted signatures by signing an original document for delivery between them.

10. Counterpart Execution. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

11. Term. The duties and obligations of each Party under this Agreement are deemed to have commenced as of the Effective Date and unless otherwise agreed to in writing by the Parties, shall remain in effect until the earlier of the following dates: (a) two (2) years from the Effective Date; or (b) the date the contemplated Potential Transaction is completed between Disclosing Party and/or its Affiliates or Representatives, as applicable, and Recipient and/or its Affiliates and Representatives, as applicable, if the Parties are successful in negotiating the executing the same.

12. Successors and Assigns. This Agreement shall be binding upon the Parties, their respective successors and assigns and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

13. Assignment. No Party may assign this Agreement or its rights and obligations without the prior written consent of the other Party, which consent shall not be unreasonably withheld or conditioned. Any assignment not permitted by this Section 13 is ineffective as to the assignment of rights and obligations under this Agreement.

14. Severability. If any portion of this Agreement is determined to be invalid or unenforceable for any reason, in whole or in part, the remaining provisions of this Agreement shall be unaffected thereby and remain in full force and effect to the fullest extent permitted by law.

15. Waiver. No waiver by any Party shall be effective unless in writing and any such waiver shall only affect the matter, and the occurrence thereof, specifically identified therein and shall not extend to any other matter or occurrence.

16. Independent Counsel. Each Party acknowledges that it is, or has had the opportunity to be, represented by independent counsel of its choice in the negotiation of this Agreement and that it has signed this Agreement with the advice of counsel or on its informed decision not to use any counsel. Each Party, and if applicable, its counsel, has cooperated in the drafting and preparation of this Agreement, and any drafts of this Agreement exchanged between the Parties are deemed the work product of the Parties collectively and may not be construed against any Party by reason of its preparation. Accordingly, any rule of interpretation that would require interpretation of any ambiguities in this Agreement against any Party that drafted it is not applicable and is expressly waived.

17. Third-Party Confidential Information. If (i) Disclosing Party or a Representative is bound by a confidentiality/non-use agreement with a Third Party (a “***Third-Party Confidentiality Agreement***”), and (ii) Disclosing Party informs Receiving Party of such obligations and provides Receiving Party with a copy of such Third-Party Confidentiality Agreement, then either (A) Receiving Party will inform Disclosing Party that Receiving Party does not wish to receive any confidential information of such third party (“***Third-Party Confidential Information***”), or (B) Receiving Party will be deemed, by virtue of having received Third-Party Confidential Information, to have agreed to comply, and to cause its Representatives who receive any such Third-Party Confidential Information to comply, with the terms of such Third-Party Confidentiality Agreement.

18. Acknowledgment. Notwithstanding anything in this Agreement to the contrary, Disclosing Party acknowledges and agrees that the Recipient’s Representatives, are not subject, directly or indirectly, to the provisions of this Agreement, except and solely to the extent they actually receive Confidential Information from Recipient or Disclosing Party.

[*Signature Page Follows*]

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

MONARCH POWER INC.

By: _____

Name: Ben Alingh

Title: President

Overton Power District No. 5

By: _____

Name: Randall Ozaki

Title: Engineering Services Manager



**Overton Power District #5
BOARD OF TRUSTEE'S
NOVEMBER 20, 2024
ACTION ITEM – L**

SUBJECT: Review and Possible Approval of a Letter of Agreement with Tenaska Power Services
PETITIONER: Staff
RECOMMENDATIONS: Approval

FISCAL IMPACT:

\$0

BACKGROUND:

Tenaska Power Services (TPS) is a national power marketing firm with experience in Nevada. TPS manages and operates a generation fleet and offers power trading, scheduling, and settlement services. TPS was awarded the bid to become OPD5's power supplier and scheduling entity commencing on January 1, 2025.

Tenaska has approached OPD5 with the opportunity to identify and introduce one or more potential new load customers to our service territory, including but not limited to data center customers and other commercial and industrial customers, who desire to enter into contracts with OPD5.

