

MUNICIPAL UTILITY DEVELOPMENT AGREEMENT

THIS MUNICIPAL UTILITY DEVELOPMENT AGREEMENT (“*Agreement*”), dated as of February [], 2026 (the “*Effective Date*”), is entered into by and between the City of Coachella, a municipal corporation and general law city, hereinafter referred to as the “*City*,” and Coachella Valley Power Services, LLC, a California limited liability company, sometimes hereinafter referred to as “*Provider*”. City and Provider are hereinafter sometimes referred to individually as a “*Party*” and together as “*Parties*”.

RECITALS

A. The Coachella City Council adopted Resolution No. 2019-62 authorizing the formation of a municipally owned electric utility (“*CMU*”) for the purpose of providing electrical power to greenfield areas in the Eastern portion of the City (“*Greenfield Service Area*”) that lack the necessary facilities and energy infrastructure needed for commercial and industrial development.

B. Imperial Irrigation District (“*IID*”) provides limited electrical service within the Greenfield Service Area, but for various reasons and financing limitations, this service is not sufficient to support the level of economic development envisioned by the City to attract and incentivize growing energy intensive industries such as data centers and technology driven industries. The purpose of the CMU is to establish a new utility that can be responsive and flexible to meet the City’s energy needs on the Eastside.

C. The City issued that certain Request for Proposals for Public-Private Partnership Development Team for Implementation of Energy Delivery System for Municipal Electric Utility on January 31, 2025 (“*RFP*”). The purpose of the RFP was to identify a private partner who could bring the capital investment and development expertise necessary to jump start the City’s effort to develop electrical infrastructure for the CMU and thereafter operate and expand this infrastructure to serve the commercial and industrial energy demand of CMU customers pursuant to a turn-key service provider agreement with CMU.

D. Stronghold Power Systems, Inc. (“*SPSI*”), responded to the RFP and was selected to negotiate a public-private partnership agreement on May 7, 2025. SPSI’s proposal coupled energy infrastructure development with the development of significant customer load in the form of a technology campus to be developed in phases and to include anchor tenants operating data centers with an immediate need for electrical service. The combination of energy demand and a commitment to infrastructure to meet that demand is critical to the success of the SPSI proposal and the economic development of the City. SPSI has formed and owns a majority interest in Provider as a project entity that will be responsible for the development and operation of the CMU.

E. The City desires to engage Provider as its private development partner and turn-key operator for the CMU within the area designated as the New Municipal Utility Phase 1 Area which is shown on the map attached hereto as *Exhibit “A”* (“*NMU*”). It is contemplated that the NMU may be expanded to incorporate a second stage within property that is adjacent to the NMU within the unincorporated County of Riverside subject to the success of the phase 1 development.

F. As part of the engagement of Provider pursuant to this Agreement, Provider will provide the following services: (i) site permitting for phase 1 of the technology campus within the NMU and design and permitting for the electrical infrastructure to serve the NMU; (ii) the construction of all electrical infrastructure necessary for the CMU to act as the load serving entity for the NMU, all of which electrical infrastructure will be either be transferred or leased to the CMU following construction (with any lease

being a financing vehicle with eventual ownership transferred to the CMU at the end of the Term); (iii) the management of energy procurement and contracting for the CMU to serve load within the NMU, including interconnections with IID and Southern California Edison (“SCE”) pursuant to existing open access transmission tariffs (“OATT”), as necessary to import energy to meet the demands of NMU customers; (iv) all applicable compliance activities necessary in connection with the operation of the CMU within the NMU, including compliance with state resource adequacy and renewables portfolio standard requirements and federal and state reporting obligations; (v) all day to day operations and system maintenance on behalf of the CMU as the turn-key operator; and (vi) all financing and capital investment necessary to carry out the foregoing obligations.

G. City and Provider desire to document the terms and conditions upon which City will engage Provider to provide the services set forth herein and Provider will provide such services to the City.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties agree as follows:

1. Scope of Agreement.

1.1. Scope of the Project. For the purposes of this Agreement, the “**Project**” will be the design, permitting and construction of all electrical infrastructure necessary for the CMU to serve electrical load for the NMU. A description of the infrastructure that is currently contemplated for the NMU is attached as **Exhibit “B” (“Project Infrastructure Plan”)**. The Project Infrastructure Plan will be finalized in connection with the issuance of the Notice to Proceed (as defined in Section 2.1) and the infrastructure included within the final Project Infrastructure Plan will be referred to herein as the “**Project Infrastructure**”. The services necessary for the completion of the Project in accordance with the Project Infrastructure Plan are referred to herein as the “**Project Services**”.

1.2. Scope of Operation and Maintenance Services. For the purposes of this Agreement, “**O&M Services**” means the services necessary to operate and maintain the Project and all Project infrastructure, including all maintenance and repair of the Project Infrastructure, handling all customer service requests, reading meters and providing all information necessary for the City to do monthly billing and collection of utility bills for service provided by the CMU. A more detailed list of O&M Services is attached hereto as **Exhibit “C”**, which list will be finalized prior to the Utility Operations Date (as defined in Section 3.6). Provider may enter into an agreement with a qualified subcontractor that is owned or controlled by Provider, including CMU Operations, LLC (“**CMU Operations**”), pursuant to which such qualified subcontractor will perform O&M Services. Any subcontractor that is not owned or controlled by Provider will be subject to the prior written approval of City. Provider will be responsible for the faithful performance of any subcontractor, including CMU Operations, with the requirements of this Agreement.

1.3. Scope of Energy Services. For the purposes of this Agreement, “**Energy Services**” means (i) the procurement and scheduling of all electrical energy needed to serve customer load within the NMU; (ii) the procurement of all regulatory products such as resource adequacy and renewable energy to meet the California Renewable Portfolio Standard; (iii) the preparation of all required regulatory compliance reports for review by CMU counsel prior to filing; and (iv) the posting of all collateral or credit assurance required by energy providers in connection with the procurement of electrical energy and regulatory products (“**Credit Support**”) by the CMU. A more detailed list of Energy Services is attached hereto as **Exhibit “D”**, which list will be finalized prior to the Commencement of Operations. It is contemplated that certain of the Energy Services may be subcontracted by Provider with the prior consent

of the City to specialist consultants such as the roles of scheduling coordinator and energy portfolio management.

1.4. Status of Provider. The Provider will act as a project developer and service provider for the CMU in accordance with the terms of this Agreement and pursuant to the authority of the CMU as an instrumentality of the City. At no time will Provider engage in providing electrical utility service as a private party to customers within the NMU, nor shall Provider be deemed to be a private utility in connection with the services provided pursuant to this Agreement. Neither Provider, nor the CMU, shall be deemed to dedicate any of Provider's separate property or the Project Infrastructure for public use. The Project Infrastructure will be owned or controlled by the CMU on behalf of the City in accordance with the terms of this Agreement.

2. Development Period.

2.1. Development Period.

(a) This Agreement shall be effective as of the Effective Date, but the obligations of the Parties to proceed with the Project in accordance with the terms of this Agreement shall be conditioned upon the assumptions, contingencies and conditions precedent for the development, design and financing of the Project which are set forth in Sections 2.3 through 2.7 (collectively, the "**Conditions Precedent**") and which are waivable only upon mutual agreement of the Parties. It is anticipated that the development, design and approval of the Project will take place over a period of [twelve (12)] months commencing with the Effective Date and as it may be extended pursuant to Section 2.2 (the "**Development Period**"). The purpose of the Development Period will be to ensure the feasibility of the Project and the ability of Provider to fulfill and finance its obligations hereunder. The decision to proceed is intended to be taken no later than the end of the Development Period. If all of the Conditions Precedent have been satisfied to the reasonable satisfaction of the City and Provider has given written notice to the City of its intent to proceed prior to the end of the Development Period, then the City will provide a written notice to proceed with the Project ("**Notice to Proceed**"). The Notice to Proceed will include the attachments set forth in Section 2.10. The Notice to Proceed will serve as the authorization by the City for the implementation of the Project and the commencement of construction of the Project Infrastructure. If Provider does not give written notice of its intent to proceed by 5:00 p.m. on the last business day of the Development Period, then City will have the right to terminate this Agreement. Notwithstanding the foregoing, if at any time during the Development Period, Provider does not believe, in its sole discretion, that the Project is feasible to proceed, then Provider may terminate this Agreement on thirty (30) days written notice to City and neither Provider nor City will have any further obligations hereunder, except as provided in this Section 2.1 and for any indemnity obligations of pursuant to this Agreement.

(b) In the event that the City elects not to issue a Notice to Proceed for reasons unrelated to any Event of Default by Provider or a failure of the Conditions Precedent, or if Provider terminates this Agreement during the Developer Period as a result of any material breach of the City's obligations under this Agreement. The costs incurred by Developer during the Development Period are fully at risk to Developer and City will have no obligation to reimburse same. Payment shall be made within thirty (30) days following submission of reasonable documentation of costs by Provider. The City acknowledges that Provider's Development Period activities are undertaken in good faith reliance on City's cooperation and representations set forth in this Agreement.

2.2. Development Schedule. An initial Project development schedule is attached hereto as **Exhibit E** ("**Development Schedule**"). The Parties will work together in good faith during the Development Period to complete milestones in accordance with the Development Schedule set forth herein. City and Provider agree that the timeframes reflected in the Development Schedule are intended to keep

the Project on track for the Project to commence construction in the [4th calendar quarter of 2026], with the Project commencing operations in the [first calendar quarter of 2029]. During the Development Period, Provider will provide a detailed monthly report to the Working Group on all activities undertaken in the prior month with respect to the development of the Project, including a copy of all documents or applications submitted in connection with meeting the LSE Requirements. Except as expressly set forth in this Section 2.2, timeframes for completion of a task in the Development Schedule are intended to be a guideline and delays in particular tasks will not be cause for default or termination provided that a Party is performing under this Agreement in good faith and with reasonable diligence. Notwithstanding the foregoing, any extension of the Development Period will be subject to the approval of City, which approval will not be unreasonably withheld if there are circumstances outside of the control of Provider that have caused a delay in the development process, including without limitation, delays by third parties to process permits or approvals, delays in obtaining electric interconnection and transmission service or gas interconnection, transmission and supply arrangements, delays in the approval of the Project by City as a result of third party litigation or threats of litigation and delays in the ability of the Provider to complete milestones as a result of City's failure to review or approve Project development deliverables in accordance with the timeframes set forth herein. Notwithstanding the foregoing, Provider will have a one-time option to extend, in its sole discretion, the Development Period for a period one hundred eighty (180) days. If either Party believes that the other is not proceeding in accordance with its obligations under this Section 2 and such failure is causing a delay in the Development Schedule, the concerned Party will give written notice to the other Party along with any requested extension in the Development Schedule as a result of the delay. A Party who receives such a notice will provide a written response along with a revised timeframe for completion of the task. If the Party causing the delay is City, then the Development Period will be extended by the duration of the delay.

2.3. Development Assumptions. Except as may be agreed by City and Provider pursuant to Section 2.4, the development process will proceed on the basis of the following assumptions ("**Development Assumptions**"):

(a) The Project will initially serve a 240 acre technology campus within the NMU ("**Technology Campus**") with a minimum of 270 MW of electrical capacity to serve a data center project comprised of six buildings and associated infrastructure that is expected to utilize the available energy capacity as shown on the map attached hereto as **Exhibit F**;

(b) It is currently contemplated that the Project Infrastructure Plan will include one or more microgrids with fuel cells located adjacent to buildings on the Technology Campus (collectively, the "**Project Microgrid**"). The purpose of the Project Microgrid will be to meet a portion of the demand on-site as well as to provide backup power and enhance reliability. A permanent easement will be granted on behalf of the CMU within the Technology Campus to allow for the ownership and operation of the Project Microgrid;

(c) The Project Infrastructure Plan will constitute all of the infrastructure necessary for the operation of the Project within the NMU for the Technology Campus;

(d) The Project will be able to interconnect with IID and/or SCE to obtain access pursuant to the applicable OATT for the import of electrical energy to serve demand within the NMU;

(e) City and Provider intend that the CMU will provide electrical service within the NMU service territory by exercising the City's legal authority under California law. Notwithstanding the foregoing, City may enter into a cooperative arrangement with IID with respect to the rights of the CMU and IID to provide service within the NMU as contemplated in Section 13.2;

(f) Concurrent with the execution of this Agreement, Provider has delivered to the City a preliminary financial plan for the funding of the Project. City acknowledges that this plan is subject to change over the course of the Development Period. No later than the end of the Development Period, Provider will have determined whether there is a viable final financial plan for the Project that provides (i) sufficient funding for the construction of the Project; (ii) operation of the CMU by Provider; and (iii) a rate structure that is consistent with section 2.3(g). If Provider has made such determination, it will deliver a copy of such final financial plan for the Project ,to City along with reasonable documentation of its details and assumptions, all of which will be subject to verification by the City;

(g) The rate structure for electrical service within the NMU and customers within the Technology Campus will be consistent with the assumptions set forth on *Exhibit "G" ("Rate Assumptions")*;

(h) The compensation of Provider for the Project Services, O&M Services and Energy Services provided pursuant to this Agreement will be consistent with the assumptions set forth on *Exhibit "H" ("Service Fee")*;

(i) Provider will be able to demonstrate the ability to fund all of its obligations under this Agreement, including the construction of the Project Infrastructure, including any necessary financing commitments from private lenders or investors, on terms which are acceptable to Provider in its sole discretion;

(j) The Technology Campus will have sufficient water rights and access to water distribution infrastructure necessary to support process water for cooling and fire suppression and domestic water service will be provided by City of Coachella Water Division and Coachella Valley Water District;

(k) City will be the local permitting agency for the Project, subject to compliance with applicable federal, state and local laws, rules and regulations, and it is expected that the City will be the lead agency for the purposes of environmental compliance under the California Environmental Quality Act ("*CEQA*"); and

(k) The Project will be subject to compliance with City building and planning codes, provided that (1) the City will use its best efforts to expedite the planning process and the issuance of necessary building permits and approvals; and (2) the City will waive all fees for planning and building permits to the extent permitted by law.

No later than the end of the Development Period, Provider will confirm with City whether it believes that the Project is feasible based on the Development Assumptions pursuant to the written notice described in Section 2.2. If Provider determines that a material change in the scope of the Development Assumptions is necessary as a result of its analysis during the Development Period, then Provider will provide to City written notice of the proposed change in scope ("*Project Change Notice*") and the City and Provider will work together in good faith to agree on a reasonable change in scope for the Project and a corresponding amendment to the Agreement. If City and Provider, each in its sole discretion, cannot agree on a change in scope within ninety (90) days of the Project Change Notice, then either Party may terminate this Agreement.

