

**AGREEMENT BETWEEN THE CITY OF COACHELLA AND
NATIONWIDE POWER GROUP LLC REGARDING THE
CONSTRUCTION AND OPERATION OF AN ELECTRICAL
SUBSTATION AND OTHER FACILITIES TO SERVE THE CITY'S
ECONOMIC DEVELOPMENT ZONE**

This Agreement to Construct and Operate an Electrical Substation (“**Agreement**”), effective December ____, 2020 (“**Effective Date**”), is by and between the CITY OF COACHELLA, a municipal corporation and general law city (“**City**”), and the NATIONWIDE POWER GROUP LLC, a California limited liability company (“**NPG**”). City and NPG shall be referred to individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

- A. The Imperial Irrigation District provides electricity outside its jurisdictional boundary to certain residents and businesses within the City’s municipal limits.
- B. District is in the process of upgrading its existing electrical system to serve an industrial area of the City and is contemplating an agreement with NPG to design, construct, and hold title to an electrical substation and other facilities for a specific period of time and satisfy electrical needs of new development within the City in an area more commonly known as the Economic Development Zone.
- C. In order to effectuate the construction and operation of an electrical substation and other appurtenances to serve the Economic Development Zone and grant the right to use certain City public streets, the City intends to authorize NPG for such limited purposes in exchange for a fee, among other obligations of City and NPG.

AGREEMENT

NOW THEREFORE, in consideration of their mutual promises and obligations, the Parties hereby agree as follows:

SECTION 1. Definitions. Whenever in this Agreement the words or phrases hereinafter in this section defined are used, they shall have the respective meanings assigned to them in the following definitions (unless, in the given instance, the context wherein they are used shall clearly import a different meaning):

(a) “**Applicable Law**” shall mean all present or future federal, state, municipal, or local laws, rules, regulations, ordinances, codes, orders, permit requirements, judgments, injunctions, or decrees, or any judgment or order or decree by a court applicable to NPG or any of NPG’s Facilities.

(b) “**City**” shall mean the City of Coachella, a municipal corporation of the State of California, in its present incorporated form or in any later reorganized, consolidated or reincorporated form.

(c) **“Economic Development Zone”** or **“EDZ”** shall mean the land area within the City identified as the **“Auto Wrecking Zone”** encompassing approximately 260 acres and generally bound by the Union Pacific Railroad tracks and Dillon Road to the west, Avenue 48 to the north, the Whitewater River to the east, and Avenue 50 to the south, and the **“Industrial Zone”** encompassing approximately 670 Acres and generally bound by Avenue 52 to the North, Highway 111 to the West, Avenue 55 to the South and the Flood Control Channel to the East.

(d) **“Engineer”** shall mean the City Engineer of the City or any other person designated by the City Manager of the City.

(e) **“Facility”** or **“Facilities”** shall mean all property owned or used by NPG in connection with this Agreement, including, but not limited to, an electrical substation and all related appurtenances as well as poles, towers, supports, wires, fiber-optics, communications, conductors, cables, guys, stubs, platforms, crossarms, braces, transformers, insulators, conduits, ducts, vaults, manholes, meters, cut-outs, switches, communication circuits, appliances, attachments, appurtenances and any other property, whether installed by the NPG or not, erected, constructed, laid, operated, or maintained in, upon, over, under, along, or across any public street used or useful in transmitting or distributing electricity to the Economic Development Zone, pursuant to any right or privilege granted by this Agreement.

(f) **“Gross Annual Receipts”** shall mean the basis for payments due the City under the terms of this Agreement, which is the gross operating revenues received by NPG from the sale of electricity to NPG’s customers with points of service within the corporate limits of the City which are or would be credited under a uniform system of accounts approved pursuant to California law, less any uncollectible amounts and less any refunds or rebates by NPG to such customers pursuant to California Public Utilities Commission decisions or orders or decision or orders of the Imperial Irrigation District.

(g) **“Imperial Irrigation District”** or **“District”** shall mean an irrigation district established under the California Water Code to serve Imperial County, and which provides electricity outside of its jurisdictional boundary to certain portions of City, subject to City’s municipal utility service area.

(i) **“NPG”** shall mean Nationwide Power Group, LLC, and its successors and assigns.

(o) **“Streets”** shall mean the public streets, ways, and alleys as the same now or may hereafter exist within the City, whether or not such public streets, ways and alleys are maintained by City.