In return for TPS identifying and introducing Customers OPD5 would grant exclusive right to supply energy, capacity and/or renewable energy credits to OPD5 for those Customers introduced for a period of 5 years.

PROPOSED MOTION:

To approve a Letter of Agreement with Tenaska Power Services as presented and authorize the General Manager/CEO to execute the Agreement.

DRAFT

TENASKA® POWER SERVICES Co.

300 E. John Carpenter Freeway
Suite 1100
Irving, Texas 75062

November __, 2024

Attention: Mendis Cooper, General Manager
Overton Power District No. 5
615 N. Moapa Valley Blvd.
PO Box 395
Overton, NV 89040
coop@opd5.com

RE: Letter Agreement Creating Exclusive Rights and Obligations

To Mendis Cooper:

This letter agreement (“**Letter Agreement**”) is entered into as of November __, 2024 (the “**Effective Date**”) by and between Tenaska Power Services Co. (“**TPS**”) and Overton Power District No. 5 (“**OPD**”). Each of TPS and OPD may be referred to individually as “**Party**” and collectively as the “**Parties**” in this Letter Agreement.

The Parties have entered into that certain Scheduling Services Agreement dated as of April 18, 2024 (the “**SSA**”) and that certain Transaction Confirmation dated as of April 18, 2024 (the “**Transaction Confirmation**”, and with the SSA, the “**Agreements**”). Under the SSA, TPS provides Scheduling Services for OPD related to the Transaction Confirmation. TPS and OPD are entering into this Letter Agreement to create exclusive rights and obligations, as described herein and subject to the terms and conditions of this Letter Agreement. Capitalized terms used but not defined in this Letter Agreement shall have the meanings given such terms in the Agreements.

Now, therefore, in consideration of the premises, together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, TPS and OPD agree as follows:

In exchange for the obligations of exclusivity assumed by OPD herein, TPS intends to identify and introduce one or more potential new load customers to OPD, including but not limited to data center customers and other commercial and industrial customers, or other counterparties (individually, a “**Customer**” and collectively, the “**Customers**”), who desire to enter into contracts with OPD, including but not limited to offtake contracts or other purchase, development, or services contracts (the “**Customer Contract(s)**”).

In return for TPS identifying and introducing Customers to OPD, OPD grants TPS the exclusive right to supply energy, capacity and/or renewable energy credits to OPD for a Customer introduced by TPS under the applicable Customer Contract. Such exclusivity includes without limitation that OPD will not during the Term (as defined below), without the written consent of TPS, (i) engage with any

parties other than TPS, or (ii) enter agreements with any parties other than TPS, in either case to supply energy, capacity and/or renewable energy credits for OPD related to a Customer Contract. This exclusive right created by this Letter Agreement shall commence upon introduction of a Customer by TPS to OPD, and shall last until the end of the Term.

Following TPS's introduction of a Customer to OPD, the Parties agree to list in Exhibit A attached hereto (i) the name of the Customer, and (ii) the name and location of such Customer's project, if applicable. It is understood and agreed that the failure or delay to add a Customer to Exhibit A shall not affect any rights or obligations of the Parties created hereunder. The Parties agree that changes to Exhibit A may be agreed upon and made via electronic mail between the Parties.

Upon introduction of a Customer to OPD by TPS, OPD agrees to attempt to negotiate in good faith a Customer Contract with such Customer if OPD considers such Customer Contract to be viable and consistent with OPD's development and commercial objectives. Nothing herein shall be construed as creating an obligation on OPD to agree to any terms, execute, or otherwise enter a Customer Contract with any Customer.

Without the written consent of TPS, OPD shall not by any means, directly or indirectly, interfere with, circumvent or attempt to circumvent, avoid, by-pass, frustrate, or obviate the purpose of this Letter Agreement or TPS's interest, if any, in the provision of energy related to a Customer Contract. OPD agrees not to initiate any transactional relationship that bypasses TPS in favor of any other individual or entity with respect to such provision of energy.