2.4. Design Phase. Provider and City will move forward with the design phase of the Project ("*Design Phase*"), with the goal of accomplishing the following milestones within six (6) months following the Effective Date:

(a) Provider will deliver a 70% design of the Project Infrastructure, which design will be subject to review and approval by the City, which approval will not be unreasonably withheld provided it is consistent with the terms of this Agreement;

(b) Provider will deliver all CEQA Documentation (as defined in Section 2.7) that is necessary for City to complete its CEQA review of the Project in accordance with the requirements of City; and

(c) Provider and City, as applicable, will commence the application process for any permits and approvals that are required by any third party, government agency or regulatory authority with respect to the construction and operation of the Project, including any interconnection agreement or transmission application required for the import of energy into the NMU. Provider will be responsible for preparing all such applications for review and approval by the City prior to filing with the applicable third party, government agency or regulatory authority.

2.5. Pre-Construction Phase. Subject to successful completion of the Design Phase as set forth in Section 2.4, Provider and City will move forward with the “*Pre-Construction Phase*” of the Project, with the goal of accomplishing the following milestones prior to the end of the Development Period:

(a) Provider will complete the final design of the Project, which will be incorporated into Exhibit “B”, and will commence negotiation of contracts for the construction of the Project Infrastructure;

(b) The City, in consultation with Provider, will develop rules and regulations for the operation of the CMU and the City and Provider will agree on a technical protocol for the delivery of the O&M Services by Provider;

(c) Provider and the City will agree on the final scope of Energy Services as set forth in Exhibit “D” and which, if any, of such Energy Services will be subcontracted by Provider;

(d) City will complete the CEQA review pursuant to Section 2.7 and to the extent City approves CEQA with mitigation conditions, City and Provider shall agree in writing on the schedule for the satisfaction of all such conditions. In the event that City does not approve the Project pursuant to Section 2.7, then City and Provider will meet and confer on such changes to the Project as may be necessary to satisfy the requirements of CEQA and the Development Period will be extended to allow for agreement on such changes and any appropriate mitigation conditions; and

(e) Provider, with the cooperation of City, will have obtained firm commitments or agreement for any interconnection agreements or transmission applications with IID and/or SCE which are necessary to establish electrical service for the NMU. If such commitments have not been obtained or have been challenged by IID and/or SCE during the Development Period, then Provider and City will meet and confer to determine whether it is feasible to proceed, whether to challenge or defend any actions taken by IID and/or SCE in connection with such applications or agreements, and to explore any alternatives that may be available, including the negotiation of a three-Party agreement between Provider, the CMU and the applicable transmission provider, regarding the scope of services provided to the CMU.

2.6. Development Agreements for the Technology Campus. During the Development Period, Provider shall have obtained firm commitments from developers and/or anchor tenants for the Technology Campus. The terms and conditions for such development will be in the sole discretion of

Provider, provided, however, that such commitments must demonstrate sufficient load for the viability of commencement of construction of the Project Improvements and the eventual operation of the CMU.

2.7. CEQA.

(a) City will be the lead agency for evaluating the environmental impact of the Project under CEQA. Provider will be responsible for the preparation of all reports and other documentation necessary for CEQA compliance, including an environmental impact report and all technical studies necessary for City to properly evaluate the environmental impact of the Project (collectively, the “*CEQA Documents*”) and the submission of those proposed documents to the City for its independent review, as well as complying with any mitigation measures that may be required in connection with the Project.

(b) The submission of the CEQA Documents and the completion of the CEQA process and any approval by the City’s governing board will be a condition precedent to moving forward with the Project beyond the Development Period, and the Parties agree that nothing herein constitutes a commitment by the City to issue any such approvals or otherwise restricts the City’s ability to impose feasible mitigation measures or consider or adopt feasible alternatives (including the “no project” alternative) as part of its CEQA process.

2.8. Litigation Indemnity and Cooperation Agreement. Provider will indemnify and cooperate in the defense of City from any claim or lawsuit which is filed challenging and right of the CMU to serve customers within the NMU and any permit or approval required in connection therewith, including the approval of the Project by City pursuant to CEQA. Notwithstanding the foregoing, in the event of any such legal challenge, City and Provider will meet and confer to discuss the feasibility of defending such challenge and moving forward with the Agreement. If the Parties cannot agree on a strategy to move forward, including the allocation of the costs of such defense, then either Party may terminate this Agreement. However, the obligation by Provider to indemnify and cooperate in the defense of the City shall survive any termination of this Agreement or rescission of any approvals. The City and Provider are parties to an existing Joint Defense/Common Interest Agreement that will remain in effect during the Term of this Agreement as the Parties may mutually agree to modify it from time to time.

2.9. Development Period Costs. Except as otherwise expressly set forth in this Section 2, Provider will be responsible for all costs incurred in connection with the activities described herein. Provider acknowledges and agrees that it is entirely at-risk with respect to the completion of the Conditions Precedent applicable to it that are necessary for the issuance of the Notice to Proceed and that the City is not obligated to incur any cost or expense beyond what is set forth in this Section 2, or as otherwise agreed by the City during the Development Period, to mitigate any impediment to the satisfaction of the Conditions Precedent. The City shall be responsible for the actual cost of the City’s third party consultants (including legal, engineering and energy industry professionals) incurred in connection with carrying out the City’s obligations under this Section 2, as well as all costs associated with staff time. Furthermore, to the extent that the City commissions its own independent review of the feasibility of any aspect of the Project, the City will pay the cost of such review and the legal fees or costs in connection therewith.

2.10. Effect of Termination. If this Agreement is terminated by the City or Provider during the Development Period as provided in this Section 2, then the obligations of Provider and City will terminate (other than any indemnity obligations of Provider pursuant to Section 2.8) and neither Party will have any remaining obligation to the other. In no event shall the City be responsible to reimburse Provider for any cost or expense incurred by Provider in connection with the activities of the Parties during the Development Period. Provider will remain the owner of all designs and engineering drawings prepared in connection with the Project Infrastructure. The City will have the right to use any consulting report, study

or analysis prepared in connection with feasibility studies prepared by Provider in connection with the Project or any interconnection agreement or transmission application. The City will remain the owner of any independent consulting report, study or analysis prepared by the City or its consultants.

2.11. Notice to Proceed. The Notice to Proceed will include (i) a final agreed version of the Project Infrastructure Plan; (ii) the final scope of the Energy Services and any agreed change to the Project Services and/or the O&M Services; (iii) the final Project financial plan, Rate Assumptions and Service Fee; (iv) the agreed rules and regulations for the operation of the CMU and technical protocol for O&M Services; and (v) any mutually agreed Project Change Notice or amendment to this Agreement in connection with the issuance of the Notice to Proceed. Exhibit “E” of this Agreement will be updated from the Development Schedule to the “**Project Implementation Schedule**” showing all milestones from the Notice to Proceed to the projected date for the commencement of operations of the CMU.

2.12. Agreement Commencement. The Term of this Agreement will commence as of the date of the Notice to Proceed (“**Commencement Date**”). Provider shall thereafter commence construction of the Project Infrastructure in accordance with the requirements of Section 3.

3. Construction of Project Infrastructure.

3.1. Construction Period. The period from the Commencement Date through the Utility Operations Date will be referred to herein as the “**Construction Period**”.

3.2. Construction Documents. Within forty-five (45) days of the Commencement Date, Provider shall provide the City with a complete set of final designs, plans and specifications for the Project Infrastructure as agreed during the Development Period (“**Construction Documents**”). Provider shall have a one-time option to extend for thirty (30) days, in its sole discretion, the delivery of the Construction Documents.

3.3. Permits. Provider is solely responsible for procuring all required building and other permits and approvals required for the construction of the Project Infrastructure, including without limitation, compliance with the requirements of the City (“**Project Permits**”).

3.4. Obligations of Provider. The construction of Project Infrastructure shall be in a good and workmanlike manner and otherwise in accordance with the provisions of this Agreement and the Construction Documents and the Project Permits. Provider, or its construction contractor(s), will obtain and deliver to City one or more performance bond(s) in the amount of the cost of the construction of the Project Infrastructure in accordance with the requirements of Section 5956.6(b)(2) of the Government Code. The scope of such performance bonds will be limited to ensuring that the City can take control of the completion of construction of Project Infrastructure following an Event of Default by Provider under this Agreement. To the extent required by applicable law, all improvements and work must be inspected and approved by the applicable governmental agency. All work will be subject to City inspection and approval, subject to providing reasonable notice to Provider and its contractors. City will reasonably cooperate with Provider as necessary for the application process for any permits and approvals that were not obtained during the Development Period. All of Provider’s contractors shall carry the insurance required by this Agreement while working on within the NMU and shall name City as an additional insured. Provider shall have the sole responsibility for the construction of the Project Infrastructure and may perform the same itself or through agents, contractors and others selected by it, and may make or issue such contracts, orders, receipts and instructions, and in general do or cause to be done all such other things, as it may in its sole discretion consider requisite or advisable for the construction of the Project Infrastructure and fulfilling its obligations under this Section. All improvements required or permitted by this Agreement will be constructed by licensed contractors. Each contractor that performs work on the Project Infrastructure

pursuant to an agreement with Provider shall be bound by the terms of this Agreement related to indemnity and insurance and Provider shall further be responsible for all acts of such contractors while working on the Project within the NMU. Upon reasonable notice to Provider, City will have the right to enter upon and inspect all construction activities of Provider and its contractors, provided, however, that City will comply with all safety requirements in connection with the presence of its agents or employees on the applicable work site while construction activities are ongoing, and will not interfere with such activities. City shall indemnify and hold Provider harmless pursuant to Section 10(b) for any losses or claims for personal injury, death or property damage to the Project or the Project site to the extent caused by City agents' or employees' negligence or willful misconduct during such access.

3.5. Prevailing Wage. To the extent required by applicable law, Provider will be responsible for complying with the prevailing wage requirements of the State of California in the construction of all of the Project Infrastructure and will indemnify and hold harmless City for any failure to comply with such requirements.

3.6. Completion of Construction. It is anticipated that the construction of the Project Improvements will require approximately twenty-four months (24) months to complete as set forth in the Project Implementation Schedule. Provider shall have a one-time option in its sole discretion, to extend the completion of construction up to six (6) months. The date upon which the Project Infrastructure is ready to commence utility operations shall be referred to herein as the "**Utility Operations Date**". For the purposes of this Agreement, "**utility operations**" shall mean that the Project Infrastructure is capable of accepting delivery of electrical load from the interconnection point with IID and/or SCE and distribute such electrical load to customers within the NMU generally and more specifically, the Technology Campus. Provider shall promptly notify City of the cause of any delay in construction and the expected impact on the projected Utility Operations Date. Provider will actively manage the construction of the Project and will monitor Provider's contractor(s) work for compliance with their obligations under any contracts for the construction of the Project Infrastructure. In the event of a delay in the projected Utility Operations Date, Provider will work with City to mitigate such delay so as not to delay the delivery of electrical service to customers in the NMU. If such delay continues for a period in excess of six (6) months, then City shall be entitled to deliver a notice of default to Provider. If utility operations have not commenced within six (6) months following the date of such notice of default, then the City may terminate the Agreement. The City will have the right to inspect and approve all of the Project Infrastructure prior to the commencement of utility operations and Provider will promptly remedy any work on the Project Infrastructure that the City reasonably deems non-conforming with the Construction Documents and Project Permits. Approval by the City will not relieve Provider of any of its obligations with respect to the O&M Services. Provider will deliver the following documents to City promptly after the Project Infrastructure has been completed: (i) copies of the "as built" plans for the Facility and the Solar System, including CAD drawings if requested by City; (ii) final lien waivers and all permits, certificates, and sign-offs required to be issued by applicable governmental agencies in connection with the Project Permits; and (iii) if applicable, copies of any approvals of Project Infrastructure that is built in connection with an interconnection agreement with IID and/or SCE.

3.7. Ownership and Risk of Loss. During the Construction Period, Provider shall at all times remain the owner of the Project Infrastructure and all improvements, facilities and equipment used therein. Provider shall bear the risk of loss of the Project Infrastructure as a result of any casualty during such period. As of the Utility Operations Date, all Project Infrastructure and the real property upon which it is located may be transferred to the CMU or leased to the CMU by Provider to the CMU and the City will accept same, subject to its right of inspection and acceptance in Section 3.6. The terms of any lease will be subject to the approval of City, in its reasonable discretion. With respect to any lease that is used for financing purposes of the Project Infrastructure, in no event will such lease create any obligation of the City for the repayment of any debt or financing except as otherwise contemplated in this Agreement and at the

end of the Term, the Project Infrastructure will be transferred to the CMU at no cost or expense. During the remainder of the Term, Provider will retain the risk of loss for the Project Infrastructure as the turn-key operator for purposes of the O&M Services, provided, however, that Provider will not be responsible for any damage to the Project Infrastructure that is directly caused by the negligent acts or willful misconduct of the City, its agents, employees and contractors.

3.8. Real Property. As of the Commencement Date, Provider will have acquired all real property rights necessary for the Project Infrastructure.

3.9. Project Infrastructure Easements. Within thirty (30) days of the Commencement Date, City will grant to the CMU a non-exclusive easement and right of way for the Term of the Agreement to install, use, maintain and repair Project Infrastructure within the NMU to provide electrical and telecommunications service to customers within the NMU. To the extent that any easements or rights of way are required across private land, Provider will acquire such easements or rights of way on behalf of the CMU in a form that is acceptable to Provider and the City. The term of all easements described herein will be perpetual.

4. Commencement of Utility Operations.

4.1. Pre-Operation Activities. It is the intent of Provider and the City that the commencement of utility operations by the CMU will occur on the Utility Operations Date. In connection therewith, Provider, with the cooperation of the City, will take all steps necessary to prepare the CMU as a load serving entity, including registration with all governmental agencies or authorities with jurisdiction over the activities of the CMU, including its ability to schedule and receive electrical deliveries through the OATT, and all regulatory filings that are necessary prior to the commencement of utility operations. A list of such filings as of the Effective Date of this Agreement is attached hereto as ***Exhibit "I" ("LSE Requirements")***. Provider will prepare all such filings for review and approval of the City and will coordinate with City to ensure that filings are made in accordance with the advance reporting and notifications necessary under applicable law. Provider will provide City with no less than thirty (30) days for the review of all filings prior to the required filing date and the City will provide any comments or feedback to Provider no later than ten (10) days prior to the required filing date. Provider will further develop an energy procurement and operations plan no less than [twelve (12)] months prior to the projected Utility Operations Date and commence procurement of energy in connection with such plan. Provider agrees that the goal of the CMU with respect to procurement will be to be fully hedged for projected energy requirements during the first two (2) years of operations as of the Utility Operations Date.