(p) **“Work”** means any and all construction, installation, repair, maintenance, removal, or relocation of any facilities or other improvements performed under this Agreement.

SECTION 2. Grant of Rights and Term.

(a) **Grant of Rights.** The right and privilege, subject to each and all of the terms and conditions contained in this Agreement, is hereby granted to NPG, to construct the

necessary Facilities to provide electricity to the EDZ for any and all purposes and including Facilities under, along, or across the streets of the City.

(b) Term. The Agreement shall run from the Effective Date and terminate on January 1, 2035. This Agreement shall endure in full force and effect during that term (i) until the same shall be voluntarily surrendered or abandoned by NPG, (ii) until the State of California or some municipal or public corporation thereunto duly authorized by law shall purchase by voluntary agreement or shall condemn and take under the power of eminent domain, all property actually used and useful in the exercise of this Agreement, and situated within the territorial limits of the State, municipal or public corporation purchasing or condemning such property, (iii) until this Agreement shall be forfeited for noncompliance with its terms by NPG, or (iv) in accordance with subsection (c) herein.

(c) Expiration. This Agreement shall terminate upon the expiration of the term.

(d) Exclusivity. NPG shall have the exclusive right and privilege to facilitate electricity to EDZ customers from the Facilities. Notwithstanding the foregoing, the granting of this Agreement shall not be construed to prevent the City from granting access to its public rights-of-way to other electrical providers, forming and operating a municipal utility to provide electrical service to City customers, or duplicate service provided by the District.

SECTION 3. Fees

(a) Monthly Fee. Upon the completion of the Facilities and initiation of providing electricity to the EDZ, NPG shall pay to City on the first day of each month through the term of the Agreement, in lawful money of the United States, a sum equivalent to eight percent (8%) of the Gross Annual Receipts from the sale of electricity by the District to EDZ customers.

(b) Verification of Monthly Fee. In order to determine the Monthly Fee, NPG shall install, own and operate a metering device to measure all energy output generated by and through the Facilities to the applicable delivery point for the EDZ. The Monthly Fee shall be based on all energy output measured in whole kilowatt-hours (kWh) at the metering device multiplied by the then current District rate schedule for EDZ customers for such period. On an annual basis, City shall have the right to call for and within thirty (30) days witness a metering device test to verify the accuracy of the measurements and recordings of such device. NPG shall provide a written report to City at NPG's costs, within twenty (20) days of the test. If after witnessing the test and reviewing the report the City determines that the metering device is inaccurate, the Parties shall determine the correct amount of energy delivered during the periods affected by the inaccuracy. NPG shall reimburse City for any deficiency in the Monthly Fee for the applicable period.

(b) District Provision of Electrical Service. The City acknowledges that the District, not NPG, is the load serving entity to EDZ customers and that NPG is the owner and operator of the Facilities. City and NPG acknowledge that upon expiration of the Agreement, ownership of the Facilities may be transferred to the District or the CMU.

(c) Permit Fees. NPG shall pay all applicable permit fees, as they may be adopted and amended from time to time.

(d) Other Fees. Payment of fees and costs made by NPG to City pursuant to this Section are in addition to, and exclusive of, any and all authorized taxes and other fees, levies, or assessments now in effect or subsequently adopted in accordance with Applicable Laws.

SECTION 5. Verified Statement of Gross Receipts; Payment of Fee; Audit

(a) Verified Statement of Gross Receipts. NPG shall file with the City Clerk within three (3) months after the expiration of the calendar year, or fractional calendar year, following the date of the grant of this Agreement, and within three (3) months after the expiration of each and every calendar year thereafter, a duly verified statement showing in detail the following:

i. The total gross receipts received by the District from the sale of electricity to the EDZ; and

ii. The method and supporting calculations used to calculate the Monthly Fees, which are payable to the City in accordance with this Agreement;

City shall have the authority to reasonably dispute any verified statement and to require additional proof to any matters set forth therein.

(b) Failure to File Verified Statement. Any neglect, omission or refusal by the NPG to file such verified statement, or to pay the percentage, at the times or in the manner herein before provided, shall be grounds for the declaration of a forfeiture of this Agreement and of all rights hereunder.