This Letter Agreement shall become effective as of the Effective Date first specified above and shall terminate on the last day of the month in which the fifth anniversary of the Effective Date occurs (the "Initial Term"). Upon expiration of the Initial Term, this Letter Agreement shall then automatically renew and extend for successive one (1) year terms (each a "Renewal Term") unless either Party provides written notice of non-renewal to the other Party no later than ninety (90) Days prior to the expiration of the Initial Term or any Renewal Term (as applicable). The Initial Term and the Renewal Term are collectively the "Term" of this Letter Agreement. Notwithstanding anything in this Letter Agreement to the contrary, if, on the date this Letter Agreement would expire or otherwise terminate, OPD and a Customer are parties to a Customer Contract (including if OPD and a Customer enter into a new Customer Contract upon the expiration of the first such Customer Contract), this Letter Agreement shall continue (and the terms of this Letter Agreement shall survive) until such Customer Contract is terminated and not replaced or extended with a new Customer Contract.

This Letter Agreement constitutes the entire agreement between the Parties with respect to the subject matter described herein and supersedes all prior agreements, understandings and negotiations, both oral and written, between the Parties with respect to such subject matter. Each Party represents and warrants that the execution and delivery of this Letter Agreement have been duly authorized by it and that this Letter Agreement is a valid and legal agreement and enforceable in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law). Each person signing this Letter Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Letter Agreement. No Party may assign this Letter Agreement or any of its rights or obligations hereunder to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed, or conditioned. This Letter Agreement will

be binding upon and will inure to the benefit of the Parties hereto and their respective permitted assigns and permitted successors at law. Nothing in this Letter Agreement is intended to create, or shall be deemed to create, a partnership or joint venture of the Parties. This Letter Agreement may be executed in multiple counterparts, including electronic means, each of which will be deemed to be an original and taken together shall be considered as one document. This Letter Agreement constitutes Confidential Information within the meaning of the SSA. Neither Party shall disclose to a third party either the fact that the Parties have entered into this Letter Agreement or that discussions or negotiations are taking place between the Parties regarding the opportunities related to this Letter Agreement. Neither Party may use the name of the other Party in any news release or advertising nor any publications directed to the general public without prior written approval of the other Party, except to the extent required by an administrative or governmental body or applicable stock exchange.

TO THE FULLEST EXTENT PERMITTED BY LAW, AND NOTWITHSTANDING ANY OTHER PROVISIONS IN THIS LETTER AGREEMENT TO THE CONTRARY, TPS SHALL NOT BE LIABLE TO OPD FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, LOST PROFIT, LOST OPPORTUNITY, BUSINESS INTERRUPTION, OR EXEMPLARY DAMAGES FOR ANY CLAIM OR CAUSE OF ACTION RELATED TO THIS LETTER AGREEMENT, WHETHER ARISING FROM BREACH OF CONTRACT OR WARRANTY OR TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR STATUTE, OR OTHERWISE. If a Party brings any legal action to enforce its rights under this Letter Agreement, the prevailing Party shall be entitled to reimbursement from the other Party of reasonable attorneys' fees and litigation costs and expenses, including witness fees of any kind, in an amount to be determined by the applicable court or by agreement of the Parties. The Parties agree that monetary damages may be an insufficient remedy for any breach of this Letter Agreement, and that an injured Party may suffer irreparable injury from the breach and shall be entitled to seek injunctive relief as an appropriate remedy.

If you are in agreement with the terms of this Letter Agreement, please acknowledge and sign this Letter Agreement where indicated below, and return one executed copy of this Letter Agreement to me for TPS's files.

Very truly yours,

TENASKA POWER SERVICES CO.