4.2. Operating Budget. Provider shall prepare an initial operating budget for the CMU based on the final financial plan no less than twelve (12) months prior to the projected Utility Operations Date that includes all anticipated revenue and expenses of the CMU during the first two (2) years of operations. The budget will include categories for energy procurement, general expenses payable by the City to the extent the City is required to be the contracting Party, general expenses payable by Provider as the turn-key operator and anticipated maintenance and repair expenses for the Project Infrastructure. Provider will thereafter prepare annual operating budgets for the CMU during the Term, which budgets will be subject to review and verification by the CMU that the budget is consistent with the approved rate structure of the CMU. The operating budget will be updated after the first year of operations and each year thereafter.

4.3. O&M Services; Utility Operations Center.

(a) Following the Utility Operations Date, Provider will provide turn-key services for the operation of the CMU within the NMU for the duration of the Term. Such services will be

provided pursuant to the scope of O&M Services on Exhibit “C”, as well as the rules and regulations of the CMU and the technical protocol adopted pursuant to Section 2.5(b).

(b) Provider and CMU will cooperate on the development of a utility administration and operations center for the CMU. The City currently owns two parcels located on Industrial Way, south of 52d Avenue, Assessor’s Parcel Numbers 763400017 and 763400016, comprising a combined approximately seven (7) acres, that the Provider has identified as desirable locations. Said parcels are currently included in a feasibility study concerning potential sites for a new rail hub within the City, but in the event that the parcels are not selected for that purpose, the City will discuss with Provider the fair market value of the parcels and the potential for the City’s transfer of such parcels for CMU administration and operations.

4.4. CMU Working Group; Risk Management Committee.

(a) The operation and management of the CMU will be coordinated between Provider, CMU and the City through a management committee designated as the “Working Group”. The Working Group is intended to include the following individuals (or such other individuals as Provider and City may agree): (i) the general manager of Provider with respect to CMU operations; (ii) two management level representatives of Provider directly involved in the day to day activities of Provider with respect to the CMU; (iii) the general manager or director of the CMU appointed by the City to oversee CMU operations; and (iv) the City Manager or his or her designee. The members of the Working Group may invite employees and third parties who are under contract with Provider, CMU or the City to attend Working Group meetings from time to time to report on or discuss various topics relevant to the development and operation of the CMU, provided that any third party attending a meeting must be subject to a duty of confidentiality. If legal counsel for Provider or City/CMU is invited to attend a meeting of the Working Group, then advance notice will be given to the members so that the other party may have legal counsel attend as well. The Working Group will meet as often as the members believe is necessary to carry out their responsibilities under this Section 4.4, but in no event less than once per month. The Working Group is intended to be a collaborative body for cooperation amongst Provider, City and CMU and does not change any of the respective rights or obligations of the parties pursuant to this Agreement. The Working Group not does not have the authority to modify or amend the terms of this Agreement, but may make recommendations to Provider and the City Council regarding modifications.

(b) The primary purpose of the Working Group will be to discuss operations and where appropriate, make decisions with respect to carrying out the development and operation of the CMU within the framework of the terms and conditions set forth in this Agreement and the policies and regulations adopted by the CMU pursuant to Section 2.5(b), as the same may be amended from time to time. It is expected that the Working Group will formalize strategy and performance criteria for CMU operations, subject to the oversight of the City Council in its role as the governing board of the CMU. On matters requiring governing board approval, such as rate setting pursuant to Section 7.1, the Working Group may make recommendations to the City Council.

(c) The Working Group will further provide a mechanism to resolve differences of opinion and disputes regarding the operation of the CMU or the interpretation of this Agreement at the management level. Disputes that cannot be resolved by the Working Group will be subject to dispute resolution pursuant to Section 29.

(d) The City Council may appoint one or more ad-hoc committees to provide oversight of CMU operations, including a risk management committee that will meet periodically to review the energy portfolio of the CMU, operating risks due to changes in the energy market and such other matters as the City Council may determine. It is intended that such committees will be informational in nature,

allowing the Working Group to keep the City Council apprised of the status of CMU development and operational activities on a periodic basis.

4.5. Changes in Law. Provider, as the turn-key operator of the CMU within the NMU will be responsible for compliance with all changes in federal, state or local law regarding the operation of the CMU. Notwithstanding the foregoing, the City will not adopt any ordinance that would expand the obligations or limit the compensation of Provider pursuant to this Agreement.

4.6. Audit. The City, or its designated accounting firm, at the City's expense, will have the right to perform an annual audit of the operation of the CMU that are conducted by Provider and Provider will reasonably cooperate with such audit.

5. Expansion of the NMU.

5.1. Campus Expansion. The Project will be planned and permitted (to the extent possible prior to annexation) with the intent of expanding the Technology Campus on 210 acres of property adjacent to the NMU that is located on unincorporated land of the County of Riverside ("*Campus Expansion*"). Such stage two expansion is intended to require an additional approximately 300 MW of electrical capacity to serve additional data centers or other technology businesses. The Campus Expansion will require annexation of the adjacent property into the boundaries of the City.

5.2. Process for Campus Expansion. The expansion of the NMU for the Campus Expansion will be within the scope of this Agreement and subject to all of the terms hereof. At such time as SPSI desires to proceed with the Campus Expansion, it will provide written notice to the City of its intent and the timing for the development of the infrastructure required for such expansion, as well as all requirements necessary for the CMU to expand its service territory to meet the needs of the Campus Expansion. The City will cooperate with SPSI for the annexation of the Campus Expansion into the boundaries of the City and the subsequent service of the Campus Expansion by the CMU provided that the following requirements are satisfied:

- (i) SPSI is not in breach of any of its obligations under this Agreement;
- (ii) SPSI has procured financing for the infrastructure necessary for the CMU to serve the Campus Expansion;
- (iii) SPSI has firm commitments with developers and/or anchor tenants for the Campus Expansion; and
- (iv) SPSI will indemnify and defend the City and the CMU from any claim arising in connection with the permits and approvals for the expansion in the same manner as Section 2.8.

5.3. Future Expansion. Provider will have the first right of refusal to serve the expansion of the CMU to serve areas outside of the NMU (except for the Campus Expansion) within the Greenfield Service Area. The actual terms and conditions of such expansion will be subject to mutual agreement of Provider and the City. If Provider and the City cannot agree on the terms of any such expansion following good faith negotiation, then the City reserves its right for the CMU to undertake such expansion separate and apart from the obligations of the Parties pursuant to this Agreement provided that no such action will interfere with the ongoing provision of utility service to the NMU for the duration of the Term. Provider acknowledges and agrees that its obligations under this Agreement are not contingent upon any future promise or agreement to provide services on behalf of the City outside of the NMU.

6. Term.

6.1. Term of Agreement. The “**Term**” of this Agreement will initially be the Development Period; provided, however, that this Agreement may be terminated during the initial Term pursuant to Section 2. Following the issuance of the Notice to Proceed, the Term will be that period of time commencing upon the Commencement Date and continuing until the twentieth (20th) anniversary of the Utility Operations Date.

6.2. Renewal. The City and Provider, upon mutual agreement, may extend the Term of this Agreement for two (2) additional five (5) year periods (each, a “**Renewal Term**”) upon the terms set forth herein or as otherwise mutually agreed.

6.3. Expiration. The last day of the Term (as extended by any Renewal Term) is referred to herein as the “**Expiration Date**”.

7. CMU Rates, Revenue and Expenses.

7.1. CMU Rates. The CMU will set rates for service to customers in the NMU consistent with the rate assumptions that are set forth in Exhibit “G”, subject to the compliance by the CMU and the City with the requirements of applicable law. Notwithstanding the participation of Provider in making recommendations with respect to rates, the final authority to set rates for the CMU will at all times be in the final discretion of the governing board of the CMU.

7.2. CMU Revenue. During the Term, all revenue earned by the CMU from the provision of electrical service to customers within the NMU will be deposited into a separate lockbox account owned and controlled by the CMU (“**Utility Lockbox Account**”). Such lockbox account will provide that such revenue may only be withdrawn from the lockbox account in accordance with the payment priorities set forth in Section 7.3. CMU shall ensure that distributions from the Utility Lockbox Account occur in such a manner that CMU payment obligations, whether managed by the City or Provider, are timely met and CMU operations are not interrupted or adversely affected.

7.3. Distributions of Revenue. The revenue of the CMU that is held in the Utility Lockbox Account will be distributed in the following order of priority:

- (i) obligations due to energy providers for the CMU;
- (ii) obligations for general expenses of the CMU which are fiscal obligations of the CMU;
- (iii) obligations for general expenses of the CMU that are administered by Provider pursuant to the O&M Services;
- (iv) the rate retention payable to the CMU as set forth in Exhibit “H”;
- (v) the funding of operating and uncollectible reserve funds as agreed by the City and Provider; and
- (vi) all remaining revenue will be distributed to Provider for the Service Fee.

7.4. Payment of Expenses. It is anticipated that the revenue of the CMU will be sufficient for the payment of all expenses, including the rate retention payable to the CMU and the Service

Fee of Provider. Notwithstanding the foregoing, to the extent that the revenue is insufficient to cover the items set forth in clauses (i) through (iv) of Section 7.3, the City and Provider shall meet and confer to implement recommendations on rate adjustments to cover such shortfall or to the extent that the shortfall is temporary, to draw upon reserves. The City and the CMU will cooperate with Provider to avoid operating shortfalls and subject to the authority of the governing board of the CMU to set rates, the foundational principle for setting rates will be to ensure that the costs and expenses of operating the CMU are provided for in good faith. Notwithstanding the foregoing, it is the primary responsibility of Provider to anticipate costs and make recommendations on any necessary rate adjustments and Provider shall be responsible to the extent that there is a revenue shortfall. To the extent that the shortfall is the result of energy procurement expenses exceeding anticipated revenues due to changes in the market or demand that were not anticipated in Provider's hedging strategy for the CMU, then Provider and the City will meet and confer to discuss a change in applicable rates.

8. Compensation for Project Infrastructure and Services.

8.1. Service Fee. Provider will be compensated for all of its obligations under this Agreement, including the construction and financing of the Project Infrastructure and the provision of the Project Services, O&M Services and the Energy Services, pursuant to the Service Fee that is described on Exhibit "H".

8.2. No Cost Reimbursement. Provider will not be entitled to any cost reimbursement by the City for the acquisition and construction of the Project Infrastructure. Provider will be solely responsible for the repayment of all financing procured by Provider for the Project and the fulfillment of its obligations under this Agreement. To the extent that any lender or investor requires a pledge of revenues or fees from Provider, such pledge shall come solely from the payment of the Service Fee and will be perfected by Provider and its lenders or investors through the use of a separate lockbox account into which Service Fee is paid from the Utility Lockbox Account.

9. Insurance. During the Term, Provider shall procure and maintain insurance of the types and in the amounts described on **Exhibit "J"**. The City shall procure and maintain wildfire insurance at the City's sole cost and expense through the City's joint powers insurance authority and Provider shall have no obligation to procure or maintain such insurance.

10. Indemnification.

(a) Provider shall defend, indemnify and hold harmless City, its elected officials, officers, employees, and agents, from any and all actual or alleged claims, demands, causes of action, liability, loss, damage or injury, to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state or local governmental body or agency ("**Claims**"), arising out of any acts, omissions, negligence or willful misconduct of Provider, its personnel, employees, agents or subcontractors in connection with this Agreement, including Provider, the construction of the Project Infrastructure and the performance of the Project Services, O&M Services or the Energy Services. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, reasonable attorney's fees and related costs or expenses, and the reimbursement of City, its elected officials, officers, employees, and/or agents for all reasonable legal expenses and costs incurred by each of them. This indemnification will not apply to the extent that a Claim is caused by the negligence or willful misconduct of City or its employees or agents. Provider's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, officers, employees, or agents.

(b) City shall defend, indemnify and hold harmless Provider, its directors, officers, employees, and agents, from any and all third party Claims arising out of the negligent acts or willful misconduct of City, its personnel, employees, agents or subcontractors in connection with the operation of the Project Infrastructure or while present on any sites that are operated by Provider, as well as any damage to the Project Infrastructure that is caused by such negligent acts or willful misconduct. This indemnification will not apply to the extent that a Claim is caused by the negligence or willful misconduct of Provider or its employees or agents. City's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by Provider, its elected officials, officers, employees, or agents.

11. No Consequential Damages. EXCEPT FOR THE INDEMNIFICATION OF THIRD PARTY CLAIMS, NEITHER PARTY HEREUNDER SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE OR IN TORT OR CONTRACT.

12. Inspection. Upon at least twenty-four (24) hours prior written notice to Provider (or, in the case of emergency, such notice as shall be practicable under the circumstances), Provider shall permit City and its agents to enter into and upon the Project Infrastructure at all reasonable times for the purpose of inspecting the same. City shall indemnify and hold Provider harmless pursuant to Section 10(b) for any losses or claims for personal injury, death or property damage to the Project or the Project site to the extent caused by City agents' or employees' negligence or willful misconduct during such access.

13. Cooperation.

13.1 Cooperation Regarding Agreement. The Parties shall negotiate with one another fairly and in good faith and shall cooperate with one another to effectuate the purposes of the Agreement. In particular, the Parties recognize and agree that Provider shall be obtaining project finance to support the development and construction of the Project Infrastructure. City shall cooperate with Provider and its financing parties to assist and support that process. Additionally, City shall support and cooperate with Provider's efforts to develop the Project and secure federal, state and local permits. All approvals required to be given by any Party shall be given or denied on good faith and may not be unreasonably denied. Each Party shall use due diligence in its attempt to accomplish any act required to be accomplished by that Party. City shall cooperate with Provider in mitigating adverse impacts from force majeure and other events beyond either Party's reasonable control that can impede Provider's performance of its obligations under this Agreement. City shall also reasonably cooperate with Provider in mitigating adverse impacts to the Project from condemnation, eminent domain, and local resistance. City shall reasonably cooperate with Provider to contact regulatory agencies and obtain information that Provider deems necessary or advisable for development of the Project; *provided, however*, that (a) the costs for obtaining such permits, licenses, instruments and approvals, including the reasonable out-of-pocket costs and expenses incurred by City in cooperating with Provider, will be paid by Provider; and (b) in no event will City be required to agree to covenants or conditions of approval which would have a material adverse effect on the City. City understands and agrees that its cooperation in this regard is essential to successful development of the Project.