(c) Delinquency. The Monthly Fee due from NPG is delinquent if not received by the City on or before the due date during normal business hours. Should the due date occur on a weekend or holiday, the Monthly Fee must be received by the City during the business hours of the first regular working day following the weekend or holiday. If NPG fails to remit the Monthly Fee on or before the due date, NPG shall pay interest at the rate of two percent (2.0%) per month of any fraction thereof on the amount of the fee from the date on which the fee first became delinquent, until paid.

(d) Audit. The City may, at any time, upon reasonable notice and during normal business hours, but no more than once a year, request an audit of NPG's accounting of the Monthly Fees paid to the City to confirm that the NPG is accurately calculating the fees paid to the City and that the NPG is accurately reporting District's Gross Annual Receipts. NPG shall not charge the City for such audit. Unless otherwise required by law, the City shall maintain confidentiality of all information provided by NPG to the City in connection with such audit that NPG has informed the City is confidential. Unless otherwise required by law, nothing herein shall be construed to require NPG to make available to the City, its officials, employees, agents, or other representatives information that constitutes private or confidential information pertaining to specific customers of the District without the consent of such customers. All books

and records of NPG relating to the calculation of the Monthly Fee for any calendar year shall be maintained by NPG for a period of at least four (4) years following delivery of the verified statement for such year.

SECTION 4. Eminent Domain. This Agreement granted hereunder shall not in any way or to any extent impair or affect the City's right to acquire the property of NPG hereof either by purchase or through the exercise of the right of eminent domain, and nothing therein contained shall be construed to contract away or to modify, or to abridge, whether for a term or in perpetuity, the City's right of eminent domain in respect to NPG. This Agreement shall not be given any value before any court or other public authority in any proceeding of any character in excess of the costs to NPG of the necessary costs of publication or any other sum paid by it to the City therefore at the time of the acquisition thereof.

SECTION 5. Construction and Installation.

(a) Construction Standards. NPG shall construct, install, maintain and repair all Facilities in accordance with all applicable federal, state and local laws, rules or regulations theretofore, or hereafter adopted by the City in the exercise of its police powers, and in accordance with the direction of the Engineer or the terms and conditions of any permit issued by a City department or agency, and, as to city streets, subject to the provisions of general laws relating to the location and maintenance of such facilities. NPG further agrees to comply with all City's land use processes and ordinances, regulations, rules, and permits that may apply to the construction of the Facilities to serve the EDZ. Any substation constructed by NPG shall be interconnected to the 230 kV system at District's Coachella Valley substation.

(b) Use of Streets. Any Work performed under the authority of this Agreement shall be done with the least possible hindrance to the use of the streets for the purposes of travel. As soon as such Work is completed, all portions of the streets that have been excavated or damaged thereby, shall be placed in as good condition as the same were before the commencement of such Work to the satisfaction of the Engineer. In the event that NPG fails or neglects to make such street repair, replacement or restoration Work, then thirty (30) days after written notice therefore has been given by the Engineer to NPG, City may perform such Work at NPG's cost. NPG shall reimburse the City for all such costs within thirty (30) days of written invoice, plus the current rate of overhead charged by the City for all reimbursable Work. NPG shall pay to the City, on demand, the cost of all repairs to public property made necessary by any operations of the NPG under this Agreement.

(c) Tunneling and Boring. Where it is necessary to lay any underground facilities, under or across any portion of a paved or macadamized street, the same shall be done by a tunnel or bore, so as not to disturb the foundation of such paved or macadamized street. The Engineer must approve any exception to this construction method.

(d) Street Coverings. All street coverings or openings of traps, vaults, and manholes shall be constructed flush with the surface of the streets; provided, however, that vents for underground traps, vaults and manholes may extend above the surface of the streets if such vents are located in parkways, between the curb and the property line, and are not, in the reasonable opinion of the Engineer, hazardous to the public.

(e) Permits. NPG shall not perform any Work under this Agreement without first obtaining all permits and entitlements from the Engineer (including, but not limited to, an encroachment permit); provided that in cases of emergencies affecting the public health and safety or the preservation of life and property, NPG shall apply for such permits no later than the next business day.

(f) Notice. In addition to any other requirement of this Agreement, NPG shall not perform any Work in a public street without first giving the City's City Manager and Manager of Planning each written notice by email at least thirty (30) days before commencing the Work; provided that in cases of emergencies affecting the public health and safety or the preservation of life and property, NPG shall give the notice as soon as reasonably practicable.