By: _____

Name: Kevin R. Smith

Title: President

Acknowledged and Agreed to on November ____,
2024

OVERTON POWER DISTRICT NO. 5

By: _____

Name: Mendis Cooper

Title: General Manager

EXHIBIT A
LIST OF CUSTOMERS

<i>Customer Name</i>	
<i>Project Name and Location (if applicable)</i>	
<i>Customer Name</i>	
<i>Project Name and Location (if applicable)</i>	
<i>Customer Name</i>	
<i>Project Name and Location (if applicable)</i>	



**Overton Power District #5
BOARD OF TRUSTEE'S
NOVEMBER 20, 2024
ACTION ITEM – M**

SUBJECT: Review and Possible Approval of a Rate Increase Effective January 1, 2025
PETITIONER: Staff
RECOMMENDATIONS: Approval

FISCAL IMPACT:
\$7,090,457

BACKGROUND:

In April 2024 the Board of Trustees approved the signing of a new contract with Tenaska Power Services (TPS). That purchase power agreement (PPA) will begin January 1, 2025, for a three (3) year term. TPS will also provide a firm load following power resource, firm transmission service, load forecasting, coordination with the Western Area Power Administration for hydropower resources, and schedules delivery of power resources from across the western power grid.

TPS provided the best pricing and has a history of working with Nevada customers, including the Colorado River Commission of Nevada, and provides services that OPD5 needs in the energy marketplace. There has been a dramatic increase in wholesale power prices due to market forces and environmental challenges. These problems include high demand for power, drought, and increased natural gas prices. Natural gas prices and supply and demand of firm generation are the primary drivers for determining wholesale power costs.

The National Rural Utilities Cooperative Finance Corporation (CFC) collected data and performed multiple studies for OPD5. The results of these studies were presented to the board earlier this year. The CFC studies and analysis are being utilized to determine rate requirements based on the new TPS PPA.

Staff worked with consultants and industry experts to find ideas that may reduce the impact on OPD5 customers. Staff made a presentation regarding future revenue requirements and rate adjustments that will be required in October 2024. This will be a follow-up discussion to that presentation with possible action.

PROPOSED MOTION:

To approve a rate increase of \$.0165 to \$.0174/kWh, effective January 1, 2025 as presented.

	Current Rate	Proposed Increase Option 1	Proposed Increase Option 2
	\$	0.01630	\$ 0.01740
Residential			
Monthly Base Charge	\$ 32.40	No Change	No Change
Block 1 First 500 kWh	\$ 0.06720	\$ 0.08350	\$ 0.08460
Block 2 Next 1,500 kWh	\$ 0.08720	\$ 0.10350	\$ 0.10460
Block 3 Over 2,000 kWh	\$ 0.09800	\$ 0.11430	\$ 0.11540
Small General Service Non - Demand 1,000 kWh or Less Per Month			
Monthly Base Charge	\$ 23.22	No Change	No Change
Energy Charge All kWh	\$ 0.08700	\$ 0.10330	\$ 0.10440
Small General Service Non - Demand Over 1,000 kWh Per Month			
Monthly Base Charge	\$ 43.20	No Change	No Change
Block 1 First 1,000 kWh	\$ 0.06850	\$ 0.08480	\$ 0.08590
Block 2 Next 1,000 kWh	\$ 0.07990	\$ 0.09620	\$ 0.09730
Block 3 Over 2000 kWh	\$ 0.08590	\$ 0.10220	\$ 0.10330
Irrigation			
Monthly Base Charge	\$ 23.22	No Change	No Change
Demand Charge All kW	\$ 7.47	No Change	No Change
Energy Charge All kWh	\$ 0.06900	\$ 0.08530	\$ 0.08640
Large General Service			
Monthly Base Charge	\$ 76.45	No Change	No Change
Demand Charge All kW	\$ 9.01	No Change	No Change
Energy Charge All kWh	\$ 0.06666	\$ 0.08296	\$ 0.08406
Municipal and Water District			
Monthly Base Charge	\$ 37.80	No Change	No Change
Demand Charge All kW	\$ 8.62	No Change	No Change
Energy Charge All kWh	\$ 0.06550	\$ 0.08180	\$ 0.08290