13.2 Cooperation Regarding NMU Service Area. City hereby authorizes Provider to jointly, with the City Manager, negotiate with IID regarding the acquisition by or transfer to the City, or coordination with the City, of IID's facilities within the NMU and surrounding areas. Provider shall coordinate such negotiations with the City Manager and shall provide regular status reports to CMU. Provider shall not have the authority to, nor shall it, bind the City to any agreement with IID, but it will be

authorized to act as a representative of the City in discussions with IID as necessary to advance the objectives of this Agreement. Provider will provide City with notice of meetings with IID in advance and an opportunity to participate. To the extent that the City does not participate in a meeting, Provider will provide the City Manager with a summary of the discussions. If IID declines to negotiate, materially delays or will not enter into an Agreement substantially consistent with the Development Assumptions, the Parties shall meet and confer to (a) determine if the Project remains feasible; and (b) to the extent necessary, modify the Development Schedule to allow for additional discussions with IID.

14. Maintenance and Repair.

14.1. At all times during the Term, Provider, at its sole cost and expense, shall maintain the Project Infrastructure and any additional infrastructure that is developed for the CMU by Provider in connection with any expansion.

14.2. If any Project Infrastructure is damaged or destroyed by a risk that is covered by the insurance Provider is required to obtain and maintain pursuant to Section 11, then Provider shall restore such facilities to substantially the same condition as they were immediately before the destruction, to the extent covered by such insurance and pursuant to codes and requirements at the time. If the insurance provided by Provider does not cover the damage, then the City will attempt to use its insurance coverage. The City shall be solely responsible for restoration of any Project Infrastructure damaged or destroyed due to wildfire.

14.3. If the Project Infrastructure is damaged or destroyed by a risk that is not covered by Provider or City insurance, then Provider and City will mutually agree on a funding mechanism to repair or replace such infrastructure, provided, however, that Provider and its affiliates will provide the necessary labor for such repairs at cost.

15. Alterations and Expansion. Provider shall not make any material alterations, additions or improvements to or of the Project Infrastructure, or any part thereof without the prior approval of City, which will not be unreasonably withheld provided that such alterations, additions or improvements are necessary for or will increase the operational efficiency of the CMU and will be provided at the sole cost of Provider unless otherwise agreed by the CMU.

16. Taxes. To the extent applicable, City shall be responsible for the timely payment of all property taxes and assessments, including without limitation, any and all utility, city or county assessments which are assessed, levied, confirmed or imposed on the Project Infrastructure.

17. Assignment. Except as provided below, Provider shall not assign, hypothecate or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of City, which consent shall not be unreasonably withheld, conditioned or delayed provided that the proposed assignee or transferee has financial support and capabilities equal to or better than Provider and the requisite expertise and experience to carry out Provider's obligations under this Agreement. Any attempt to do so shall be null and void, and any assignee, hypothecate or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, Provider may, without the City's consent, transfer or assign this Agreement to (a) a subsidiary or affiliate under common ownership or control with Provider provided such subsidiary or affiliate assumes in writing all of the obligations under this agreement and Provider remains responsible for the performance of such obligations by the subsidiary or affiliate; or (b) any lender, investor, financing party or project company established for purposes of financing the Project, provide, however, that any mortgage or assignment does not relieve Provider of its obligations under this Agreement.

18. Events of Provider's Default and City's Remedies.

18.1. Events of Default. If one or more of the following events ("***Event of Default***") occurs, such occurrence constitutes a breach of this Agreement by Provider:

(a) Except in circumstances where the City fails to timely distribute monies to Provider from the Utility Lockbox Account, Provider fails to pay any sum, cost or expense that is the responsibility of Provider when the same becomes due and payable, and such failure continues for more than sixty (60) days after City gives written notice thereof to Provider;

(b) Provider fails to comply with any legal or regulatory requirement, permit obligation of Provider pursuant to this Agreement and such failure is not remedied within thirty (30) days after City gives written notice thereof to Provider or, if such default cannot be cured within said thirty (30) day period but Provider has commenced action to cure, then Provider shall have up to an additional sixty (60) days to cure such default, provided, however, that if the continued operation of the Project Infrastructure and CMU is in imminent danger as a result of such failure to comply, then the City may step in and cure such default at the cost of Provider until such time as Provider has remedied the default;

(c) Provider fails to perform or observe any covenant, condition or provision of this Agreement hereof to be performed by Provider as and when performance is due, and such failure continues for more than sixty (60) days after City gives written notice thereof to Provider or, if such default cannot be cured within said sixty (60) day period but Provider has commenced action to cure, then Provider shall have up to an additional sixty (60) days to cure such default, provided, however, that if the continued operation of the Project Infrastructure and CMU is in imminent danger as a result of such failure to comply, then the City may step in and cure such default at the cost of Provider until such time as Provider has remedied the default; and

(d) Provider becomes subject to an action for bankruptcy or insolvency or a receiver is appointed for the benefit of Provider's creditors, unless within ninety (90) days of the filing of such action, Provider is successful in having the action dismissed.

18.2. City's Remedies. If an Event of Default occurs, City at any time thereafter has the right to terminate this Agreement or to commence an action for the enforcement of this Agreement at law or equity.

18.3. Right to Operate. In the event of any termination of this Agreement by reason of Provider's default, City has the immediate right to take over operation of the CMU and the Project Infrastructure.

19. Events of City's Default and Provider's Remedies.

19.1. If one or more of the following events (each a "***City Event of Default***") occurs, such occurrence constitutes a breach of this Agreement by City:

(a) If City fails to disburse funds in accordance with Section 7.3 and such failure continues for more than five (5) business days after Provider gives written notice thereof to City;

(b) If City fails to perform or observe any agreement, covenant, condition or provision of this Agreement to be performed or observed by City as and when performance or observance is due, and such failure continues for more than sixty (60) days after Provider gives written notice thereof to City; and

(c) The City becomes subject to an action for bankruptcy or insolvency or a receiver is appointed for the benefit of City's creditors, unless within ninety (90) days of the filing of such action, City is successful in having the action dismissed.

18.2 Provider's Remedies. Upon the occurrence of a City Event of Default set forth in 18.1, Provider will have all the rights and remedies available to it at law, in equity, by statute or otherwise.

20. Rights and Obligations on Expiration of the Term or Termination.

20.1. Notice of Renewal or Non-Renewal. No later than one (1) year prior to the expiration of the Term (as the same may be renewed), Provider will provide City with written notice of Provider's interest in renewal of the Term and any proposed modification of terms. If Provider gives such notice, then the City and Provider will have ninety (90) days to negotiate mutually acceptable terms for a renewal term of up to five (5) years. If City and Provider are unable to agree on the terms of renewal or if Provider does not give notice of renewal in accordance with this section, then the Agreement will expire at the end of the Term.

20.2. Transition of Utility Operations. If this Agreement terminates or expires, Provider will cooperate with City to transition the operation of the CMU and the Project Infrastructure to CMU or CMU's designee for a period of one hundred eighty (180) days and will deliver to the City all books and records held by Provider in connection with the services provided under this Agreement.

21. Early Termination Option of City. The City will have the right to terminate this Agreement at any time following the tenth (10th) anniversary of the Commencement of Operations, subject to mutual agreement by City and Provider on the following terms: (a) the payoff in full of any financing obtained by Provider for the Project Infrastructure and Provider's operation of the CMU pursuant to this Agreement, including any penalties associated with such prepayment; and (b) an early termination payment to Provider that reasonably compensates Provider for its anticipated operating profit from the services provided pursuant to this Agreement, including a reasonable return on the equity capital invested by Provider to carry out its obligations under this Agreement, which early termination payment will be discounted for the remainder of the Term.

22. Notices. All notices, demands, consents, approvals and other communications which are required to be given by either City or Provider to the other under this Agreement will be deemed to have been fully given when made in writing and (i) personally delivered; (ii) sent via commercial overnight courier; or (iii) sent via electronic mail, subject to receipt of confirmation via electronic mail of receipt thereof by the other Party (not including automated notices or confirmations of receipt), and addressed to City or Provider at the address set forth below, or at such other addresses as City or Provider may from time to time designate in writing in accordance with this Section 26:

City: City of Coachella
Attn: City Manager
53990 Enterprise Way,
Coachella, CA 92236
Phone: (760) 398-3502
Email: bpattison@coachella.org

With a copy to: Best Best & Krieger LLP
Attn: City Attorney, Ryan Guiboa
74-760 Highway 111, Suite 100
Indian Wells, CA 92210
Phone: (760) 568-2611
Email: ryan.guiboa@bbklaw.com

Provider: _____
Attn: _____

Phone: _____
Email Address: _____

with a copy to: _____
Attn: _____

Phone: _____
Email Address: _____

23. No Waiver. The waiver by City or Provider of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained.

24. Force Majeure. Neither Party shall not be deemed in default of this Agreement, nor shall such Party be responsible for, any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, epidemic, pandemic, act of God (inclusive without limitation of extreme weather events, drought, earthquake, fire, flood, lightning, hurricane, high winds or other natural disasters), war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of Provider or City, as applicable, provided that the Party asking to be excused from performance as a result of such occurrence gives the other Party prompt written notice thereof and takes all steps reasonably necessary to mitigate the effects of the event. The Party claiming the occurrence of force majeure shall use its best efforts to mitigate such event and resume performance as soon as reasonably practicable. If an event of force majeure continues for a period in excess of one hundred eighty (180) days, then the Parties will meet and confer in good faith to determine whether it is economically and operationally feasible to mitigate the effects of the event or to rebuild the facilities of either Party as necessary to restore performance of the terms of this Agreement no later than one (1) year from the commencement of the event of force majeure or such longer period which the Parties shall mutually agree upon.

25. Successors and Assigns. The covenants and conditions herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all Parties hereto, and all of the Parties hereto shall be jointly and severally liable hereunder.

26. Complete Agreement. There are no written or oral agreements between City and Provider affecting this Agreement, and this Agreement supersedes and cancels any and all previous negotiations, arrangements, proposals, agreements and understandings, oral or written, if any, between City and Provider or displayed by City to Provider with respect to the subject matter of this Agreement.

27. Amendment and Modification. This Agreement may not be amended or modified in any respect whatsoever except by an instrument in writing signed by City and Provider. This Agreement and any instrument, agreement or document attached hereto or referred to herein, is intended by City and Provider as the final expression of the agreement with respect to the terms and conditions set forth in this Agreement and any such instrument, agreement or document and as the complete and exclusive statement of the terms agreed to by City and Provider.

28. Incorporation of Exhibits and Documents. Each and every exhibit or document referenced in this Agreement, whether or not attached to this Agreement, shall be incorporated into the body of this Agreement and each point of reference.

29. Dispute Resolution.

29.1. Management Discussions. Should any dispute or claim arise between the Parties concerning the terms, interpretation, effect, or operation of this Agreement, the Parties agree to make good faith efforts to informally resolve such dispute or claim through discussions between the City Manager of City and the Chief Executive Officer of Provider. If the Parties fail to resolve such disputes or claims, then either Party shall have the right to submit the dispute or claim to arbitration pursuant to Section 28.2.

29.2. Arbitration. Any dispute arising under this Agreement, including, without limitation, all disputes relating in any manner to the performance or enforcement of this Agreement shall be resolved by binding arbitration in the County of Riverside, California, pursuant to the rules of Judicial Arbitration and Mediation Services (“**JAMS**”), as amended or as augmented in this Agreement (the “**Rules**”). Arbitration shall be initiated as provided by the Rules, although the written notice to the other party initiating arbitration shall also include a description of the claim(s) asserted and the facts upon which the claim(s) are based. Arbitration shall be final and binding upon the parties and shall be the exclusive remedy for all claims subject hereto, including any award of attorney’s fees and costs. Either party may bring an action in court to compel arbitration under this Agreement and to enforce an arbitration award. All disputes shall be decided by a single arbitrator. The arbitrator shall be selected by mutual agreement of the parties within thirty (30) days of the effective date of the notice initiating the arbitration. If the parties cannot agree on an arbitrator, then the complaining party shall notify JAMS and request selection of an arbitrator in accordance with the Rules. The arbitrator shall have only such authority to award equitable relief, damages, costs, and fees as a court would have for the particular claim(s) asserted. In no event shall the arbitrator award punitive damages of any kind. The parties acknowledge that one of the purposes of utilizing arbitration is to avoid lengthy and expensive discovery and allow for prompt resolution of the dispute. The arbitrator shall have the power to limit or deny a request for documents or a deposition if the arbitrator determines that the request exceeds those matters which are directly relevant to the claims in controversy. The document demand and response shall conform to Code of Civil Procedure section 1282.6. The deposition notice shall conform to Code of Civil Procedure section 1283. The parties may make a motion for protective order or motion to compel before the arbitrator with regard to the discovery, as provided in Code of Civil Procedure. Notwithstanding the election by the parties to arbitrate their disputes, nothing contained herein shall prevent a party from filing an action in a court of competent jurisdiction to seek any form of equitable remedy or relief.

30. Governing Law and Venue. This Agreement is to be governed by and construed in accordance with the laws of the State of California. All disputes will be brought in the federal court for the

Central District of California or the superior court of the State of California located in the County of Riverside.

31. Attorney's Fees. Each Party will bear its own legal fees and costs in any action brought to enforce the terms of this Agreement.

32. Miscellaneous.

32.1. The words "**City**" and "**Provider**" as used herein include the plural as well as the singular. If there is more than one Provider or City, the obligations hereunder imposed upon Provider or City are joint and several. Time is of the essence of this Agreement and each and all of its provisions. Subject to the provisions applicable to assignment, the agreements, covenants, conditions and provisions herein contained apply to and bind the successors and assigns of City and Provider.

32.2. This Agreement has been mutually negotiated by the Parties and their legal advisors. Should any provision of this Agreement require interpretation, it is agreed that the person or persons interpreting or construing the same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one Party by reason of the rule of construction that a document is to be construed more strictly against the Party who itself or through its agent or counsel prepared the same or caused the same to be prepared; it being agreed that the agents and counsel of all of the parties have participated equally in the negotiation and preparation of this Agreement. The language in all parts of this Agreement shall be in all cases construed simply, fairly, equitably and reasonably, according to its plain meaning and not strictly for or against any of the Parties. Without limiting the generality of the foregoing: use of the masculine gender includes the feminine and neuter; the singular number includes the plural and the plural number includes the singular; the term "person" includes a corporation or other entity as well as natural person; and the term "including" means "including but not limited to."