(g) Plans and Specifications. The Engineer shall have the right to give NPG such directions for the location of any Facilities as may be reasonably necessary to avoid sewers, water pipes, conduits or other structures lawfully in or under the streets; and prior to any Work commenced by NPG, NPG shall file with the Engineer plans and specifications showing the location and Work thereof. In addition, all Facilities shall be designed and constructed in accordance with all federal, state and local standards that may apply. The Engineer shall have the right to review and approve NPG's plans and specifications for the construction of any Facilities for proper purposes.

(h) Bonds. At City's request, NPG shall make such deposits of money or file such bonds with the City as may be required to ensure satisfaction and completion of any Work under this Agreement.

(i) Hazardous Waste. In the event of a release of hazardous waste, as that term is defined in Section 1004(3) of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6903(5)), by NPG or from any Facilities, NPG shall immediately notify City, begin remedial Work and pay for all related remedial costs incurred by NPG and City.

SECTION 9. Relocation, Abandonment & Removal.

(a) Relocation. NPG shall, at the request of the City and NPG's sole cost and expense, remove or relocate any Facilities installed, used or maintained under this Agreement if and when made necessary by the lawful change in grade, alignment or width of any street, including the construction of any subway or viaduct by the City, or any other street improvement of any kind required by the City or other legal entity of the City. NPG shall remove or relocate its Facilities to the nearest alternative location as established by the Engineer, and within such time as the Engineer establishes. If NPG fails to relocate its Facilities within the required time, the City may cause the Work to be done and shall keep an itemized account of the entire cost thereof, and NPG shall reimburse the City for its costs within ninety (90) days of NPG's receipt of the itemized account of costs. The City may consider NPG in default of this Agreement should NPG fail to comply with the notice, timing or direction to relocate its Facilities. NPG shall not be required to bear the expense of any removal or relocation made at the request of the City on behalf or for the benefit of any private developer or other non-governmental third party.

(b) Abandonment & Removal. NPG shall notify the City within thirty (30) days prior to any determination made by NPG to abandon the use of any Facilities or its intent either to abandon the Facilities in place, or remove all or a portion of the Facilities. NPG may thereafter abandon or remove the facilities in accordance with such terms and conditions as may be imposed by the Engineer.

SECTION 10. Maps and Plans.

(a) Provision of Maps and Plans. City regularly performs improvement projects whereby facility maps and plans of NPG's facilities are needed to properly design and construct the project(s). Upon written request by City, NPG shall, within thirty (30) days of the receipt of said request, send a copy of the Facility maps and plans within the City project area. NPG shall provide said information in an electronic format (or by mail if the electronic format is not available) at no charge.

(b) Content of Maps and Plans. NPG's maps and plans shall include, but not be limited to, information indicating the length of NPG's lines, the nominal external diameter of such mainlines and the points where they enter and exit the streets; old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of new conduits laid for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; and the diameter of such conduits laid, removed, and/or abandoned in place.

(c) Potholing. Upon City written notice, and in accordance with the City's schedule for a City improvement project, NPG shall determine horizontal and vertical location of its facilities and provide such information to City for City design purposes.

(d) Map Supplements. Within ninety (90) days following the installation, change, removal or abandonment of any Facilities in accordance with Section 9, NPG shall file a map or maps showing the accurate location and size of the facilities installed, changed, removed or abandoned.

(e) Emergency Response Plans. NPG shall at all times during the term of this Agreement maintain emergency response plans as required by regulatory agencies having jurisdiction, including filing with the Riverside County Sheriff's Department and the Riverside County Fire Department a current copy of the NPG's emergency preparedness and response plan. Such plan shall address all federal, state and local requirements for prevention of and response to all risks, whether natural or manmade.

SECTION 11. Faithful Performance Bond. On or before the effective date of this Agreement granting this Agreement, NPG shall file and thereafter at all times during the life of this Agreement keep on file with the City Clerk a corporate surety bond approved by the City Attorney running to the City in the penal sum of Fifty Thousand Dollars (\$50,000.00), with a surety licensed to do business in California and approved by the City Clerk. The bond shall provide that NPG shall well and truly observe, fulfill, and perform each condition of this Agreement and that in case of any breach of condition of the bond the whole amount of the penal sum shall be deemed to be liquidated damages and shall be recoverable from the principal and

sureties of the bond. If the bond is not filed prior to the effective date of this Agreement, this Agreement may be terminated by City and any money paid in consideration of this Agreement shall be deemed forfeited. This clause shall in no way limit the NPG's defense and indemnity obligations nor the coverage or applicability of the insurance policies provided by the NPG under this Agreement.