[signature page follows]

IN WITNESS WHEREOF, City and Provider have executed this Agreement as of the day and year first herein above written.

CITY:

CITY OF COACHELLA

By: _____

Name: William Pattison

Title: City Manager

Approved as to form:

Best Best & Krieger LLP

PROVIDER:

Coachella Valley Power Services, LLC
a California limited liability company

By: _____

Name: _____

Title: _____

EXHIBIT "A"

MAP OF NEW MUNICIPAL UTILITY PHASE 1 AREA



Exhibit "B"

EXHIBIT “B”

PROJECT INFRASTRUCTURE PLAN

NMU – Technology Campus (Phase 1)

1. Infrastructure

A. Initial Infrastructure

1. New 230Kv Interconnection to IID’s existing Coachella Valley Substation and Associated 230Kv Switchyard at the Coachella Energy Center, each as shown on the map attached hereto as Exhibit B-1.
2. Required equipment to tie-in to IID’s Coachella Valley Substation
3. All required 230Kv Metering Equipment
4. All required 230kv sub-transmission
5. Electrical Ops Yard and maintenance building located at the Coachella Energy Center
6. Fuel cell microgrid(s) located at the Technology Campus as shown on Exhibit B-1.

B. Future Additions to Infrastructure

Provider will have the option pursuant to Section 5.3, but not the obligation, to participate in the following future additions:

1. New 92 Kv Substation and Tie-ins for Future Phase 2 Electrical infrastructure
2. New Energy Center Distribution Substation and required Overhead and Underground to stub-out and support future local growth
3. New Polk Street Distribution Substation
4. New Oats Lane Distribution Substation

Transmission included in the infrastructure will be overhead for sub-transmission circuits and will be underground for Distribution Circuits.

2. Real Property

Provider will acquire any real property necessary for the location of the substations and shall dedicate such real property to the City upon completion of the Project Infrastructure.

3. Rights of Way

City will provide access at no cost for the location of infrastructure within public rights of way as identified on the map attached to this Exhibit B. Any private property or rights-of-way across private property that are required to provide transmission to the NMU or within the NMU to the Technology Campus will be acquired by Provider and assigned to the CMU.

4. Building Requirements

The City will adopt rules and regulations for the construction of infrastructure within the CMU that is based on current State of California utility regulations, standards and best practices.

5. Fire Station

Provider will provide five acres for future City-built and staffed Fire Station at or close to the corner of Ave 50th and Filmore St.

EXHIBIT "B-1"

MAP OF PROJECT INFRASTRUCTURE

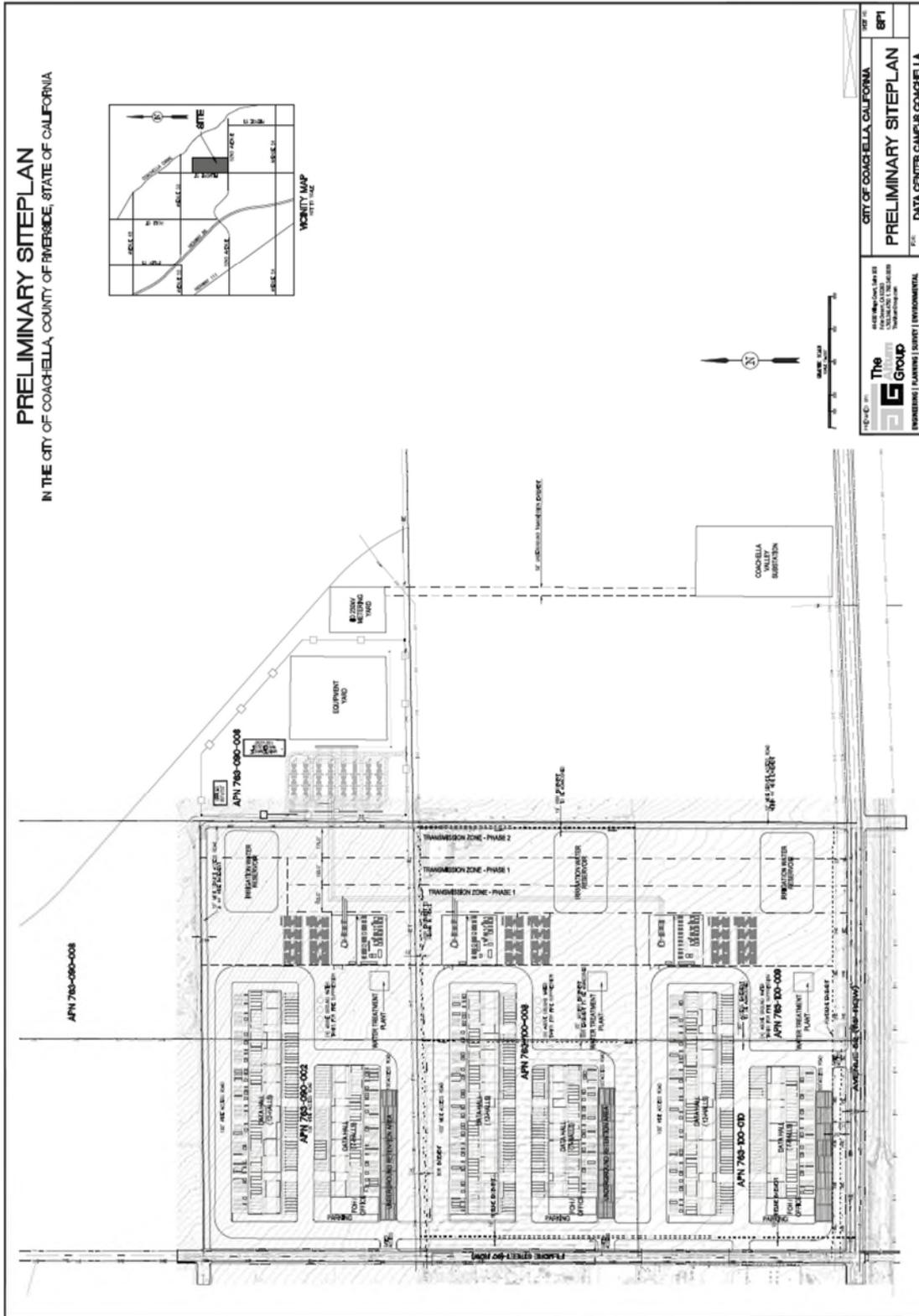
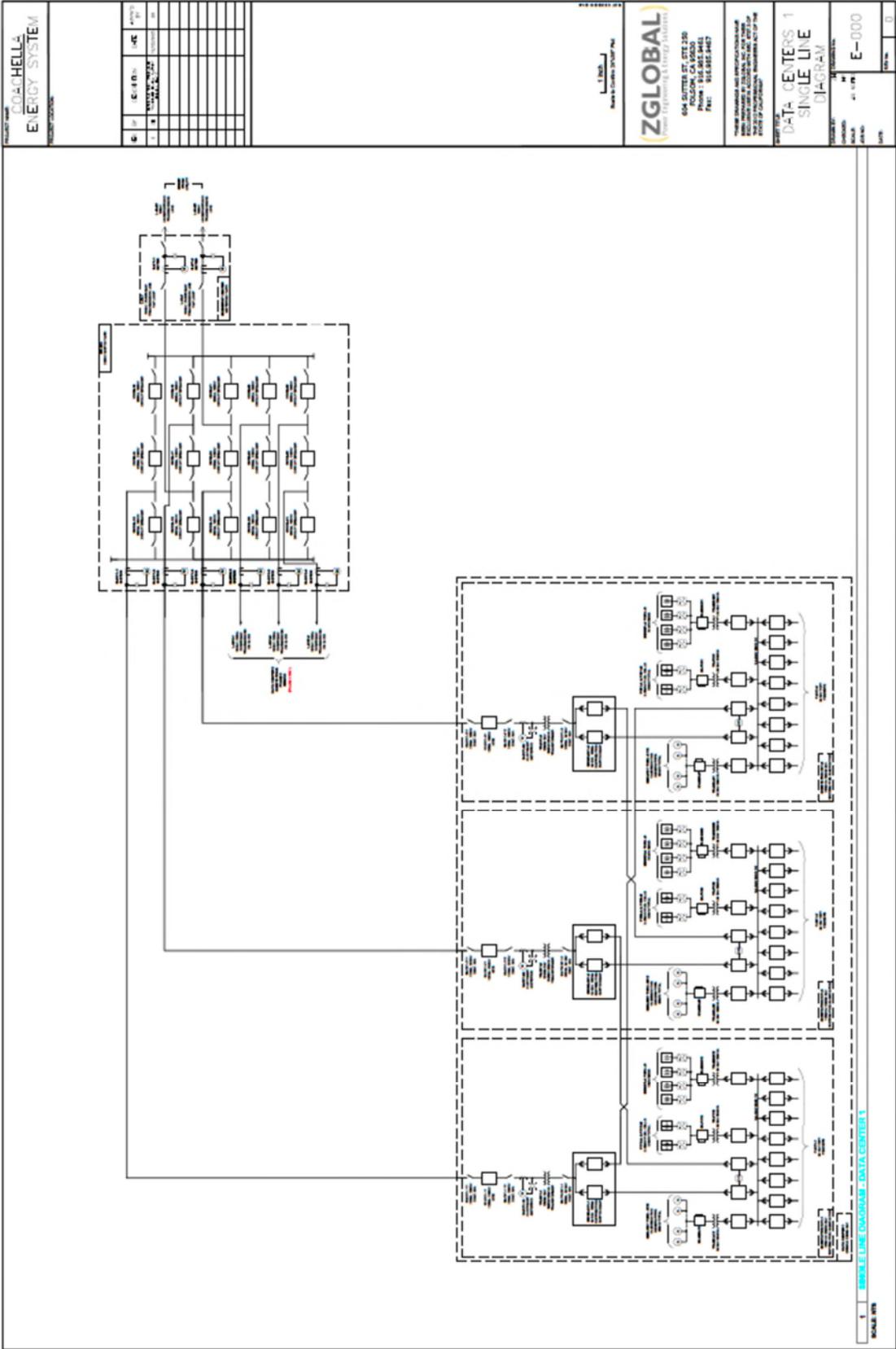


Exhibit "B"



COACHELLA ENERGY SYSTEM

NO.	DESCRIPTION	DATE	BY
1	ISSUED FOR PERMIT	08/11/11	...
2
3
4
5
6
7
8
9
10

Scale: As Shown
 1" = 100'

ZGLOBAL
 Power Engineering & Energy Solutions
 6540 AVENUE 107, SUITE 100
 RIVERSIDE, CA 92503
 PHONE: 951.585.8445
 FAX: 951.585.5467

PROJECT: DATA CENTERS 1
 SINGLE LINE DIAGRAM

DATE: 08/11/11
 DRAWN BY: ...
 CHECKED BY: ...
 E-000

1. SINGLE LINE DIAGRAM - DATA CENTERS 1

Exhibit "B"

EXHIBIT “C”

SCOPE OF O&M SERVICES

Beginning on the Utility Operations Date and continuing thereafter throughout the Term, Provider shall, in a timely manner, perform and/or provide all work, services, supervision, management, labor, equipment, materials, parts, tools, consumables, consumable parts, materials, supplies and other items necessary or appropriate to perform CMU operations within the NMU.

Provider shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating provision of the O&M Services consistent with the terms of this Agreement, including the timely performance or delivery of work by its subcontractors, except where the Agreement otherwise provides specific instructions concerning these matters.

Project Infrastructure

Provider shall be solely responsible for the operation and maintenance of the Project Infrastructure, including the following:

1. Substations, distribution feeder circuits, switches, primary circuits, protective equipment, distribution transformers, conductors, controls, and instruments.
2. Electrical distribution infrastructure, including overhead poles and wires and underground equipment, lightning arrestors, fuses, insulators, circuit breakers, relays, and busses;
3. Electrical operations control center and customer service center;
4. Accessory buildings and maintenance/repair equipment yards;
5. Equipment required for operation and maintenance of project infrastructure, including parts, tools, and vehicles;
6. Customer electrical meters;
7. Back-end customer service hardware and software;
8. Additional infrastructure and equipment necessary to provide the O&M Services in accordance with industry best practices.

Work not specifically delineated in this Agreement will be performed and provided by Provider to the extent necessary or appropriate to complete the O&M Services.

During the Development Period as set forth in Section 2.5(b), Provider shall prepare and submit to City for its approval, Provider’s proposed Operating and Maintenance Plan (“O&M Plan”) for the initial year of CMU operations. The O&M Plan shall show, in such detail reasonably required by City, and on a Month-by-Month basis, all relevant information relating to the anticipated operation and on-going maintenance of the Project Infrastructure by Provider and shall include a program and timetable for the performance of Provider’s obligations under this Agreement, the proposed number of hours of maintenance, the timing of such maintenance, and any other material activities as identified by Provider. The O&M Plan will be updated by Provider with any necessary modifications no later than the Utility Operation Date. No changes shall be made to the O&M Plan by Provider without the prior written approval of City, which will not be unreasonably withheld, conditioned or delayed.

Provider shall arrange for the testing and calibration of all customer meters on installation and thereafter on a regularly scheduled basis in compliance with the applicable manufacturer’s recommendations.

Provider shall prepare log books and reports as necessary with respect to all maintenance activities. The City may review such log books and reports at reasonable intervals, but no more frequently than four (4)

times per calendar year, following prior notice to Provider. Provider shall provide reasonable assistance to City in preparing all reports, plans and other materials that City is required to deliver concerning the maintenance and servicing of the Project Infrastructure, if any, including any asset and inventory management requirements of the CMU to comply with GAAP as adopted by the Governmental Accounting Standards Board or otherwise required by the State of California. All reports and documents prepared by or for Provider for City in connection with the performance of the O&M Services shall become the property of City immediately upon creation thereof.

Billing and Collections

The CMU will handle all billing and collections with respect to the customers of the CMU. Provider will support this effort by providing all information necessary for the CMU to timely bill its customers on a monthly basis, including meter data. All such information will be provided in digital form that is configured to work with the City's billing system.

Permits and Compliance

Provider shall obtain, pay for, and maintain all permits required to allow Provider to lawfully perform the O&M Services and otherwise carry out its business affairs as contemplated in the Agreement, and shall secure each permit prior to performance of the relevant portion of the O&M Services for which such permit is required.

Provider shall deliver copies to CMU of each permit promptly after receipt thereof. Provider shall perform all the O&M Services such that the performance of such services will comply with the provisions of all permits.

Provider shall promptly notify CMU of any communication from any governmental authority that alleges that Provider is not acting in compliance with applicable laws. Provider shall provide a copy to the City immediately upon receipt of any notice, order or other correspondence by Provider from any governmental authority related to any failure or asserted failure to comply with any legal requirement. If the legal requirements are inconsistent but one is more stringent than the other(s) (such that all can be complied with by complying with the most stringent requirement), Provider shall perform its obligations in accordance with the most stringent requirement. If two or more requirements are in conflict (such that it is impossible to comply with all of them concurrently), Provider shall promptly notify CMU of the conflict and the CMU shall resolve such conflict in its sole discretion, after considering input from Provider.

Personnel

Provider shall provide the labor and professional, supervisory and managerial personnel required to perform the O&M Services in accordance with the requirements. Such personnel shall be qualified (including possessing appropriate licenses), experienced and trained in the duties to which they are assigned by Provider and capable of performing such duties in accordance with this Agreement.

Provider shall retain sole authority, control and responsibility with respect to labor matters in connection with the performance of the O&M Services. Upon City's reasonable request, Provider shall provide City with the qualifications of any or all personnel employed in connection with the Services at the Project Site. Provider shall remove, and cause subcontractors to remove, any employee, agent or other person engaged in the performance of the O&M Services for Provider or such subcontractor, as the case may be, whose conduct the CMU reasonably deems to be having a material adverse effect on the O&M Services or the Project Infrastructure, adversely impacting the health and safety of the public, or the perception of the CMU, or City's relationship with the surrounding community.

Provider shall provide ongoing training and education programs, as necessary, for all personnel engaged by Provider in providing the O&M Services. Prior to the expiration of the Term, Provider shall train City's personnel in the performance of the O&M Services and in the start-up, shut-down and operation and maintenance of, safety, and all general process understanding and emergency procedures for the Project Infrastructure and all of its sub-systems.

Provider shall take cognizance of and responsibility for the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("**Prevailing Wage Laws**"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public work" and "maintenance" projects. Provider shall fully comply with and require its subcontractors/subconsultants to fully comply with such Prevailing Wage Laws to the extent applicable. If the Services are funded in whole or in part by federal funds or otherwise requires compliance with the Davis-Bacon Fair Labor Standards Act, Provider and all its subcontractors/subconsultants shall pay the higher of the state or federal prevailing wage rates.

Provider shall adopt policies and practices designed to avoid labor disputes, and to minimize the risk of labor-related delays or disruption in providing the O&M Services. Provider shall advise City promptly, in writing, of any actual or threatened labor dispute of which Provider has knowledge that might materially affect the provision of the O&M Services. Notwithstanding the foregoing, the settlement of labor disputes shall be at the discretion of the Party having the difficulty.

Provider shall ensure (with respect to its employees), and shall cause all subcontractors to ensure (with respect to their respective employees), that at the time of hiring, all personnel providing the O&M Services are in possession of all such documents (including visas, driver's licenses and work permits) as may be required by any and all applicable laws. Provider shall provide any such documentation to the CMU in a timely fashion in order for the CMU to comply with any request or requirement of any governmental Authority.

Safety and Emergencies

Provider shall be responsible for the security of the Project Infrastructure during the duration of the Term. Provider shall secure access to the Project Infrastructure sites in accordance with best industry practices.

In the event of an emergency endangering life or property, Provider shall take such action as may be necessary or reasonable to prevent or mitigate injury, damage or loss and shall promptly notify the CMU of any such emergency and the actions taken by Provider. In addition, the CMU may take such action as is necessary or reasonable to prevent, avoid or mitigate injury, damage or loss (provided that the taking of such action by the CMU, or the CMU's failure to do so, shall not limit Provider's liability or its obligations under this Agreement), and if the necessity of taking of such action is caused by Provider's acts or omissions or those of any other responsible party, then Provider shall reimburse the City for the costs incurred by the CMU in taking such action.

Provider shall cooperate with the requests of the CMU to address any and all concerns of the landowners or occupants of real property adjacent to the Project Infrastructure sites. Provider shall not enter into any agreement, contract or understanding with any landowner or occupant of real property adjacent to the Project Infrastructure without the prior written consent of City.

Environmental Compliance

Provider specifically agrees that in the performance of its obligations under this Agreement and in the performance of all the Services hereunder, Provider shall at all times fully comply with and cause each of its subcontractors, if any, to fully comply with all applicable environmental laws. Provider further agrees that Provider shall have and cause its subcontractors, if any, to have and keep in effect all licenses, permits, registrations, certificates, and approvals required by any environmental law or by any governmental agency for the O&M Services undertaken by Provider or its subcontractors, if any, in the performance of Provider's obligations under this Agreement.

All hazardous materials used in connection with the O&M Services will be promptly and properly managed, containerized, stored, removed, transported and disposed of by Provider in accordance with all applicable environmental laws. Without in any way limiting the foregoing, Provider shall not cause or permit the spillage, discharge, emissions, or release of any hazardous materials in the course of performing O&M Services. If spillage, discharge, emission, or release should accidentally occur through Provider's actions, Provider shall immediately notify the CMU and:

- (1) Take all reasonable steps necessary to stop and contain said release;
- (2) Make any report of such release as required under environmental law;
- (3) Clean up such release as required by the applicable governmental agency.

Provider shall immediately notify the CMU's designated representative of the following upon the occurrence of any release of hazardous material in connection with the O&M Services:

- (1) A description of the release;
- (2) The identification of the hazardous material and the volume released;
- (3) Death or injury to any person;
- (4) Property damage;
- (5) Any communication from any governmental agency that alleges that Provider is not acting in compliance with environmental laws, rules or regulations;
- (6) Any communication from any governmental agency that affects any permits or licenses necessary to perform the O&M Services.

Provider shall submit within thirty-six (36) hours of the release to City's designated representative a written report, in a format required by City, describing in detail any event of any release of a hazardous material which shall include the following information:

- (1) Name and address of Provider and any subcontractor(s) involved.
- (2) Name and address of Provider's commercial and environmental liability insurance carrier.
- (3) Name and address of any injured or deceased persons, if applicable.
- (4) Name and address of any property damage, if applicable.
- (5) A detailed description of the release including the identification of the hazardous material, the date and time of the release, the volume released, and the nature of any environmental contamination.
- (6) A determination of whether any of City/CMU personnel, equipment, tools or materials were involved.
- (7) A detailed description of all reports made to any governmental agency, and a description of the actions taken to respond to the release.

EXHIBIT “D”

SCOPE OF ENERGY SERVICES

Portfolio Management Strategy

Provider will assist CMU with preparing and periodically updating its portfolio management strategy that addresses regulatory requirements and Risk Management Policy criteria and thresholds (e.g., mark-to-market and open position tolerances). Setting a strategic course requires a firm understanding of the regulatory landscape/requirements and current market conditions (e.g., price and availability by resource type), which will be carefully considered in reviewing and updating a plan that balances costs and other organizational objectives.

Summary of Tasks

Provider shall develop and complete the following key tasks in collaboration with CMU related to portfolio management strategy:

- Prepare briefing materials articulating applicable regulatory requirements, the various energy products and options available to the CMU, market conditions, and cost and other tradeoffs among the available products and energy sources;
- Attain City Council direction on regulatory ambitions and risk tolerances;
- Discuss options for achieving City Council goals and risk tolerances with respect to cost impacts; and
- Review and update a portfolio management strategy and related planning documentation to achieve established targets.

Risk Management Program Administration

A key component to the success of any load serving entity is a comprehensive and effective energy risk management program. A sound energy risk management program enables the timely understanding of portfolio positions relative to specified targets and values-at-risk (for any open positions) and provides CMU’s management with requisite information to make informed decisions regarding its portfolio. Some key components of such a program should include: 1) an Energy Risk Management Policy (Risk Policy) that describes the key risks related to energy procurement that an organization faces and its corresponding mitigators, including price risk, volumetric risk, credit risk, and operational risk, among others; 2) Credit Risk Guidelines (Credit Guidelines) that include management practices/parameters related to supplier credit and liquidity (to inform decision related to collateral posting, etc.) and how to manage credit risk in the event of a supplier default; 3) quantification and reporting of portfolio positions, values and risks; and 4) scenario analyses and stress testing to facilitate CMU’s understanding of potential stress-based outcomes under extreme circumstances and certain unlikely/undesirable scenarios.

Summary of Tasks

Provider shall develop and complete the following key tasks in collaboration with CMU related to energy risk management:

- Periodically review the Risk Policy to ensure it is tailored to CMU’s needs, focusing on information specific to CMU’s operations in order to make well-informed decisions and incorporating industry best practices;

- Draft Credit Guidelines that help shield CMU from counter Party credit risk while minimizing collateral postings;
- Determine the best methods and/or systems to aggregate positions, value positions, value risks, and establish the tolerance bands based upon CMU's risk appetite. Provider will prepare the reports required to review together with CMU's senior management at regularly scheduled (likely, quarterly) Risk Oversight Committee meetings; and
- Perform scenario analyses as needed and present the scenario with the most likely outcome and compare it with the extremes and circumstances under which they could occur.

Power Supply Portfolio Management & Procurement

To continue serving customers, CMU will need to secure requisite energy products and services, including shaped energy (i.e., a quantity of energy delivered by the supplier(s) according to an agreed upon schedule), resource adequacy capacity (i.e., reserve capacity required to meet mandatory compliance obligations applicable to municipal utilities, including incremental procurement orders issued by jurisdictional regulatory authorities), renewable energy (both short-term and long-term renewable supply, which will be necessary to satisfy California's recently increased 65% long-term RPS contracting requirement), and carbon-free energy (if necessary).

Summary of Tasks

Provider shall develop and complete the following key tasks in collaboration with CMU related to supplier selection and related contracting for power procurement:

- Develop and maintain a detailed load forecast for all eligible customers within the NMU;
- Determine desired energy and capacity quantities, which would supply aggregate customer requirements, including anticipated participation in default and voluntary retail service options;
- Prepare draft solicitation materials, including a Request for Proposals/Offers document and related bid workbooks (which will provide an organized, uniform framework for bidder responses), to support the procurement of necessary energy and capacity products, including requisite long-term renewable energy contracts to satisfy California's 65% long-term RPS contracting requirement and incremental capacity procurement obligations issued by jurisdictional regulatory authorities (e.g., the supplemental mid-term reliability procurement order issued by the CPUC via D.23-02-040);
- Coordinate with CMU's executive leadership to explore the possibility of procuring surplus RA capacity and RPS-eligible renewable energy (both short- and long-term);
- Evaluate offers received in response to the aforementioned solicitation processes and assist CMU in selecting the preferred supplier(s) of such products and services;
- In conjunction with the CMU's designated staff and legal counsel, support power purchase agreement negotiation for desired products and services;
- Assist CMU (in cooperation with CMU's designated staff and legal counsel) in developing and finalizing form transaction documents for desired products and services; and
- Perform necessary coordinative activities with CMU's selected supplier(s).

Legislative & Regulatory Compliance

As a Load Serving Entity (LSE) within the state of California, CMU will be required to comply with a variety of regulations, including participation in certain reporting programs administered by the CPUC and California Energy Commission (CEC). In particular, the annual electric load forecast (as it relates to future reserve capacity, also known as "resource adequacy," compliance obligations), Western

Renewable Energy Generation Information System (WREGIS) account renewable energy credits validation work, preparation of a renewable procurement plan, preparation of joint cost comparisons (a customer communication requirement created by SB 790) and preliminary power source disclosures will all require pre-launch completion.

Summary of Tasks

To ensure compliance with these requirements, Provider shall complete the following activities:

- Prepare a regulatory compliance calendar and reporting matrix to ensure that management has a thorough understanding of currently applicable technical reporting requirements and related submittal deadlines;
- Prepare load forecast and related filings to ensure compliance with California's resource adequacy program;
- Prepare annual compliance reports, as required under California's Renewables Portfolio Standard Program;
- Validate and transfer renewable energy credits (REC) on the WREGIS platform as the recipient and the issuer of the RECs on behalf of CMU;
- Assist CMU in developing requisite resource planning documents including statutorily required Integrated Resource Plan, if applicable, and RPS Procurement Plan;
- Prepare CMU's annual Power Source Disclosure reports and distribute key portfolio performance metrics to CMU's management – complete the CEC's required Power Content Label template and coordinate with CMU's communications team regarding technical elements of annual Power Content Label preparation;
- Assist and coordinate with CMU and its Scheduling Coordinator to determine the strategies for acquisition of Import Allocation Rights that may be used to support use of import resource adequacy capacity;
- Assist in preparing month-ahead and year-ahead resource adequacy compliance filings, including those related to California's slice-of-day compliance framework;
- Coordinate with resource adequacy suppliers and jurisdictional regulatory agencies to address and resolve prospective compliance issues;
- Assist in preparing compliance filings pursuant to the CEC's biennial Integrated Energy Policy Report, Quarterly Fuels and Energy Report including the related CEC 1306B quarterly report, and the U.S. Energy Information Agency monthly EIA-826 and annual EIA-861 reports;
- Assist in preparing Demand Forecast and Resource Supply compliance filings related to the CEC Integrated Energy Policy Reports;
- Assist in preparing status updates related to incremental procurement orders mandated by the CPUC; and
- Assist in preparing data request responses related to inputs required for calculation of the Power Charge Indifference Adjustment market price benchmarks.

Rate Setting & Financial Modeling

Provider will maintain a working pro forma financial model for CMU use in budgeting, cash flow planning, and financial performance monitoring. Provider will design customer electric rates and update rates for approval by CMU's governing board on an annual basis – such rates will be established at sufficient levels to meet adopted financial targets. The following tasks are included as part of this service:

Summary of Tasks – Rate Setting

- Annually, develop proposed CMU rate schedules; cost of service modeling; IID benchmarking; billing determinant (e.g., Time of Use energy) forecast; present and proposed rate revenue forecast;
- Collaborate with staff, CMU, and CMU governing bodies, as necessary, in regard to rate changes, including necessary new rate designs or options;
- Monitor realized rate revenue vs. projections to identify necessary rate changes;
- Monitor IID rates and surcharges; and
- Prepare a draft feed-in-tariff policy, including applicable project eligibility criteria, pricing schedules, and an appropriate power purchase agreement (which will be primarily based on successfully deployed FIT agreements used by other municipal utilities).