SECTION 12. Insurance.

(a) On or before commencement of any Agreement operations and for the term of this Agreement, NPG shall obtain or provide satisfactory evidence of having policies of commercial general liability, and auto liability insurance and if NPG has not obtained a certificate of self-insurance from the California Department of Industrial Relations, workers' compensation insurance, in each case, from companies authorized to transact business in the State of California by the Insurance Commissioner of California, and with a Best's rating of "A" or better upon the terms set forth below to the extent commercially reasonable.

i. The policy of liability insurance shall, for the term of this Agreement:

a. Be issued to NPG and name the City, its officers, officials, consultants, employees, agents, and volunteers as additional insureds;

b. Defend and indemnify the insureds against all liability for personal injury, bodily injury, wrongful death, and property damage arising from activities conducted pursuant to this Agreement by providing coverage therefor, including, but not limited to, coverage for negligent acts or omissions of NPG and the agents, servants, and employees thereof, committed in the conduct of Agreement operations; and

c. Provide a combined single limit of liability insurance in the amount of Ten Million Dollars (\$10,000,000.00) and provide pollution liability including products liability for potable water with no lead exclusion, provided the coverage is commercially available, with a limit no less than Five Million Dollars (\$5,000,000.00) per claim or occurrence and Five Million Dollars (\$5,000,000) aggregate per policy per period of one (1) year.

ii. NPG shall notify the City should NPG receive any notice of cancellation at least thirty (30) calendar days prior to cancellation date.

iii. If NPG has not provided the City with satisfactory evidence that it has obtained consent to self-insure from the California Department of Industrial Relations, the NPG shall provide the City satisfactory evidence that it has obtained a policy of workers' compensation that:

a. Has been previously approved as to substance and form by the California Insurance Commissioner;

b. Covers all employees of the NPG who in the course and scope of their employment are to conduct or do Work pursuant to the Agreement operations;

c. Provides for every benefit and payment presently or hereinafter conferred by Division 4 of the Labor Code of the State of California upon an injured employee, including the vocational rehabilitation and death benefits; and

d. Be non-cancellable without thirty (30) calendar days' written notice thereof directed to the City Clerk.

iv. NPG shall provide auto combined single limit (CSL) liability insurance for owned, non-owned and hired autos using ISO Business Auto Coverage form CA 00 01 or its equivalent with a limit of no less than One Million Dollars (\$1,000,000.00) per accident.

v. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to NPG's commercial general liability policy, shall be delivered to the City at or prior to the adoption of this Agreement.

vi. NPG may maintain self-insured retentions and deductibles at its discretion, but the amounts shall be disclosed on the insurance certificates.

vii. For any claims related to this Agreement, NPG's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of NPG's insurance and shall not contribute with it.

(b) NPG hereby waives its rights of subrogation that any insurer of NPG may acquire from NPG by virtue of the payment of any loss. NPG shall obtain any endorsement that may be necessary to effect this waiver of subrogation. The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all Work performed by NPG, its employees, agents and subcontractors.

SECTION 13. Indemnification. NPG shall indemnify, defend and hold the City, and its Council members, and/or employees, from and against all third-party claims, demands, liabilities, losses, costs, and expenses, including reasonable attorney fees, liens, or judgments, arising from the negligence or willful misconduct of NPG under this Agreement, including any claims for personal injury, wrongful death or property damage arising in connection with the construction and operation of the Facilities.

The aggregate liability of NPG pursuant to this Agreement shall in no event exceed (i) the greater of One Million Dollars (\$1,000,000) or (ii) the coverage limit of any applicable insurance policy pursuant to Section 12.

SECTION 14. Assignment.

(a) To the extent permitted by Applicable Law, NPG shall not directly or indirectly sell, transfer, assign, or lease this Agreement or any part thereof, except with the City Council's prior written consent.