Summary of Tasks – Financial Modeling (Pro Forma)

- Maintain CMU’s pro forma financial models of monthly income/expense projections, cash flow and cash balances;
- Update pro forma models as necessary to incorporate current load, resource and market data; monitor accuracy of financial projections on monthly basis; assist in reconciling budget variances;
- Prepare forecast of power supply and other expenses for annual budget;
- Prepare draft annual budget for the CMU program in cooperation with CMU management and accountants; and
- As necessary, coordinate with CMU and its financial advisors with regard to matters that may impact CMU’s financial standing, debt levels, electric rates, annual budget, resource planning and other key concerns.

Invoice Validation Services

Provider will provide invoice validation services for all invoices submitted by CMU’s counterparties, including invoices relating to all existing and future agreements and contracts for the term of the Agreement for all required power resources to meet regulatory compliance and serve customer loads. The categories of invoices include product components of energy, resource adequacy, and renewable energy attributes that comply with California’s Renewable Portfolio Standard, collectively as Products.

Summary of Tasks – Invoice Validation Services

- Upon execution of Products’ contracts and agreements and the delivery of such products, invoices will be submitted to Provider by CMU’s counterparties.
- Upon receipt of the invoices, Provider will review and validate the submitted invoices against the respective contracts and agreements.
- Should there be discrepancies, incomplete submissions, lack of justifications, and/or clarifications required, Provider will deliberate with CMU’s counterparties to ensure invoices are fully validated.
- Once Provider validates the Products’ invoices, Provider will approve and forward the invoices to CMU for timely final approval and processing.

Provider will observe the terms of the Products' contracts and agreements to ensure the invoice validation process are completed timely to provide CMU ample time to finalize payments.

Credit Support/Performance Guaranty

It is intended that Provider will assume all payment risk associated with the procurement of energy to meet load within the NMU.

Provider will work with the CMU to create credit support mechanisms for the procurement of energy and regulatory products, including without limitation, a lockbox for energy provider payments, letters of credit and cash collateral.

To the extent required by counterparties, Provider will act as a guarantor for the obligations of the CMU pursuant to all power purchase agreements and will provide as necessary, letters of credit or cash collateral deposits.

EXHIBIT "F"

MAP OF TECHNOLOGY CAMPUS AND CAMPUS EXPANSION

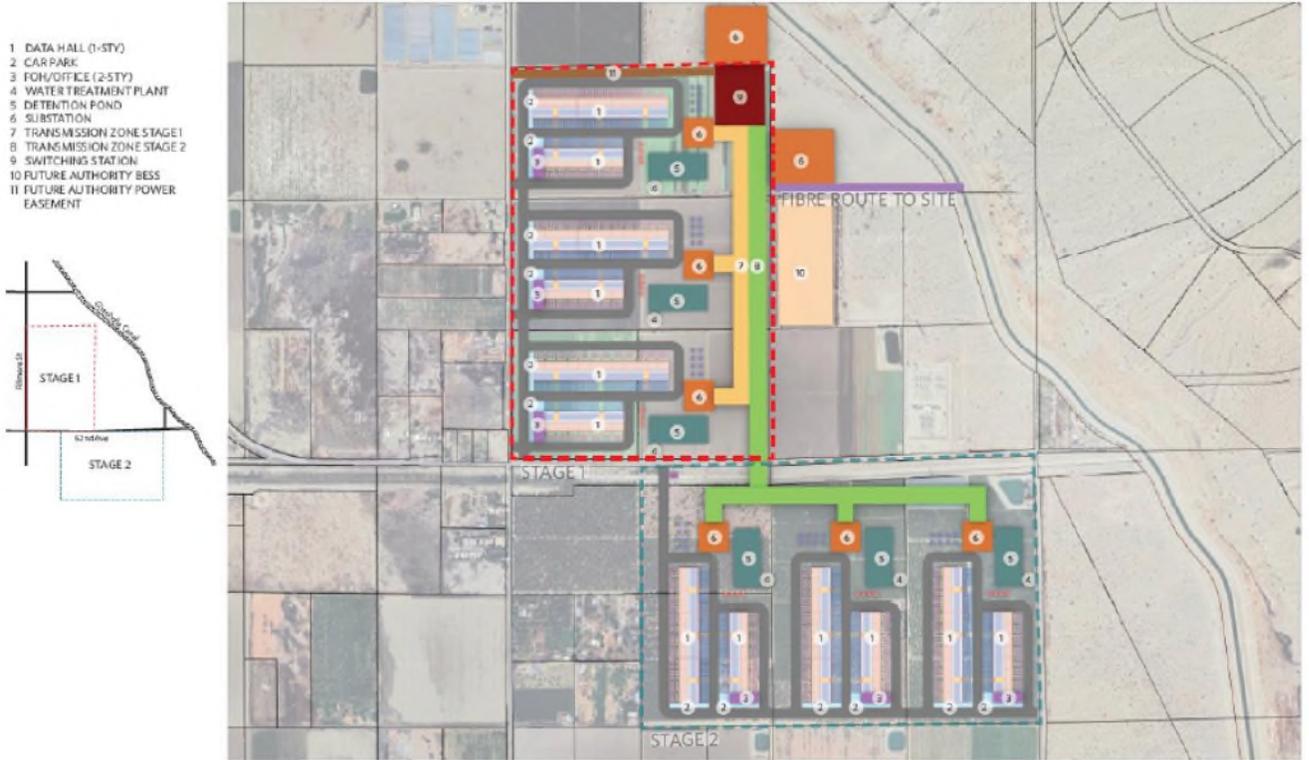


EXHIBIT “G”

RATE ASSUMPTIONS FOR NMU

1. CMU rates will be competitive with IID rates for large commercial customers such as the Technology Campus
2. CMU rates will be consistent with the discussions with initial data center customers within the Technology Campus.
3. CMU rates will be sufficient to cover:
 - (i) a retention payment to the CMU equivalent to Eight Percent (8% of gross revenues, subject to reduction in the sole discretion of the City;
 - (ii) all anticipated costs and expenses of the CMU for each fiscal year as well as appropriate reserves;
 - (iii) all debt service for the Project Infrastructure; and
 - (iv) a reasonable return on investment and operating profit of Provider.

EXHIBIT “H”

SERVICE FEE

Provider will provide the Project Infrastructure and all Project Services, O&M Services and Energy Services on the basis of a single turn-key provider fee equal to the revenue of the CMU for providing service within the NMU that is remaining each month after all costs and expenses of the CMU have been paid and the rate retention of the CMU has been retained. Provider acknowledges and agrees that the Service Fee is at-risk subject to the terms and conditions of this Agreement and the City does not guaranty any percentage of return or profit to Provider.

All debt service and repayment for financing obtained by Provider will be paid from its Service Fee.

The Service Fee will be payable in accordance with Section 7.3.

EXHIBIT “I”
LSE REQUIREMENTS

[to be inserted]

EXHIBIT "J"
INSURANCE REQUIREMENTS

See Attached

**MINIMUM INSURANCE REQUIREMENTS
DEVELOPMENT & DESIGN PHASE**

I. COVERAGE

Before the commencement of any significant design services, Provider shall procure and maintain Professional Liability (Errors & Omissions) insurance covering negligent acts, errors, and omissions arising out of Professional Services performed in connection with this Agreement, including design, engineering, planning, studies, modeling, and technical specifications, with a minimum required limit of \$2,000,000 Per Claim and Aggregate.

When Provider retains a licensed architect, engineer or designer or any other Design Consultants (collectively “Consultants”) such Consultants and their Subconsultants shall be required to maintain Professional Liability coverage in an amount not less than \$5,000,000 Per Claim and Aggregate. This represents the minimum limit required and shall not be construed as confirmation that such limits are adequate to cover the risk.

All required Professional Liability coverage shall be maintained in full force and effect during the performance of the Professional Services and for a period of not less than four (4) years following the completion of such Professional Services, or two (2) years following Substantial Completion of the Project, whichever period is longer. The retroactive date of the Professional Liability policy must predate the beginning of any services provided under the contract and shall not be advanced during the period of time coverage is required to be maintained. Notwithstanding any provision to the contrary, Provider’s maximum liability arising out of or related to Professional Services performed in connection with this Agreement, whether in contract, tort, or otherwise, shall not exceed the available proceeds of insurance, excluding liability arising from gross negligence, willful misconduct, or fraud. Consequential, incidental, or indirect damages are excluded to the maximum extent permitted by law.

II. OPTION TO USE ALTERNATIVE INSURANCE PROGRAMS

Provider may, in lieu of the insurance policies otherwise required above, satisfy such requirements through the use of a project-specific insurance program, a master project insurance program, or any other consolidated or alternative insurance arrangement (collectively, an “Alternative Insurance Program”), provided that the coverage afforded by such Alternative Insurance Program is substantially equivalent to, or more comprehensive than, the coverage required under this Agreement.

To the extent an Alternative Insurance Program is used, Provider may require its Consultants and Subconsultants to participate in such program, which shall satisfy their corresponding insurance obligations under this Agreement. The City shall not require Consultants or Subconsultants to procure separate or duplicative insurance unless commercially necessary due to a material coverage gap.

MINIMUM INSURANCE REQUIREMENTS CONSTRUCTION PHASE

Provider shall procure and maintain insurance of the types specified below, and shall cause each of its Contractors, Subcontractors and Consultants of every tier (collectively “Contractors”) to procure and maintain the same. All coverage shall be placed with insurance companies licensed to do business in the state where the project is located with a minimum A.M. Best rating of A- VIII. A specific exception to this requirement will be the State Compensation Insurance Fund of California.

Unless otherwise approved in writing by the City of Coachella (“City”), these insurance obligations shall remain in effect from commencement of any Work until Final Acceptance and through any applicable warranty or maintenance period specified in the Agreement.

I. COVERAGE

1. Commercial General Liability (CGL) Insurance

Provider shall maintain Commercial General Liability (CGL) insurance with a limit of not less than \$2,000,000 Per Occurrence and \$4,000,000 Aggregate. If such CGL insurance contains a General Aggregate Limit, it shall apply separately to this project as evidenced by ISO Endorsement CG 25 03 or equivalent.

CGL insurance shall be written on the current version of the ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If the CGL policy does not contain standard ISO separation of insureds condition or substantially similar clause, there shall be an endorsement providing cross liability.

If the Scope of Work includes work within 50 feet of any railroad, the CGL policy shall be endorsed to delete the Contractual Liability exclusion for work performed within 50 feet of a railroad.

The City shall be included as an additional insured under the CGL using ISO additional insured endorsements CG 20 10 10/01 (ongoing) and CG 20 37 10/01 (completed operations) or their equivalents, to the extent commercially available. Coverage shall be primary to, and will not seek contribution from, any other insurance or self-insurance programs afforded to the City. Coverage shall be maintained in effect for a period of ten (10) years following completion.

2. Commercial Auto

Provider shall maintain Commercial Auto insurance for all owned, hired, and non-owned vehicles with limits of not less than \$1,000,000 Each Accident.

Coverage shall be written on the current version of ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. The City shall be included as an additional insured, on a primary and non-contributory basis.

3. Workers Compensation and Employers Liability Insurance

Provider shall maintain Workers Compensation and Employers Liability insurance as required by statute. Employers Liability limits shall not be less than \$1,000,000 Each Accident, \$1,000,000 Each Employee by Disease, and \$1,000,000 Policy Limit by Disease.

4. Umbrella/Excess Liability

Provider shall maintain Umbrella/Excess Liability coverage with a minimum limit of \$25,000,000 Each Occurrence and \$25,000,000 Aggregate. Such policy shall provide coverage over and above the CGL, Auto Liability, and Employers Liability required herein and shall be at least as broad as the underlying coverages. The Excess policy (or policies) shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

This insurance will name the City as additional insured for ongoing and completed operations on a primary and non-contributory basis.

5. Professional Liability (Errors and Omissions)

Provider shall maintain Professional Liability insurance covering negligent acts, errors, and omissions arising out of Professional Services in an amount not less than \$10,000,000 Per Claim and Aggregate.

If Provider or Contractors, retain a licensed architect, engineer or designer (“Design Professional”) such Design Professional shall be required to maintain Professional Liability coverage in an amount not less than \$5,000,000 Per Claim and Aggregate. This represents the minimum limit required and shall not be construed as confirmation that such limits are adequate to cover the risk.

All required Professional Liability coverage shall be maintained in force throughout the life of the project and for a period of four (4) years following substantial completion of the project. The retroactive date of the Professional Liability policy must predate the beginning of any services provided under the contract and shall not be advanced during the period of time coverage is required to be maintained.

6. Pollution Liability

Provider shall maintain Pollution Liability in an amount not less than \$10,000,000 Per Occurrence and \$10,000,000 Aggregate.

If any Contractor, Subcontractor or supplier, regardless of tier, perform remediation of hazardous material, or if their operations create an exposure to hazardous materials as those terms are defined in federal, state, or local law, such parties shall maintain in force for the full period of this contract insurance covering losses caused by pollution incidents arising from the operations of such parties. This insurance shall apply to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least \$5,000,000 Per Occurrence and \$5,000,000 Aggregate

The City shall be included as an additional insured, on a primary and non-contributory basis.

If any Contractor, Subcontractor or supplier, regardless of tier, haul hazardous material (including without limitation, waste) their Commercial Auto policy must include MCS 90 and ISO endorsement CA 99 48 or equivalent coverage.

8. Riggers Liability

If Contractors work involves the moving, lifting, lowering, rigging or hoisting of property or equipment, such Contractor (or Contractors) shall carry Rigger’s Liability Insurance to insure against physical loss or damage to first party or third party property or equipment and third party bodily injury with a minimum limit of \$10,000,000.

7. Builders Risk (All-Risk)

Provider shall procure and maintain Builders Risk insurance on an “all-risks” completed value or equivalent policy form with a limit sufficient to cover the total value of the entire Project on a replacement cost basis including all materials, equipment, machinery, fixtures, and supplies intended for incorporation into the Utility. The limit shall be no less than the initial contract value, plus the value of any subsequent modifications. Coverage shall include property in transit, and to the extent commercially available and affordable, Equipment Breakdown, Testing, Delay In Start Up, Earthquake and Flood. The City, Provider, Contractor, and all Subcontractors of every tier shall be included as Additional Named Insureds (or Additional Insureds) on the policy.

The requirement to maintain Builders Risk shall remain in full force at all times during the duration of project without any gaps, delays or breaks in coverage, until the Completion and Acceptance of the Work.

The City and Provider waive all rights against each other and any of their Contractors, Subcontractors, agents, and employees, each of the other, for damages caused by fire, or other causes of loss, to the extent those losses are covered by the Builders Risk required by this agreement or other Property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The City and Provider, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Exhibit shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. If during the Project construction period the City insures properties, real or personal or both, at or adjacent to the site, the City waives all rights in accordance with the terms of this Exhibit for damages caused by fire or other causes of loss covered by said separate Property insurance or any Self-Insurance Program.

II. ADDITIONAL PROVISIONS AND CONDITIONS

1. Waiver of Subrogation

Provider waives all rights against the City, its agents, and employees for recovery of damages to the extent these damages are covered by insurance (whether or not such insurance is required by this agreement) including but not limited to Commercial General Liability, Commercial Auto, Workers Compensation, and Pollution Liability. This waiver or subrogation shall not apply to the extent such damages arise out of any acts, omissions, negligence or willful misconduct of the City.

2. Cancellation of Insurance

If the insurance company elects to cancel or non-renew coverage for any reason other than nonpayment of premium, Provider’s insurer or insurer’s representative will provide 30 days notice of such cancellation or nonrenewal.

3. Evidence of Insurance

Prior to commencement of the work, Provider shall furnish the City with a Certificate of Insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. Copies of all required endorsements shall be submitted with the Certificate of Insurance. If requested by the City, Provider shall furnish copies of policies for each coverage required.

4. Failure to Maintain Insurance

Failure to maintain the required insurance may result in termination of this contract at the City’s option.

5. Lower Tier Insurance

With the exception of Builders Risk, Provider shall require all Contractors to maintain insurance consistent with these requirements and shall be responsible for ensuring compliance.

6. Continuation of Coverage

All policies, coverages, and limits required by this agreement shall be maintained for a period of at least four (4) years following completion of the project unless specified elsewhere in this Exhibit.

7. No Representation of Coverage Adequacy

This Exhibit K shall not be construed as a representation or guarantee that such coverage and limits are adequate to protect the City, Provider, or any other party to the project, nor shall such coverage and limits be deemed as a limitation of liability.

III. BOND AND FINANCIAL SECURITY REQUIREMENTS

Provider may be required to maintain security requirements that may be satisfied with insurance or surety bonds. Provider may also require surety bonds securing the Provider's obligations by subcontractors, vendors and suppliers.

IV. CHANGES

The Parties acknowledge that insurance markets, statutory requirements, utility standards, and project risk profiles may change over time. The Insurance Requirements applicable to the Construction Phase are therefore subject to adjustment in accordance with this Section. No Party shall be required to procure or maintain insurance coverage beyond what is commercially reasonable, available, and customary for comparable public-private utility projects.

Accordingly, the Parties shall, in good faith, review the Insurance Requirements for the Construction Phase set forth in this Exhibit and may amend such requirements upon mutual written agreement. Any amendment shall be reasonably and proportionately based upon: (a) a material change in the scope or nature of the Work, (b) a change in applicable law, regulation, code, or binding industry standard, (c) a change in the commercial availability, terms, or pricing of the relevant insurance coverage, or (d) prevailing prudent practices within the utility, construction, or renewable-energy space.

The City shall have no unilateral right to increase the required limits or impose new insurance obligations on the Provider or its Contractors, except as expressly allowed in this Section.

If any required coverage becomes commercially unavailable, the Parties shall work in good faith to agree on a commercially reasonable substitute.

V. OPTION TO USE ALTERNATIVE INSURANCE PROGRAMS

Provider may, in lieu of one or more of the insurance policies otherwise required under this Agreement, satisfy such requirements through the use of an Owner-Controlled Insurance Program ("OCIP"), a Contractor-Controlled Insurance Program ("CCIP"), a project-specific insurance program, a master project insurance program, or any other consolidated or alternative insurance arrangement (collectively, an "Alternative Insurance Program"), provided that the coverage afforded by such Alternative Insurance Program is substantially equivalent to, or more comprehensive than, the coverage required under this Agreement, as determined by City in its reasonable discretion.

To the extent an Alternative Insurance Program is used, Provider may require its Contractors and Subcontractors of every tier to participate in such program, which shall satisfy their corresponding

insurance obligations under this Agreement. The City shall not require Contractors or Subcontractors to procure separate or duplicative insurance unless commercially necessary due to a material coverage gap.

**MINIMUM INSURANCE REQUIREMENTS
OPERATION, MAINTENANCE AND SERVICE PHASE**

Provider shall procure and maintain insurance of the types specified below, and shall cause each of its Subcontractors and Subconsultants of every tier (collectively “Subcontractors”) to procure and maintain the same. All coverage shall be placed with insurance companies licensed to do business in the state where the project is located with a minimum A.M. Best rating of A- VIII. A specific exception to this requirement will be the State Compensation Insurance Fund of California.

The insurance required herein shall remain in effect for the full term of the O&M Agreement, including any renewal terms, warranty periods, or transition periods required for turnover.

I. COVERAGE

1. Commercial General Liability (CGL) Insurance

Provider shall maintain Commercial General Liability (CGL) insurance with a limit of not less than \$2,000,000 Per Occurrence and \$4,000,000 Aggregate.

CGL insurance shall be written on the current version of the ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If the CGL policy does not contain standard ISO separation of insureds condition or substantially similar clause, there shall be an endorsement providing cross liability.

If the Scope of Services includes any work within 50 feet of any railroad, the CGL policy shall be endorsed to delete the Contractual Liability exclusion for work performed within 50 feet of a railroad.

The City of Coachella (“City”) shall be included as an additional insured under the CGL using ISO additional insured endorsements CG 20 10 10/01 (ongoing) and CG 20 37 10/01 (completed operations) or their equivalents, to the extent commercially available. Coverage shall be primary to, and will not seek contribution from, any other insurance or self-insurance programs afforded to the City.

2. Commercial Auto

Provider shall maintain Commercial Auto insurance for all owned, hired, and non-owned vehicles with limits of not less than \$1,000,000 Each Accident.

Coverage shall be written on the current version of ISO form CA 00 01, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. The City shall be included as an additional insured.

3. Workers Compensation and Employers Liability Insurance

Provider shall maintain Workers Compensation and Employers Liability insurance as required by statute. Employers Liability limits shall not be less than \$1,000,000 Each Accident, \$1,000,000 Each Employee by Disease, and \$1,000,000 Policy Limit by Disease.

4. Umbrella/Excess Liability

Provider shall maintain Umbrella/Excess Liability coverage with a minimum limit of \$25,000,000 Each Occurrence and \$25,000,000 Aggregate. Such policy shall provide coverage over and above the CGL, Auto Liability, and Employers Liability required herein and shall be at least as broad as the underlying

coverages. The Excess policy (or policies) shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

This insurance will name the City as additional insured for ongoing and completed operations on a primary and non-contributory basis.

5. Professional Liability (Errors and Omissions)

If Provider provide engineering, design, supervision of interconnection systems, technical performance modeling, or similar Professional or Technical Services, Provider shall maintain Professional Liability insurance covering negligent acts, errors, and omissions arising out of such Professional Services in an amount not less than \$10,000,000 Per Claim and Aggregate.

If Provider retain Subcontractors to provide Professional Services, Subcontractors shall be required to maintain Professional Liability coverage in an amount not less than \$5,000,000 Per Claim and Aggregate. This represents the minimum limit required and shall not be construed as confirmation that such limits are adequate to cover the risk.

All required Professional Liability coverage shall be maintained in force throughout the life of the contract and for a period of four (4) years following completion of services. The retroactive date of the Professional Liability policy must predate the beginning of any services provided under the contract and shall not be advanced during the period of time coverage is required to be maintained.

6. Pollution Liability

Provider shall maintain Pollution Liability in an amount not less than \$10,000,000 Per Occurrence and \$10,000,000 Aggregate.

If any Subcontractors retained by Provider perform remediation of hazardous material, or if their operations create an exposure to hazardous materials as those terms are defined in federal, state, or local law (including but not limited to battery storage chemicals, herbicides, and transformer oils) such parties shall maintain in force for the full period of this contract insurance covering losses caused by pollution incidents arising from the operations of such parties. This insurance shall apply to bodily injury, property damage, including loss of use of damaged property or of property that has not been physically injured, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. The policy of insurance affording these required coverages shall be written in an amount of at least \$5,000,000 Per Occurrence and \$5,000,000 Aggregate.

The City shall be included as an additional insured, on a primary and non-contributory basis.

If Provider or Subcontractors, regardless of tier, haul hazardous material (including without limitation, waste) their Commercial Auto policy must include MCS 90 and ISO endorsement CA 99 48 or equivalent coverage.

7. Cyber Liability

Provider shall maintain Cyber Liability covering losses and claims arising from or related to unauthorized access to, or use of, Project data, SCADA systems, communications networks, monitoring platforms, or other IT systems; Data Breach; Network Security Failures; Cyber Extortion; and Business Interruption or Extra Expense resulting from a Cyber Incident. Coverage shall include third-party liability, regulatory actions, incident response costs, forensic investigation, data restoration, system restoration, and breach notification expenses. The limits maintained shall be no less than \$5,000,000 Per Claim and Aggregate.

8. Property Insurance (All-Risk)

Beginning on the Utility Operations Date and continuing for the duration of the Operating Term, as defined in the agreement, the Provider shall procure and maintain Property Insurance covering all related infrastructure, equipment, facilities, and improvements owned by the CMU in connection with the NMU. Coverage shall be written on an “all-risk” basis including coverage for physical loss or damage caused by Windstorm, Hail, Flood, Earthquake, Collapse, Theft, Vandalism, and Equipment Breakdown (including electrical arcing, mechanical breakdown, and transformer failure), to the extent commercially available and affordable. Pursuant to Section 9 of the Agreement, the City will be responsible to provide wildfire coverage for the assets of the CMU. In addition, Property Insurance shall include: Business Interruption, Electrical Generation Interruption, and/or Loss of Income in amounts sufficient to cover loss of revenue, operating margin, and fixed expenses during the period of restoration; Extra Expense coverage to minimize interruption or expedited repair costs; coverage for Renewable Energy Equipment (as applicable) including but not limited to photovoltaic modules, trackers, inverters, transformers, communications equipment, SCADA systems, battery-energy storage components, and interconnection facilities owned by the Operating Entity; and Utility Service Interruption coverage to the extent commercially available and affordable.

Property Insurance shall be maintained for the full replacement cost. Unless otherwise agreed, replacement cost valuation shall be based on: the current replacement cost of solar generating equipment and balance of plant (i.e. non-panel infrastructure) at the time of loss, and the full replacement cost of batteries or other energy storage equipment (if applicable).

The City shall be named as a Loss Payee, but only to the extent of their insurable interest in the Property. If required by Loan or Finance Agreement, Lender shall be included as Loss Payee or Mortgagee pursuant to such agreement.

9. Equipment

Provider and Subcontractors are responsible for insuring their own tools, vehicles, drones, test equipment, SCADA laptops, and personal property. The City is not responsible for such equipment or property.

II. ADDITIONAL PROVISIONS AND CONDITIONS

1. Waiver of Subrogation

Nothing in this Section shall modify or expand the scope of indemnity, except to allocate responsibility between the Parties and their insurers consistent with the risk allocation set forth in this Agreement.

2. Cancellation of Insurance

If the insurance company elects to cancel or non-renew coverage for any reason other than nonpayment of premium Provider’ insurer or insurer’s representative will provide 30 days notice of such cancellation or nonrenewal.

3. Evidence of Insurance

Prior to commencement of services, Provider shall furnish the City with a Certificate of Insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth herein. Copies of all required endorsements shall be submitted with the Certificate of Insurance. If requested by the City, Provider shall furnish copies of policies for each coverage required.

4. Failure to Maintain Insurance

Failure to maintain the required insurance may result in termination of this contract at the City’s option.

5. Lower Tier Insurance

With the exception of Property Insurance, Provider shall require all Subcontractors to maintain insurance consistent with these requirements and shall be responsible for ensuring compliance.

6. Continuation of Coverage

All policies, coverages, and limits required by this agreement shall be maintained for a period of at least four (4) years following completion of services unless specified elsewhere in this Exhibit.

7. No Representation of Coverage Adequacy

Exhibit K shall not be construed as a representation or guarantee that such coverage and limits are adequate to protect the City, Provider, or any other party providing services in accordance with this Agreement, nor shall the requirement of such coverage and limits be deemed as a limitation of liability.

III. BOND AND FINANCIAL SECURITY REQUIREMENTS

The Provider may be required to maintain security requirements that may be satisfied with insurance or surety bonds. The Provider may also require surety bonds securing the Provider' obligations by subcontractors, vendors and suppliers.

IV. CHANGES

The Parties acknowledge that insurance markets, statutory requirements, utility standards, and project risk profiles may change over time. The requirements applicable to the Operational Phase are therefore subject to adjustment in accordance with this Section. No Party shall be required to procure or maintain insurance coverage, bonds, or financial instruments beyond what is commercially reasonable, available, and customary for comparable public-private utility projects.

Accordingly, the Parties shall, in good faith, review the requirements for the Operational Phase set forth in this Exhibit K and may amend such requirements upon mutual written agreement. Any amendment shall be reasonably and proportionately based upon: (a) a material change in the scope or nature of the Work, (b) a change in applicable law, regulation, code, or binding industry standard, (c) a change in the commercial availability, terms, or pricing of the relevant insurance coverage, or (d) prevailing prudent practices within the utility, construction, or renewable-energy space.

The City shall have no unilateral right to increase the required limits or impose new obligations on the Provider or its Subcontractors, except as expressly allowed in this Section.

If any required coverage becomes commercially unavailable, the Parties shall work in good faith to agree on a commercially reasonable substitute.

V. OPTION TO USE ALTERNATIVE INSURANCE PROGRAMS

Provider may, in lieu of one or more of the insurance policies otherwise required under this Agreement, satisfy such requirements through the use of a project-specific insurance program, a master project insurance program, or any other consolidated or alternative insurance arrangement (collectively, an "Alternative Insurance Program"), provided that the coverage afforded by such Alternative Insurance Program is substantially equivalent to, or more comprehensive than, the coverage required under this Agreement, as determined by City in its reasonable discretion.