(b) Such City approved sale, transfer, assignment, lease, or agreement shall be made by filing with the City Council a copy of the duly executed instrument of such sale, transfer, assignment, lease, or agreement and a written request for the consent of the City Council to such sale, transfer, assignment, lease or agreement. As a condition to the granting of consent to such sale, transfer, assignment, lease, or agreement, the City Council may impose such reasonable additional terms and conditions upon this Agreement and upon NPG or assignee, which the City Council may deem to be in the public interest. NPG shall have no right to sell, transfer, assign, or lease this Agreement, or any part thereof, except in the manner aforesaid, unless otherwise permitted by Applicable Law. This subsection applies to any assignment, whether by operation of law, by a voluntary act of NPG, or otherwise.

SECTION 15. Failure to Comply.

(a) If NPG shall fail, neglect, or refuse to comply with any of the provisions or conditions of the Agreement, and shall not, within ten (10) calendar days after written demand for compliance, begin the Work of compliance, or after such beginning shall not prosecute the same with due diligence to completion, then the City Council, after a noticed public hearing, may declare this Agreement forfeited.

(b) The City may sue in its own name for the forfeiture of this Agreement, or the imposition of any remedy allowed by law, in the event of noncompliance by NPG, its successors or assigns, with any of the conditions thereof.

SECTION 16. Compliance with Applicable Law. Until such time as (a) this Agreement terminates, (b) NPG removes all of its Facilities, and (c) NPG completes any necessary remedial Work, the NPG will comply with all Applicable Law. Without limiting the foregoing, the NPG shall comply with all requirements of the National Pollution Discharge Elimination System (“NPDES”) permitting process for all activities involving water discharges, unless expressly exempted by an applicable NPDES Permit. The NPDES permitting process is a mandatory federal regulatory process designed to safeguard against water quality problems. Compliance with NPDES requirements will ensure that any water discharges will not have a significant impact on the environment.

SECTION 17. Notice. All notices, requests and demands hereunder must be in writing to be effective. All notices required to be given hereunder or by operation of law in connection with the performance or enforcement hereof shall be deemed given upon delivery if delivered personally (which includes notices delivered by messenger or overnight courier) or, if delivered by mail, shall be deemed given three days after being deposited by first class mail in any duly authorized United States mail depository, postage prepaid. All such notices shall be addressed as follows, or to such other address or addresses as the Parties may from time to time specify in writing:

To the City at: Attn: City Manager
City of Coachella
53990 Enterprise Way
Coachella, CA 92236

To NPG at:

SECTION 18. Independent Contractor. Nothing herein contained shall be deemed to create an agency, joint venture, or partnership between the City and NPG.

SECTION 19. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter of the Agreement. Any modification of this Agreement will be effective only if it is in writing executed by City and NPG, unless otherwise allowed herein.

SECTION 20. Governing Law and Venue. NPG and City acknowledge and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the Parties to this Agreement and also govern the interpretation of this Agreement. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Riverside County, California, and the City and NPG agree to and to hereby submit to the jurisdiction of such court, notwithstanding California Code of Civil Procedure § 394. Furthermore, City and NPG specifically agree to waive any and all rights to request that an action be transferred for trial to another county.

SECTION 21. Consent to Breach Not Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused, unless such a waiver or consent shall be in writing and signed by the City and NPG claimed to have waived or consented. Any consent by the City and NPG to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

SECTION 22. Calendar Days. Any reference to the word “day” or “days” shall mean calendar day or calendar days respectively, unless otherwise expressly provided.

SECTION 23. Attorney’s Fees. In any action or proceeding to enforce or interpret any provision of this Agreement or where any provisions hereof is validly asserted as a defense, City and NPG shall be entitled to recover their attorney’s fees, costs and expenses.

SECTION 24. Interpretation. This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, City and NPG have been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other Party hereto or by any person representing them, or both. Accordingly, any rule of law, (including California Civil Code § 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that drafted it is not applicable and it deemed waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the Parties to this Agreement.

SECTION 25. Severability. If any term, condition, provision or article of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

SECTION 26. Authority to Execute This Agreement. City and NPG represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.

[Signatures to Follow On Next Page]

IN WITNESS WHEREOF, City and NPG have signed this Agreement on the dates set forth below.

CITY OF COACHELLA

Date: _____

By: _____

Title: _____

NATIONWIDE POWER GROUP LLC

Date: _____

By: _____

Title: _____